

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

JOINT APPLICATION OF PECO ENERGY :
COMPANY AND PUBLIC SERVICE ELECTRIC :
AND GAS COMPANY FOR APPROVAL OF THE :
MERGER OF PUBLIC SERVICE ENTERPRISE :
GROUP INCORPORATED WITH AND INTO :
EXELON CORPORATION :

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AND PUBLIC SERVICE ELECTRIC AND GAS COMPANY

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ENERGY COMPANY AND PUBLIC
SERVICE ELECTRIC AND GAS
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MERGER OF PUBLIC SERVICE
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INCORPORATED WITH AND INTO
EXELON CORPORATION**

DOCKET NO. A-

**JOINT APPLICATION OF PECO ENERGY COMPANY
AND PUBLIC SERVICE ELECTRIC AND GAS COMPANY**

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Dated: February 4, 2005

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**JOINT APPLICATION OF PECO ENERGY COMPANY
AND PUBLIC SERVICE ELECTRIC AND GAS COMPANY**

A. INTRODUCTION

1. PECO Energy Company (PECO) and Public Service Electric and Gas Company (PSE&G) (Joint Applicants) are filing this Joint Application to obtain the approval of the Pennsylvania Public Utility Commission (PUC or the Commission), if such approvals are required, under Chapters 11, 22 and 28 of the Public Utility Code, for the merger of Public Service Enterprise Group Incorporated (PSEG), the corporate parent of PSE&G, with and into Exelon Corporation (Exelon), the ultimate corporate parent of the Joint Applicants. If the Commission determines that such approvals are required, the Joint Applicants request that the Commission issue Certificates of Public Convenience evidencing its approval. Alternatively, if the Commission determines that such approvals are not required, PECO requests that the Commission issue a final declaratory order setting forth that finding.

2. The names and addresses of the Joint Applicants are as follows:

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3. The names and addresses of PECO's attorneys are as follows:

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B. DESCRIPTION OF THE JOINT APPLICANTS AND THE OTHER COMPANIES INVOLVED IN THE PROPOSED TRANSACTION

5. **PECO** is a corporation organized and existing under the laws of the Commonwealth of Pennsylvania and is engaged in the business of supplying, transmitting and distributing electricity and natural gas. PECO has turned over the operational control of its electric transmission system to the PJM Interconnection, LLC (PJM), which is the Regional Transmission Organization (RTO) approved by the Federal Energy Regulatory Commission (FERC) for a centrally dispatched control area comprising all or parts of the states of Delaware, Illinois, Indiana, Kentucky, Maryland, Michigan, New Jersey, Ohio, Pennsylvania, Tennessee, Virginia and West Virginia and the District of Columbia. PECO is a "public utility," a "natural gas distribution company" (NGDC) and an "electric distribution company" (EDC) as those terms are defined, respectively, in Sections 102, 2202 and 2803 of the Public Utility Code (66 Pa. C.S. §§102, 2202 and 2803) and, therefore, is subject to regulation by the Commission. PECO furnishes retail electric service in all or substantially all of Bucks, Chester, Delaware, Montgomery and Philadelphia Counties and portions of York County. PECO is headquartered in Philadelphia and furnishes retail natural gas service in substantial portions of Bucks, Chester, Delaware, and Montgomery Counties and a small section of Lancaster County.

6. **Exelon** is a corporation organized and existing under the laws of the Commonwealth of Pennsylvania and is a registered holding company under the Public Utility Holding Company Act of 1935 (PUHCA). The common stock of Exelon is publicly traded and is listed on the New York Stock Exchange. Pursuant to this Commission's Order entered June 22, 2000 at Docket No. A-00110550F0147 granting PECO the requisite approvals under, *inter alia*, Chapter 11 of the Public Utility Code, PECO became a wholly owned subsidiary of Exelon by the exchange of common stock in Exelon for the outstanding common stock of PECO. Concurrent with that transaction, Unicom Corporation (Unicom), the parent of Commonwealth Edison Company (ComEd), was merged with and into Exelon and the shareholders of Unicom exchanged their stock in Unicom for common stock in Exelon. As a consequence of that merger, ComEd became a virtually wholly owned subsidiary of Exelon.¹ As part of the corporate realignment that established the holding company structure, PECO and ComEd transferred their generation assets, other non-regulated enterprises and business service functions, respectively, to separate corporations that also became wholly owned subsidiaries of Exelon. Currently, Exelon, through its subsidiaries, operates in three primary business segments, which have been denominated Energy Delivery, Generation, and Enterprises and, through a subsidiary service company, provides business services to the consolidated group.² The Enterprises business, which is being winded down, is an infrastructure and electrical contracting business directed principally towards the communications and energy services industries. The Energy Delivery, Generation and Business Services segments are described below.

¹ Currently, PECO and ComEd are second tier subsidiaries of Exelon through their immediate parent, Exelon Energy Delivery Company, LLC (Exelon Energy Delivery).

² A diagram depicting Exelon's existing corporate structure is attached hereto as Exhibit A.

a. **Energy Delivery.** Exelon's energy delivery business is conducted through PECO and ComEd. PECO's retail electric and natural gas operations were described in Paragraph No. 5, above. ComEd is headquartered in Chicago and is engaged in the business of supplying, transmitting and distributing electricity in Northern Illinois and, through a wholly owned subsidiary, provides electric transmission service in portions of Indiana. ComEd is a "public utility" under the Illinois Public Utilities Act and, therefore, is subject to regulation by the Illinois Commerce Commission (ICC). On April 1, 2003, ComEd received approval from the FERC to transfer operational control of its transmission assets to PJM, which occurred in May 2004.

b. **Generation.** Exelon's generation business consists of: (1) electric generating facilities with a total capacity of 34,467 Megawatts (MW) that Exelon Generation Company, LLC (Exelon Generation) owns or has under contract; (2) the wholesale energy marketing operations (Power Team) of Exelon Generation; and (3) as of January 1, 2004, the competitive retail sales business of Exelon Energy Company. Exelon Generation is one of the largest competitive generation companies in the United States, as measured by owned and controlled generation capacity. Power Team is a major wholesale marketer of energy that uses Exelon Generation's energy generation portfolio, transmission rights and expertise to ensure delivery of energy to Exelon Generation's wholesale customers under long-term and short-term contracts, including the load requirements of ComEd and PECO. Power Team markets any remaining energy in the wholesale bilateral and spot markets. The generation portfolio of Exelon Generation includes its ownership interests in 11 nuclear generating stations, consisting of 19 units with 16,943 MW of capacity, which is the largest fleet of nuclear units in the United States. All of the nuclear generating stations in which Exelon Generation has an ownership

interest are operated by it except for the Salem Nuclear Generating Station (Salem), which is operated by its co-owner, PSEG Nuclear LLC, a subsidiary of PSEG.

c. **Business Services.** In addition to Exelon's two business segments, Exelon Business Services Company (Business Services), a first tier subsidiary of Exelon, provides Exelon and its subsidiaries with financial, human resources, legal, information technology, supply management and corporate governance services.

7. **PSE&G** is a corporation organized and existing under the laws of the State of New Jersey and is engaged in the business of supplying, transmitting and distributing electricity and natural gas. PSE&G is headquartered in Newark and, like PECO and ComEd, has turned over operational control of its electric transmission system to the PJM. PSE&G's service territory comprises a corridor running diagonally across New Jersey from the southwest to the northeast and encompasses most of New Jersey's largest municipalities, 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 also holds a certificate of public convenience issued by this Commission. However, PSE&G is not a "public utility" in Pennsylvania in the traditional sense in that it is not authorized to serve any customers in Pennsylvania. Indeed, PSE&G's certificate, which was issued on April 24, 1968 at Docket No. 94234, specifically provides that it "shall confine and restrict its operations to the construction, maintenance, repair, replacement, and removal of the proposed electric transmission line."

8. **PSEG**, the parent company of PSE&G, is a corporation organized and existing under the laws of the State of New Jersey and is an exempt holding company under PUHCA. The common stock of PSEG is publicly traded and is listed on the New York Stock Exchange. PSEG has four principal direct wholly-owned subsidiaries: PSE&G; PSEG Power LLC (PSEG Power); PSEG Energy Holdings LLC (PSEG Energy Holdings); and PSEG Services Corporation (PSEG Services).³ PSE&G's retail electric and natural gas operations were described previously. The operations of PSEG's other subsidiaries are summarized below:

a. **PSEG Power.** Power is a multi-regional, wholesale energy supply company that integrates its generating asset operations with its wholesale energy, fuel supply, energy trading and marketing and risk management functions through three principal direct wholly-owned subsidiaries: PSEG Nuclear LLC (PSEG Nuclear), which owns and operates nuclear generating stations; PSEG Fossil LLC (PSEG Fossil), which develops, owns and operates domestic fossil generating stations; and PSEG Energy Resources & Trade LLC (PSEG ER&T), which markets the capacity and production of PSEG Fossil's and PSEG Nuclear's stations and manages the commodity price risks and market risks related to generation. PSEG Power's generation portfolio consists of approximately 18,000 MW of installed capacity that is diversified by fuel source and market segment. PSEG ER&T purchases virtually all of the capacity and energy produced by PSEG Fossil and PSEG Nuclear, and markets electricity, capacity, ancillary services and natural gas products on a wholesale basis. PSEG ER&T is a fully integrated wholesale energy marketing and trading organization that is active in the long-term and spot wholesale energy markets.

³ A diagram depicting PSEG's existing corporate structure is attached hereto as Exhibit B.

b. **PSEG Energy Holdings.** PSEG Energy Holdings has pursued investment opportunities in energy markets through two principal direct wholly-owned subsidiaries, PSEG Global LLC (PSEG Global) and PSEG Resources LLC (PSEG Resources). PSEG Global has focused on the operating segments of the electric industries and PSEG Resources has primarily made financial investments in those industries.

c. **PSEG Services.** PSEG Services provides management and administrative services to PSEG and its subsidiaries, including legal, human resources, information technology, financial, and corporate governance services.

C. OVERVIEW OF THE PROPOSED TRANSACTION

9. Pursuant to the terms of an Agreement and Plan of Merger, a copy of which is provided as the separately bound Exhibit C, PSEG will merge with and into Exelon (Merger), thereby ending the separate corporate existence of PSEG. Each PSEG shareholder will be entitled to receive 1.225 shares of Exelon common stock for each PSEG share held and will be paid cash in lieu of any fractional share of Exelon stock the PSEG shareholder would otherwise be entitled to receive. 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 the post-Merger Exelon.

10. Exelon will be the surviving company and, as such, will remain the corporate parent of PECO and all other current Exelon subsidiaries, and will become the ultimate corporate parent of PSE&G and all other PSEG subsidiaries. Following the Merger, Exelon will change its name to Exelon Electric & Gas Corporation (EEG). EEG will continue to be a registered public

utility holding company under PUHCA. A diagram depicting EEG's post-Merger corporate structure is appended hereto as Exhibit D.

11. As a consequence of the Merger, all of PSEG's outstanding indebtedness will become the indebtedness of Exelon, as the surviving company. The indebtedness of subsidiaries of PSEG will not be assumed or guaranteed by Exelon or any subsidiary of Exelon and will remain the sole obligation of each PSEG subsidiary. The Merger will not change the terms or the character of PSE&G's preferred stock because those shares will not be exchanged or redeemed as part of the Merger. Rather, PSE&G's preferred stock will remain outstanding and will continue to represent a preferred equity interest in PSE&G. The common stock of Exelon will be unaffected by the Merger, with each issued and outstanding share thereof remaining outstanding following the Merger as a share in the surviving company. The Merger will not change the terms or character of the outstanding preferred stock or debt of PECO or any other Exelon subsidiary.

12. Exelon's parent-company corporate headquarters will remain in Chicago. The headquarters of PECO will remain in Philadelphia, and the headquarters of PSE&G will remain in Newark. The headquarters of the combined energy trading and nuclear operations will be located in southeastern Pennsylvania. Nuclear headquarters will be moved from Illinois to Pennsylvania. The new combined generation company will be headquartered in Newark, New Jersey.

13. After the Merger, Exelon will increase the size of its board of directors from twelve to eighteen, and will fill the six new positions by the appointment of former PSEG directors as designated by the former PSEG Chief Executive Officer. During a three-year

transition period following the completion of the Merger, the Exelon board of directors will be required to nominate for election: (1) the legacy PSEG directors (or their successors) whose class is standing for election; and (2) the legacy Exelon directors (or their successors) whose class is standing for election. In addition, during the three-year transition period, the Exelon board of directors will take whatever action is necessary to ensure that: (1) any vacancy on the board representing a position previously held by a legacy PSEG director will be filled by a person nominated by the entire Exelon board of directors and approved by a majority of the legacy PSEG directors remaining on the board; and (2) any vacancy on the board representing a position previously held by a legacy Exelon director will be filled by a person nominated by the entire Exelon board and approved by a majority of the legacy Exelon directors remaining on the board.

14. Mr. John W. Rowe, the current Chairman, Chief Executive Officer and President of Exelon, will serve as Chief Executive Officer and President of Exelon following the Merger. Mr. E. James Ferland, the current Chairman, Chief Executive Officer and President of PSEG, will become the non-executive Chairman of the Exelon board of directors after the Merger and will serve in that capacity until the earlier of (1) March 31, 2007 or (2) the date on which Mr. Ferland no longer serves as a member of the Exelon board of directors. When Mr. Ferland ceases to be the non-executive Chairman of the Exelon board of directors, Exelon's Chief Executive Officer will be appointed as Chairman of the Exelon board of directors. Mr. Denis 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.

D. APPROVALS AND LEGAL STANDARDS

15. Section 1102(a)(3) of the Public Utility Code (66 Pa. C.S. §1102(a)(3)) provides, in pertinent part, that the Commission's prior approval, evidenced by a certificate of public convenience, is required:

For any public utility . . . to acquire from, or transfer to, any person or corporation . . . by any method or device whatsoever, including the sale or transfer of stock and 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.

16. In *Application of Airsignal International of Pittsburgh, Pennsylvania, Inc.*, Docket No. A-101365 (January 14, 1980), the Commission held that Section 1102(a)(3) did not apply to the transfer of stock constituting a controlling interest in a corporation that held a public utility as a subsidiary because only the transfer of stock in the utility itself effected a transfer of property "used or useful in the public interest" as contemplated by Section 1102(a)(3). The Commission reaffirmed that interpretation in *Application of MCI Airsignal of Pennsylvania, Inc.*, Docket No. A-330035 (July 15, 1986).

17. In 1993, the Commission revisited the issue of stock transfers in *Joint Application of Commonwealth Telephone Company, et al*, Docket No. A-310800F0006 (October 22, 1993), where it overruled *Airsignal International* and *MCI Airsignal, supra*, and held that Section 1102(a)(3) would thereafter be extended to the transfer of stock of "a utility or of its parent or grandparent affiliates, regardless of the remoteness of the transaction" if the transfer effected a "transfer of control of the utility." The Commission followed up *Commonwealth Telephone* with its decision in *Joint Application of Paging Network of Pittsburgh, Inc. and Paging Network of Philadelphia, Inc.*, Docket No. A-33013F0005 (October 29, 1993), where it found that a 32.6%

interest held by a single stockholder constituted "*de facto* control" of the parent of two jurisdictional public utilities and, therefore, a stock transfer by that shareholder of its stock in the parent required prior approval under Section 1102(a)(3).

18. To provide direction for future applicants, the Commission issued a Statement of Policy on October 22, 1994 "to establish clear standards regarding what transfer of voting interest constitutes a change in *de facto* control of the utility" (52 Pa. Code § 69.901). The Statement of Policy provides, in pertinent part, as follows:

(1) A transaction or series of transactions resulting in a new controlling interest is jurisdictional when the transaction or transactions result in a different entity becoming the beneficial holder of the largest voting interest in the utility or parent, regardless of the tier. A transaction or series of transactions resulting in the elimination of a controlling interest is jurisdictional when the transaction or transactions result in the dissipation of the largest voting interest in the utility or parent, regardless of the tier.

(2) For purposes of this section, a controlling interest is an interest, held by a person or a group acting in concert, which enables the beneficial holders to control at least 20% of the voting interest in the utility or its parent, regardless of the remoteness of the transaction. In determining whether a controlling interest is present, voting power arising from a contingent right shall be disregarded.

19. Applying the standards set forth in the Statement of Policy, the Merger will not result in a "change in control" of PECO. Following the Merger, the common stock of PECO will continue to be held by Exelon Energy Delivery which, in turn, will continue to be a wholly owned, first tier subsidiary of Exelon. Moreover, the Merger will not effect a change in control of Exelon since no controlling interest, as defined in the Statement of Policy (i.e., a person or group acting in concert controlling at least 20% of the voting interest), currently exists in Exelon

nor will any new controlling interest be created as a result of the Merger.⁴ Although the Merger will effect a change in control of PSE&G by creating new controlling interests in Exelon Energy Delivery and Exelon, PSE&G's status as a "public utility" for Pennsylvania regulatory purposes is extremely limited as it does not serve any retail electric or natural gas customers in Pennsylvania and, indeed, is not authorized to do so.

20. Under Pennsylvania law, a statement of policy, unlike a regulation, does not have the force and effect of law but, instead, is merely 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); *Statement Of Policy On Expanded Interconnection For Intrastate Special Access*, Docket No. M-00920376 (February 11, 1993), 1993 Pa. PUC LEXIS 5 (pp. 56-57). Because a statement of policy, unlike a regulation, does not bind the agency that adopted it, the Joint Applicants are unwilling to rely upon the Statement of Policy as an assurance that the Commission will find the Merger to be outside its jurisdiction. Consequently, this Joint Application is being filed to obtain a definitive determination by the Commission that its approval of the Merger under Section 1102(a)(3) is not required or, if it is, that such approval should be granted.

21. Section 1103(a) of the Public Utility Code provides that a certificate of public convenience evidencing the Commission's approval under Section 1102 shall issue only upon a

⁴ The current public shareholders of Exelon, in aggregate, do not constitute a "controlling interest" since they are not a "group acting in concert." Moreover, even if, contrary to the terms of the Statement of Policy, the current public shareholders of Exelon were considered a "controlling interest," they would represent the "largest voting interest" in Exelon both before (100%) and after (68%) the Merger.

showing that granting such approval is “necessary or proper for the service, accommodation, convenience, or safety of the public” (66 Pa. C.S. §1103(a)). In *York v. Pa. P.U.C.*, 449 Pa. 136, 295 A.2d 825, 828 (1972), the Pennsylvania Supreme Court held that those seeking approval of a utility merger⁵ must demonstrate that the merger “will affirmatively promote the ‘service, accommodation, convenience, or safety of the public’ in some substantial way.” Evidence deemed sufficient to satisfy this standard has included testimony that the merger would produce a stronger company; that investors would be more attracted to a larger enterprise; that certain duplicative tasks would be eliminated; that service would be improved; that economies of scale or scope would result in lower costs and could give rise to lower rates in the future than would otherwise be the case; and that the merged entities could improve their operations by sharing best practices. *York, supra*; *Joint Application Of Pennsylvania-American Water Company And Thames Water Aqua Holdings*, 221 P.U.R. 4th 487 (2002).⁶ As explained in Sections E. and F., *infra*, and in PECO Statement No. 1, the Direct Testimony of Denis P. O’Brien, the Merger will produce substantial affirmative benefits that satisfy the *York* test.

⁵ *York* involved the merger of public utilities themselves, not the merger or change in control of the parent or grandparent of a utility.

⁶ See also *Joint Application for a Certificate of Public Convenience Evidencing Approval under Section 1102(a)(3) of the Public Utility Code, of the Transfer, By Merger, of a Controlling Interest in Three Operating Water Utilities From Consumers Water Company to Philadelphia Suburban Corporation*, Docket Nos. A-212370F0048 *et al* (December 17, 1998) (adopting the Initial Decision of Chief Administrative Law Judge Robert A. Christianson); *Joint Application of Pennsylvania-American Water Company and Citizens Utilities Water Company of Pennsylvania*, Docket Nos. A-212285F0074 and A-211070F2000 (January 24, 2001); *Application of United Water Pennsylvania, Inc. (United) for Approval of the Acquisition by Lyonnaise American Holding, Inc (Lyonnaise) of the Remaining Outstanding Shares of United's Parent, United Water Resources, Inc.*, Docket Nos. A-310013F0014 and A-230077F0003 (January 27, 2000).

22. Chapters 22 (Natural Gas Choice and Competition Act) and 28 (Electricity Generation Customer Choice and Competition Act) contain parallel provisions that require the Commission to consider the potential anti-competitive effects of a merger or combination “in the exercise of *authority the commission otherwise may have* to approve mergers or consolidations” (emphasis added) involving natural gas distribution companies and electric utilities (66 Pa. C.S. §§2210(a) and 2811(e)(1)). Sections 2210 and 2811 do not confer any authority upon the Commission to approve mergers or consolidations of public utilities or a change in control of a public utility beyond the authority the Commission otherwise possesses under Chapter 11 of the Public Utility Code. Thus, if the Commission finds that the Merger does not require prior approval under Section 1102(a)(3), then Sections 2210 and 2811 are not applicable to the transaction. In any event, even if Sections 2210 and 2811 were to be applied to the Merger, there would be no basis for the Commission to find that it would result in anti-competitive or discriminatory conduct, would lead to the unlawful exercise of market power, or would prevent retail natural gas or electricity customers from obtaining the benefits of properly functioning and workable competitive retail natural gas and electricity markets. As explained in detail in PECO Statement No. 3, the Direct Testimony of William H. Hieronymus, the Merger will have no adverse competitive effects on either the wholesale market within PJM or Pennsylvania’s retail energy markets and, indeed, will likely promote increased retail competition.

E. IMPACT OF THE PROPOSED TRANSACTION ON SERVICE, RATES, JOBS AND LOCAL COMMUNITIES

23. PECO is committed to providing adequate, efficient, safe and reliable electric and natural gas service, and its track record of high quality service and dependability bears this out. The Merger will not diminish in any way PECO’s aggressive pursuit of service excellence. To

the contrary, the Merger, by combining the resources of two outstanding utility companies and permitting them to share "best practices," will make PECO even better positioned to meet future customer demands and to ensure that high quality service will be maintained and enhanced.

24. PECO's rates, rules and regulations, and the terms and conditions of service in effect prior to the Merger will not change as a result of the Merger. Going forward, and after costs-to-achieve are incurred, the Merger will generate economies, some of which will accrue to the Pennsylvania jurisdictional regulated businesses of PECO. Those economies will help to offset the increase in the cost of providing regulated electric and natural gas distribution service and, thus, may give rise, over time, to lower rates than otherwise would be the case.

25. The Merger will result in some reductions in force. Certain positions, primarily in the managerial and administrative ranks, will no longer be necessary as duplicative functions are consolidated. The reductions in force will be achieved, to the extent practical, through attrition and/or the normal retirement process. Severance programs may also be utilized. There are no plans to reduce field forces in either PECO's electric or natural gas delivery functions.

26. PECO has always played a vital role in the day-to-day life of southeastern Pennsylvania through the financial support of numerous civic and charitable organizations and, of equal importance, through the substantial involvement of PECO's employees in the activities of those groups. PECO's commitment to remain a good corporate citizen and an active member of the communities it serves will continue unabated after the Merger.

F. BENEFITS OF THE MERGER

27. By combining, in a single holding company structure, three outstanding utilities, the Merger will create the nation's premier utility company, with over seven million retail electric customers and two million retail gas customers being served by PECO, ComEd and PSE&G in three states. By sharing resources and best practices, the proposed Merger will enhance operations and strengthen the combined ability of Exelon's utility subsidiaries to provide cost-effective, safe and reliable service and, thereby, will affirmatively promote the public interest in a number of substantial ways.

a. **Increased Scale and Scope; Diversification.** The combined company will have increased scale and scope in both energy delivery and generation. In addition, the combined company will have greater diversification and balance in its energy delivery business and generation portfolio. This increased scale, scope and diversification is expected to result in improved service and reliability with greater earnings predictability.

(i) **Electric Energy Delivery.** With respect to the energy delivery business, the combined company will have three urban-based utility franchises with service areas encompassing more than 18 million people. PECO, ComEd and PSE&G are all within the PJM's control area and have turned over operational control of their respective transmission systems to PJM as the FERC-approved RTO. In addition, New Jersey, like Pennsylvania and Illinois, has restructured its electricity industry to permit and foster retail competition. Significantly, New Jersey has adopted a competitive auction model for electric distribution companies in the State to obtain energy and capacity to serve their Basic Generation Service (BGS) load. As a consequence, PSE&G has several years of experience in acquiring energy and

capacity through the competitive auction process. It is anticipated that both PECO and ComEd will benefit from PSE&G's expertise in this area, since both the PUC and the ICC are contemplating the adoption of similar competitive acquisition models for Pennsylvania and Illinois electric distribution companies to acquire energy and capacity to meet their default/provider of last resort requirements at the end of their respective generation rate cap periods.

(ii) **Natural Gas Distribution.** PECO provides natural gas distribution service to approximately 460,000 customers located in southeastern Pennsylvania outside of the City of Philadelphia. PSE&G provides natural gas distribution service to approximately 1,600,000 customers in the State of New Jersey. The affiliation of PECO and PSE&G is also expected to create opportunities to increase efficiencies, improve service and capture economies of scale and scope in natural gas operations.

(iii) **Generation.** With respect to the generation business, the combined company will, before planned divestitures, have 52,000 megawatts of domestic capacity in multiple states, including approximately 20,000 megawatts of low-cost nuclear generation. This generation diversification is expected to create a more balanced portfolio in terms of geography, fuel mix, dispatch and load-servicing capacity. Exelon has a proven track record of improving and sustaining safety and operating and cost performance at its nuclear plants, which is grounded on a nuclear management model that Exelon has successfully implemented at the plants it operates. As a consequence, Exelon has achieved first quartile performance across the entire fleet of nuclear plants it operates. Exelon intends to apply this same nuclear management model to the Salem and the Hope Creek Generating Stations and thereby improve the operating performance of those plants while assuring the highest levels of

safety. If the capacity factors of PSEG's nuclear units improve, the availability of more low cost nuclear generation will put downward pressure on wholesale power prices in the PJM region. As Dr. Hieronymus explains, lower wholesale prices, in turn, should inure to the benefit of retail customers.

b. **Financial Strength and Flexibility.** The diversification of the energy delivery and generation portfolios of the combined company should result in a more stable cash flow, with approximately half of the combined company's earnings and cash flow coming from the three regulated utilities and approximately half coming from the unregulated generation business, and provide PECO continued access to capital at favorable rates.

c. **Expanded Nuclear Operations.** As noted in (a)(iii), above, the combined company will have expanded nuclear operations and should be able to capitalize on Exelon's nuclear operating and cost structure improvements, as well as the sharing of best practices across organizations.

d. **Sharing of Best Practices.** The Merger will combine companies with complementary areas of expertise, namely, Exelon's expertise in generation operations and PSEG's expertise in transmission and distribution operations. Significantly, PSE&G has consistently achieved first quartile performance in all major metrics for transmission and distribution reliability.

e. **Synergies.** The Merger will create the opportunity to achieve meaningful cost savings for the regulated and unregulated businesses of Exelon and PSEG through the sharing of best practices, the elimination of duplicative functions, improved operating efficiencies in nuclear and other generation operations and supply chain benefits from improved

sourcing. The synergies that will accrue to the Pennsylvania jurisdictional regulated businesses of PECO over time will, at least in part, offset the increasing cost of providing regulated retail utility service and, thereby, may reduce the size of future rate increases.

f. **Commitment to Competition.** As previously explained, the utility subsidiaries of Exelon and PSEG operate in jurisdictions that have introduced retail electric competition. Exelon and PSEG have a shared commitment to fostering the continued development of competitive retail markets for electricity and natural gas, and that commitment will be continued and strengthened by the combined company. In addition, as Dr. Hieronymus explains, the robust mitigation plan that the companies are proposing will fully ameliorate the generation market concentration that combining the generation portfolios of the companies creates.

g. **Impact of the Merger on Employees and Suppliers.** The Merger is expected to benefit employees by making them part of a larger, more diverse organization with increased opportunities across the combined company's business lines. As a consequence of the Merger, the combined company should be able to streamline and increase the efficiency of its procurement process.

h. **Impact of the Merger on the Communities Served.** The Merger is expected to benefit the communities served by PECO, ComEd and PSE&G by creating a strong combined company with operating headquarters and a substantial corporate presence in Philadelphia, Newark and Chicago. In addition, these companies expect to maintain and enhance their roles as leaders and active participants in the civic and cultural life of the cities and

communities they serve and to take an even greater leadership role in contributing money, time and other resources to charitable institutions and causes throughout their combined service areas.

28. PECO remains fully committed to providing safe and reliable electric and natural gas service at reasonable rates and, in fact, is convinced that the Merger will enhance its ability to do so.

G. WRITTEN TESTIMONY

29. With this Application, PECO is submitting the written testimony and supporting exhibits of three witnesses, which, subject to possible supplementation in response to positions, inquiries and issues set forth in the filings by other parties or in interim orders of the Commission, will comprise PECO's case-in-chief:

Denis P. O'Brien is PECO's President. He describes the Merger and its likely effects on customers, employees and local communities.

William D. Arndt is Senior Vice President, Financial Operations for Exelon. Mr. Arndt presents the results of a study that was conducted to assist Exelon and PSEG in identifying and quantifying the potential cost savings in regulated operations that will likely arise from the Merger.

William H. Hieronymus is a Vice President of Charles River Associates. Dr. Hieronymus, a consulting economist, analyzes the Merger for its possible impact on competition and concludes that the Merger, upon implementation of the parties' proposed generation mitigation plan, will have no adverse impact on Pennsylvania's retail electric or natural gas markets and, in fact, may facilitate

additional competition.

H. ADDITIONAL SUPPORTING DATA

30. The following Exhibits, containing additional information in support of this Joint Application, are attached hereto:

Exhibit A: Diagram of Exelon's pre-merger corporate structure.

Exhibit B: Diagram of PSEG's pre-merger corporate structure.

Exhibit C: Agreement and Plan of Merger.

Exhibit D: Diagram of Exelon's post-merger corporate structure.

Exhibit E: Statements of the original cost of PECO's electric and natural gas plant in service, by primary account, together with the associated reserve for depreciation, as of December 31, 2004.

Exhibit F: Consolidated balance sheet for PECO as of September 30, 2004. PECO's balance sheet will not be affected by the Merger and, therefore, a pro forma post-Merger balance sheet is not being submitted.

Exhibit G: A pro forma, post-Merger balance sheet for Exelon as of September 30, 2004.

Exhibit H: Income statement for PECO for the twelve months ended December 31, 2003 and the nine months ended September 30, 2004. PECO's income statement will not be affected by the Merger and, therefore, a pro forma post-Merger income statement is not being submitted.

Exhibit I: Pro forma, post-Merger income statements for Exelon for the

twelve months ended December 31, 2003 and the nine months ended September 30, 2004.

Exhibit J: A listing of the number of electric customers and natural gas customers, by rate classification, for PECO as of December 31, 2004. The Merger will have no effect on the number of customers served by PECO or the rates they are charged.

Exhibit K: Exelon's annual report to shareholders for 2003.

Exhibit L: PSEG's annual report to shareholders for 2003.

Exhibit M: Customer Notice.

31. All annual reports, tariffs, certificates of public convenience, applications, securities certificates and similar documents previously filed by PECO and PSE&G are made a part hereof by reference.

I. OTHER REGULATORY AND SHAREHOLDER APPROVALS

32. Exelon and PSE&G will submit the Merger for review by, or seek approval from, various Federal and State regulatory agencies. The principal regulatory approvals that must be obtained are: (a) the approval of the Securities and Exchange Commission (SEC) under PUHCA; (b) the approval of the FERC under the Federal Power Act (FPA); (c) the approval of the Nuclear Regulatory Commission (NRC) under Section 184 of the Atomic Energy Act of 1954; (d) the expiration or termination of the waiting period under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended; (e) the approval of the New Jersey Board of Public Utilities (NJBPUB) under N.J.S.A. 48:2-51.1 and 48:3-10; (f) the written consent of the New York

Public Service Commission under Section 70 of the New York Public Service Law in connection with the "indirect transfer" of certain generation assets of PSEG Power located in New York; and (g) approval by the Federal Communications Commission (FCC) of the transfer of control by PSEG of certain telecommunications permits or licenses. Under Illinois law, ComEd is not required to obtain the approval of the Merger by the ICC but, instead, under Section 16-111(G) of the Illinois Public Utilities Act, is only required to file a notice of the Merger accompanied by certain information about the Merger.²

33. The Merger is subject to approval by the shareholders of PSEG. Approval by the shareholders of Exelon is required for Exelon to issue additional shares of common stock, as needed to consummate the Merger. PSEG and Exelon intend to seek the approval of their shareholders at meetings to be scheduled for mid-2005 and plan to complete the Merger as soon as possible after all regulatory and shareholder approvals have been obtained and the other conditions precedent to closing have been satisfied or waived.

J. PROPOSED LITIGATION SCHEDULE

34. The parties to the Merger desire to close the proposed Merger as expeditiously as possible consistent with the legitimate review rights of interested parties. With that in mind, the Joint Applicants suggest that holding an initial Prehearing Conference early in the process will assist the parties in identifying and resolving issues. A litigation schedule can be developed after the active parties have been identified, with the assistance of the presiding Administrative Law Judge.

² A copy of the applications being filed with the FERC and the NJBPU for approval of the Merger will be served on the Commission under separate cover. Copies of the SEC, (continued).

K. NOTICE

35. PECO will shortly begin sending to its customers, and publishing in newspapers of general circulation, bill inserts, in the form attached hereto as Exhibit M, advising them of this filing. PECO is also serving copies of this filing on the Office of Trial Staff, the Office of Consumer Advocate and the Office of Small Business Advocate and is serving notice of this filing on all other active parties to PECO's application proceeding in connection with its 2000 corporate restructuring and merger with Unicom and parties that were active in its natural gas restructuring proceeding. A service list is attached to the transmittal letter that accompanies this Joint Application.

NRC, New York and Illinois filings will be served on the Commission after they are made.

WHEREFORE, for the reasons set forth above, PECO Energy Company and Public Service Electric & Gas Company request that the Commission find and determine that its approval of the proposed Merger is not required under Chapters 11, 22 or 28 of the Public Utility Code or, alternatively, that the Commission grant such approval and any other approvals as it may determine are necessary in order for the Merger to be lawfully consummated.

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Dated: February 4, 2005

Respectfully submitted,

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Counsel for PECO Energy Company

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

JOINT APPLICATION OF PECO ENERGY :
COMPANY AND PUBLIC SERVICE ELECTRIC :
AND GAS COMPANY FOR APPROVAL OF THE :
MERGER OF PUBLIC SERVICE ENTERPRISE :
GROUP INCORPORATED WITH AND INTO :
EXELON CORPORATION :

APPLICATION
DOCKET NO. A - ~~40550~~ F0160

JK
9-22-05
Phila

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NOV 10 2005

VOLUME I

JOINT APPLICATION OF PECO ENERGY COMPANY
AND PUBLIC SERVICE ELECTRIC AND GAS COMPANY

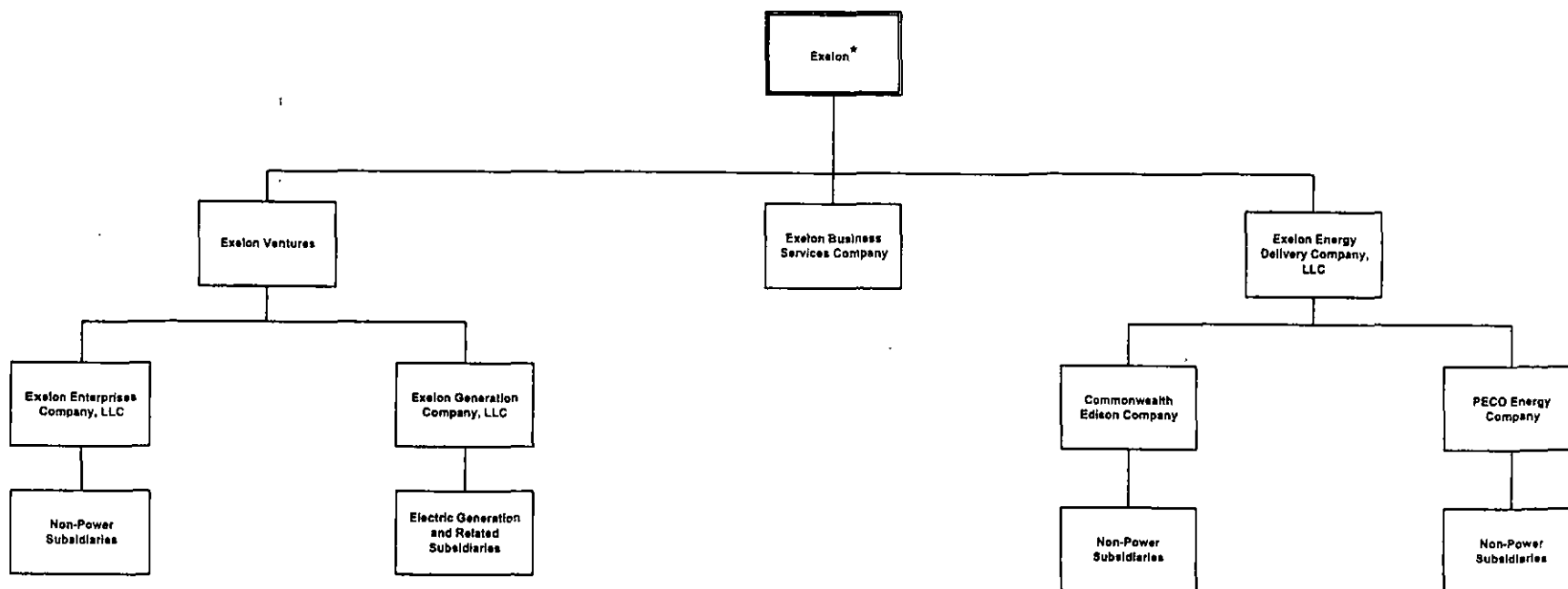
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SEP 26 2005

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Exelon - Pre-Merger



*Other direct subsidiaries of Exelon are not shown as we anticipate the merger will not affect their relative placement in the corporate structure.

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DOCKETED
NOV 10 2005

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

JOINT APPLICATION OF PECO ENERGY
COMPANY AND PUBLIC SERVICE ELECTRIC
AND GAS COMPANY FOR APPROVAL OF THE
MERGER OF PUBLIC SERVICE ENTERPRISE
GROUP INCORPORATED WITH AND INTO
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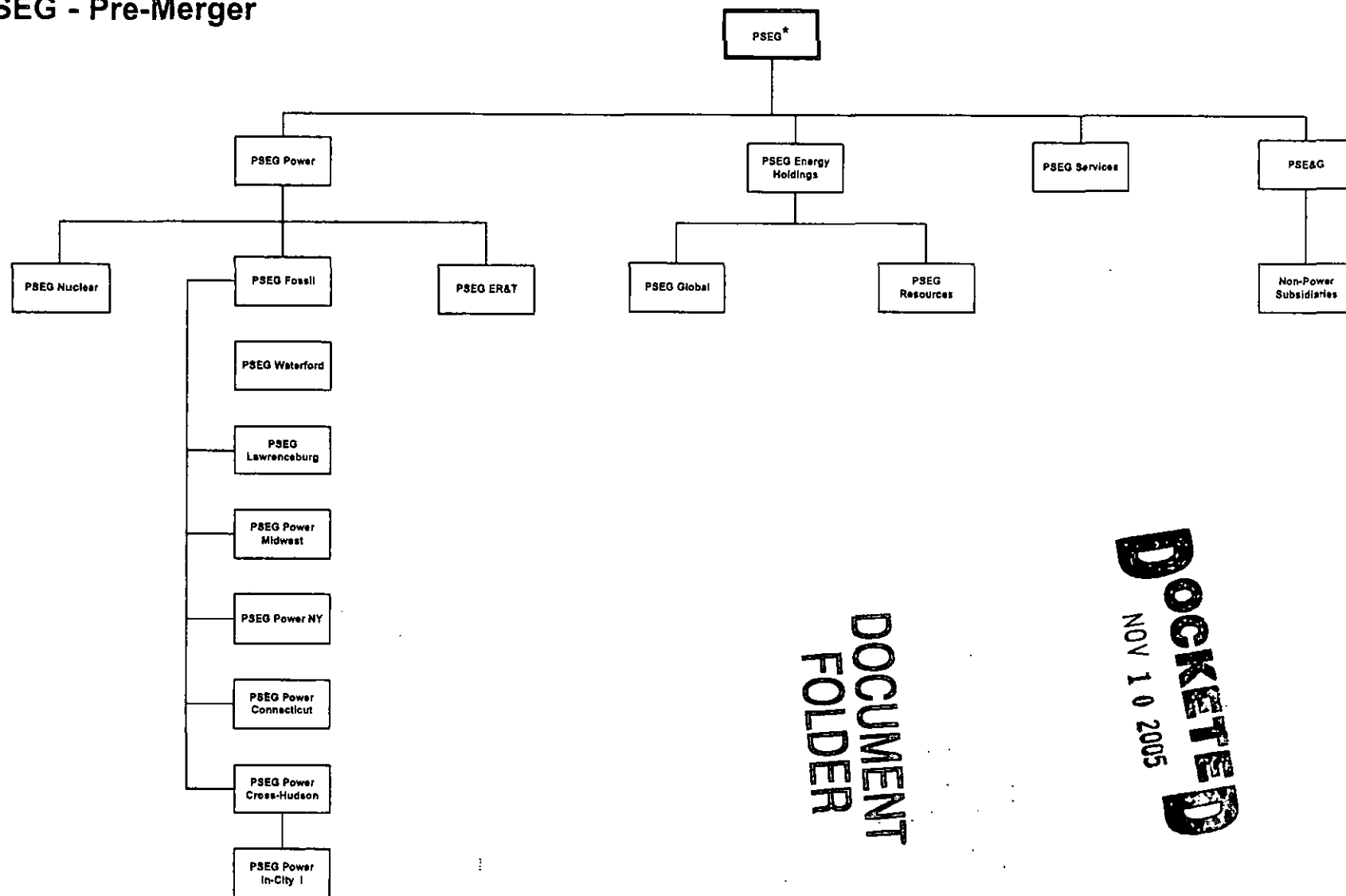
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PSEG - Pre-Merger



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NOV 10 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 :
MERGER OF PUBLIC SERVICE ENTERPRISE :
GROUP INCORPORATED WITH AND INTO :
EXELON CORPORATION :

APPLICATION
DOCKET NO. A - 110550F0160

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VOLUME II

EXHIBIT C

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SECRETARY'S BUREAU

EXECUTION COPY

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AGREEMENT AND PLAN OF MERGER

BETWEEN

EXELON CORPORATION

AND

PUBLIC SERVICE ENTERPRISE GROUP INCORPORATED

DATED AS OF DECEMBER 20, 2004

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AGREEMENT AND PLAN OF MERGER

AGREEMENT AND PLAN OF MERGER, dated as of December 20, 2004 between Exelon Corporation, a Pennsylvania corporation ("Parent"), and Public Service Enterprise Group Incorporated, a New Jersey corporation (the "Company") (Parent and the Company being hereinafter collectively referred to as the "Constituent Corporations"). Except as otherwise set forth herein, capitalized (and certain other) terms used herein shall have the meanings set forth in Section 1.1.

WITNESSETH:

WHEREAS, the respective Boards of Directors of Parent and the Company have each approved the merger of the Company with and into Parent (the "Merger"), upon the terms and subject to the conditions set forth in this Agreement, whereby the issued and outstanding shares of Common Stock, no par value per share, of the Company ("Company Common Stock," and the shares of Company Common Stock are hereinafter referred to as the "Shares"), other than Shares owned directly or indirectly by Parent or the Company, will be converted into shares of Common Stock, no par value per share, of Parent (the "Parent Shares");

WHEREAS, the Board of Directors of the Company has determined that this Agreement and the Merger are advisable and fair to, and in the best interests of, the Company and the Company's shareholders, has approved this Agreement and the Merger and has recommended that the Company's shareholders approve this Agreement;

WHEREAS, the Board of Directors of Parent has determined that this Agreement and the Merger are advisable and fair to, and in the best interests of, Parent and Parent's shareholders, has approved this Agreement and the Merger and has recommended that Parent's shareholders approve the issuance of Parent Shares in the Merger;

WHEREAS, for federal income Tax purposes, it is intended that the Merger shall qualify as a "reorganization" within the meaning of Section 368(a) of the Internal Revenue Code of 1986, as amended (the "Code"); and

WHEREAS, Parent and the Company desire to make certain representations, warranties, covenants and agreements in connection with the Merger and also to prescribe various conditions to the Merger.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and agreements herein contained, and intending to be legally bound hereby, Parent and the Company hereby agree as follows:

ARTICLE I INTERPRETATION; DEFINITIONS

Section 1.1 Interpretation; Definitions. When a reference is made in this Agreement to an Article or a Section, such reference shall be to an Article or a Section of this Agreement

unless otherwise indicated. The table of contents and headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. Whenever the words "include," "includes" or "including" are used in this Agreement, they shall be deemed to be followed by the words "without limitation."

As used in this Agreement, the following terms have the meanings specified or referred to in this Section 1.1 and shall be equally applicable to both the singular and plural forms. Any reference to the Surviving Corporation or to Parent after giving effect to the Merger means Parent as the Surviving Corporation. Any agreement referred to below shall mean such agreement as amended, supplemented or modified from time to time to the extent permitted by the applicable provisions thereof and by this Agreement.

"Acquisition Agreement" shall have the meaning set forth in Section 6.2(a).

"Affected Employees" shall have the meaning set forth in Section 7.1(c).

"Affiliate" shall have the meaning as defined in Rule 12b-2 under the Exchange Act.

"Agreement" means this Agreement and Plan of Merger between Parent and the Company.

"Articles of Merger" shall have the meaning set forth in Section 2.3.

"Assumed Stock-Based Award" shall have the meaning set forth in Section 7.2(b).

"Atomic Energy Act" means the Atomic Energy Act of 1954, as amended.

"Benefit Plan" means any bonus, pension, profit sharing, deferred compensation, incentive compensation, stock ownership, stock purchase, stock option, restricted stock, phantom stock, stock appreciation or other equity-based compensation, retirement, vacation, severance, disability, death benefit, hospitalization, medical, dental, vision care, life insurance or other plan, program or arrangement providing compensation or benefits to or in respect of any current or former employee, officer or director of the Company or Parent, as the case may be, or any of their respective Subsidiaries.

"BPU" means the New Jersey Board of Public Utilities.

"Burdensome Action" means any action that (i) would, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on Parent after giving effect to the Merger or (ii) involves (A) divesting or holding separate any nuclear generation assets of Parent, the Company or any of their respective Subsidiaries or Affiliates unless otherwise agreed by the Chief Executive Officers of each of Parent and the Company, (B) implementing any auction or other process to transfer control over an amount of nuclear base-load capacity materially in excess of that amount of nuclear base-load capacity that is proposed by the parties' mutually agreed upon analysis of the mitigation sufficient to address the increased market concentration resulting from the Merger as set forth in the "Appendix A" analysis to be filed at FERC for base-load capacity or (C) divesting or holding separate an amount of peaking or mid-merit generation assets or capacity of Parent, the Company or any of their respective Subsidiaries or Affiliates

materially in excess of that amount of peaking and mid-merit assets or capacity that is proposed by the parties' mutually agreed upon analysis of the mitigation sufficient to address the increased market concentration resulting from the Merger as set forth in the "Appendix A" analysis to be filed at FERC for peaking and mid-merit capacity.

"Burdensome Order" shall have the meaning set forth in Section 8.1(f).

"Capital Stock" means, as applicable any capital stock of a corporation or any other equity interest (including preferred interests) in any Person including any equity interest (including preferred interests) in any partnership, limited liability company or limited liability partnership.

"Certificate of Merger" shall have the meaning set forth in Section 2.3.

"Certificates" shall have the meaning set forth in Section 3.3(b).

"Closing Date" shall have the meaning set forth in Section 2.2.

"Code" shall have the meaning set forth in the fourth recital provision of this Agreement.

"Company" shall have the meaning set forth in the introductory paragraph of this Agreement.

"Company Business Personnel" shall have the meaning set forth in Section 4.13(a).

"Company Cash Award" shall have the meaning set forth in Section 7.2(b).

"Company Cash Dividend Equivalents" means dividend equivalent awards under the Company Stock Plans that are settled in cash.

"Company Cash Phantom Shares" means awards under the Company Stock Plans, Company's Deferred Compensation Plan for Directors, the Company's Deferred Compensation Plan for Certain Employees, the Company's Deferred Compensation Plan for Nuclear Representatives to Nuclear Review Board, the Company's Deferred Compensation Plan for Members of Nuclear Oversight Committee and employment contracts, the value of which are determined by the value of the Company Common Stock and which are settled in cash.

"Company Common Stock" shall have the meaning set forth in the first recital provision of this Agreement.

"Company DRIP" shall have the meaning set forth in Section 4.3(a).

"Company Employee Savings Plan" shall have the meaning set forth in Section 4.3(a).

"Company Equity Units" means the Company's 9,200,000 outstanding Participating Units issued and outstanding as of the date hereof.

"Company ESPP" shall have the meaning set forth in Section 4.3(a).

"Company Filed SEC Documents" means the documents (including portions of exhibits containing the audited financial statements of the Company, the notes thereto or Management's Discussion and Analysis of Financial Condition and Results of Operations but excluding all other exhibits or portions thereof) filed with or furnished to the SEC by the Company or any of its Subsidiaries and publicly available on the Electronic Data Gathering, Analysis and Retrieval System since December 31, 2001 and prior to the date of the execution of this Agreement.

"Company Group" means (a) any "affiliated group" (as defined in Section 1504(a) of the Code without regard to the limitations contained in Section 1504(b) of the Code) that, at any time on or before the Closing Date, consists or consisted solely of the Company (or any predecessor), any Subsidiary of the Company (or any predecessor) or any combination thereof or that, at any time on or before the Closing Date, has or had the Company (or any predecessor) or any Subsidiary of the Company (or any predecessor) as the common parent, and (b) any other group of corporations that, at any time on or before the Closing Date, files or has filed Tax Returns on a combined, consolidated or unitary basis and consists or consisted solely of the Company (or any predecessor), any Subsidiary of the Company (or any predecessor) or any combination thereof or that, at any time on or before the Closing Date, files or has filed Tax Returns on a combined, consolidated or unitary basis and has or had the Company (or any predecessor) or any Subsidiary of the Company (or any predecessor) as the common parent.

"Company Indebtedness" means (a) indebtedness for borrowed money of the Company and its Subsidiaries, (b) obligations of the Company and its Subsidiaries evidenced by notes, bonds, debentures or other similar instruments or by letters of credit agreements, including purchase money obligations or other obligations relating to the deferred purchase price of property and (c) direct or indirect guarantees by the Company or any of its Subsidiaries of indebtedness for borrowed money of any Person.

"Company Insiders" shall have the meaning set forth in Section 7.11.

"Company Joint Venture" means any corporation, limited liability company, partnership, joint venture, trust or other entity which is not a Subsidiary of the Company and in which (i) the Company, directly or indirectly, owns or controls any shares of any class of the outstanding voting securities or other equity interests (other than the ownership of securities primarily for investment purposes as part of routine cash management or investments of 2% or less in publicly traded companies) or (ii) the Company or a Subsidiary of the Company is a general partner.

"Company Letter" means the letter from the Company to Parent dated the date hereof, which letter relates to this Agreement and is designated therein as the Company Letter.

"Company Material Contract" shall have the meaning set forth in Section 4.25.

"Company Material Taxes" means (a) federal income Taxes imposed on any Company Group, (b) New Jersey Corporation Business Taxes imposed on the Company, any Subsidiary of the Company or any Company Group and (c) material foreign Taxes imposed on the Company,

any Subsidiary of the Company or any Company Group (including, in the case of each reference to the Company or any Subsidiary of the Company, any predecessor thereof).

"Company Non-US Compensation and Benefit Plans" shall have the meaning set forth in Section 4.12(h).

"Company Nuclear Facilities" shall have the meaning set forth in Section 4.16(a).

"Company Option Plans" shall have the meaning set forth in Section 4.3(a).

"Company Performance Shares" shall mean the Performance Shares described under Company Stock Plans.

"Company Performance Units" shall mean the Performance Units described under the Company Stock Plans.

"Company Permits" shall have the meaning set forth in Section 4.9(a).

"Company Preferred Stock" shall have the meaning set forth in Section 4.3(a).

"Company Regulatory Approval Coordinators" shall have the meaning set forth in Section 7.10(d)(i).

"Company Reporting Subsidiary" means each Subsidiary of the Company required to file documents with or furnish documents to the SEC pursuant to the Securities Act or the Exchange Act.

"Company Required Statutory Approvals" shall have the meaning set forth in Section 4.5(b).

"Company Restricted Shares" shall have the meaning set forth in Section 4.3(a).

"Company RSUs" shall have the meaning set forth in Section 4.3(a).

"Company SEC Documents" shall have the meaning set forth in Section 4.6(a).

"Company Shareholder Approval" shall have the meaning set forth in Section 7.3(a).

"Company Shareholders Meeting" shall have the meaning set forth in Section 7.3(a).

"Company Stock-Based Awards" means the Company Restricted Shares, the Company RSUs, the Company Performance Units, the Company Performance Shares, the Company Stock Phantom Shares and the Company Stock Equivalents that are payable in Company Common Stock.

"Company Stock Dividend Equivalents" means dividend equivalent awards under the Company Stock Plans that are settled in Shares.

"Company Stock Equivalents" shall have the meaning set forth in Section 4.3(a).

"Company Stock Options" shall have the meaning set forth in Section 4.3(a).

"Company Stock Phantom Shares" means awards under the Company Stock Plans the value of which are determined by the value of the Company Common Stock and which may be settled in Shares.

"Company Stock Plans" shall have the meaning set forth in Section 4.3(a).

"Company Tax Certificate" means a form of certificate attached to the Company Letter which contains certain representations substantially to the effect of the representations to be made by the Company in connection with the tax opinions contemplated by Sections 8.2(c) and 8.3(d).

"Company Thrift Plan" shall have the meaning set forth in Section 4.3(a).

"Company Trading" means any transaction which does not hedge an underlying exposure, is conducted to increase expected margin at increased expected risk and is recorded in Power's Wholesale Power Trading book but shall not include trading activities of Holdings and its Subsidiaries.

"Company Trading Guidelines" shall have the meaning set forth in Section 4.18.

"Company Voting Debt" shall have the meaning set forth in Section 4.3(a).

"Compensation Commitments" shall have the meaning set forth in Section 4.12(a).

"Confidentiality Agreement" shall have the meaning set forth in Section 7.4(a).

"Constituent Corporations" shall have the meaning set forth in the introductory paragraph of this Agreement.

"Contract" shall mean any written or oral agreement, undertaking, contract, commitment, lease, license, permit, franchise, concession, deed of trust, contract, note, bond, mortgage, indenture, arrangement or other instrument or obligation.

"Current Premium" shall have the meaning set forth in Section 7.9(b).

"Directors' Units" shall have the meaning set forth in Section 5.3(a).

"Dividend Shortfall" shall have the meaning set forth in Section 7.13(b).

"Dividend Threshold" shall have the meaning set forth in Section 7.13(b).

"D&O Insurance" shall have the meaning set forth in Section 7.9(b).

"Effective Time" shall have the meaning set forth in Section 2.3.

"End Date" shall have the meaning set forth in Section 9.1(i).

“ENEH” means Exelon New England Holdings, LLC, a Delaware limited liability company.

“Environmental Law” means any federal, state, local or foreign statute, law, regulation, order, decree, permit, authorization, common law or agency requirement relating to: (i) the protection, investigation or restoration of the environment, health, safety or natural resources, (ii) the handling, use, presence, disposal, release or threatened release of any Hazardous Substance or radioactive material or (iii) noise, odor, indoor air, employee exposure, wetlands, pollution, contamination or any injury or threat of injury to persons or property relating to any Hazardous Substance or nuclear and radioactive materials.

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended, together with the rules and regulations promulgated thereunder.

“ERISA Affiliate” shall have the meaning set forth in Section 4.12(a).

“ERISA Benefit Plan” means a Benefit Plan maintained as of the date of this Agreement which is also an “employee pension benefit plan” (as defined in Section 3(2) of ERISA) or which is also an “employee welfare benefit plan” (as defined in Section 3(1) of ERISA).

“Exchange Act” means the Securities Exchange Act of 1934, as amended, together with the rules and regulations promulgated thereunder.

“Exchange Agent” shall have the meaning set forth in Section 3.3(a).

“Exchange Fund” shall have the meaning set forth in Section 3.3(a).

“Exchange Ratio” shall have the meaning set forth in Section 3.2(c).

“Federal Power Act” shall have the meaning set forth in Section 4.2(a).

“Federal Required Statutory Approvals” shall have the meaning set forth in Section 9.1(i).

“FERC” means the Federal Energy Regulatory Commission.

“Final Order” means any action by the relevant Governmental Entity which has not been reversed, stayed, enjoined, set aside, annulled or suspended, with respect to which any waiting period prescribed by law before the transactions contemplated hereby may be consummated has expired, and as to which all conditions to the consummation of such transactions prescribed by law, regulation or order have been satisfied.

“Financing Contract” means any loan agreement, indenture or other financing Contract to which the Company or any of its Affiliates is a party that was entered into in connection with any Leveraged Lease.

“Global” means PSEG Global L.L.C., a New Jersey limited liability company.

“Governmental Entity” means any federal, state, local or foreign government or any court, tribunal, administrative agency or commission or other governmental or other regulatory authority or agency, domestic, foreign or supranational.

“Hazardous Substance” means any substance that is (i) listed, classified or regulated pursuant to any Environmental Law, (ii) any petroleum product or by-product, asbestos-containing material, lead-containing paint, polychlorinated biphenyls or radioactive material and (iii) any other substance which is regulated by or for which liability or standards of care are imposed by any Environmental Law.

“Holdings” means PSEG Energy Holdings L.L.C., a New Jersey limited liability company.

“Holdings Joint Venture” shall have the meaning set forth in Section 4.26(a).

“HSR Act” means the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended.

“ICC” means the Illinois Commerce Commission.

“Indemnified Person” shall have the meaning set forth in Section 7.9(a).

“Intellectual Property Rights” shall have the meaning set forth in Section 4.19.

“IRS” means the Internal Revenue Service.

“J.P. Morgan” shall have the meaning set forth in Section 5.23.

“Knowledge” shall mean the actual knowledge of the Persons set forth on Item 1.1(a) of the Company Letter, in the case of the Company, and the actual knowledge of the Persons set forth on Item 1.1(a) of the Parent Letter, in the case of Parent.

“Lehman” shall have the meaning set forth in Section 5.23.

“Leveraged Lease” means (a) any lease that is collateral for indebtedness through which the lessor financed or acquired an asset and to which the Company, any of its Affiliates or any Company Joint Venture is a party and (b) all Contracts and documents entered into by the Company, any of its Affiliates or any Company Joint Venture with the lessee or an Affiliate of the lessee in connection with the transactions contemplated by such lease.

“Liens” means any pledges, claims, liens, charges, encumbrances and security interests of any kind or nature whatsoever.

“Listed Transaction” means (i) any transaction that is the same as or substantially similar to one of the types of transactions that the IRS has identified (by notice, regulation, other form of published guidance or otherwise) as a “listed transaction” pursuant to Treasury Regulation § 1.6011-4(b)(2), (ii) any transaction or arrangement in which there is an acquisition of a leasehold interest in property and the sublease of such property (including, without

limitation, any transaction or arrangement that is similar to that described in IRS Notice 2000-15 or that is referred to as a "lease-in/lease-out" or "LILO") or (iii) any transaction or arrangement in which a lessee of property may arrange for a service Contract, replacement lease, residual value insurance or similar arrangement during or at the end of a lease term (including, without limitation, any transaction or arrangement that is structured with an intent to avoid the application of Section 168(g)(3)(A) of the Code or that is referred to as a "sale-in/lease-out" or "SILO").

"Material Adverse Change" or **"Material Adverse Effect"** means, when used with reference to the Company or Parent, as the case may be, any event, effect, change or development that, individually or in the aggregate with other events, effects, changes or developments (including, in the case of the Company, any event, effect, change or development with respect to any Company Joint Venture) (a) is, or would reasonably be expected to be, material and adverse to the financial condition, business, assets, liabilities (contingent or otherwise), operations or results of operations of the Company and its Subsidiaries taken as a whole, in the case of the Company, or Parent and its Subsidiaries taken as a whole, in the case of Parent, (b) with respect to Parent, has a material and adverse effect on the ability of Parent to perform its obligations under this Agreement or to consummate the transactions contemplated hereby by the End Date or (c) with respect to the Company, has a material and adverse effect on the ability of the Company to perform its obligations under this Agreement or to consummate the transactions contemplated hereby by the End Date; provided, however, that to the extent any event, effect, change or development is caused by or results from any of the following, in each case, it shall not be taken into account in determining whether there has been (or would reasonably be expected to be) a "Material Adverse Change" or a "Material Adverse Effect": (i) factors affecting the economy or financial markets as a whole, (ii) factors affecting the electric energy market as a whole, except to the extent the Company and its Subsidiaries, taken as a whole, or Parent and its Subsidiaries, taken as a whole, as the case may be, are materially and adversely affected in a disproportionate manner as compared to comparable participants in the electric energy market, (iii) the announcement of the execution of this Agreement, (iv) any failure by Parent or the Company to meet any revenue or earnings predictions prepared by the Company or Parent, as the case may be, or revenue or earnings predictions of equity analysts or the receipt by Parent or the Company, or any of their respective Subsidiaries of any credit ratings downgrade (it being understood that the facts or occurrences giving rise or contributing to any such effect, event, change or development which affect or otherwise relate to or result from the failure to meet revenue or earnings predictions prepared by the Company or Parent, as the case may be, or revenue or earnings predictions of equity analysts or to the receipt of any credit ratings downgrade may be deemed to constitute, or be taken into account in determining whether there has been, or would reasonably be expected to be, a Material Adverse Change or Material Adverse Effect), (v) changes in laws, rules or regulations of any Governmental Entity affecting the electric energy market as a whole except to the extent the Company and its Subsidiaries, taken as a whole, or Parent and its Subsidiaries, taken as a whole, as the case may be, are materially and adversely affected in a disproportionate manner as compared to comparable participants in the electric energy market, (vi) any loss, in and of itself, resulting from the sale of assets in accordance with Section 6.1(a)(viii)(B) or impairment charge, in and of itself, taken in relation to the assets identified on Item 6.1(a)(viii)(B) of the Company Letter, (vii) any sale or disposition of assets that may be ordered by the SEC, as part of its review of the Merger under PUHCA, (viii) any change in generally accepted accounting principles by the Financial

Accounting Standards Board, the SEC or any other regulatory body, (ix) any event, effect, change or development resulting from a breach by Exelon Generation Company, LLC of the OSC shall not be deemed to be an event, effect, change or development that would have a Material Adverse Effect on the Company or (x) any matter to the extent identified on Item 1.1(b) of the Parent Letter or Item 1.1(b) of the Company Letter.

"Merger" shall have the meaning set forth in the first recital provision of this Agreement.

"Morgan Stanley" shall have the meaning set forth in Section 4.22.

"Multiemployer Plan" shall have the meaning set forth in Section 4.12(d).

"Natural Gas Act" means the Natural Gas Act.

"Natural Gas Policy Act" means the Natural Gas Policy Act of 1978.

"Net Company Position" shall have the meaning set forth in Section 4.18.

"Net Parent Position" shall have the meaning set forth in Section 5.19.

"NJBCA" shall have the meaning set forth in Section 2.1.

"NRC" means the Nuclear Regulatory Commission.

"NYSE" means the New York Stock Exchange, Inc.

"Order" shall have the meaning set forth in Section 8.1(b).

"OSC" means the Operating Services Contract, dated as of the date hereof, between Exelon Generation Company, LLC and PSEG Nuclear LLC.

"Parent" shall have the meaning set forth in the introductory paragraph of this Agreement.

"Parent Acquisition Transaction" shall have the meaning set forth in Section 9.1(j).

"Parent Business Personnel" shall have the meaning set forth in Section 5.14(a).

"Parent Compensation Commitment" means any material Contract, commitment, understanding, plan, policy or arrangement of any kind, whether written or oral, with or for the benefit of any current or former officer, director, employee or consultant, including each employment, compensation, deferred compensation, severance, supplemental pension, life insurance, termination or consulting Contract or arrangement and any Contracts or arrangements between Parent or any of its Subsidiaries and any current or former employee, officer, director or consultant of Parent or any of its Subsidiaries.

"Parent-Deferred Shares" means Parent Shares the issuance of which has been deferred pursuant to Parent's Deferred Compensation Plan.

"Parent Directors' Stock Unit Plan" means Parents' Non-Employee Directors Deferred Stock Unit Plan.

"Parent Dividend Equivalents" means dividend equivalents outstanding under Parent's Retirement Plan for Directors and Parent's Director Fee Plan.

"Parent DRIP" shall have the meaning set forth in Section 5.3(a).

"Parent ESPP" shall have the meaning set forth in Section 5.3(a).

"Parent Filed SEC Documents" means the documents (including portions of exhibits containing the audited financial statements of Parent, the notes thereto or Management's Discussion and Analysis of Financial Condition and Results of Operations but excluding all other exhibits or portions thereof) filed with or furnished to the SEC by Parent or any of its Subsidiaries and publicly available on the Electronic Data Gathering, Analysis and Retrieval System since December 31, 2001 and prior to the date of the execution of this Agreement.

"Parent Group" means (a) any "affiliated group" (as defined in Section 1504(a) of the Code without regard to the limitations contained in Section 1504(b) of the Code) that, at any time on or before the Closing Date, consists or consisted solely of Parent (or any predecessor); any Subsidiary of Parent (or any predecessor) or any combination thereof or that, at any time on or before the Closing Date, has or had Parent (or any predecessor) or any Subsidiary of Parent (or any predecessor) as the common parent, and (b) any other group of corporations that, at any time on or before the Closing Date, files or has filed Tax Returns on a combined, consolidated or unitary basis and consists or consisted solely of Parent (or any predecessor), any Subsidiary of Parent (or any predecessor) or any combination thereof or that, at any time on or before the Closing Date, files or has filed Tax Returns on a combined, consolidated or unitary basis and has or had Parent (or any predecessor) or any Subsidiary of Parent (or any predecessor) as the common parent.

"Parent Indebtedness" means (a) indebtedness for borrowed money of Parent and its Subsidiaries, (b) obligations of Parent and its Subsidiaries evidenced by notes, bonds, debentures or other similar instruments or by letters of credit agreements, including purchase money obligations or other obligations relating to the deferred purchase price of property and (c) direct or indirect guarantees by Parent or any of its Subsidiaries of indebtedness for borrowed money of any Person.

"Parent Joint Venture" means any corporation, limited liability company, partnership, joint venture, trust or other entity which is not a Subsidiary of Parent and in which (i) Parent, directly or indirectly, owns or controls any shares of any class of the outstanding voting securities or other equity interests (other than the ownership of securities primarily for investment purposes as part of routine cash management or investments of 2% or less in publicly traded companies) or (ii) Parent or a Subsidiary of the Parent is a general partner.

"Parent Letter" means the letter from Parent to the Company dated the date hereof, which letter relates to this Agreement and is designated therein as the Parent Letter.

“Parent Material Contract” means any Contract to which Parent or one of its Subsidiaries is a party and which is material to Parent and its Subsidiaries, taken as a whole.

“Parent Material Taxes” means (a) federal income Taxes imposed on any Parent Group, (b) Illinois income Taxes imposed on Parent, any Subsidiary of Parent or any Parent Group, (c) Pennsylvania Corporate Net Income Taxes imposed on Exelon Ventures Company, LLC or PECO Energy Company and (d) material foreign Taxes imposed on Parent, any Subsidiary of Parent or any Parent Group (including, in the case of each reference to Parent or any Subsidiary of Parent, any predecessor thereof).

“Parent Non-US Compensation and Benefit Plans” shall have the meaning set forth in Section 5.13(h).

“Parent Nuclear Facilities” shall have the meaning set forth in Section 5.17(a).

“Parent Performance Shares” shall have the meaning set forth in Section 5.3(a).

“Parent Permits” shall have the meaning set forth in Section 5.9(a).

“Parent Phantom Shares” means amounts credited to participants’ retirement accounts and matching contribution accounts under Parent’s Deferred Compensation Unit Plan and credited as or benchmarked against Parent Shares.

“Parent Preferred Stock” shall have the meaning set forth in Section 5.3(a).

“Parent Regulatory Approval Coordinators” shall have the meaning set forth in Section 7.10(d)(i).

“Parent Reporting Subsidiary” means each Subsidiary of Parent required to file documents with or furnish documents to the SEC pursuant to the Securities Act or the Exchange Act.

“Parent Required Statutory Approvals” shall have the meaning set forth in Section 5.5(b).

“Parent Restricted Shares” means Parent Shares subject to forfeiture.

“Parent SEC Documents” shall have the meaning set forth in Section 5.6(a).

“Parent Shareholder Approval” shall have the meaning set forth in Section 7.3(a).

“Parent Shareholders Meeting” shall have the meaning set forth in Section 7.3(a).

“Parent Share Issuance” means the issuance of the Parent Shares upon conversion of the Shares pursuant to Section 3.2(c).

“Parent Shares” shall have the meaning set forth in the first recital provision of this Agreement.

"Parent Stock Equivalents" shall have the meaning set forth in Section 5.3(a).

"Parent Stock Incentive Plans" shall have the meaning set forth in Section 5.3(a).

"Parent Stock Options" shall have the meaning set forth in Section 5.3(a).

"Parent Tax Certificate" means a form of certificate attached to the Parent Letter which contains certain representations substantially to the effect of the representations to be made by Parent in connection with the tax opinions contemplated by Sections 8.2(c) and 8.3(e).

"Parent Trading" means any transaction which does not hedge an underlying exposure, is conducted to increase expected margin at increased expected risk and is recorded in Parent's Proprietary Trading Book.

"Parent Trading Guidelines" shall have the meaning set forth in Section 5.19.

"Parent Voting Debt" shall have the meaning set forth in Section 5.3(a).

"PBCL" shall have the meaning set forth in Section 2.1.

"PBGC" shall have the meaning set forth in Section 4.12(d).

"Person" means any person, employee, individual, corporation, limited liability company, partnership, trust, or any other non-governmental entity (including any foreign entity) or any governmental or regulatory authority or body (including any foreign entity).

"Power" means PSEG Power LLC, a Delaware limited liability company.

"Power Agreement" shall have the meaning set forth in Section 6.1(a)(xii).

"Proxy Statement" shall have the meaning set forth in Section 4.8.

"PUHCA" shall have the meaning set forth in Section 4.2(a).

"PURPA" shall have the meaning set forth in Section 4.2(a).

"Qualified Plan" means any Benefit Plan that is intended to be qualified and exempt from federal income Taxes under Sections 401(a) and 501(a) of the Code.

"Registration Statement" shall have the meaning set forth in Section 4.8.

"Regulatory Approval Coordinators" shall have the meaning set forth in Section 7.10(d)(i).

"Regulatory Approval Team" shall have the meaning set forth in Section 7.10(d)(i).

"Regulatory Approval Team Chairperson" shall have the meaning set forth in Section 7.10(d)(i).

"Regulatory Approval Team Vice-Chair" shall have the meaning set forth in Section 7.10(d)(i).

"Resources" means PSEG Resources L.L.C., a New Jersey limited liability company.

"Sarbanes-Oxley Act" shall have the meaning set forth in Section 4.9(b).

"SEC" means the Securities and Exchange Commission.

"Section 16 Information" shall have the meaning set forth in Section 7.11.

"Securities Act" means the Securities Act of 1933, as amended, together with the rules and regulations promulgated thereunder.

"Shareholders Meetings" shall have the meaning set forth in Section 7.3(a).

"Shares" shall have the meaning set forth in the first recital provision of this Agreement.

"Significant Subsidiary" of any Person means a Subsidiary of such Person that would constitute a "significant subsidiary" of such Person within the meaning of Rule 1.02(w) of Regulation S-X as promulgated by the SEC.

"State Committees" shall have the meaning set forth in Section 7.10(d)(ii).

"Subsidiary" or **"subsidiary"** of any Person means another Person, an amount of the voting securities, other voting ownership or voting partnership interests of which is sufficient to elect at least a majority of its Board of Directors or other governing body (or, if there are no such voting interests, greater than 50% of the equity interests of which) is owned directly or indirectly by such first Person.

"Substitute Option" shall have the meaning set forth in Section 7.2(a).

"Superior Proposal" shall have the meaning set forth in Section 6.2(a).

"Surviving Corporation" shall have the meaning set forth in Section 2.1.

"Takeover Proposal" shall have the meaning set forth in Section 6.2(a).

"Tax" and **"Taxes"** means: (i) any federal, state, local or foreign net income, gross income, gross receipts, windfall profit, severance, property, production, sales, use, license, excise, franchise, employment, payroll, withholding, alternative or add-on minimum, ad valorem, value-added, transfer, stamp, or environmental (including taxes under Section 59A of the Code) tax, or any other tax, custom, duty, governmental fee or other like assessment or charge of any kind whatsoever, together with any interest or penalty, addition to tax or additional amount imposed by any governmental authority and (ii) any liability for the payment of amounts with respect to payments of a type described in clause (i) as a result of being a member of an affiliated, consolidated, combined or unitary group, or as a result of any obligation under any Tax Sharing Arrangement or Tax indemnity arrangement.

"Tax Return" means any return, report or similar statement required to be filed with respect to any Tax (including any attached schedules), including, without limitation, any information return, claim for refund, amended return or declaration of estimated Tax.

"Tax Sharing Arrangement" means any written or unwritten arrangement for the allocation or payment of Tax liabilities or payment for Tax benefits with respect to a consolidated, combined or unitary Tax Return.

"Transition Chairperson" shall have the meaning set forth in Section 7.4(b).

"Transition Coordinators" shall have the meaning set forth in Section 7.4(b).

"Transition Team" shall have the meaning set forth in Section 7.4(b).

"Transfer Taxes" shall have the meaning set forth in Section 7.7.

"Unvested Restrictions" shall have the meaning set forth in Section 7.2(b).

ARTICLE II THE MERGER

Section 2.1 The Merger. Upon the terms and subject to the conditions hereof, and in accordance with the New Jersey Business Corporation Act (the "NJBCA") and the Pennsylvania Business Corporation Law of 1988, as amended (the "PBCL") the Company shall be merged with and into Parent at the Effective Time. Following the Effective Time, the separate corporate existence of the Company shall cease and Parent shall continue as the surviving corporation (the "Surviving Corporation") and shall succeed to and assume all the rights and obligations of the Company and Parent in accordance with the PBCL and the NJBCA.

Section 2.2 Closing. The closing of the Merger will take place at 10:00 a.m. on a date mutually agreed to by Parent and the Company, which shall be no later than the second business day after satisfaction or waiver of the conditions set forth in Article VIII (the "Closing Date"), at the offices of Sidley Austin Brown & Wood LLP, Chicago, Illinois 60603, unless another date, time or place is agreed to in writing by the parties hereto.

Section 2.3 Effective Time. The Merger shall become effective when (a) a Certificate of Merger (the "Certificate of Merger"), executed in accordance with the relevant provisions of the NJBCA, is duly filed with the Department of Treasury of the State of New Jersey and (b) Articles of Merger (the "Articles of Merger"), executed in accordance with the relevant provisions of the PBCL, are duly filed with the Department of State of the Commonwealth of Pennsylvania, or at such other time as Parent and the Company shall agree should be specified in the Certificate of Merger and the Articles of Merger. When used in this Agreement, the term "Effective Time" shall mean the later of (i) the date and time at which the Certificate of Merger is duly filed with the Department of Treasury of the State of New Jersey and the Articles of Merger are duly filed with the Department of State of the Commonwealth of Pennsylvania and (ii) such later time as Parent and the Company shall agree and as shall be specified in the Certificate of Merger and the Articles of Merger.

Section 2.4 Effects of the Merger. The Merger shall have the effects set forth in this Agreement and in the NJBCA and the PBCL.

Section 2.5 Articles of Incorporation and By-laws; Officers and Directors. (a) The Amended and Restated Articles of Incorporation, as amended, of Parent, as in effect immediately prior to the Effective Time shall be amended so that Article I reads in its entirety as follows: "The name of the Corporation is Exelon Electric & Gas Corporation (the "Corporation")." The Amended and Restated Articles of Incorporation of Parent, as so amended, shall be the Articles of Incorporation of the Surviving Corporation until thereafter changed or amended as provided therein or by applicable law.

(b) The Amended and Restated By-laws, as amended, of Parent as in effect immediately prior to the Effective Time, shall be amended as set forth on Exhibit A. The Amended and Restated By-laws of Parent, as so amended, shall be the By-laws of the Surviving Corporation until thereafter changed or amended as provided by the Certificate of Incorporation of the Surviving Corporation or by applicable law.

(c) Subject to Section 7.14(a), the directors of Parent immediately prior to the Effective Time shall be the directors of the Surviving Corporation, until the next annual meeting of shareholders (or the earlier of their resignation or removal) and until their respective successors are duly elected and qualified, as the case may be.

(d) At the Effective Time, the officers of Parent shall be the officers of the Surviving Corporation with such substitutions, additions and deletions as shall be determined by Parent's Chief Executive Officer in consultation with the Company's Chief Executive Officer and approved by the Board of Directors of the Surviving Corporation, until the earlier of their resignation or removal and until their respective successors are duly elected and qualified, as the case may be.

ARTICLE III EFFECT OF THE MERGER ON THE STOCK OF THE CONSTITUENT CORPORATIONS; EXCHANGE OF CERTIFICATES

Section 3.1 Effect on Stock. As of the Effective Time, by virtue of the Merger and without any action on the part of any of Parent, the Company or the holders of any securities of the Constituent Corporations, the capital stock of the Constituent Corporations shall be treated as set forth in this Article III and in accordance with the terms of this Agreement.

Section 3.2 Conversion. (a) Capital Stock of Parent. Each issued and outstanding Parent Share shall remain outstanding following the Effective Time as a share of the Surviving Corporation.

(b) Treasury Stock and Parent Owned Stock. Each Share that is owned by the Company or by any Subsidiary of the Company and each Share that is owned by Parent or any Subsidiary of Parent shall automatically be cancelled and retired and shall cease to exist, and no consideration shall be delivered in exchange therefor.

(c) Conversion of Shares. Each Share issued and outstanding (other than Shares to be cancelled in accordance with Section 3.2(b)) shall be converted into the right to receive 1.225 of duly authorized, validly issued, fully paid and non-assessable Parent Shares (the "Exchange Ratio"). As of the Effective Time, all such Shares, when so converted, shall no longer be outstanding and shall automatically be cancelled and retired, and each holder of a certificate representing any such Shares shall cease to have any rights with respect thereto, except the right to receive any dividends or distributions in accordance with Section 3.3(c), certificates representing the Parent Shares into which such Shares are converted and any cash, without interest, in lieu of fractional shares to be issued or paid in consideration therefor upon the surrender of such certificate in accordance with Section 3.3(d).

Section 3.3 Exchange of Certificates. (a) Promptly after the Effective Time, the Surviving Corporation shall deposit, or shall cause to be deposited, with a banking or other financial institution selected by Parent and reasonably satisfactory to the Company (the "Exchange Agent"), for the benefit of the holders of Shares, for exchange in accordance with this Article III, certificates representing the Parent Shares to be issued in connection with the Merger and, subject to Section 3.3(d), cash in lieu of fractional shares (such cash and certificates for Parent Shares, together with any dividends or distributions with respect thereto (relating to record dates for such dividends or distributions after the Effective Time), being hereinafter referred to as the "Exchange Fund") to be issued pursuant to Section 3.2 and paid pursuant to this Section 3.3 in exchange for outstanding Shares.

(b) Exchange Procedure. Promptly after the Effective Time, the Surviving Corporation shall cause the Exchange Agent to mail to each holder of record of a certificate or certificates that immediately prior to the Effective Time represented Shares, other than Shares referred to in Section 3.2(b) (the "Certificates"), (i) a letter of transmittal (which shall specify that delivery shall be effected, and risk of loss and title to the Certificates shall pass, only upon delivery of the Certificates to the Exchange Agent and shall be in a form and have such other provisions as Parent may specify) and (ii) instructions for use in effecting the surrender of the Certificates in exchange for the consideration contemplated by Section 3.2 and this Section 3.3, including cash in lieu of fractional shares, if applicable. Upon surrender of a Certificate for cancellation to the Exchange Agent, together with such letter of transmittal, duly executed, and such other documents as may reasonably be required by the Exchange Agent, the holder of such Certificate shall be entitled to receive in exchange therefor (x) a certificate representing that number of whole Parent Shares and (y) a check representing the amount of cash in lieu of fractional shares, if any, and unpaid dividends and distributions with respect to the Parent Shares as provided for in Section 3.3(c), if any, that such holder has the right to receive in respect of the Certificate surrendered pursuant to the provisions of this Article III, after giving effect to any required withholding Tax. No interest will be paid or accrued on the cash payable to holders of Shares. In the event of a transfer of ownership of Shares that is not registered in the transfer records of the Company, a certificate representing the proper number of Parent Shares, together with a check for the cash to be paid pursuant to this Section 3.3, if applicable, may be issued to such a transferee if such Certificate shall be properly endorsed or otherwise be in proper form for transfer and the transferee shall pay any transfer or other Taxes required by reason of the payment to a Person other than the registered holder of such Certificate or establish to the satisfaction of the Surviving Corporation that such Tax has been paid or is not applicable. The Surviving Corporation or the Exchange Agent shall be entitled to deduct and withhold from the

consideration otherwise payable pursuant to this Agreement such amounts as the Surviving Corporation or the Exchange Agent is required to deduct and withhold with respect to the making of such payment under the Code or under any provision of state, local or foreign Tax law. To the extent that amounts are so withheld by the Surviving Corporation or the Exchange Agent, such withheld amounts shall be treated for all purposes of this Agreement as having been paid to the Person in respect of which such deduction and withholding was made.

(c) Dividends. Notwithstanding any other provisions of this Agreement, no dividends or other distributions declared with a record date on or after the Effective Time on Parent Shares shall be paid with respect to any Shares represented by a Certificate until such Certificate is surrendered for exchange as provided herein. Following surrender of any such Certificate, there shall be paid to the holder of the certificates representing whole Parent Shares issued in exchange therefor, without interest, (i) at the time of such surrender, the amount of dividends or other distributions with a record date after the Effective Time theretofore payable with respect to such whole Parent Shares and not paid, less the amount of any withholding Taxes which may be required thereon, and (ii) at the appropriate payment date or as promptly as practicable thereafter, the amount of dividends or other distributions with a record date after the Effective Time but prior to such surrender and a payment date subsequent to such surrender payable with respect to such whole Parent Shares, less the amount of any withholding Taxes which may be required thereon. The Surviving Corporation will provide or cause to be provided to the Exchange Agent the cash necessary to make the payments contemplated by this Section 3.3(c).

(d) No Fractional Securities. No fractional Parent Shares shall be issued pursuant hereto. In lieu of the issuance of any fraction of a Parent Share, cash adjustments will be paid to holders in respect of any fraction of a Parent Share that would otherwise be issuable, and the amount of such cash adjustment shall be equal to the product obtained by multiplying such shareholder's fraction of a Parent Share that would otherwise be issuable by the closing price per share of Parent Shares on the New York Stock Exchange Composite Transaction Tape on the Closing Date as reported by *The Wall Street Journal* (or, if not reported thereby, any other authoritative source).

(e) No Further Ownership Rights in Shares. All Parent Shares issued upon the surrender for exchange of Certificates in accordance with the terms of this Article III (including any cash paid pursuant to this Section 3.3) shall be deemed to have been issued in full satisfaction of all rights pertaining to the Shares theretofore represented by such Certificates. At the Effective Time, the stock transfer books of the Company shall be closed, and there shall be no further registration of transfers on the stock transfer books of the Surviving Corporation of the Shares that were outstanding immediately prior to the Effective Time. If, after the Effective Time, Certificates are presented to the Surviving Corporation or the Exchange Agent for any reason, they shall be cancelled and exchanged as provided in this Article III.

(f) Termination of Exchange Fund. Any portion of the Exchange Fund (including the proceeds of any investments thereof and any Parent Shares) which remains undistributed to the holders of Shares for 12 months after the Effective Time may be delivered to the Surviving Corporation, upon demand, and any holders of Shares who have not theretofore complied with this Article III and the instructions set forth in the letter of transmittal mailed to

such holders after the Effective Time shall thereafter look only to the Surviving Corporation or its agent (subject to abandoned property, escheat or other similar laws) for payment of their Parent Shares, cash and unpaid dividends and distributions on Parent Shares deliverable in respect of each Share such shareholder holds as determined pursuant to this Agreement, in each case, without any interest thereon.

(g) No Liability. None of Parent, the Surviving Corporation, the Company or the Exchange Agent shall be liable to any Person in respect of any amount properly delivered or deliverable to a public official pursuant to any applicable abandoned property, escheat or other similar law.

Section 3.4 Tax Consequences. It is intended by the parties hereto that the Merger shall constitute a "reorganization" within the meaning of Section 368(a) of the Code, and the parties hereto adopt this Agreement as a "plan of reorganization" for such purposes.

Section 3.5 Adjustment of Exchange Ratio. In the event that Parent changes or establishes a record date for changing the number of Parent Shares issued and outstanding as a result of a stock split, stock dividend, recapitalization, subdivision, reclassification, combination or similar transaction with respect to the outstanding Parent Shares and the record date therefor shall be prior to the Effective Time, the Exchange Ratio applicable to the Merger and any other calculations based on or relating to Parent Shares shall be appropriately, equitably and proportionately adjusted in light of such stock split, stock dividend, recapitalization, subdivision, reclassification, combination or similar transaction.

Section 3.6 Lost Certificates. If any Certificate shall have been lost, stolen or destroyed, upon the making of an affidavit of that fact by the Person claiming such Certificate to be lost, stolen or destroyed and, if required by Parent or the Exchange Agent, the posting by such Person of a bond, in such reasonable amount as Parent or the Exchange Agent may direct as indemnity against any claim that may be made against them with respect to such Certificate, the Exchange Agent will issue in exchange for such lost, stolen or destroyed Certificate the Parent Shares, any cash in lieu of fractional shares of Parent Shares to which the holders thereof are entitled pursuant to Section 3.3(d) and any dividends or other distributions to which the holders thereof are entitled pursuant to Section 3.3(c).

Section 3.7 Further Assurances. If at any time after the Effective Time the Surviving Corporation shall consider or be advised that any deeds, bills of sale, assignments or assurances or any other acts or things are necessary, desirable or proper (a) to vest, perfect or confirm, of record or otherwise, in the Surviving Corporation its right, title or interest in, to or under any of the rights, privileges, powers, franchises, properties, permits, licenses or assets of either of the Constituent Corporations, or (b) otherwise to carry out the purposes of this Agreement, the Surviving Corporation and its proper officers and directors or their designees shall be authorized to execute and deliver, in the name and on behalf of either of the Constituent Corporations, all such deeds, bills of sale, assignments and assurances and to do, in the name and on behalf of either Constituent Corporation, all such other acts and things as may be necessary, desirable or proper to vest, perfect or confirm the Surviving Corporation's right, title or interest in, to or under any of the rights, privileges, powers, franchises, properties or assets of such Constituent Corporation and otherwise to carry out the purposes of this Agreement.

ARTICLE IV REPRESENTATIONS AND WARRANTIES OF THE COMPANY

The Company represents and warrants to Parent, (i) other than in the case of Sections 4.1, 4.3(a), 4.4, 4.20, 4.21, 4.22 and 4.23, except as set forth in the Company Letter (with specific reference to the relevant sections of the representations and warranties in Article IV or disclosure in such a way as to make its relevance to the information called for by such representation or warranty readily apparent) or (ii) other than in the case of Sections 4.1, 4.2(a), 4.3, 4.4, 4.10, 4.20, 4.21, 4.22, 4.23 and 4.26, except as disclosed in the Company Filed SEC Documents (it being understood that any matter set forth in the Company Filed SEC Documents shall be deemed to qualify any representation or warranty in Article IV only to the extent that the description of such matter in the Company Filed SEC Documents is made in such a way as to make its relevance to the information called for by such representation or warranty readily apparent), as follows:

Section 4.1 Organization. Each of the Company and each of its Subsidiaries is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization and has requisite power and authority to carry on its businesses as now being conducted, except where the failure to be so organized, existing and in good standing or to have such power and authority would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on the Company. Each of the Company and each of its Subsidiaries is duly qualified or licensed to do business and in good standing in each jurisdiction in which the nature of its businesses or the ownership or leasing of its properties makes such qualification or licensing necessary, except in such jurisdictions where the failure to be so duly qualified or licensed and in good standing would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on the Company. The Company has delivered to Parent complete and correct copies of its Certificate of Incorporation and By-laws and has delivered to Parent complete and correct copies of the charter and by-laws (or similar organizational documents) of each of its Significant Subsidiaries.

Section 4.2 Subsidiaries. (a) Item 4.2(a) of the Company Letter lists each Significant Subsidiary of the Company and its jurisdiction of organization and specifies each of the Subsidiaries of the Company that is (i) a "public-utility company," a "holding company," a "subsidiary company," an "affiliate" of any public-utility company, an "exempt wholesale generator" or a "foreign utility company" within the meaning of Section 2(a)(5), 2(a)(7), 2(a)(8), 2(a)(11), 32(a)(1) or 33(a)(3) of the Public Utility Holding Company Act of 1935, as amended ("PUHCA"), respectively, (ii) a "public utility" within the meaning of Section 201(e) of the Federal Power Act (the "Federal Power Act") or (iii) a "qualifying facility" within the meaning of the Public Utility Regulatory Policies Act of 1978, as amended ("PURPA"), or that owns such a qualifying facility.

(b) All of the outstanding Capital Stock of each Subsidiary of the Company has been validly issued and is fully paid and nonassessable. All of the outstanding Capital Stock of each Subsidiary of the Company is owned by the Company, by one or more Subsidiaries of the Company or by the Company and one or more Subsidiaries of the Company and is free and clear of all Liens. Except for the Capital Stock of its Subsidiaries, the Company does not own, directly or indirectly, any Capital Stock of any corporation, partnership, joint venture, limited liability company or other entity. Neither the Company nor any of its Subsidiaries is a party to,

or has any commitment to become a party to, any joint venture, off-balance sheet partnership or any similar Contract (including without limitation any Contract relating to any transaction or relationship between or among the Company and any of its Subsidiaries, on the one hand, and any unconsolidated Affiliate, including without limitation any structured finance, special purpose or limited purpose entity or Person, on the other hand, or any "off-balance sheet arrangement" (as defined in Item 303(a) of Regulation S-K of the SEC)). There are no outstanding bonds, debentures, notes or other indebtedness of the Company or any of its Subsidiaries having the right to vote (or convertible into, or exchangeable for, securities having the right to vote) on any matter on which the shareholders or other equity holders of any Subsidiary may vote.

Section 4.3 Capital Structure. (a) The authorized capital stock of the Company consists of 500,000,000 Shares and 50,000,000 shares of preferred stock, no par value per share ("Company Preferred Stock"). At the close of business on December 15, 2004, (i) 237,789,891 Shares were issued and outstanding, all of which were validly issued, fully paid and nonassessable and, except as provided in the Certificate of Incorporation, as amended, of the Company, free of preemptive rights, (ii) 26,029,740 Shares were held by the Company in its treasury, (iii) 9,411,565 Shares were reserved for issuance pursuant to outstanding options to purchase Company Common Stock (the "Company Stock Options") granted under the Company's 2004 Long-Term Incentive Plan, the Company's 2001 Long-Term Incentive Plan and the Company's 1989 Long-Term Incentive Plan (together, and each as amended, the "Company Option Plans"), (iv) 88,850 Shares were reserved for issuance pursuant to outstanding restricted stock units ("Company RSUs") under the Company Stock Plans, (v) 88,850 Shares were reserved for issuance pursuant to outstanding Company Performance Units and Company Performance Shares under the Company Stock Plans, (vi) 10,410,735 Shares were reserved for the grant of additional awards under the Company Stock Plans (exclusive of clauses (vii) through (xii)), (vii) 100,000 Shares were reserved for issuance pursuant to the Company's Stock Plan for Outside Directors, (viii) 100,000 Shares were reserved for issuance pursuant to the Company's Compensation Plan for Outside Directors, (ix) 123,048 Shares were reserved for issuance pursuant to the Company's Thrift and Tax Deferred Savings Plan (the "Company Thrift Plan"), (x) 349,313 Shares were reserved for issuance pursuant to the Company's Employee Savings Plan (the "Company Employee Savings Plan"), (xi) 1,044,195 Shares were reserved for issuance pursuant to the Company's Dividend Reinvestment and Stock Purchase Plan ("Company DRIP"), (xii) 1,965,809 Shares were reserved for issuance pursuant to the Company's Employee Stock Purchase Plan (the "Company ESPP" and together with the Company Option Plans, the Company Thrift Plan, the Company Employee Savings Plan, the Company DRIP, the Company's Compensation Plan for Outside Directors and the Company's Stock Plan for Outside Directors, the "Company Stock Plans"), (xiii) 14,200,000 Shares were reserved for issuance pursuant to the purchase contracts forming a part of the 9,200,000 issued and outstanding Company Equity Units and (xiv) 22,000 Shares were reserved for issuance pursuant to outstanding Company Stock Phantom Shares. Between 11,400,000 and 14,200,000 Shares are subject to purchase pursuant to the purchase contracts forming a part of Company Equity Units. 186,850 Shares of the outstanding Shares are restricted Shares still subject to forfeiture ("Company Restricted Shares"). As of the close of business on the date of this Agreement, except as set forth above, no Shares or shares of Company Preferred Stock were issued, reserved for issuance or outstanding, no awards or grants have been made under the Company Stock Plans and there are not any phantom stock or other contractual rights the value of which is determined in whole or in part by the value of any capital stock of the Company (other than the Company

Cash Phantom Shares and Company Cash Dividend Equivalents) ("Company Stock Equivalents"). There are no outstanding stock appreciation rights with respect to the capital stock of the Company. Each outstanding Share is, and each Share which may be issued pursuant to the Company Stock Plans, the Company ESPP, the Company DRIP, the Company RSUs, the Company Performance Units, the Company Performance Shares or purchase contracts forming part of the Company Equity Units will be, when issued, duly authorized, validly issued, fully paid and nonassessable and, except as set forth in the Certificate of Incorporation, as amended, of the Company, not subject to preemptive rights. Other than the Company Common Stock and the Company Preferred Stock, there are no other authorized classes of capital stock of the Company. There are no outstanding bonds, debentures, notes or other indebtedness of the Company having the right to vote (or convertible into, or exchangeable for, securities having the right to vote) on any matter on which the Company's shareholders may vote ("Company Voting Debt"). The treatment of Company Stock Options and Company Stock-Based Awards contemplated by Section 7.2 is permitted under the plans and agreements under which they were issued.

(b) As of the date of this Agreement, there are no securities, options, warrants, calls, rights, commitments, agreements, arrangements or undertakings of any kind to which the Company or any of its Subsidiaries is a party or by which any of them is bound obligating the Company or any of its Subsidiaries to issue, deliver or sell or create, or cause to be issued, delivered or sold or created, additional Capital Stock, Company Stock Options, Company Voting Debt or other securities or Company Stock Equivalents of Company or of any of its Subsidiaries or obligating the Company or any of its Subsidiaries to issue, grant, extend or enter into any such security, option, warrant, call, right, commitment, agreement, arrangement or undertaking. As of the date of this Agreement, there are no outstanding contractual obligations of the Company or any of its Subsidiaries to repurchase, redeem or otherwise acquire any Capital Stock of the Company or any of its Subsidiaries. There are no outstanding agreements to which the Company, its Subsidiaries or any of their respective officers or directors is a party concerning the voting of any Capital Stock of the Company or any of its Subsidiaries.

Section 4.4 Authority. On or prior to the date of this Agreement, the Board of Directors of the Company unanimously approved this Agreement, declared this Agreement and the Merger advisable and fair to and in the best interest of the Company and its shareholders, resolved to recommend the approval of this Agreement by the Company's shareholders, directed that this Agreement be submitted to the Company's shareholders for approval and adoption (all in accordance with the NJBCA) and approved the other agreements to be entered into by it as contemplated hereby. The Company has all requisite corporate power and authority to execute and deliver this Agreement and, subject to approval by the Company's shareholders of this Agreement, to consummate the transactions contemplated hereby. The execution, delivery and performance of this Agreement by the Company and the consummation by the Company of the Merger and of the other transactions contemplated hereby have been duly authorized by all necessary corporate action on the part of the Company, subject to approval by the Company's shareholders of this Agreement. This Agreement has been duly executed and delivered by the Company and (assuming the valid authorization, execution and delivery of this Agreement by Parent) constitutes the valid and binding obligation of the Company enforceable against the Company in accordance with its terms, except that such enforceability (i) may be limited by bankruptcy, insolvency, moratorium or other similar laws affecting or relating to the enforcement of creditors' rights generally and (ii) is subject to general principles of equity.

Section 4.5 Consents and Approvals; No Violations. (a) Except for filings, permits, authorizations, consents and approvals contemplated by Section 4.5(b), neither the execution, delivery or performance of this Agreement by the Company nor the consummation by the Company of the transactions contemplated hereby will (i) conflict with or result in any breach of any provision of the Certificate of Incorporation or By-laws of the Company or of the similar organizational documents of any of its Subsidiaries or any Company Joint Venture, (ii) result in a violation or breach of, or constitute (with or without due notice or lapse of time or both) a default (or give rise to any right of termination, guaranteed payment, loss of rights, cancellation or acceleration) under any of the terms, conditions or provisions of any Contract to which the Company or any of its Subsidiaries or any Company Joint Venture is a party or by which any of them or any of their properties or assets may be bound or any Company Permit, (iii) violate any order, writ, injunction, decree, statute, rule or regulation applicable to the Company, any of its Subsidiaries or any Company Joint Venture or any of their properties or assets or (iv) result in the creation of any Lien upon any of the properties or assets of the Company or any of its Affiliates (including Parent and its Subsidiaries following the Merger), except in the case of clause (i) (solely with respect to Company Joint Ventures) and clauses (ii) through (iv) for such items that would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on the Company.

(b) No filing or registration with, or authorization, consent or approval of, any Governmental Entity (other than filings, registrations, authorizations, consents and approvals the failure of which to make or obtain would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on the Company or, after giving effect to the Merger, on Parent) is required by or with respect to the Company or any of its Subsidiaries or any Company Joint Venture in connection with the execution and delivery of this Agreement by the Company or is necessary for the consummation by the Company of the Merger and the other transactions contemplated by this Agreement, except (i) in connection, or in compliance, with the provisions of the HSR Act, (ii) the filing of the Certificate of Merger with the Secretary of State of the State of New Jersey, the filing of the Articles of Merger with the Secretary of State of the Commonwealth of Pennsylvania and appropriate documents with the relevant authorities of other states in which the Company or any of its Subsidiaries is qualified to do business, (iii) as may be required by state takeover laws and foreign or supranational laws relating to antitrust and competition clearances disclosed on Item 4.5(b) of the Company Letter, (iv) such filings as may be required in connection with the Taxes described in Section 7.7, (v) as may be required under the Securities Act or the Exchange Act and (vi) such other filings, registrations, authorizations, consents and approvals as set forth on Item 4.5(b) of the Company Letter (collectively, whether or not legally required to be made or obtained, the "Company Required Statutory Approvals"). For purposes of this Agreement, references to "obtained" with respect to Parent Required Statutory Approvals and Company Required Statutory Approvals shall include the making of all filings and registrations and the giving of all applicable notices.

Section 4.6 SEC Documents and Other Reports. (a) Each of the Company and its Subsidiaries has timely filed with or furnished to the SEC all documents required to be filed or furnished by it since December 31, 2001 under the Securities Act or the Exchange Act (as such documents have been amended or supplemented prior to the date hereof, the "Company SEC Documents"). As of their respective filing or furnishing dates, the Company SEC Documents complied in all material respects with the requirements of the Securities Act or the Exchange

Act, as the case may be, each as in effect on the date so filed or furnished, and at the time filed with the SEC, none of the Company SEC Documents so filed contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading. The consolidated financial statements of the Company included in the Company SEC Documents complied as of their respective dates in all material respects with the then applicable accounting requirements and the published rules and regulations of the SEC with respect thereto, were prepared in accordance with generally accepted accounting principles (except in the case of the unaudited statements, as permitted by Form 10-Q under the Exchange Act) applied on a consistent basis during the periods involved (except as may be indicated therein or in the notes thereto) and fairly present in all material respects the consolidated financial position of the Company and its consolidated Subsidiaries as at the dates thereof and the consolidated results of their operations and their consolidated cash flows for the periods then ended (subject, in the case of unaudited statements, to normal year-end audit adjustments and to any other adjustments described therein).

(b) The financial statements of each of the deconsolidated Subsidiaries of the Company, if any, for each of the last three fiscal years fairly present in all material respects the financial position of such deconsolidated Subsidiary of the Company as at the dates thereof and the results of their operations and their cash flows for the periods then ended (subject, in the case of unaudited statements, to normal year-end audit adjustments and to any other adjustments described therein).

(c) Each of the Company and its Subsidiaries has filed with the SEC, FERC, the NRC, or the appropriate state public utilities commission, as the case may be, all material documents required to be filed by it under PUHCA, the Federal Power Act, the Atomic Energy Act, the Natural Gas Act, the Natural Gas Policy Act and applicable state public utility laws and regulations. All such documents complied, as of the date so filed or, if amended, as of the date of the last amendment prior to the date hereof, in all material respects with all applicable requirements of the applicable statute and rules and regulations thereunder.

Section 4.7 Absence of Material Adverse Change. Since December 31, 2003 and through the date hereof the Company and its Subsidiaries have conducted their respective businesses in all material respects only in the ordinary course, and there has not been (i) any Material Adverse Change with respect to the Company, (ii) any declaration, setting aside or payment of any dividend or other distributions with respect to its or any of its Subsidiaries' Capital Stock (other than (a) regular quarterly cash dividends paid by the Company on Company Common Stock not in excess of \$0.55 per share per quarter with usual record and payment dates and consistent with the Company's past dividend policy, (b) dividends and distributions by a direct or indirect Subsidiary of the Company to its parent or another Subsidiary of the Company, and (c) regular cash dividends and distributions paid by the Subsidiaries of the Company on their preferred stock in accordance with their respective terms), (iii) any split, combination or reclassification of any of its or any of its Subsidiaries' Capital Stock or any issuance or the authorization of any issuance of any other securities in respect of, in lieu of or in substitution for shares of its or any of its Subsidiaries' Capital Stock, (iv) any change in accounting methods, principles or practices by the Company or any of its Subsidiaries, (v) any Tax Return relating to Company Material Taxes prepared or filed materially inconsistent with past practice, or with

respect to any such Tax Return any position taken, election made or method adopted that is materially inconsistent with positions taken, elections made or methods used in preparing or filing similar Tax Returns, (vi) any settlement entered into involving any material claim for Company Material Taxes, (vii) any material damage, destruction or other casualty loss with respect to any material asset or property owned, leased or otherwise used by the Company or any of its Subsidiaries, whether or not covered by insurance or (viii) any increase in the compensation payable or that could become payable by the Company or any of its Subsidiaries to officers or key employees or any amendment of any of the Benefit Plans of the Company or any of its Subsidiaries other than increases or amendments in the ordinary course.

Section 4.8 Information Supplied. None of the information supplied or to be supplied by the Company specifically for inclusion or incorporation by reference in Parent's registration statement on Form S-4 (together with any amendments or supplements thereto, the "Registration Statement"), pursuant to which Parent Shares issuable in the Merger will be registered, or the joint proxy statement/prospectus (together with any amendments or supplements thereto, the "Proxy Statement") relating to the Shareholders Meetings, will, in the case of the Registration Statement, at the time it becomes effective, and, in the case of the Proxy Statement, at the time it is first mailed to the shareholders of the Company or Parent and at the time of the Shareholders Meetings, contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they are made, not misleading. The Proxy Statement will comply as to form in all material respects with the requirements of the Exchange Act, except that no representation or warranty is made by the Company with respect to statements made or incorporated by reference in the Proxy Statement based on information supplied by Parent or any of its representatives specifically for inclusion or incorporation by reference therein.

Section 4.9 Compliance with Laws; Permits. (a) The businesses of the Company and its Subsidiaries are not being and have not been conducted in violation of any law, ordinance or regulation of any Governmental Entity, except for violations that would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on the Company. The Company and each of its Subsidiaries is in possession of all franchises, grants, authorizations, licenses, permits, easements, variances, rights-of-way, exceptions, consents, certificates, approvals and orders of any Governmental Entity necessary for the Company and its Subsidiaries to own, lease and operate its properties or to carry on its business as it is now being conducted (the "Company Permits"), except where the failure to have any of the Company Permits would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on the Company, and, as of the date of this Agreement, no suspension or cancellation of any of the Company Permits is pending or, to the Knowledge of the Company, threatened, except where the suspension or cancellation of any of the Company Permits would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on the Company.

(b) The Company and each of its Subsidiaries is in compliance in all material respects with (i) the applicable provisions of the Sarbanes-Oxley Act of 2002 and the related rules and regulations promulgated thereunder or under the Exchange Act (the "Sarbanes-Oxley Act") and (ii) the applicable listing and corporate governance rules and regulations of the NYSE. Except as permitted by the Exchange Act, including Sections 13(k)(2) and (3), since the enactment of the Sarbanes-Oxley Act, neither the Company nor any of its Affiliates has made,

arranged or modified (in any material way) personal loans to any executive officer or director of the Company or any of its Subsidiaries.

(c) Each of the principal executive officer of the Company and of each Company Reporting Subsidiary and the principal financial officer of the Company and of each Company Reporting Subsidiary (or each former principal executive officer of the Company and of each Company Reporting Subsidiary and each former principal financial officer of the Company and of each Company Reporting Subsidiary, as applicable) has made all certifications required by Rule 13a-14 or 15d-14 under the Exchange Act or Sections 302 and 906 of the Sarbanes-Oxley Act and the rules and regulations of the SEC promulgated thereunder with respect to Company SEC Documents. For purposes of the preceding sentence, "principal executive officer" and "principal financial officer" shall have the meanings given to such terms in the Sarbanes-Oxley Act. The Company has delivered to Parent a summary of any disclosure made by management to the Company's auditors and audit committee since January 1, 2002 referred to in such certifications.

(d) The Company and each Company Reporting Subsidiary has (i) designed disclosure controls and procedures to ensure that material information relating to it and its consolidated Subsidiaries, is made known to its management by others within those entities and (ii) to the extent required by applicable laws, disclosed, based on its most recent evaluation, to its auditors and the audit committee of its Board of Directors (A) any significant deficiencies and material weaknesses in the design or operation of internal controls over financial reporting which are reasonably likely to adversely affect its ability to record, process, summarize and report financial information and (B) to the Knowledge of the Company, any fraud, whether or not material, that involves management or other employees who have a significant role in its internal control over financial reporting.

(e) The Company has prepared a plan for the Company and each Company Reporting Subsidiary to comply with the requirements of Section 404 of the Sarbanes-Oxley Act on the date by which they must comply with such requirements. None of the Company or any Company Reporting Subsidiary is aware of any reason the Company or any Company Reporting Subsidiary will not comply with the requirements of Section 404 of the Sarbanes-Oxley Act on the applicable compliance date.

(f) Through the date hereof the Company has delivered to Parent copies of any written notifications it has received since December 31, 2001 of a (i) "reportable condition" or (ii) "material weakness" in the Company's internal controls. For purposes of this Agreement, the terms "reportable condition" and "material weakness" shall have the meanings assigned to them in the Statements of Auditing Standards No. 60, as in effect on the date hereof.

Section 4.10 Tax Matters. (a) (i) Each of the Company, each Subsidiary of the Company and each Company Group has timely filed all Tax Returns relating to Company Material Taxes required to be filed, except where the failure to timely file would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on the Company, (ii) all such Tax Returns are complete and accurate and disclose all Company Material Taxes required to be paid by the Company, each Subsidiary of the Company and each Company Group for the periods covered thereby, except where the failure to be complete or accurate or to

disclose all Company Material Taxes would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on the Company, (iii) none of the Company, any Subsidiary of the Company or any Company Group is currently the beneficiary of any extension of time within which to file any Tax Return relating to Company Material Taxes, (iv) all Company Material Taxes (whether or not shown on any Tax Return) owed by the Company, any Subsidiary of the Company or any Company Group have been timely paid, except where the failure to timely pay would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on the Company, (v) neither the Company nor any Subsidiary of the Company has waived in writing or been requested in writing to waive any statute of limitations in respect of Company Material Taxes which waiver is currently in effect, (vi) the Tax Returns referred to in clause (i) (without regard to any Material Adverse Effect qualifier) have been examined by the appropriate taxing authority or the period for assessment of the Company Material Taxes in respect of which each such Tax Return was required to be filed (taking into account all applicable extensions and waivers) has expired, (vii) there is no action, suit, inquiry, investigation, audit, claim or assessment pending or, to the Knowledge of the Company, proposed in writing or threatened in writing with respect to Company Material Taxes or other material Taxes of the Company, any Subsidiary of the Company or any Company Group, (viii) all deficiencies asserted or assessments made as a result of any examination of any Tax Returns relating to Company Material Taxes required to be filed by the Company, any Subsidiary of the Company or any Company Group have been paid in full, (ix) there are no Liens for Company Material Taxes upon the assets of the Company or any Subsidiary of the Company except Liens relating to current Taxes not yet due or except to the extent such Liens would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on the Company, (x) all Taxes which the Company or any Subsidiary of the Company are required by law to withhold or to collect for payment have been duly withheld and collected and have been either paid or accrued, reserved against and entered on the books of the Company, except where the failure to do any of the foregoing would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on the Company, (xi) to the Knowledge of the Company, neither the Company nor any Subsidiary of the Company has any material liability for Taxes of another Person under Treasury Regulation § 1.1502-6 (or any similar provision of state, local or foreign law), (xii) to the extent the Company, any Subsidiary of the Company or any Affiliate thereof has participated in a transaction that is described as a "reportable transaction" within the meaning of Treasury Regulation § 1.6011-4(b)(1), such participation has been adequately disclosed to the IRS on IRS Form 8886 (Reportable Transaction Disclosure Statement) (or predecessor Form) or on a written attachment to such Form or predecessor Form, (xiii) the accruals for Taxes reflected in the consolidated financial statements of the Company represent the Company's best estimate of the amounts required to be so reflected as of the dates hereof and (xiv) during the last three years, none of the Company or any Subsidiary of the Company has been a party to any transaction (other than a transaction described in Section 355(e)(2)(C) of the Code) treated by the parties thereto as one to which Section 355 of the Code (or any similar provision of state, local or foreign law) applied. For purposes of the representations and warranties contained in this Section 4.10(a), references to the Company or any Subsidiary of the Company shall include, except where the context requires otherwise, any predecessor thereof.

(b) The Company has delivered to Parent a correct and complete summary (i) by year, of all items of income, gain, loss, deduction and credit of the Company (or any

predecessor) or any Subsidiary of the Company (or any predecessor) that has been or is expected to be generated by any Listed Transaction, (ii) of any material income or gain of the Company (or any predecessor) or any Subsidiary of the Company (or any predecessor) deferred pursuant to Treasury Regulation §§ 1.1502-13 or -14, or any similar or predecessor Treasury Regulation, whether proposed, temporary or final and (iii) of any excess loss account (as described in Treasury Regulation §§ 1.1502-19 and 1.1502-32) that exists with respect to the stock of any Subsidiary of the Company.

(c) No transaction contemplated by this Agreement is subject to withholding under Section 1445 of the Code and no stock transfer Taxes, sales Taxes, use Taxes, real estate transfer or gains Taxes, or other similar Taxes will be imposed on the transactions contemplated by this Agreement, except such Taxes so imposed that would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on the Company.

(d) Neither the Company nor any of its Affiliates has taken or agreed to take any action that, to the Knowledge of the Company, will (or will be reasonably likely to) prevent the Merger from qualifying as a "reorganization" within the meaning of Section 368(a) of the Code. To the Knowledge of the Company, the representations set forth in the Company Tax Certificate, if made on the date hereof (assuming the Merger were consummated on the date hereof and based on reasonable estimates in the case of certain information not available on the date hereof), would be true and correct in all material respects.

Section 4.11 Litigation. There is no suit, action, proceeding or investigation pending or, to the Knowledge of the Company threatened against the Company or any of its Affiliates that would, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on the Company. Neither the Company nor any of its Affiliates is subject to any outstanding judgment, order, writ, injunction or decree that would, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on the Company.

Section 4.12 Benefit Plans. (a) Item 4.12(a) of the Company Letter sets forth a true and complete list of each Benefit Plan (including each ERISA Benefit Plan) maintained by the Company and its Subsidiaries. Except as required by law, neither the Company nor any of its Subsidiaries has adopted or amended in any material respect any Benefit Plan since the date of the most recent audited financial statements included in the Company Filed SEC Documents. As of the date of this Agreement, none of the Company, its Subsidiaries or any trade or business which is treated as a single employer ("ERISA Affiliate") with the Company under Section 414(b), (c), (m) or (o) of the Code contributes to any ERISA Benefit Plan that is a "multiemployer plan" (as defined in Section 3(37) of ERISA) or maintains any ERISA Benefit Plan that is subject to Title IV of ERISA or Section 412 of the Code. As of the date of this Agreement there exists no material Contract, commitment, understanding, plan, policy or arrangement of any kind, whether written or oral, with or for the benefit of any current or former officer, director, employee or consultant, including each employment, compensation, deferred compensation, severance, supplemental pension, life insurance, termination or consulting Contract or arrangement and any Contracts or arrangements associated with a change in control between the Company or any of its Subsidiaries and any current or former employee, officer, director or consultant of the Company or any of its Subsidiaries ("Compensation Commitments"). As of the date of this Agreement, neither the Company nor any of its

Subsidiaries maintains or contributes to any Benefit Plans or employs any employees outside of the United States.

(b) With respect to each Benefit Plan listed on Item 4.12(a) of the Company Letter, correct and complete copies, where applicable, of the following documents have been made available to Parent: (i) all Benefit Plan documents and amendments, trust agreements and insurance and annuity contracts and policies, (ii) the most recent IRS determination letter or opinion letter if the Benefit Plan is intended to satisfy the requirements for Tax favored treatment pursuant to Sections 401-417 of the Code, (iii) the Annual Reports (Form 5500 Series) and accompanying schedules, as filed, for the three most recently completed plan years, (iv) any discrimination or coverage tests performed during the last two plan years and (v) the current summary plan description. True and complete copies of all written Compensation Commitments and of all related insurance and annuity policies and contracts and other documents with respect to each Compensation Commitment have been made available to Parent. Item 4.12(b) of the Company Letter contains a true and complete description of all material oral Compensation Commitments.

(c) Each Benefit Plan listed on Item 4.12(a) of the Company Letter which is intended to be a Qualified Plan has received a favorable determination letter from the IRS that such plan is so qualified under the Code (or an application for such letter has been or will be submitted to the IRS within the applicable remedial amendment period) or has been established pursuant to a prototype plan that has received a favorable opinion letter from the IRS, and no circumstance exists which, might cause such plan to cease being so qualified except for any circumstance that would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on the Company. Each Benefit Plan listed on Item 4.12(a) of the Company Letter complies and has been maintained in all respects with its terms and all requirements of law and regulations applicable thereto, and there has been no notice issued by any Governmental Entity questioning or challenging such compliance, except for any circumstance that would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on the Company. Neither the Company nor any of its Subsidiaries has taken any action within the 12-month period ending on the date hereof to take corrective action or make a filing under any voluntary correction program of the IRS, Department of Labor or any other Governmental Entity with respect to any Benefit Plan or Compensation Commitment, and neither the Company nor any of its Subsidiaries has any Knowledge of any plan defect which would qualify for correction under any such program, except for any action, filing or plan defect that would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on the Company. There is no dispute, arbitration, grievance, action, suit or claim (other than routine claims for benefits) pending or, to the Knowledge of the Company, threatened involving such Benefit Plans or the assets of such plans that would, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on the Company. Neither the Company nor any of its Subsidiaries has any obligation under any welfare plans or otherwise to provide health or death benefits to or in respect of former employees of the Company or any of its Subsidiaries, except as specifically required by the continuation requirements of Part 6 of Title I of ERISA or applicable state law. No plan or arrangement disclosed on Item 4.12(c) of the Company Letter that provides health or death benefits to or in respect of former employees of the Company or any of its Subsidiaries contains provisions that by their terms prohibit the Company or its Subsidiaries from amending or terminating such plan or arrangement at any time

without the consent of any other Person and without incurring liability thereunder other than in respect of claims incurred prior to such amendment or termination. Neither the Company nor any of its Subsidiaries has, directly or indirectly, any liability (i) on account of any violation of the health care requirements of Part 6 of Title I of ERISA or Section 4980B of the Code, (ii) under Section 502(i) or Section 502(l) of ERISA or Section 4975 of the Code, (iii) under Section 302 of ERISA or Section 412 of the Code or (iv) under Title IV of ERISA that would, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on the Company.

(d) The Company and its Subsidiaries have not, within the 12-month period ending on the date hereof, incurred and do not expect to incur any material withdrawal liability with respect to a "multiemployer plan" (within the meaning of Section 3(3) of ERISA) (a "Multiemployer Plan") (regardless of whether based on contributions of an ERISA Affiliate of the Company). No notice of a "reportable event," within the meaning of Section 4043 of ERISA for which the 30-day reporting requirement has not been waived or extended, other than pursuant to Pension Benefit Guaranty Corporation ("PBGC") Reg. Section 4043.66, has been required to be filed for any pension plan or by any ERISA Affiliate of the Company within the 12-month period ending on the date hereof or will be required to be filed in connection with the transactions contemplated by this Agreement.

(e) All contributions or premiums required to be paid under the terms of any Benefit Plan maintained by the Company or any of its Subsidiaries, collective bargaining agreement or by any applicable laws as of the date hereof have been timely made or have been reflected on the most recent consolidated balance sheet filed or incorporated by reference in the Company Filed SEC Documents. No Benefit Plan maintained by the Company or any of its Subsidiaries that is subject to Section 412 of the Code or Section 302 of ERISA has an "accumulated funding deficiency" (whether or not waived) within the meaning of Section 412 of the Code or Section 302 of ERISA and neither the Company nor any of its Subsidiaries has an outstanding funding waiver. Neither the Company nor any of its Subsidiaries has provided, or is required to provide, security to any Benefit Plan pursuant to Section 401(a)(29) of the Code.

(f) Under each Benefit Plan maintained by the Company or any of its Subsidiaries which is a single-employer plan (as defined in Section 4001(a)(15) of ERISA), as of the last day of the most recent plan year ended prior to the date hereof, the actuarially determined present value of all "benefit liabilities," within the meaning of Section 4001(a)(16) of ERISA (as determined on the basis of the actuarial assumptions contained in the Benefit Plan's most recent actuarial valuation), did not exceed the then current value of the assets of such Benefit Plan by more than \$400 million as of the date hereof, and there has been no material adverse change in the financial condition of such Benefit Plan since the last day of the most recent plan year.

(g) None of the execution and delivery of this Agreement, approval of this Agreement, or consummation of the transactions contemplated by this Agreement will: (i) entitle any employees of the Company or its Subsidiaries to severance pay or any increase in severance pay upon termination of employment, (ii) accelerate the time of payment or vesting or trigger any payment of compensation or benefits under, increase the amount payable or trigger any other material obligation pursuant to, any of the Benefit Plans or Compensation Commitments, (iii) result in any breach or violation of, or a default under, any of the Benefit Plans or Compensation

Commitments, (iv) limit or restrict the right of the Company or, after the consummation of the transactions contemplated hereby, Parent or any of its Subsidiaries to merge, amend or terminate any of the Benefit Plans maintained by the Company or any of its Subsidiaries or Compensation Commitments, (v) cause the Company or any of its Subsidiaries or, after the consummation of the transactions contemplated hereby, Parent or any of its Subsidiaries to record additional compensation expense on its income statement with respect to any outstanding stock option or other equity-based award or (vi) result in payments under any of the Benefit Plans or Compensation Commitments that are not deductible pursuant to Section 162(m) or Section 280G of the Code.

(h) All Benefit Plans and Compensation Commitments covering current or former employees employed by the Company and its Subsidiaries outside the United States, or their dependents or beneficiaries ("Company Non-US Compensation and Benefit Plans"), are and have been registered, qualified, invested and administered in all material respects in accordance with applicable local law and the terms of such Company Non-US Compensation and Benefit Plans. The Company and its Subsidiaries have complied with all material obligations under such Company Non-US Compensation and Benefit Plans and there is no proceeding, action, complaint, investigation or claim in respect of any Company Non-US Compensation and Benefit Plan initiated by any Governmental Entity or any other Person (other than routine inquiries and claims for benefits that would not, individually or in the aggregate reasonably be expected to have a Material Adverse Effect on the Company). Each Company Non-US Compensation and Benefit Plan which is a funded plan is fully funded as of the last actuarial valuation date on both a going concern and a solvency basis pursuant to the actuarial assumptions and methodology utilized in the most recent actuarial valuation therefor as filed with the applicable regulatory authorities, except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on the Company. None of the Company Non-US Compensation and Benefit Plans (other than pension plans) provide benefits to retired employees or to the beneficiaries or dependents of retired employees, except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on the Company.

(i) As a direct or indirect result of the transactions contemplated by this Agreement, no payment or other benefit, and no acceleration of the vesting of any options, payments or other benefits, will be (or under Section 280G of the Code and the Treasury Regulations thereunder will be presumed to be) a "parachute payment" to a "disqualified individual" as those terms are defined in Section 280G of the Code and the Treasury Regulations thereunder, without regard to whether such payment or acceleration is reasonable compensation for personal services performed or to be performed in the future.

Section 4.13 Labor Matters. (a) Each of the Company and its Subsidiaries has complied with all applicable requirements of law which relate to prices, wages, hours, discrimination in employment and collective bargaining and to the operation of its business and is not liable for any arrears of wages or any withholding Taxes or penalties for failure to comply with any of the foregoing, except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on the Company. Neither the Company nor any of its Subsidiaries is a party to any collective bargaining agreement or labor Contract, and to the Knowledge of the Company, there are currently no union organizing activities related to the Company or any of its

Subsidiaries. Neither the Company nor any of its Subsidiaries has engaged in any unfair labor practice with respect to any Persons employed by or otherwise performing services primarily for the Company or any of its Subsidiaries (the "Company Business Personnel"), and neither the Company nor any of its Subsidiaries has received written notice of any unfair labor practice charge or complaint against the Company or any of its Subsidiaries by the National Labor Relations Board or any comparable state agency pending or threatened in writing with respect to Company Business Personnel, except, in each case, as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on the Company.

(b) There is (i) no labor strike, dispute, slowdown or stoppage pending or, to the Knowledge of the Company, threatened against or affecting the Company or any of its Subsidiaries that could interfere with the respective business activities of the Company or any of its Subsidiaries, except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on the Company and (ii) no pending or, to the Knowledge of the Company, threatened employee or governmental claim or investigation regarding employment matters, including any charges to the Equal Employment Opportunity Commission or state employment practice agency or investigations regarding Fair Labor Standards Act or similar state law or other wage and hour compliance, or audits by the Office of Federal Contractor Compliance Programs, except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on the Company.

Section 4.14 Environmental Matters. Except for matters that would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on the Company: (i) the Company and its Subsidiaries have complied at all times with all applicable Environmental Laws and all Company Permits issued pursuant to Environmental Laws, (ii) to the Knowledge of the Company, no property currently owned or operated by the Company or any of its Subsidiaries (including soils, groundwater, surface water, buildings or other structures) contains or is contaminated with any Hazardous Substance of a type or quantity which would reasonably be expected to require remediation pursuant to any Environmental Law, (iii) to the Knowledge of the Company, no property formerly owned or operated by the Company or any of its Subsidiaries contained or was contaminated with any Hazardous Substance during or prior to such period of ownership or operation of a type or quantity which would reasonably be expected to require remediation pursuant to any Environmental Law, (iv) none of the Company or any of its Subsidiaries is liable for any Hazardous Substance release, disposal or contamination on any third party property, (v) neither the Company nor any of its Subsidiaries has received any notice, demand, letter, claim or request for information alleging that the Company or any of its Subsidiaries is or may be in violation of or subject to liability under any Environmental Law (including claims of exposure, personal injury or property damage), (vi) neither the Company nor any of its Subsidiaries is party to any proceeding, or subject to any order, decree, injunction, indemnity or other agreement with any Governmental Entity or any third party resolving or relating to violations of or liability under any Environmental Law or liability with respect to Hazardous Substances and (vii) there are no other circumstances or conditions involving the Company or any of its Subsidiaries, or their respective properties or operations, including, to the Knowledge of the Company, any pending Environmental Law, that would reasonably be expected to result in any claim, liability, investigation, increased costs to comply or restriction on the operation, ownership, use, or transfer of any property or operation pursuant to any Environmental Law.

Section 4.15 Regulation as a Utility. Public Service Electric and Gas Company is regulated as a public utility by the State of New Jersey and by no other state. Except as set forth above, neither the Company nor any "subsidiary company" or "affiliate" of the Company is subject to regulation as a public utility or public service company (or similar designation) by any other state in the United States or any foreign country. The Company is a public utility holding company as defined by PUHCA, but currently claims exemption from registration under PUHCA pursuant to Rule 2 of the SEC issued under PUHCA.

Section 4.16 Operations of Nuclear Power Plants. (a) The operations of the nuclear generation stations currently owned, in whole or part, by the Company or any of its Affiliates (collectively, the "Company Nuclear Facilities") are and have been conducted in compliance with all applicable laws and the Company Permits, except for such failures to comply that would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on the Company. Each of the Company Nuclear Facilities maintains, and is in compliance with, (i) emergency plans designed to respond to an unplanned release of a Hazardous Substance therefrom of radioactive materials and (ii) plans for the storage and disposal of spent nuclear fuel, and each such plan enumerated in clauses (i) and (ii) conforms with the requirements of applicable law.

(b) The Company has funded to the extent required consistent with NRC regulations the decommissioning costs of each Company Nuclear Facility.

(c) Neither the Company nor any of its Subsidiaries has been given written notice of or been charged with actual or potential violation of, or, to the Knowledge of the Company, is the subject of any ongoing proceeding, inquiry, special inspection, diagnostic evaluation or other NRC action of which the Company or any of its Subsidiaries has received notice under the Atomic Energy Act or the terms and conditions of any license granted to the Company or any of its Subsidiaries regarding the Company Nuclear Facilities that would, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on the Company.

(d) The Company makes no representation under Section 4.16(a) or (c) with respect to any Company Nuclear Facility for any periods during which such Company Nuclear Facility was operated by Parent or a Subsidiary of Parent (including any periods during which Parent or any of its Subsidiaries operated such Company Nuclear Facility under the OSC).

Section 4.17 Regulatory Proceedings. Other than fuel adjustment or purchase gas adjustment or similar adjusting rate mechanisms, none of the Company nor any of its Subsidiaries all or part of whose rates or services are regulated by a Governmental Entity (a) is a party to any rate proceeding before a Governmental Entity with respect to rates charged by the Company or any of its Subsidiaries other than in the ordinary course consistent with past practice, (b) has rates in any amounts that have been or are being collected subject to refund, pending final resolution of any rate proceeding pending before a Governmental Entity or on appeal to a court or (c) is a party to any Contract with any Governmental Entity entered into other than in the ordinary course consistent with past practice imposing conditions on rates or services in effect as of the date hereof or which, to the Knowledge of the Company, are as of the date hereof scheduled to go into effect at a later time, except in case of clauses (a) through (c) that would not, individually or in the aggregate, reasonably be expected to have a Material

Adverse Effect on the Company. No representation or warranty with respect to the Company Permits is made by this Section 4.17.

Section 4.18 Trading. The Company has established risk parameters, limits and guidelines in compliance with the risk management policy approved by the Company's Board of Directors (the "Company Trading Guidelines") to restrict the level of risk that the Company and its Subsidiaries are authorized to take with respect to, among other things, the net position resulting from all Company Trading (the "Net Company Position") and monitors compliance by the Company and its Subsidiaries with such Company Trading Guidelines. The Company has provided a copy of the Company Trading Guidelines to Parent prior to the date of this Agreement. As of the date of this Agreement, (i) the Net Company Position is within the risk parameters that are set forth in the Company Trading Guidelines and (ii) the exposure of the Company and its Subsidiaries with respect to the Net Company Position resulting from all such transactions is not material to the Company and its Subsidiaries taken as a whole. From December 31, 2003 to the date of this Agreement, the Company and its Subsidiaries have not, in accordance with generally recognized mark to market accounting policies, experienced an aggregate net loss in its Company Trading and related operations that would be material to the Company and its Subsidiaries taken as a whole.

Section 4.19 Intellectual Property. The Company and its Subsidiaries own or have a valid right to use all patents, trademarks, trade names, service marks, domain names, copyrights, and any applications and registrations therefor, technology, trade secrets, know-how, computer software and tangible and intangible proprietary information and materials (collectively, "Intellectual Property Rights") used in connection with the business of the Company and its Subsidiaries. Neither the Company nor any of its Subsidiaries has infringed, misappropriated or violated in any material respect any Intellectual Property Rights of any third party except where such infringement, misappropriation or violation would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on the Company. No third party infringes, misappropriates or violates any Intellectual Property Rights owned or exclusively licensed by or to the Company or any of its Subsidiaries, except where such infringement, misappropriation or violation would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on the Company.

Section 4.20 Required Vote of the Company Shareholders. The affirmative vote of the holders of a majority of the shares of Company Common Stock voting at the Company Shareholders Meeting (provided that at least a majority of the shares of Company Common Stock are represented in person or by proxy at such meeting) approving this Agreement is the only vote of the holders of any class or series of the Company's or any of its Subsidiaries' Capital Stock necessary to approve this Agreement and the transactions contemplated by this Agreement.

Section 4.21 State Takeover Statutes. Assuming Parent does not beneficially own 10% or more of the Shares on the date hereof, the action of the Board of Directors of the Company in approving the Merger, this Agreement and the transactions contemplated by this Agreement is sufficient to render inapplicable to Parent, the Merger and this Agreement the provisions of Section 14A:10-A4 and Section 14A:10-A5 of the NJBCA, the Corporation Takeover Bid Disclosure Law and Article 9 of the Certificate of Incorporation of the Company. Assuming

Parent does not beneficially own 10% or more of the Shares on the date hereof, no New Jersey "fair price," "moratorium," "control share acquisition" or other similar anti-takeover statute or regulation or any anti-takeover provision in the Company's Certificate of Incorporation or By-laws is, or at the Effective Time will be, applicable to the Company, Company Common Stock, Parent, the Merger or the other transactions contemplated by this Agreement.

Section 4.22 Brokers. No broker, investment banker, financial advisor or other Person, other than Morgan Stanley and Co. Incorporated ("Morgan Stanley"), the fees and expenses of which will be paid by the Company (and are reflected in an agreement between Morgan Stanley and the Company), complete copies of which have been furnished to Parent), is entitled to any broker's, finder's, financial advisor's or other similar fee or commission in connection with the transactions contemplated by this Agreement based upon arrangements made by or on behalf of the Company.

Section 4.23 Opinion of Financial Advisor. The Company has received the opinion of Morgan Stanley to the effect that, as of the date hereof, the Exchange Ratio is fair to the holders of Company Common Stock from a financial point of view.

Section 4.24 Title to Properties. The Company or its applicable Subsidiary has good and sufficient title in and to each material parcel of real property owned by the Company or any of its Subsidiaries, subject to no Liens that would, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on the Company or materially impair the Company's or its Subsidiary's rights to or ability to use any such property.

Section 4.25 Material Contracts. As of the date hereof, neither the Company nor any of its Subsidiaries nor, with respect to clauses (b) and (c) any Company Joint Venture, is a party to or bound by any Contract that (a) is a "material contract" (as such term is defined in Item 601(b)(10) of Regulation S-K promulgated by the SEC) as to the Company or any Company Reporting Subsidiary, (b) would, after giving effect to the Merger, limit or restrict the Surviving Corporation or any of its Subsidiaries or any successor thereto, from engaging or competing in any line of business or in any geographic area or that contains restrictions on pricing (including most favored nation provisions) or exclusivity or non-solicitation provisions with respect to customers, (c) limits or otherwise restricts the ability of the Company, any of its Subsidiaries or any Company Joint Venture to pay dividends or make distributions to its shareholders, (d) provides for the operation or management of any operating assets of the Company or any of its Subsidiaries by any Person other than the Company and its Subsidiaries or (e) is a material guarantee or contains a material guarantee by the Company, any of its Subsidiaries or any Company Joint Venture of any indebtedness or other obligations of any Person. Notwithstanding the foregoing, the representations made in the first sentence of this Section 4.25 shall not be deemed to be not true and correct solely as a result of Items 4.25(c) and (e) of the Company Letter not including a list of Contracts evidencing Company Indebtedness which Contracts were made available to Parent prior to the date hereof. Each Contract of the type described in this Section 4.25, whether or not set forth on Item 4.25 of the Company Letter and whether or not entered into on or prior to the date hereof, is referred to herein as a "Company Material Contract." Each Company Material Contract is a valid and binding obligation of the Company or its Subsidiary party thereto enforceable against the Company or its Subsidiary party thereto in accordance with its terms and, to the Company's Knowledge, each other party thereto, and is in

full force and effect, and each of the Company and each of its Subsidiaries and each Company Joint Venture which is a party thereto has performed in all material respects all obligations required to be performed by it to the date hereof under each Company Material Contract and, to the Company's Knowledge, each other party to each Company Material Contract has performed in all material respects all obligations required to be performed by it under such Company Material Contract, except, in each case, as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on the Company. None of the Company, any of its Subsidiaries or any Company Joint Venture has Knowledge of, or has received notice of, any violation of or default under (or any condition which with the passage of time or the giving of notice would cause such a violation of or default under) any Company Material Contract to which it is a party or by which it or any of its properties or assets is bound, except for violations or defaults that would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on the Company or, after giving effect to the Merger, on Parent.

Section 4.26 Holdings. (a) None of Holdings, any of its Subsidiaries or any Company Joint Venture in which Holdings or any of its Subsidiaries has an equity interest (a "Holdings Joint Venture") is a party to any Contract whereunder a failure to satisfy a condition thereunder, a failure to meet a requirement thereof, a breach thereof or a default thereunder would, individually or in the aggregate, reasonably be expected to (i) result in a breach or default under any Company Indebtedness or any Company Material Contract (in each case, other than Company Indebtedness under which Holdings or any of its Subsidiaries is the sole obligor or guarantor or any Company Material Contract to which Holdings, any of its Subsidiaries or any Holdings Joint Venture is a party and none of the Company or any of its other Subsidiaries is a party or guarantor), (ii) require the Company or any of its Subsidiaries or, after giving effect to the Merger, the Surviving Corporation or any of its Subsidiaries (in each case, other than Holdings and its Subsidiaries) to pay cash or provide materials or services or make any capital contributions to Holdings, any of its Subsidiaries, any Holdings Joint Venture or any third Person or (iii) otherwise be recourse to the Company or any of its Subsidiaries or, after giving effect to the Merger, and other than solely as a result of provisions in Contracts to which prior to the Merger Parent or any of its Subsidiaries is a party, the Surviving Corporation or any of its Subsidiaries (in each case, other than Holdings and its Subsidiaries).

(b) None of Holdings, any of its Subsidiaries or any Holdings Joint Venture is subject to any law, rule, regulation or order whereunder a failure to satisfy a condition thereunder, a failure to meet a requirement thereof, or a violation thereof would, individually or in the aggregate, reasonably be expected to (i) result in a breach or default under any Company Indebtedness or any Company Material Contract (in each case, other than Company Indebtedness under which Holdings or any of its Subsidiaries is the sole obligor or guarantor or any Company Material Contract to which Holdings, any of its Subsidiaries or any Holdings Joint Venture is a party and none of the Company or any of its other Subsidiaries is a party or guarantor), (ii) require the Company or any of its Subsidiaries or, after giving effect to the Merger, and other than solely as a result of provisions in Contracts to which prior to the Merger Parent or any of its Subsidiaries is a party, the Surviving Corporation or any of its Subsidiaries (in each case, other than Holdings and its Subsidiaries) to pay cash or provide materials or services or make any capital contributions to Holdings, any of its Subsidiaries, any Holdings Joint Venture or any third Person or (iii) otherwise grant Holdings, any of its Subsidiaries, any

Holdings Joint Venture or any third Person recourse to the Company or any of its Subsidiaries or, after giving effect to the Merger and, other than solely as a result of provisions in Contracts to which prior to the Merger, Parent or any of its Subsidiaries is a party, the Surviving Corporation or any of its Subsidiaries (in each case, other than Holdings and its Subsidiaries).

ARTICLE V REPRESENTATIONS AND WARRANTIES OF PARENT

Parent represents and warrants to the Company, (i) other than in the case of Sections 5.1, 5.3(a), 5.4, 5.21, 5.22, 5.23 and 5.24, except as set forth in the Parent Letter (with specific reference to the relevant sections of the representations and warranties in Article V or disclosure in such a way as to make its relevance to the information called for by such representation or warranty readily apparent) or (ii) other than in the case of Sections 5.1, 5.2(a), 5.3, 5.4, 5.11, 5.21, 5.22, 5.23 and 5.24, except as disclosed in the Parent Filed SEC Documents (it being understood that any matter set forth in the Parent Filed SEC Documents shall be deemed to qualify any representation or warranty in Article V only to the extent that the description of such matter in the Parent Filed SEC Documents is made in such a way as to make its relevance to the information called for by such representation or warranty readily apparent), as follows:

Section 5.1 Organization. Each of Parent and each of its Subsidiaries is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization and has requisite power and authority to carry on its businesses as now being conducted, except where the failure to be so organized, existing and in good standing or to have such power and authority would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on Parent. Each of Parent and each of its Subsidiaries is duly qualified or licensed to do business and in good standing in each jurisdiction in which the nature of its businesses or the ownership or leasing of its properties makes such qualification or licensing necessary, except in such jurisdictions where the failure to be so duly qualified or licensed and in good standing would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on Parent. Parent has delivered to the Company complete and correct copies of its Amended and Restated Articles of Incorporation and Amended and Restated By-laws and has delivered to the Company complete and correct copies of the charter and by-laws (or similar organizational documents) of each of its Significant Subsidiaries.

Section 5.2 Subsidiaries. (a) Item 5.2(a) of the Parent Letter lists each Significant Subsidiary of Parent and its jurisdiction of organization and specifies each of the Subsidiaries of Parent that is (i) a "public-utility company," a "holding company," a "subsidiary company," an "affiliate" of any public-utility company, an "exempt wholesale generator" or a "foreign utility company" within the meaning of Section 2(a)(5), 2(a)(7), 2(a)(8), 2(a)(11), 32(a)(1) or 33(a)(3) of PUHCA, respectively, (ii) a "public utility" within the meaning of Section 201(e) of the Federal Power Act or (iii) a "qualifying facility" within the meaning of PURPA, or that owns such a qualifying facility.

(b) All of the outstanding Capital Stock of each Subsidiary of Parent has been validly issued and is fully paid and nonassessable. All of the outstanding Capital Stock of each Subsidiary of Parent is owned by Parent, by one or more Subsidiaries of Parent or by Parent and one or more Subsidiaries of Parent and is free and clear of all Liens. Except for the Capital

Stock of its Subsidiaries, Parent does not own, directly or indirectly, any Capital Stock of any corporation, partnership, joint venture, limited liability company or other entity. Neither Parent nor any of its Subsidiaries is a party to, or has any commitment to become a party to, any joint venture, off-balance sheet partnership or any similar Contract (including without limitation any Contract relating to any transaction or relationship between or among Parent and any of its Subsidiaries, on the one hand, and any unconsolidated Affiliate, including without limitation any structured finance, special purpose or limited purpose entity or Person, on the other hand, or any "off-balance sheet arrangement" (as defined in Item 303(a) of Regulation S-K of the SEC)). There are no outstanding bonds, debentures, notes or other indebtedness of Parent or any of its Subsidiaries having the right to vote (or convertible into, or exchangeable for, securities having the right to vote) on any matter on which the shareholders or other equity holders of any Subsidiary may vote.

Section 5.3 Capital Structure. (a) The authorized capital stock of Parent consists of 1,200,000,000 Parent Shares and 100,000,000 shares of Preferred Stock, no par value per share ("Parent Preferred Stock"). At the close of business on December 17, 2004, (i) 666,526,558 Parent Shares were issued and outstanding, all of which were validly issued, fully paid and nonassessable and free of preemptive rights, (ii) 2,499,865 Parent Shares were held by Parent in its treasury, (iii) 25,278,095 Parent Shares were reserved for issuance pursuant to outstanding options to purchase Parent Shares (the "Parent Stock Options") granted under Parent's Long-Term Incentive Plan, Parent's Amended and Restated Long-Term Incentive Plan, as amended, and Parent's 1998 Stock Option Plan (together with Parent's Directors' Stock Unit Plan the "Parent Stock Incentive Plans"), (iv) 14,610,750 Parent Shares were reserved for the grant of additional awards under the Parent Stock Incentive Plans, (v) 7,000,000 Parent Shares were reserved for issuance pursuant to the Parent Dividend Reinvestment and Stock Purchase Plan ("Parent DRIP"), (vi) 1,127,000 Parent Shares were reserved for issuance pursuant to outstanding performance shares ("Parent Performance Shares"), (vii) 216,000 Parent Shares were reserved for issuance pursuant to outstanding units ("Directors' Units") under Parent's Directors' Stock Unit Plan, (viii) 4,548,254 Parent Shares were reserved for issuance under Parent's Employee Stock Purchase Plan (the "Parent ESPP"), (ix) 562,000 Parent Shares were reserved for issuance pursuant to outstanding Parent Restricted Shares and (x) 1,343,000 Parent Shares were reserved for issuance pursuant to outstanding Parent Deferred Shares. As of the close of business on the date of this Agreement, except as set forth above, no Parent Shares or shares of Parent Preferred Stock were issued, reserved for issuance or outstanding, no awards or grants have been made under the Parent Stock Incentive Plans and there are not any phantom stock or other contractual rights the value of which is determined in whole or in part by the value of any capital stock of Parent (other than the Parent Phantom Shares and Parent Dividend Equivalents) ("Parent Stock Equivalents"). There are no outstanding stock appreciation rights with respect to the capital stock of Parent. Each outstanding Parent Share is, and each Parent Share which may be issued pursuant to Parent Stock Incentive Plans, the Parent DRIP, the Parent Performance Shares or the Parent ESPP will be, when issued, duly authorized, validly issued, fully paid and nonassessable and not subject to preemptive rights. Other than the Parent Shares and the Parent Preferred Stock, there are no other authorized classes of capital stock of Parent. There are no outstanding bonds, debentures, notes or other indebtedness of Parent having the right to vote (or convertible into, or exchangeable for, securities having the right to vote) on any matter on which Parent's shareholders may vote ("Parent Voting Debt").

(b) As of the date of this Agreement, there are no securities, options, warrants, calls, rights, commitments, agreements, arrangements or undertakings of any kind to which Parent or any of its Subsidiaries is a party or by which any of them is bound obligating Parent or any of its Subsidiaries to issue, deliver or sell or create, or cause to be issued, delivered or sold or created, additional Capital Stock, Parent Stock Options, Parent Voting Debt or other securities or Parent Stock Equivalents or of any of its Subsidiaries or obligating Parent or any of its Subsidiaries to issue, grant, extend or enter into any such security, option, warrant, call, right, commitment, agreement, arrangement or undertaking. As of the date of this Agreement, there are no outstanding contractual obligations of Parent or any of its Subsidiaries to repurchase, redeem or otherwise acquire any Capital Stock of Parent or any of its Subsidiaries. There are no outstanding agreements to which Parent, its Subsidiaries or any of their respective officers or directors is a party concerning the voting of any Capital Stock of Parent or any of its Subsidiaries.

Section 5.4 Authority. On or prior to the date of this Agreement, the Board of Directors of Parent unanimously approved this Agreement and the Parent Share Issuance, resolved to recommend the Parent Share Issuance to its shareholders for approval and directed that the Parent Share Issuance be submitted to its shareholders for approval. Parent has all requisite corporate power and authority to execute and deliver this Agreement and, subject to approval by Parent's shareholders of the issuance of Parent Shares in the Merger, to consummate the transactions contemplated hereby. The execution, delivery and performance of this Agreement by Parent and the consummation by Parent of the Merger and of the other transactions contemplated hereby have been duly authorized by all necessary corporate action on the part of Parent, subject to approval by Parent's shareholders of the issuance of Parent Shares in the Merger. This Agreement has been duly executed and delivered by Parent and (assuming the valid authorization, execution and delivery of this Agreement by the Company) constitutes the valid and binding obligation of Parent enforceable against it in accordance with its terms, except that such enforceability (i) may be limited by bankruptcy, insolvency, moratorium or other similar laws affecting or relating to the enforcement of creditors' rights generally and (ii) is subject to general principles of equity.

Section 5.5 Consents and Approvals; No Violations. (a) Except for filings, permits, authorizations, consents and approvals contemplated by Section 5.5(b), neither the execution, delivery or performance of this Agreement by Parent nor the consummation by Parent of the transactions contemplated hereby will (i) conflict with or result in any breach of any provision of the Amended and Restated Articles of Incorporation, as amended, or Amended and Restated By-laws of Parent or of the similar organizational documents of any of Parent's Subsidiaries or any Parent Joint Venture, (ii) result in a violation or breach of, or constitute (with or without due notice or lapse of time or both) a default (or give rise to any right of termination, guaranteed payment, loss of rights, cancellation or acceleration) under any of the terms, conditions or provisions of any Contract to which Parent, any of its Subsidiaries or any Parent Joint Venture is a party or by which any of them or any of their properties or assets may be bound or any Parent Permit, (iii) violate any order, writ, injunction, decree, statute, rule or regulation applicable to Parent, any of its Subsidiaries, any Parent Joint Venture or any of their properties or assets or (iv) result in the creation of any Lien upon any of the properties or assets of Parent or any of its Subsidiaries except in the case of clause (i) (solely with respect to the Parent Joint Ventures) and

clauses (ii) through (iv) for such items that would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on Parent.

(b) No filing or registration with, or authorization, consent or approval of, any Governmental Entity (other than filings, registrations, authorizations, consents and approvals the failure of which to make or obtain would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on Parent) is required by or with respect to Parent or any of its Subsidiaries or any Parent Joint Venture in connection with the execution and delivery of this Agreement by Parent or is necessary for the consummation by Parent of the Merger and the other transactions contemplated by this Agreement, except (i) in connection, or in compliance, with the provisions of the HSR Act, (ii) the filing of the Certificate of Merger with the Secretary of State of the State of New Jersey, the filing of the Articles of Merger with the Secretary of State of the Commonwealth of Pennsylvania and appropriate documents with the relevant authorities of other states in which Parent or any of its Subsidiaries is qualified to do business, (iii) as may be required by state takeover laws and foreign or supranational laws relating to antitrust and competition clearances disclosed on Item 5.5(b) of the Parent Letter, (iv) such filings as may be required in connection with the Taxes described in Section 7.7, (v) as may be required under the Securities Act or the Exchange Act and (vi) such other filings, registrations, authorizations, consents and approvals as set forth on Item 5.5(b) of the Parent Letter (collectively, whether or not legally required to be made or obtained, the "Parent Required Statutory Approvals").

Section 5.6 SEC Documents and Other Reports. (a) Each of Parent and its Subsidiaries has timely filed with or furnished to the SEC all documents required to be filed or furnished by it since December 31, 2001 under the Securities Act or the Exchange Act (as such documents have been amended or supplemented prior to the date hereof, the "Parent SEC Documents"). As of their respective filing or furnishing dates, the Parent SEC Documents complied in all material respects with the requirements of the Securities Act or the Exchange Act, as the case may be, each as in effect on the date so filed or furnished, and at the time filed with the SEC, none of the Parent SEC Documents so filed contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading. The consolidated financial statements of Parent included in the Parent SEC Documents complied as of their respective dates in all material respects with the then applicable accounting requirements and the published rules and regulations of the SEC with respect thereto, were prepared in accordance with generally accepted accounting principles (except in the case of the unaudited statements, as permitted by Form 10-Q under the Exchange Act) applied on a consistent basis during the periods involved (except as may be indicated therein or in the notes thereto) and fairly present in all material respects the consolidated financial position of Parent and its consolidated Subsidiaries as at the dates thereof and the consolidated results of their operations and their consolidated cash flows for the periods then ended (subject, in the case of unaudited statements, to normal year-end audit adjustments and to any other adjustments described therein).

(b) The financial statements of each of the deconsolidated Subsidiaries of Parent, if any, for each of the last three fiscal years fairly present in all material respects the financial position of such deconsolidated Subsidiary of Parent as at the dates thereof and the results of their operations and their cash flows for the periods then ended (subject, in the case of unaudited

statements, to normal year-end audit adjustments and to any other adjustments described therein).

(c) Each of Parent and its Subsidiaries has filed with the SEC, FERC, the NRC, or the appropriate state public utilities commission, as the case may be, all material documents required to be filed by it under PUHCA, the Federal Power Act, the Atomic Energy Act, the Natural Gas Act, the Natural Gas Policy Act and applicable state public utility laws and regulations. All such documents complied, as of the date so filed or, if amended, as of the date of the last amendment prior to the date hereof, in all material respects with all applicable requirements of the applicable statute and rules and regulations thereunder.

Section 5.7 Absence of Material Adverse Change. Since December 31, 2003 and through the date hereof, Parent and its Subsidiaries have conducted their respective businesses in all material respects only in the ordinary course and there has not been (i) any Material Adverse Change with respect to Parent, (ii) any declaration, setting aside or payment of any dividend or other distributions with respect to its or any of its Subsidiaries' Capital Stock (other than (a) regular quarterly cash dividends paid by Parent on the Parent Shares not in excess of \$0.40 per share per quarter with usual record and payment dates and consistent with Parent's past dividend policy, (b) dividends and distributions by a direct or indirect Subsidiary of Parent to its parent or another Subsidiary of Parent and (c) regular cash dividends and distributions paid by the Subsidiaries of Parent on their preferred stock in accordance with their respective terms), (iii) any split, combination or reclassification of any of its or any of its Subsidiaries' Capital Stock or any issuance or the authorization of any issuance of any other securities in respect of, in lieu of or in substitution for shares of its or any of its Subsidiaries' Capital Stock, (iv) any change in accounting methods, principles or practices by Parent or any of its Subsidiaries, (v) any Tax Return relating to Parent Material Taxes prepared or filed materially inconsistent with past practice, or with respect to any such Tax Return any position taken, election made or method adopted that is materially inconsistent with positions taken, elections made or methods used in preparing or filing similar Tax Returns, (vi) any settlement entered into involving any material claim for Parent Material Taxes, (vii) any material damage, destruction or other casualty loss with respect to any material asset or property owned, leased or otherwise used by Parent or any of its Subsidiaries, whether or not covered by insurance or (viii) any increase in the compensation payable or that could become payable by Parent or any of its Subsidiaries to officers or key employees or any amendment of any of the Benefit Plans of Parent or any of its Subsidiaries other than increases or amendments in the ordinary course.

Section 5.8 Information Supplied. None of the information supplied or to be supplied by Parent specifically for inclusion or incorporation by reference in the Registration Statement or the Proxy Statement relating to the Shareholders Meetings, will, in the case of the Registration Statement, at the time it becomes effective, and, in the case of the Proxy Statement, at the time it is first mailed to the shareholders of the Company or Parent and at the time of the Shareholders Meetings, contain any untrue statement of a material fact, or omit to state any material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they are made, not misleading. The Registration Statement will comply as to form in all material respects with the requirements of the Securities Act and the Proxy Statement will comply as to form in all material respects with the requirements of the Exchange Act, except that no representation or warranty is made by Parent with respect to

statements made or incorporated by reference in the Registration Statement or the Proxy Statement based on information supplied by the Company or any of its representatives specifically for inclusion or incorporation by reference therein.

Section 5.9 Compliance with Laws; Permits. (a) The businesses of Parent and its Subsidiaries are not being and have not been conducted in violation of any law, ordinance or regulation of any Governmental Entity, except for violations that would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on Parent. Parent and each of its Subsidiaries is in possession of all franchises, grants, authorizations, licenses, permits, easements, variances, rights-of-way, exceptions, consents, certificates, approvals and orders of any Governmental Entity necessary for Parent and its Subsidiaries to own, lease and operate its properties or to carry on its business as it is now being conducted (the "Parent Permits"), except where the failure to have any of the Parent Permits would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on Parent, and, as of the date of this Agreement, no suspension or cancellation of any of the Parent Permits is pending or, to the Knowledge of Parent, threatened, except where the suspension or cancellation of any of the Parent Permits would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on Parent.

(b) Parent and each of its Subsidiaries is in compliance in all material respects with (i) the applicable provisions of the Sarbanes-Oxley Act and (ii) the applicable listing and corporate governance rules and regulations of NYSE. Except as permitted by the Exchange Act, including Sections 13(k)(2) and (3), since the enactment of the Sarbanes-Oxley Act, neither Parent nor any of its Affiliates has made, arranged or modified (in any material way) personal loans to any executive officer or director of Parent or any of its Subsidiaries.

(c) Each of the principal executive officer of Parent and of each Parent Reporting Subsidiary and the principal financial officer of Parent and of each Parent Reporting Subsidiary (or each former principal executive officer of Parent and of each Parent Reporting Subsidiary and each former principal financial officer of Parent and of each Parent Reporting Subsidiary, as applicable) has made all certifications required by Rule 13a-14 or 15d-14 under the Exchange Act or Sections 302 and 906 of the Sarbanes-Oxley Act and the rules and regulations of the SEC promulgated thereunder with respect to the Parent SEC Documents. For purposes of the preceding sentence, "principal executive officer" and "principal financial officer" shall have the meanings given to such terms in the Sarbanes-Oxley Act. Parent has delivered to the Company a summary of any disclosure made by management to Parent's auditors and audit committee since January 1, 2002 referred to in such certifications.

(d) Parent and each Parent Reporting Subsidiary has (i) designed disclosure controls and procedures to ensure that material information relating to it and its consolidated Subsidiaries, is made known to its management by others within those entities and (ii) to the extent required by applicable laws, disclosed, based on its most recent evaluation, to its auditors and the audit committee of its Board of Directors (A) any significant deficiencies and material weaknesses in the design or operation of internal controls over financial reporting which are reasonably likely to adversely affect its ability to record, process, summarize and report financial information and (B) to the Knowledge of Parent, any fraud, whether or not material, that

involves management or other employees who have a significant role in its internal control over financial reporting.

(e) Parent has prepared a plan for Parent and each Parent Reporting Subsidiary to comply with the requirements of Section 404 of the Sarbanes-Oxley Act on the date by which they must comply with such requirements. None of Parent or any Parent Reporting Subsidiary is aware of any reason Parent or any Parent Reporting Subsidiary will not comply with the requirements of Section 404 of the Sarbanes-Oxley Act on the applicable compliance date.

(f) Through the date hereof, Parent has delivered to the Company copies of any written notifications it has received since December 31, 2001 of a (i) "reportable condition" or (ii) "material weakness" in Parent's internal controls.

Section 5.10 Parent Shares. All of the Parent Shares issuable in exchange for Shares in the Merger in accordance with this Agreement have been duly authorized and will be, when so issued, validly issued, fully paid and non-assessable and free of preemptive rights. The issuance of such Parent Shares will be registered under the Securities Act and registered or exempt from registration under applicable state securities laws.

Section 5.11 Tax Matters. (a) (i) Each of Parent, each Subsidiary of Parent and each Parent Group has timely filed all Tax Returns relating to Parent Material Taxes required to be filed, except where the failure to timely file would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on Parent, (ii) all such Tax Returns are complete and accurate and disclose all Parent Material Taxes required to be paid by Parent, each Subsidiary of Parent and each Parent Group for the periods covered thereby, except where the failure to be complete or accurate or to disclose all Parent Material Taxes would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on Parent, (iii) none of Parent, any Subsidiary of Parent or any Parent Group is currently the beneficiary of any extension of time within which to file any Tax Return relating to Parent Material Taxes, (iv) all Parent Material Taxes (whether or not shown on any Tax Return) owed by Parent, any Subsidiary of Parent or any Parent Group have been timely paid, except where the failure to timely pay would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on Parent, (v) neither Parent nor any Subsidiary of Parent has waived in writing or been requested in writing to waive any statute of limitations in respect of Parent Material Taxes which waiver is currently in effect, (vi) the Tax Returns referred to in clause (i) (without regard to any Material Adverse Effect qualifier) have been examined by the appropriate taxing authority or the period for assessment of the Parent Material Taxes in respect of which each such Tax Return was required to be filed (taking into account all applicable extensions and waivers) has expired, (vii) there is no action, suit, inquiry, investigation, audit, claim or assessment pending or, to the Knowledge of Parent, proposed in writing or threatened in writing with respect to Parent Material Taxes or other material Taxes of Parent, any Subsidiary of Parent or any Parent Group, (viii) all deficiencies asserted or assessments made as a result of any examination of any Tax Returns relating to Parent Material Taxes required to be filed by Parent, any Subsidiary of Parent or any Parent Group have been paid in full, (ix) there are no Liens for Parent Material Taxes upon the assets of Parent or any Subsidiary of Parent except Liens relating to current Taxes not yet due or except to the extent such Liens would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on Parent, (x) all Taxes

which Parent or any Subsidiary of Parent are required by law to withhold or to collect for payment have been duly withheld and collected and have been either paid or accrued, reserved against and entered on the books of Parent, except where the failure to do any of the foregoing would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on Parent, (xi) to the Knowledge of Parent, neither Parent nor any Subsidiary of Parent has any material liability for Taxes of another Person under Treasury Regulation § 1.1502-6 (or any similar provision of state, local or foreign law), (xii) to the extent Parent, any Subsidiary of Parent or any Affiliate thereof has participated in a transaction that is described as a "reportable transaction" within the meaning of Treasury Regulation § 1.6011-4(b)(1), such participation has been adequately disclosed to the IRS on IRS Form 8886 (Reportable Transaction Disclosure Statement) (or predecessor Form) or on a written attachment to such Form or predecessor Form and (xiii) the accruals for Taxes reflected in the consolidated financial statements of Parent represent Parent's best estimate of the amounts required to be so reflected as of the dates hereof. For purposes of the representations and warranties contained in this Section 5.11(a), references to Parent or any Subsidiary of Parent shall include, except where the context requires otherwise, any predecessor thereof.

(b) Parent has delivered to the Company a correct and complete summary (i) by year, of all items of income, gain, loss, deduction and credit of Parent (or any predecessor) or any Subsidiary of Parent (or any predecessor) that has been or is expected to be generated by any Listed Transaction and (ii) of any material income or gain of Parent (or any predecessor) or any Subsidiary of Parent (or any predecessor) deferred pursuant to Treasury Regulation §§ 1.1502-13 or -14, or any similar or predecessor Treasury Regulation, whether proposed, temporary or final.

(c) No stock transfer Taxes, sales Taxes, use Taxes, real estate transfer or gains Taxes, or other similar Taxes will be imposed on the transactions contemplated by this Agreement, except such Taxes so imposed that would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on Parent.

(d) Neither Parent nor any of its Affiliates has taken or agreed to take any action that, to the Knowledge of Parent, will (or will be reasonably likely to) prevent the Merger from qualifying as a "reorganization" within the meaning of Section 368(a) of the Code. To the Knowledge of Parent, the representations set forth in the Parent Tax Certificate, if made on the date hereof (assuming the Merger were consummated on the date hereof and based on reasonable estimates in the case of certain information not available on the date hereof), would be true and correct in all material respects.

Section 5.12 Litigation. There is no suit, action, proceeding or investigation pending or, to the Knowledge of Parent, threatened against Parent or any of its Affiliates that would, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on Parent. Neither Parent nor any of its Affiliates is subject to any outstanding judgment, order, writ, injunction or decree that would, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on Parent.

Section 5.13 Parent Benefit Plans. (a) Item 5.13(a) of the Parent Letter sets forth a true and complete list of each Benefit Plan (including each ERISA Benefit Plan) maintained by Parent and its Subsidiaries. Except as required by law, neither Parent nor any of its Subsidiaries

has adopted or amended in any material respect any Benefit Plan since the date of the most recent audited financial statements included in the Parent Filed SEC Documents. As of the date of this Agreement, none of Parent, its Subsidiaries or any ERISA Affiliate with Parent under Section 414(b), (c), (m) or (o) of the Code contributes to any ERISA Benefit Plan that is a "multiemployer plan" (as defined in Section 3(37) of ERISA) or maintains any ERISA Benefit Plan that is subject to Title IV of ERISA or Section 412 of the Code. As of the date of this Agreement there exists no Parent Compensation Commitments. As of the date of this Agreement, neither Parent nor any of its Subsidiaries maintains or contributes to any Benefit Plans or employs any employees outside of the United States.

(b) With respect to each Benefit Plan listed on Item 5.13(a) of the Parent Letter, correct and complete copies, where applicable, of the following documents have been made available to the Company: (i) all Benefit Plan documents and amendments, trust agreements and insurance and annuity contracts and policies, (ii) the most recent IRS determination letter or opinion letter if the Benefit Plan is intended to satisfy the requirements for Tax favored treatment pursuant to Sections 401-417 of the Code, (iii) the Annual Reports (Form 5500 Series) and accompanying schedules, as filed, for the three most recently completed plan years, (iv) any discrimination or coverage tests performed during the last two plan years and (v) the current summary plan description. True and complete copies of all written Parent Compensation Commitments and of all related insurance and annuity policies and contracts and other documents with respect to each Parent Compensation Commitment have been made available to the Company. Item 5.13(b) of the Parent Letter contains a true and complete description of all material oral Parent Compensation Commitments.

(c) Each Benefit Plan listed on Item 5.13(a) of the Parent Letter which is intended to be a Qualified Plan has received a favorable determination letter from the IRS that such plan is so qualified under the Code (or an application for such letter has been or will be submitted to the IRS within the applicable remedial amendment period) or has been established pursuant to a prototype plan that has received a favorable opinion letter from the IRS, and no circumstance exists which might cause such plan to cease being so qualified except for any circumstance that would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on Parent. Each Benefit Plan listed on Item 5.13(a) of the Parent Letter complies and has been maintained in all respects with its terms and all requirements of law and regulations applicable thereto, and there has been no notice issued by any Governmental Entity questioning or challenging such compliance, except for any circumstance that would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on Parent. Neither Parent nor any of its Subsidiaries has taken any action within the 12-month period ending on the date hereof to take corrective action or make a filing under any voluntary correction program of the IRS, Department of Labor or any other Governmental Entity with respect to any Benefit Plan or Parent Compensation Commitment, and neither Parent nor any of its Subsidiaries has any Knowledge of any plan defect which would qualify for correction under any such program, except for any action, filing or plan defect that would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on Parent. There is no dispute, arbitration, grievance, action, suit or claim (other than routine claims for benefits) pending or, to the Knowledge of Parent, threatened involving such Benefit Plans or the assets of such plans that would, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on Parent. Neither Parent nor any of its Subsidiaries has any obligation under any welfare

plans or otherwise to provide health or death benefits to or in respect of former employees of Parent or any of its Subsidiaries, except as specifically required by the continuation requirements of Part 6 of Title I of ERISA or applicable state law. No plan or arrangement disclosed on Item 5.13(c) of the Parent Letter that provides health or death benefits to or in respect of former employees of Parent or any of its Subsidiaries contains provisions that by their terms prohibit Parent or its Subsidiaries from amending or terminating such plan or arrangement at any time without the consent of any other Person and without incurring liability thereunder other than in respect of claims incurred prior to such amendment or termination. Neither Parent nor any of its Subsidiaries has, directly or indirectly, any liability (i) on account of any violation of the health care requirements of Part 6 of Title I of ERISA or Section 4980B of the Code, (ii) under Section 502(i) or Section 502(l) of ERISA or Section 4975 of the Code, (iii) under Section 302 of ERISA or Section 412 of the Code or (iv) under Title IV of ERISA that would, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on Parent.

(d) Parent and its Subsidiaries have not, within the 12-month period ending on the date hereof, incurred and do not expect to incur any material withdrawal liability with respect to a Multiemployer Plan (regardless of whether based on contributions of an ERISA Affiliate of Parent). No notice of a "reportable event," within the meaning of Section 4043 of ERISA for which the 30-day reporting requirement has not been waived or extended, other than pursuant to PBGC Reg. Section 4043.66, has been required to be filed for any pension plan or by any ERISA Affiliate of Parent within the 12-month period ending on the date hereof or will be required to be filed in connection with the transactions contemplated by this Agreement.

(e) All contributions or premiums required to be paid under the terms of any Benefit Plan maintained by Parent or any of its Subsidiaries, collective bargaining agreement or by any applicable laws as of the date hereof have been timely made or have been reflected on the most recent consolidated balance sheet filed or incorporated by reference in the Parent Filed SEC Documents. No Benefit Plan maintained by Parent or any of its Subsidiaries that is subject to Section 412 of the Code or Section 302 of ERISA has an "accumulated funding deficiency" (whether or not waived) within the meaning of Section 412 of the Code or Section 302 of ERISA and neither Parent nor any of its Subsidiaries has an outstanding funding waiver. Neither Parent nor any of its Subsidiaries has provided, or is required to provide, security to any Benefit Plan pursuant to Section 401(a)(29) of the Code.

(f) Under each Benefit Plan maintained by Parent or any of its Subsidiaries which is a single-employer plan (as defined in Section 4001(a)(15) of ERISA), as of the last day of the most recent plan year ended prior to the date hereof, the actuarially determined present value of all "benefit liabilities," within the meaning of Section 4001(a)(16) of ERISA (as determined on the basis of the actuarial assumptions contained in the Benefit Plan's most recent actuarial valuation), did not exceed the then current value of the assets of such Benefit Plan by more than \$2,400,000,000 as of the date hereof, and there has been no material adverse change in the financial condition of such Benefit Plan since the last day of the most recent plan year.

(g) None of the execution and delivery of this Agreement, approval of this Agreement or consummation of the transactions contemplated by this Agreement will: (i) entitle any employees of Parent or its Subsidiaries to severance pay or any increase in severance pay upon termination of employment, (ii) accelerate the time of payment or vesting or trigger any

payment of compensation or benefits under, increase the amount payable or trigger any other material obligation pursuant to, any of the Benefit Plans or Parent Compensation Commitments, (iii) result in any breach or violation of, or a default under, any of the Benefit Plans or Parent Compensation Commitments, (iv) limit or restrict the right of Parent or any of its Subsidiaries to merge, amend or terminate any of the Benefit Plans maintained by Parent or any of its Subsidiaries or Parent Compensation Commitments, (v) cause Parent or any of its Subsidiaries to record additional compensation expense on its income statement with respect to any outstanding stock option or other equity-based award or (vi) result in payments under any of the Benefit Plans or Parent Compensation Commitments that are not deductible pursuant to Section 162(m) or Section 280G of the Code.

(h) All Benefit Plans and Parent Compensation Commitments covering current or former employees employed by Parent and its Subsidiaries outside the United States, or their dependents or beneficiaries ("Parent Non-US Compensation and Benefit Plans"), are and have been registered, qualified, invested and administered in all material respects in accordance with applicable local law and the terms of such Parent Non-US Compensation and Benefit Plans. Parent and its Subsidiaries have complied with all material obligations under such Parent Non-US Compensation and Benefit Plans and there is no proceeding, action, complaint, investigation or claim in respect of any Parent Non-US Compensation and Benefit Plan initiated by any Governmental Entity or any other Person (other than routine inquiries and claims for benefits that would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on Parent). Each Parent Non-US Compensation and Benefit Plan which is a funded plan is fully funded as of the last actuarial valuation date on both a going concern and a solvency basis pursuant to the actuarial assumptions and methodology utilized in the most recent actuarial valuation therefor as filed with the applicable regulatory authorities. None of the Parent Non-US Compensation and Benefit Plans (other than pension plans) provide benefits to retired employees or to the beneficiaries or dependents of retired employees.

(i) As a direct or indirect result of the transactions contemplated by this Agreement, no payment or other benefit, and no acceleration of the vesting of any options, payments or other benefits, will be (or under Section 280G of the Code and the Treasury Regulations thereunder will be presumed to be) a "parachute payment" to a "disqualified individual" as those terms are defined in Section 280G of the Code and the Treasury Regulations thereunder, without regard to whether such payment or acceleration is reasonable compensation for personal services performed or to be performed in the future.

Section 5.14 Labor Matters. (a) Each of Parent and its Subsidiaries has complied with all applicable requirements of law which relate to prices, wages, hours, discrimination in employment and collective bargaining and to the operation of its business and is not liable for any arrears of wages or any withholding Taxes or penalties for failure to comply with any of the foregoing, except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on Parent. Neither Parent nor any of its Subsidiaries is a party to any collective bargaining agreement or labor Contract, and to the Knowledge of Parent, there are currently no union organizing activities related to Parent or any of its Subsidiaries. Neither Parent nor any of its Subsidiaries has engaged in any unfair labor practice with respect to any Persons employed by or otherwise performing services primarily for Parent or any of its Subsidiaries (the "Parent Business Personnel"), and neither Parent nor any of its Subsidiaries has

received written notice of any unfair labor practice charge or complaint against Parent or any of its Subsidiaries by the National Labor Relations Board or any comparable state agency pending or threatened in writing with respect to the Parent Business Personnel, except, in each case, as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on Parent.

(b) There is (i) no labor strike, dispute, slowdown or stoppage pending or, to the Knowledge of Parent, threatened against or affecting Parent or any of its Subsidiaries that could interfere with the respective business activities of Parent or any of its Subsidiaries, except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on Parent and (ii) no pending or, to the Knowledge of Parent, threatened employee or governmental claim or investigation regarding employment matters, including any charges to the Equal Employment Opportunity Commission or state employment practice agency or investigations regarding Fair Labor Standards Act or similar state law or other wage and hour compliance, or audits by the Office of Federal Contractor Compliance Programs, except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on Parent.

Section 5.15 Environmental. Except for matters that would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on Parent: (i) Parent and its Subsidiaries have complied at all times with all applicable Environmental Laws and all Parent Permits issued pursuant to Environmental Laws, (ii) to the Knowledge of Parent, no property currently owned or operated by Parent or any of its Subsidiaries (including soils, groundwater, surface water, buildings or other structures) contains or is contaminated with any Hazardous Substance of a type or quantity which would reasonably be expected to require remediation pursuant to any Environmental Law, (iii) to the Knowledge of Parent, no property formerly owned or operated by Parent or any of its Subsidiaries contained or was contaminated with any Hazardous Substance during or prior to such period of ownership or operation of a type or quantity which would reasonably be expected to require remediation pursuant to any Environmental Law, (iv) none of Parent or any of its Subsidiaries is liable for any Hazardous Substance release, disposal or contamination on any third party property, (v) neither Parent nor any of its Subsidiaries has received any notice, demand, letter, claim or request for information alleging that Parent or any of its Subsidiaries is or may be in violation of or subject to liability under any Environmental Law (including claims of exposure, personal injury or property damage), (vi) neither Parent nor any of its Subsidiaries is party to any proceeding, or subject to any order, decree, injunction, indemnity or other agreement with any Governmental Entity or any third party resolving or relating to violations of or liability under any Environmental Law or liability with respect to Hazardous Substances and (vii) there are no other circumstances or conditions involving Parent or any of its Subsidiaries, or their respective properties or operations, including, to the Knowledge of Parent, any pending Environmental Law, that would reasonably be expected to result in any claim, liability, investigation, increased costs to comply or restriction on the operation, ownership, use, or transfer of any property or operation pursuant to any Environmental Law.

Section 5.16 Regulation as a Utility. Commonwealth Edison Company is regulated as a public utility and an electric utility by the State of Illinois and by no other state. PECO Energy Company is regulated as a public utility by the Commonwealth of Pennsylvania and by no other

state. ComEd of Indiana, Inc. is regulated as a public utility by the State of Indiana and by no other State. Except as set forth above, neither Parent nor any "subsidiary company" or "affiliate" of Parent is subject to regulation as a public utility or public service company (or similar designation) by any other state in the United States or any foreign country. Parent is a public utility holding company as defined by PUHCA, and is registered thereunder.

Section 5.17 Operations of Nuclear Power Plants. (a) The operations of the nuclear generation stations currently owned, in whole or part, by Parent or any of its Affiliates (collectively, the "Parent Nuclear Facilities") are and have been conducted in compliance with all applicable laws and Parent Permits, except for such failures to comply that would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on Parent. Each of the Parent Nuclear Facilities maintains, and is in compliance with, (i) emergency plans designed to respond to an unplanned release of a Hazardous Substance therefrom of radioactive materials and (ii) plans for the storage and disposal of spent nuclear fuel, and each such plan enumerated in clauses (i) and (ii) conforms with the requirements of applicable law.

(b) Parent has funded to the extent required consistent with NRC regulations the decommissioning costs of each Parent Nuclear Facility.

(c) Neither Parent nor any of its Subsidiaries has been given written notice of or been charged with actual or potential violation of, or, to the Knowledge of Parent, is the subject of any ongoing proceeding, inquiry, special inspection, diagnostic evaluation or other NRC action of which Parent or any of its Subsidiaries has received notice under the Atomic Energy Act or the terms and conditions of any license granted to Parent or any of its Subsidiaries regarding the Parent Nuclear Facilities that would, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on Parent.

(d) Parent makes no representation under Section 5.17(a) or (c) with respect to any Parent Nuclear Facility for any periods during which such Parent Nuclear Facility was operated by the Company or a Subsidiary of the Company.

Section 5.18 Regulatory Proceedings. Other than fuel adjustment or purchase gas adjustment or similar adjusting rate mechanisms, none of Parent nor any of its Subsidiaries all or part of whose rates or services are regulated by a Governmental Entity (a) is a party to any rate proceeding before a Governmental Entity with respect to rates charged by Parent or any of its Subsidiaries other than in the ordinary course consistent with past practice, (b) has rates in any amounts that have been or are being collected subject to refund, pending final resolution of any rate proceeding pending before a Governmental Entity or on appeal to a court or (c) is a party to any Contract with any Governmental Entity entered into other than in the ordinary course consistent with past practice imposing conditions on rates or services in effect as of the date hereof or which, to the Knowledge of Parent, are as of the date hereof scheduled to go into effect at a later time, except, in case of clauses (a) through (c) that would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on Parent. No representation or warranty with respect to the Parent Permits is made by this Section 5.18.

Section 5.19 Trading. Parent has established risk parameters, limits and guidelines in compliance with the risk management policy approved by the Parent's Board of Directors (the

"Parent Trading Guidelines") to restrict the level of risk that Parent and its Subsidiaries are authorized to take with respect to, among other things, the net position resulting from all Parent Trading (the "Net Parent Position") and monitors compliance by Parent and its Subsidiaries with such Parent Trading Guidelines. Parent has provided a copy of the Parent Trading Guidelines to the Company prior to the date of this Agreement. As of the date of this Agreement, (i) the Net Parent Position is within the risk parameters that are set forth in the Parent Trading Guidelines and (ii) the exposure of Parent and its Subsidiaries with respect to the Net Parent Position resulting from all such transactions is not material to Parent and its Subsidiaries taken as a whole. From December 31, 2003 to the date of this Agreement, Parent and its Subsidiaries have not, in accordance with generally recognized mark to market accounting policies, experienced an aggregate net loss in its Parent Trading and related operations that would be material to Parent and its Subsidiaries taken as a whole.

Section 5.20 Intellectual Property. Parent and its Subsidiaries own or have a valid right to use all Intellectual Property Rights used in connection with the business of Parent and its Subsidiaries. Neither Parent nor any of its Subsidiaries has infringed, misappropriated or violated in any material respect any Intellectual Property Rights of any third party, except where such infringement, misappropriation or violation would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on Parent. No third party infringes, misappropriates or violates any Intellectual Property Rights owned or exclusively licensed by or to Parent or any of its Subsidiaries, except where such infringement, misappropriation or violation would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on Parent.

Section 5.21 Required Vote of Parent Shareholders. The affirmative vote of the holders of a majority of the votes cast by holders of Parent Shares represented at the Parent Shareholders Meeting (provided that at least a majority of the Parent Shares are represented in person or by proxy at such meeting) approving the issuance of Parent Shares in the Merger is the only vote of the holders of any class or series of Parent's or any of its Subsidiaries' Capital Stock necessary to approve this Agreement and the transactions contemplated by this Agreement.

Section 5.22 State Takeover Statutes. Assuming the Company does not beneficially own 10% or more of the Parent Shares on the date hereof or at any time prior to the Effective Time, no Pennsylvania "fair price," "moratorium," "control share acquisition" or other similar anti-takeover statute or regulation or any anti-takeover provision in Parent's Amended and Restated Articles of Incorporation or Amended and Restated By-laws is, or at the Effective Time will be, applicable to Parent, the Parent Shares, the Merger or the other transactions contemplated by this Agreement.

Section 5.23 Brokers. No broker, investment banker, financial advisor or other Person, other than J.P. Morgan Securities Inc. ("J.P. Morgan") and Lehman Brothers, Inc. ("Lehman"), the fees and expenses of which will be paid by Parent, is entitled to any broker's, finder's, financial advisor's or other similar fee or commission in connection with the transactions contemplated by this Agreement based upon arrangements made by or on behalf of Parent.

Section 5.24 Opinions of Financial Advisors. Parent has received the opinion of each of J.P. Morgan and Lehman to the effect that, as of the date hereof, the Exchange Ratio is fair to Parent from a financial point of view.

Section 5.25 Title to Properties. Parent or its applicable Subsidiary has good and sufficient title in and to each material parcel of real property owned by Parent or any of its Subsidiaries, subject to no Liens that would, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on Parent or materially impair Parent's or its Subsidiary's rights to or ability to use any such property.

Section 5.26 Material Contracts. (a) Each Parent Material Contract is a valid and binding obligation of Parent or its Subsidiary party thereto enforceable against Parent or its Subsidiary party thereto in accordance with its terms and, to the Parent's Knowledge, each other party thereto, and is in full force and effect, and each of the Parent and each of its Subsidiaries which is a party thereto has performed in all material respects all obligations required to be performed by it to the date hereof under each Parent Material Contract and, to the Parent's Knowledge, each other party to each Parent Material Contract has performed in all material respects all obligations required to be performed by it under such Parent Material Contract, except, in each case, as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on Parent. None of Parent or any of its Subsidiaries has Knowledge of, or has received notice of, any violation of or default under (or any condition which with the passage of time or the giving of notice would cause such a violation of or default under) any Parent Material Contract to which it is a party or by which it or any of its properties or assets is bound, except for violations or defaults that would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on Parent.

(b) None of ENEH or any of its Subsidiaries is a party to any Contract whereunder a failure to satisfy a condition thereunder, a failure to meet a requirement thereof, a breach thereof or a default thereunder would, individually or in the aggregate, reasonably be expected to (i) result in a breach or default under any Parent Indebtedness or any Parent Material Contract (in each case, other than Parent Indebtedness under which ENEH or any of its Subsidiaries is the sole obligor or guarantor or any Parent Material Contract to which ENEH or any of its Subsidiaries is a party and none of Parent or any of its other Subsidiaries is a party or guarantor), (ii) require Parent or any of its Subsidiaries (other than ENEH and its Subsidiaries) to pay cash or provide materials or services or make any capital contributions to ENEH, any of its Subsidiaries or any third Person or (iii) otherwise be recourse to Parent or any of its Subsidiaries (other than ENEH and its Subsidiaries).

(c) None of ENEH or any of its Subsidiaries is subject to any law, rule, regulation or order whereunder a failure to satisfy a condition thereunder, a failure to meet a requirement thereof, or a violation thereof would, individually or in the aggregate, reasonably be expected to (i) result in a breach or default under any Parent Indebtedness or any Parent Material Contract (in each case, other than Parent Indebtedness under which ENEH or any of its Subsidiaries is the sole obligor or guarantor or any Parent Material Contract to which ENEH or any of its Subsidiaries is a party and none of Parent or any of its other Subsidiaries is a party or guarantor), (ii) require Parent or any of its Subsidiaries (other than ENEH and its Subsidiaries) to pay cash or provide materials or services or make any capital contributions to ENEH, any of its

Subsidiaries or any third Person or (iii) grant ENEH, any of its Subsidiaries or any third Person recourse to Parent or any of its Subsidiaries (other than ENEH and its Subsidiaries).

ARTICLE VI COVENANTS RELATING TO CONDUCT OF BUSINESS

Section 6.1 Conduct of Business Pending the Merger.

(a) Conduct of Business by the Company Pending the Merger. During the period from the date of this Agreement until the Effective Time, except as expressly permitted by this Agreement or as set forth on Item 6.1(a) of the Company Letter, the Company shall and shall cause each of its Subsidiaries to carry on its business in the ordinary course as currently conducted and, to the extent consistent therewith, use reasonable best efforts to preserve its business organization intact, maintain in full force and effect the Company Permits and maintain its existing relations and goodwill with Governmental Entities, customers, suppliers, distributors, creditors, lessors, licensors, licensees, employees and business associates to the end that their goodwill and ongoing businesses shall not be impaired in any material respect at the Effective Time. To the extent permitted by applicable law and whether or not an action is one specified below, the Company will consult with Parent with respect to any action or failure to take an action that would be considered not to be in the ordinary course of the Company's business as it is currently conducted. Without limiting the generality of the foregoing, and except as otherwise expressly permitted by this Agreement or as set forth on Item 6.1(a) of the Company Letter, during the period from the date of this Agreement to the Effective Time, the Company shall not and shall not permit any of its Subsidiaries to without the prior written consent of Parent (which consent shall not be unreasonably withheld or delayed) take any of the following actions (it being understood that any action allowed by any of clauses (i) through (xix) but otherwise restricted under this Agreement shall be so restricted):

(i) (A) declare, set aside or pay any dividends on, or make any other distributions in respect of, any of its Capital Stock, other than (1) dividends and distributions by a direct or indirect Subsidiary of the Company to its parent, (2) regular quarterly cash dividends and distributions with respect to the Company Common Stock, in accordance with the Company's dividend policy as set forth on Item 6.1(a)(i)(A)(2) of the Company Letter, with record dates and payment dates consistent with the Company's past dividend practice and (3) regular cash dividends and distributions with respect to preferred stock of the Company or its Subsidiaries in accordance with the terms thereof as existing on the date hereof, (B) split, combine or reclassify any of its Capital Stock or issue or authorize the issuance of any other securities in respect of, in lieu of or in substitution for its Capital Stock or (C) purchase, redeem or otherwise acquire any Capital Stock of the Company or any of its Subsidiaries or any other securities thereof or any rights, warrants or options to acquire any Capital Stock or other securities thereof;

(ii) other than (1) the issuance of Company Common Stock upon the exercise or conversion of Company Stock Options, Company RSUs, Company Performance Units, Company Dividend Equivalents and Company Stock

Phantom Shares outstanding on the date of this Agreement and in accordance with their present terms, upon the exercise or conversion of Company Stock Options, Company RSUs, Company Performance Units, Company Stock Dividend Equivalents and Company Stock Phantom Shares awarded in accordance with Section 6.1(a)(ii)(2) or pursuant to the terms of any Compensation Commitment as in effect on the date of this Agreement or as amended in accordance with or as permitted by this Agreement, (2) the issuance, subject to Section 6.1(a)(vi), of additional Company Stock Options, Company RSUs, Company Performance Units, Company Dividend Equivalents, Company Stock Phantom Shares and Company Performance Shares pursuant to the Company Stock Plans as set forth on Item 6.1(a)(ii)(2) of the Company Letter, (3) issuances by a direct or indirect Subsidiary of the Company of its Capital Stock to its parent, (4) the issuance of Shares upon settlement of forward purchase contracts forming a part of Company Equity Units pursuant to the terms thereof as existing on the date hereof, (5) the issuance of Shares in accordance with Item 6.1(a)(ii)(5) of the Company Letter, (6) the issuance of Shares pursuant to the Company ESPP, the Company DRIP, the Company Thrift Plan and the Company Employee Savings Plan and (7) the issuance of Company Cash Phantom Shares and Company Cash Dividend Equivalents in the ordinary course of business consistent with past practice, issue, deliver, pledge, encumber, sell, dispose of or grant (A) any of its Capital Stock or any Capital Stock in any of its direct or indirect Subsidiaries or of any Company Joint Venture, (B) any Company Voting Debt, Company Stock Equivalents or other voting securities, (C) any securities convertible into or exchangeable for, or any options, warrants or rights to acquire, any Capital Stock referred to in clause (A), Company Voting Debt, Company Stock Equivalents, voting securities or convertible or exchangeable securities or (D) any "phantom" stock, "phantom" stock rights, stock appreciation rights or stock-based performance units;

(iii) amend the Certificate of Incorporation of the Company;

(iv) amend the By-laws of the Company or amend the certificate of incorporation, by-laws or other comparable charter or organizational documents of any Subsidiary of the Company, except for such amendments that do not have an adverse effect on the Merger and that are not inconsistent with any of the obligations of the Company hereunder;

(v) (A) acquire or agree to acquire by merging or consolidating with, or by purchasing a substantial equity interest in or portion of the assets of, or by any other manner, any business or any corporation, partnership, joint venture, association or other business organization or division thereof, (B) acquire or agree to acquire any assets, other than in the ordinary course of business consistent with past practice or pursuant to capital expenditures made in accordance with Section 6.1(a)(x) or (C) make any investment in the Capital Stock of, or other instrument convertible into or exchangeable for the Capital Stock of, any other Person (other than direct or indirect Subsidiaries of the Company that are direct or indirect Subsidiaries of the Company as of the date hereof and investments by the managers of Benefit Plans and nuclear decommissioning trusts in the ordinary

course of business consistent with past practice) other than, (1) in the case of clauses (A) through (C), acquisitions of assets and investments in Persons located and operating solely in the United States of America that are not greater than \$5 million individually or \$25 million in the aggregate in any consecutive 12 month period (including the value of any indebtedness assumed) or (2) investments in any Person by Holdings or any of its Subsidiaries solely for purposes of effecting the transactions described in Section 6.1(a)(viii)(B); provided, however, that the Company shall not be permitted hereunder to acquire or agree to acquire any asset or to make any investment in any Person to the extent such agreement, acquisition or investment would reasonably be expected to have an adverse effect on the ability of Parent or the Company to obtain any Parent Required Statutory Approval or Company Required Statutory Approval, respectively, or to delay by a material period the receipt thereof;

(vi) except to the extent required by applicable law or by the terms of any Benefit Plan maintained by the Company, Compensation Commitment or collective bargaining agreement in effect as of the date of this Agreement, (A) grant to any current or former employee, officer or director of the Company or any of its Subsidiaries any increase in compensation or benefits or new incentive compensation grants, except in the ordinary course of business consistent with past practice (including, without limitation, annual salary and compensation increases in respect of any fiscal year regardless of when such increases are approved), (B) grant to any current or former employee, officer or director of the Company or any of its Subsidiaries any increase in severance, pay to stay or termination pay, except to the extent consistent with past practice and that, in the aggregate, does not result in a material increase in benefits or compensation expenses, (C) enter into or amend any Compensation Commitment with any such current or former employee, officer or director, (D) establish, adopt, enter into or amend in any material respect any collective bargaining agreement or Benefit Plan, except, (1) with respect to any Benefit Plan maintained by the Company that is a Qualified Plan, as may be required to facilitate or obtain a determination from the IRS that such Benefit Plan is a Qualified Plan and (2) with respect to the collective bargaining agreements set forth on Item 6.1(a)(vi)(D)(2) of the Company Letter, renewing such collective bargaining agreements at their expiration on terms substantially similar to their current respective terms or (E) take or permit to be taken any action to accelerate any rights or benefits or the funding thereof, or make or permit to be made any material determinations not in the ordinary course of business consistent with past practice, under any collective bargaining agreement, Benefit Plan or Compensation Commitment; provided, however, that notwithstanding anything in this Section 6.1(a)(vi) to the contrary, the foregoing shall not restrict the Company or its Subsidiaries from entering into or making available to newly hired officers and employees or to officers and employees in the context of promotions based on job performance or workplace requirements in the ordinary course of business consistent with past practice, plans, agreements, benefits and compensation arrangements (including incentive grants) that have, consistent with past practice, been made available to newly hired or promoted officers and employees;

(vii) make any material change in accounting methods, principles or practices except as required by generally accepted accounting principles or by the Company's independent auditors;

(viii) sell, lease (as lessor), license or otherwise dispose of or subject to any Lien (other than Liens as required by after acquired property covenants in Contracts evidencing Company Indebtedness and Liens created in connection with the refinancing of Company Indebtedness in accordance with Section 6.1(a)(ix) that are no less favorable to the Company and its Subsidiaries than those Liens that were created in connection with the Company Indebtedness that is being refinanced) any properties or assets that are material, individually or in the aggregate, to the Company and its Subsidiaries, taken as a whole, other than (A) sales of excess or obsolete assets in the ordinary course of business consistent with past practice and (B) sales of assets by Holdings or any Subsidiary of Holdings described on Item 6.1(a)(viii)(B) of the Company Letter and sales of assets by Power or any Subsidiary of Power described on Item 6.1(a)(viii)(B) of the Company Letter in each case, on commercially reasonable terms, after having given Parent notice of the intent to make any such sale, lease, license or other disposition, and at least five business days' prior notice of the entering into of any agreement with respect thereto, including the material terms of any such agreement and any amendment thereto;

(ix) except in the ordinary course of business consistent with past practice, (A) incur any indebtedness for borrowed money or guarantee any such indebtedness of another Person, issue or sell any debt securities or warrants or other rights to acquire any debt securities of the Company or any of its Subsidiaries, guarantee any debt securities of another Person, enter into any "keep well" or other agreement to maintain any financial statement condition of another Person or enter into any arrangement having the economic effect of any of the foregoing, in each case, other than (1) in connection with a refinancing on commercially reasonable terms and borrowings under revolving credit agreements or similar credit facilities in effect on the date hereof (or under any extensions or replacements thereof) in accordance with their terms, (2) indebtedness incurred by any Subsidiary of the Company under any loan permitted by clause (B), and (3) the assumption of indebtedness in connection with an acquisition or investment made pursuant to Section 6.1(a)(v) or (B) make any loans, advances or capital contributions to, or investments in, any other Person, other than to or in the Company or any Subsidiary; provided, however, that the Company shall not, and shall not permit any of its Subsidiaries to, take any such action with respect to Holdings or any of its Subsidiaries or any Holdings Joint Ventures and the Company shall not permit Holdings or any of its Subsidiaries to take any such action;

(x) make or agree to make any new capital expenditure or expenditures, other than (A) expenditures in accordance with Item 6.1(a)(x) of the Company Letter, (B) expenditures that do not exceed \$10 million individually or \$150 million in the aggregate in any consecutive 12 month period and (C) expenditures

to the extent made or agreed to be made in order to ensure compliance with the rules and regulations or an order of the NRC or any other Governmental Entity or to ensure compliance with the terms of any Permit, in which case, to the extent permissible under applicable law, the Company shall consult with Parent prior to making or agreeing to make any such expenditure;

(xi) engage in any activities not engaged in on the date hereof which would cause a change in the Company's status as an exempt holding company under PUHCA;

(xii) other than participation in the New Jersey Basic Generation Service auction in a manner consistent with past practice, enter into any Contract for the purchase and/or sale of capacity and/or energy ("Power Agreement") other than any Power Agreement entered into in the ordinary course of business that does not exceed (1) a notional value of purchase and/or sale energy commitments of \$150 million, (2) a fixed notional value of purchase and/or sale of capacity of \$25 million, (3) a notional value for the underlying sale of options of \$75 million and (4) a notional value for the aggregate premiums paid in a calendar year for the purchase of options of \$25 million unless the Company consults with Parent regarding such Power Agreement and the Company has obtained the prior written consent of Parent to such Power Agreement or such Power Agreement is fully compliant with criteria to which Parent has previously given a generic consent, in each case, which consent shall not be unreasonably withheld or delayed, it being understood that in such consultation process Parent and the Company shall comply with all applicable laws and any applicable confidentiality or similar third party agreement;

(xiii) pay, discharge, settle, compromise or satisfy any material claims, liabilities, litigation or other obligations (absolute, accrued, asserted or unasserted, contingent or otherwise), other than the payment, discharge or satisfaction, in the ordinary and usual course of business consistent with past practice or in accordance with their terms, of liabilities reflected or reserved against in, or contemplated by, the most recent consolidated financial statements (or the notes thereto) of the Company included in the Company Filed SEC Documents, or incurred in the ordinary and usual course of business consistent with past practice, or waive, release or assign any such material rights or claims;

(xiv) enter into, or, other than in the ordinary course of business consistent with past practice, modify or amend the terms of, any Leveraged Lease or Financing Contract;

(xv) take any action that would, individually or in the aggregate, reasonably be expected to cause the Company Indebtedness or other obligations under which Holdings or any Subsidiary of Holdings is the obligor or any indebtedness for borrowed money or other obligations under which any Company Joint Venture is the obligor or direct or indirect guarantee by any Company Joint Venture of any indebtedness for borrowed money or other obligations of any

Person to be recourse to the Company or any of its Subsidiaries other than Holdings and the Subsidiaries of Holdings, or after giving effect to the Merger, the Surviving Corporation or any of its Subsidiaries other than Holdings and the Subsidiaries of Holdings or would reasonably be expected to make it necessary for the Company or any of its Subsidiaries, or after giving effect to the Merger, the Surviving Corporation or any of its Subsidiaries to make any capital contributions or pay cash, or incur a liability or provide property or services, in order to enable Holdings and its Subsidiaries to operate in the ordinary course;

(xvi) amend or modify the Company Trading Guidelines in a manner that results in such Company Trading Guidelines being less restrictive than the Company Trading Guidelines in effect on the date hereof or, other than in the ordinary course of business consistent with past practice, terminate the Company Trading Guidelines; provided that, in the case of any such termination, new Company Trading Guidelines are adopted that are at least as restrictive as the Company Trading Guidelines in effect on the date hereof or, take any action that violates the Company Trading Guidelines or cause or permit the Net Company Position to be outside the risk parameters set forth in the Company Trading Guidelines; and if at any time the Net Company Position becomes outside the risk parameters set forth in the Company Trading Guidelines due to a move in market prices then action will be taken to bring the Net Company Position back inside the parameters as is required by the Company Trading Guidelines;

(xvii) adopt a plan of complete or partial liquidation or a dissolution or resolutions providing for or authorizing such a liquidation or a dissolution, restructuring, recapitalization or reorganization other than with respect to Subsidiaries of Global and Resources in connection with the transactions described in Section 6.1(a)(viii)(B);

(xviii) retire, commit to retire or otherwise indicate an intention to retire any generation facility of the Company or any of its Subsidiaries; or

(xix) commit or agree to take any of, the foregoing actions.

(b). Conduct of Business by Parent Pending the Merger. During the period from the date of this Agreement until the Effective Time, except as expressly permitted by this Agreement or as set forth on Item 6.1(b) of the Parent Letter, Parent shall and shall cause each of its Subsidiaries to, carry on its business in the ordinary course as currently conducted and, to the extent consistent therewith, use reasonable best efforts to preserve its business organization intact, maintain in full force and effect the Parent Permits and maintain its existing relations and goodwill with Governmental Entities, customers, suppliers, distributors, creditors, lessors, licensors, licensees, employees and business associates to the end that their goodwill and ongoing businesses shall not be impaired in any material respect at the Effective Time. To the extent permitted by applicable law and whether or not an action is one specified below, Parent will consult with the Company with respect to any action or failure to take an action that would be considered not to be in the ordinary course of Parent's business as it is currently conducted. Without limiting the generality of the foregoing, and except as otherwise expressly permitted by

this Agreement or as set forth on Item 6.1(b) of the Parent Letter, during the period from the date of this Agreement to the Effective Time, Parent shall not and shall not permit any of its Subsidiaries to without the prior written consent of the Company (which consent shall not be unreasonably withheld or delayed) take any of the following actions (it being understood that any action allowed by any of clauses (i) through (xvi) but otherwise restricted under this Agreement shall be so restricted:

(i) (A) declare, set aside or pay any dividends on, or make any other distributions in respect of, any of its Capital Stock, other than (1) dividends and distributions by a direct or indirect Subsidiary of Parent to its parent, (2) regular quarterly cash dividends and distributions with respect to the Parent Shares, in accordance with Parent's dividend policy as set forth on Item 6.1(b)(i)(A)(2) of the Parent Letter, with record dates and payment dates consistent with Parent's past dividend practice, and (3) regular cash dividends and distributions with respect to preferred stock of Parent or its Subsidiaries in accordance with the terms thereof as existing on the date hereof, (B) split, combine or reclassify any of its Capital Stock or issue or authorize the issuance of any other securities in respect of, in lieu of or in substitution for its Capital Stock or (C) purchase, redeem or otherwise acquire any Capital Stock of Parent or any of its Subsidiaries or any other securities thereof or any rights, warrants or options to acquire any Capital Stock or other securities thereof other than the purchase of Parent Shares on the open market pursuant to the Parent DRIP and the Parent ESPP;

(ii) other than (1) the issuance of Parent Shares upon the exercise or conversion of Parent Stock Options, Parent Performance Shares, Parent Deferred Shares, Parent Restricted Shares, Parent Dividend Equivalents and Directors' Units outstanding on the date of this Agreement and in accordance with their present terms, upon the exercise or conversion of Parent Stock Options, Parent Performance Shares, Parent Deferred Shares, Directors' Units, Parent Dividend Equivalents and Parent Restricted Shares awarded in accordance with Section 6.1(b)(ii)(2) or pursuant to the terms of any Parent Compensation Commitment as in effect on the date of this Agreement or as amended in accordance with or as permitted by this Agreement, (2) the issuance, subject to Section 6.1(b)(vi), of additional Parent Stock Options, Parent Performance Shares, Parent Restricted Shares, Parent Dividend Equivalents, Directors' Units, Parent Deferred Shares and other securities as set forth on Item 6.1(b)(ii)(2) of the Parent Letter, (3) the issuance of Parent Shares pursuant to the Parent ESPP and the Parent DRIP, (4) issuances by a direct or indirect Subsidiary of Parent of its Capital Stock to its parent and (5) the issuance of Parent Phantom Shares, issue, deliver, pledge, encumber, sell, dispose of or grant (A) any of its Capital Stock or any Capital Stock in any of its direct or indirect Subsidiaries, (B) any Parent Voting Debt, Parent Stock Equivalents or other voting securities, (C) any securities convertible into or exchangeable for, or any options, warrants or rights to acquire, any Capital Stock referred to in clause (A), Parent Voting Debt, Parent Stock Equivalents, voting securities or convertible or exchangeable securities or (D) any "phantom" stock, "phantom" stock rights, stock appreciation rights or stock-based performance units;

(iii) amend the Amended and Restated Articles of Incorporation of Parent other than to increase Parent's authorized capital stock;

(iv) amend the Amended and Restated By-laws of Parent or amend the certificate of incorporation, by-laws or other comparable charter or organizational documents of any Subsidiary of Parent, except for such amendments that do not have an adverse effect on the Merger and that are not inconsistent with any of the obligations of Parent hereunder;

(v) (A) acquire or agree to acquire by merging or consolidating with, or by purchasing a substantial equity interest in or portion of the assets of, or by any other manner, any business or any corporation, partnership, joint venture, association or other business organization or division thereof, (B) acquire or agree to acquire any assets, other than in the ordinary course of business consistent with past practice or pursuant to capital expenditures made in accordance with Section 6.1(b)(x) or (C) make any investment in the Capital Stock of, or other instrument convertible into or exchangeable for the Capital Stock of, any other Person (other than direct or indirect Subsidiaries of Parent and investments by the managers of Benefit Plans and nuclear decommissioning trusts in the ordinary course of business consistent with past practice) and other than, in the case of clauses (A) through (C), acquisitions of assets and investments in Persons that are not greater than \$10 million individually or \$50 million in the aggregate in any consecutive 12 month period (including the value of any indebtedness assumed); provided, however, that Parent shall not be permitted hereunder to acquire or agree to acquire any asset or to make any investment in any Person to the extent such agreement, acquisition or investment would reasonably be expected to have an adverse effect on the ability of Parent or the Company to obtain any Parent Required Statutory Approval or Company Required Statutory Approval, respectively, or to delay by a material period the receipt thereof;

(vi) except to the extent required by applicable law or by the terms of any Benefit Plan maintained by Parent, Parent Compensation Commitment or collective bargaining agreement in effect as of the date of this Agreement (A) grant to any current or former employee, officer or director of Parent or any of its Subsidiaries any increase in compensation or benefits or new incentive compensation grants, except in the ordinary course of business consistent with past practice (including, without limitation, annual salary and compensation increases in respect of any fiscal year regardless of when such increases are approved), (B) grant to any current or former employee, officer or director of Parent or any of its Subsidiaries any increase in severance, pay to stay or termination pay, except to the extent consistent with past practice and that, in the aggregate, does not result in a material increase in benefits or compensation expenses, (C) enter into or amend any Parent Compensation Commitment with any such current or former employee, officer or director, (D) establish, adopt, enter into or amend in any material respect any collective bargaining agreement or Benefit Plan, except, (1) with respect to any Benefit Plan maintained by Parent that is a Qualified Plan, as may be required to facilitate or obtain a determination

from the IRS that such Benefit Plan is a Qualified Plan and (2) with respect to the collective bargaining agreements set forth on Item 6.1(b)(vi)(D)(2) of the Parent Letter, renewing such collective bargaining agreements at their expiration on terms substantially similar to their current respective terms or (E) take or permit to be taken any action to accelerate any rights or benefits or the funding thereof, or make or permit to be made any material determinations not in the ordinary course of business consistent with past practice, under any collective bargaining agreement, Benefit Plan or Parent Compensation Commitment; provided, however, that notwithstanding anything in this Section 6.1(b)(vi) to the contrary, the foregoing shall not restrict Parent or its Subsidiaries from entering into or making available to newly hired officers and employees or to officers and employees in the context of promotions based on job performance or workplace requirements in the ordinary course of business consistent with past practice, plans, agreements, benefits and compensation arrangements (including incentive grants) that have, consistent with past practice, been made available to newly hired or promoted officers and employees;

(vii) make any material change in accounting methods, principles or practices except as required by generally accepted accounting principles or by Parent's independent auditors;

(viii) sell, lease (as lessor), license or otherwise dispose of or subject to any Lien (other than Liens as required by after acquired property covenants in Contracts evidencing Parent Indebtedness and Liens created in connection with the refinancing of Parent Indebtedness in accordance with Section 6.1(b)(ix) that are no less favorable to Parent and its Subsidiaries than those Liens that were created in connection with the Parent Indebtedness that is being refinanced) any properties or assets that are material, individually or in the aggregate, to Parent and its Subsidiaries, taken as a whole, other than sales of excess or obsolete assets in the ordinary course of business consistent with past practice and except to the extent necessary to obtain the Parent Required Statutory Approvals and the Company Required Statutory Approvals;

(ix) except in the ordinary course of business consistent with past practice, (A) incur any indebtedness for borrowed money or guarantee any such indebtedness of another Person, issue or sell any debt securities or warrants or other rights to acquire any debt securities of Parent or any of its Subsidiaries, guarantee any debt securities of another Person, enter into any "keep well" or other agreement to maintain any financial statement condition of another Person or enter into any arrangement having the economic effect of any of the foregoing, in each case, other than (1) in connection with a refinancing on commercially reasonable terms, and borrowings under revolving credit agreements or similar credit facilities in effect on the date hereof (or under any extensions or replacements thereof) in accordance with their terms, (2) indebtedness incurred by any Subsidiary of Parent under any loan permitted by clause (B) and (3) the assumption of indebtedness in connection with an acquisition or investment made pursuant to Section 6.1(b)(v) or (B) make any loans, advances or capital

contributions to, or investments in, any other Person, other than to or in Parent or any Subsidiary of Parent;

(x) make or agree to make any new capital expenditure or expenditures other than (A) expenditures in accordance with Item 6.1(b)(x) of the Parent Letter, (B) expenditures that do not exceed \$15 million individually or \$300 million in the aggregate in any consecutive 12 month period and (C) expenditures to the extent made or agreed to be made in order to ensure compliance with the rules and regulations or an order of the NRC or any other Governmental Entity or to ensure compliance with the terms of any Permit, in which case, to the extent permissible under applicable law, Parent shall consult with the Company prior to making or agreeing to make any such expenditure;

(xi) engage in any activities which would cause a change in Parent's status under PUHCA;

(xii) enter into any Power Agreement other than any Power Agreement entered into in the ordinary course of business that does not exceed (1) a notional value of purchase and/or sale energy commitments of \$300 million, (2) a fixed notional value of purchase and/or sale of capacity of \$25 million, (3) a notional value for the underlying sale of options of \$100 million and (4) a notional value for the aggregate premiums paid in a calendar year for the purchase of options of \$50 million unless Parent consults with the Company regarding such Power Agreement and Parent has obtained the prior written consent of the Company to such Power Agreement or such Power Agreement is fully compliant with criteria to which the Company has previously given a generic consent, in each case, which consent shall not be unreasonably withheld or delayed, it being understood that in such consultation process the Company and Parent shall comply with all applicable laws and any applicable confidentiality or similar third party agreement;

(xiii) amend or modify the Parent Trading Guidelines in a manner that results in such Parent Trading Guidelines being less restrictive than the Parent Trading Guidelines in effect on the date hereof or, other than in the ordinary course of business consistent with past practice, terminate the Parent Trading Guidelines; provided that, in the case of any such termination new Parent Trading Guidelines are adopted that are at least as restrictive as the Parent Trading Guidelines in effect on the date hereof or take any action that violates the Parent Trading Guidelines or cause or permit the Net Parent Position to be outside the risk parameters set forth in the Parent Trading Guidelines; and if at any time the Net Parent Position becomes outside the risk parameters set forth in the Parent Trading Guidelines due to a move in market prices then action will be taken to bring the Net Parent Position back inside the parameters as is required by the Parent Trading Guidelines;

(xiv) take any action that would, individually or in the aggregate, (A) reasonably be expected to cause the Parent Indebtedness or other obligations

under which ENEH or any Subsidiary of ENEH is the obligor or any indebtedness for borrowed money or other obligations of any Person to be recourse to the Parent or any of its Subsidiaries other than ENEH and the Subsidiaries of ENEH or would reasonably be expected to make it necessary for Parent or any of its Subsidiaries (other than ENEH and its Subsidiaries) to make any capital contributions or pay cash, or incur a liability or provide property or services, in order to enable ENEH and its Subsidiaries to operate in the ordinary course;

(xv) adopt a plan of complete or partial liquidation or a dissolution or resolutions providing for or authorizing such a liquidation or dissolution, restructuring, recapitalization or reorganization; or

(xvi) commit or agree to take any of, the foregoing actions.

Section 6.2 No Solicitation. (a) From the date hereof until the earlier of the Effective Time or the date on which this Agreement is terminated in accordance with the terms hereof, the Company shall not, nor shall it permit any of its Subsidiaries to, nor shall it or its Subsidiaries authorize or permit any of their respective officers, directors, employees, representatives or agents to, directly or indirectly, (i) solicit, initiate or knowingly encourage or facilitate (including by way of furnishing non-public information) any inquiries regarding, or the making of any proposal which constitutes or that may reasonably be expected to lead to, any Takeover Proposal, (ii) enter into any letter of intent or agreement related to any Takeover Proposal (each, an "Acquisition Agreement") or (iii) participate in any discussions or negotiations regarding, or take any other action to facilitate any inquiries or the making of any proposal that constitutes, or that may reasonably be expected to lead to, any Takeover Proposal; provided, however, that if, at any time after the date hereof and prior to the Company Shareholders Meeting the Company receives an unsolicited *bona fide* written Takeover Proposal from any third Person that in the reasonable good faith judgment of the Company's Board of Directors constitutes a Superior Proposal and the Board of Directors of the Company determines in its reasonable good faith judgment, after consultation with outside counsel, that it would be required to do so by its fiduciary duties under applicable law, the Company may, in response to such Superior Proposal, (x) furnish information with respect to the Company to any such Person pursuant to a confidentiality agreement no more favorable to such Person than the Confidentiality Agreement is to Parent and (y) participate in negotiations with such Person regarding such Superior Proposal if (A) prior to furnishing such non-public information to, or entering into discussions or negotiations with, such third Person the Company or any of its Subsidiaries provides at least three business days advance written notice to Parent of the identity of the third Person making, and the proposed terms and conditions of, such Superior Proposal and a copy of all written materials delivered by such third Person to the Company or any of its Subsidiaries, (B) the Company shall have provided to Parent a copy of all written materials delivered to the third Person making the Superior Proposal in connection with such Superior Proposal and made available to Parent all materials and information made available to the third Person making the Superior Proposal in connection with such Superior Proposal and (C) the Company shall have fully complied with this Section 6.2. For purposes of this Agreement, "Takeover Proposal" means any inquiry, proposal or offer from any Person (other than Parent and its Affiliates) relating to any direct or indirect acquisition or purchase of 20% or more of the assets of the Company and its Significant Subsidiaries or 20% or more of the voting power of the Capital Stock of the Company or the Capital Stock of any of its Significant

Subsidiaries then outstanding, any tender offer or exchange offer that if consummated would result in any Person beneficially owning 20% or more of the voting power of the capital stock of the Company or the Capital Stock of such Subsidiaries then outstanding, or any merger, consolidation, business combination, recapitalization, liquidation, dissolution or similar transaction involving the Company or any of its Significant Subsidiaries, other than the transactions with Parent contemplated by this Agreement. For purposes of this Agreement, a "Superior Proposal" means any unsolicited *bona fide* written offer made by any Person (other than Parent and its Affiliates) to acquire, directly or indirectly, for consideration consisting of cash and/or securities, more than 50% of the voting power of the capital stock of the Company then outstanding or all or substantially all the assets of the Company and otherwise on terms which the Board of Directors of the Company determines in its reasonable good faith judgment (after consultation with its financial advisors) to be more favorable, from a financial point of view, to the Company's shareholders than the Merger (and any revised proposal made by Parent), which is not conditioned on any financing and which is reasonably likely to receive all required governmental approvals in the form of Final Orders prior to the End Date and is otherwise reasonably capable of being completed on the terms proposed (taking into account the ability to deliver any consideration to be paid in connection with such transaction).

(b) Except as set forth in Section 9.1(e), neither the Board of Directors of the Company nor any committee thereof shall (i) withdraw, qualify or modify, or propose to withdraw, qualify or modify, in a manner adverse to Parent, the approval by such Board of Directors of the Merger and this Agreement or the recommendation by such Board of Directors of this Agreement or such Board of Directors declaration that this Agreement and the Merger are advisable and fair to, and in the best interests of, the Company and its shareholders, or take any other action or make any other statement in connection with the Company Shareholders Meeting inconsistent with such recommendation, approval or declaration, (ii) approve or recommend, or propose to approve or recommend, any Takeover Proposal or (iii) authorize or permit the Company or any of its Subsidiaries to enter into any Acquisition Agreement.

(c) Nothing contained in this Section 6.2 shall prohibit the Company from complying with Rules 14d-9 or 14e-2 promulgated under the Exchange Act with respect to a Takeover Proposal; provided, however, that compliance with such rules shall not in any way limit or modify the effect that any action taken pursuant to such rules has under any other provision of this Agreement, including Section 9.1(d).

(d) The Company agrees that it and its Subsidiaries shall, and the Company shall direct and cause its and its Subsidiaries' respective officers, directors, employees, representatives and agents to, immediately cease and cause to be terminated any activities, discussions or negotiations with any Persons with respect to any Takeover Proposal. The Company agrees that it will notify Parent in writing as promptly as practicable (and in any event within 18 hours) after any Takeover Proposal is received by, any information is requested from, or any discussions or negotiations relating to a Takeover Proposal are sought to be initiated or continued with, the Company, its Subsidiaries, or their officers, directors, employees, representatives or agents. The notice shall indicate the name of the Person making such Takeover Proposal or taking such action, the material terms and conditions of any proposals or offers and a copy of all written materials delivered by such Person making the Takeover Proposal to the Company or any of its Subsidiaries, and thereafter the Company shall keep Parent informed, on a current basis, of the

status and materials terms of any such proposals or offers and the status of any such discussions or negotiations and provide Parent with copies of all written materials delivered by such Person making the Takeover Proposal to the Company or any of its Subsidiaries. The Company also agrees that it will promptly request each Person that has heretofore executed a confidentiality agreement in connection with any Takeover Proposal to return or destroy all confidential information heretofore furnished to such Person by or on behalf of it or any of its Subsidiaries.

Section 6.3 Third Party Standstill Agreements. During the period from the date of this Agreement through the Effective Time, the Company shall enforce and shall not terminate, amend, modify or waive any standstill or employee non-solicitation provision of any confidentiality, standstill, employee non-solicitation or similar agreement between the Company and any other Persons which relates to any transaction that could constitute a Takeover Proposal or that has as a counterparty any Person other than Parent. During such period, the Company agrees to enforce, to the fullest extent permitted under applicable law, the provisions of any such agreements, including using its reasonable best efforts to obtain injunctions to prevent any threatened or actual breach of such agreements and to enforce specifically the terms and any provision thereof in any court of the United States or any state thereof having jurisdiction.

Section 6.4 Disclosure of Certain Matters; Delivery of Certain Filings. (a) The Company shall promptly advise Parent orally and in writing if, to the Knowledge of the Company, there exists a material breach of a representation or warranty made by the Company contained herein or if there occurs, to the Knowledge of the Company, any change or event which results in the executive officers of the Company having a good faith belief that such change or event has resulted in, or is reasonably likely to result in, a material breach of a representation or warranty made by the Company contained herein. Parent shall promptly advise the Company orally and in writing, to the Knowledge of Parent, if there exists a material breach of a representation or warranty made by Parent contained herein or if there occurs, to the Knowledge of Parent, any change or event which results in the executive officers of Parent having a good faith belief that such change or event has resulted in, or is reasonably likely to result in, a material breach of a representation or warranty made by Parent contained herein. The Company shall provide to Parent, and Parent shall provide to the Company, copies of all filings made by the Company or Parent, as the case may be, with any Governmental Entity in connection with this Agreement and the transactions contemplated hereby.

(b) To the extent permitted by applicable law, the Company shall, and shall cause its Subsidiaries to, promptly notify Parent in writing of (i) any written communications with or notice from any taxing authority relating to any Listed Transaction (excluding information document or similar requests from any taxing authority) or (ii) any material change in the appraised value of any property leased pursuant to a Leveraged Lease. To the extent permitted by applicable law, the Company shall not, and shall not permit its Subsidiaries or any of their respective officers, employees or other representatives or agents to participate in any formal discussions or negotiations with any taxing authority related to the foregoing, unless, in each case, it consults with Parent in advance of such discussions or negotiations.

(c) To the extent permitted by applicable law, Parent and the Company shall, and shall cause their respective Subsidiaries to, promptly notify the Company or Parent, as the case may be, of any written communication with or notice from any taxing authority relating to any

material Tax audit or examination relating to any Parent Material Taxes or Company Material Taxes, as the case may be (excluding information document or similar requests from any taxing authority), any extension of any statute of limitations relating to Parent Material Taxes or Company Material Taxes, as the case may be or any change in method of accounting relating to Parent Material Taxes or Company Material Taxes, as the case may be.

(d) To the extent permitted by applicable law, each of the parties shall, and shall cause its Subsidiaries to, consult with the other party with respect to negotiations relating to the renewal of any collective bargaining agreement. No consultation in accordance with this Section 6.4(d) shall be deemed to be a consent by either party to any action proposed by the other party with respect to renewal of a collective bargaining agreement.

Section 6.5 Reorganization. During the period from the date of this Agreement through the Effective Time, unless the other party shall otherwise agree in writing, none of Parent, the Company or any of their respective Subsidiaries shall take or fail to take any action which action or failure would, to its Knowledge, jeopardize the qualification of the Merger as a "reorganization" within the meaning of Section 368(a) of the Code.

Section 6.6 Rate Matters. To the extent permitted by applicable law, the Company and Parent shall, and shall cause each of its Subsidiaries to, deliver to Parent or the Company, as the case may be, a copy of each principal filing or agreement related to its generally applicable rates, charges, standards of service, accounting or regulatory policy which could lead to a material change in any of those areas as soon as practicable and in any event no later than five business days prior to the filing or execution thereof so that Parent or the Company, as the case may be, may comment thereon. Except as set forth on Item 6.6 of the Company Letter or Item 6.6 of the Parent Letter, as the case may be, the Company and Parent shall, and shall cause its Subsidiaries to, make all such filings only in the ordinary course of business consistent with past practice or as required by a Governmental Entity or regulatory agency with appropriate jurisdiction or under existing settlement agreements to which the Company or Parent, as the case may be, is a party.

ARTICLE VII ADDITIONAL AGREEMENTS

Section 7.1 Employee Benefits; Workforce Matters. (a) From and after the Effective Time, Parent shall, or shall cause one of its Subsidiaries to, honor and perform in accordance with their respective terms (as in effect on the date of this Agreement or as amended in accordance with or as permitted by this Agreement), all the collective bargaining agreements to which the Company or one of its Subsidiaries is a party and is set forth on Item 4.13(a) of the Company Letter. Nothing in this Section 7.1(a) shall be interpreted to prevent Parent or any of its Subsidiaries from enforcing such agreements in accordance with their respective terms, including enforcement of any reserved right to amend, modify, suspend, revoke or terminate any such agreement.

(b) Subject to applicable law and obligations under each applicable collective bargaining agreement, Compensation Commitments and Benefit Plan, and except as provided in Section 7.2, Parent shall, or shall cause one of its Subsidiaries to, assume, maintain in effect, honor and perform in accordance with their respective terms (as in effect on the date of this

Agreement or as amended or established in accordance with or as permitted by this Agreement) each Benefit Plan and Compensation Commitment listed on Item 4.12(a) of the Company Letter and in effect on the date of this Agreement (or established as permitted by this Agreement), with respect to the current and former employees, officers or directors of the Company and its Subsidiaries who are covered by such plans or commitments immediately prior to the Effective Time. Nothing in this Section 7.1(b) shall be interpreted to limit any reserved right contained in any such Benefit Plan or Compensation Commitment to amend, modify, suspend, revoke or terminate any such plan or commitment in accordance with its terms.

(c) Following the Effective Time, Parent shall continue to provide to individuals who are employed by the Company and its Subsidiaries as of the Effective Time who remain employed with Parent or any of its Subsidiaries after the Effective Time ("Affected Employees"), for so long as such Affected Employees remain employed by Parent or any of its Subsidiaries, employee benefits (i) pursuant to the Benefit Plans maintained by the Company immediately prior to the Effective Time (which are maintained by Parent or one of its Subsidiaries after the Effective Time in accordance with Section 7.1(b)) or (ii) pursuant to Benefit Plans maintained by Parent or any of its Subsidiaries providing coverage and benefits which, in the aggregate, are no less favorable than those provided to employees of Parent in positions comparable to positions held by Affected Employees with Parent or its Subsidiaries from time to time after the Effective Time.

(d) Each Affected Employee who becomes eligible to participate in a Benefit Plan maintained by Parent or any of its Subsidiaries shall receive credit for purposes of eligibility to participate, vesting and eligibility to receive benefits (but specifically excluding for benefit accrual purposes or where such crediting would result in a duplication of benefits) under such Benefit Plan for service credited for the corresponding purpose under any Benefit Plan listed on Item 4.12(a) of the Company Letter; provided, however, that such crediting of service shall not operate to cause any such plan to fail to comply with the applicable provisions of the Code or ERISA.

(e) Each Benefit Plan maintained by Parent or any of its Subsidiaries which is a welfare benefit plan, and in which Affected Employees become eligible to participate, shall take into account for purposes of determining an Affected Employee's deductibles and out-of-pocket limits thereunder expenses previously incurred by the Affected Employee during the same year while participating in any other such Benefit Plan listed on Item 4.12(a) of the Company Letter and shall waive any waiting periods and restrictions and limitations for pre-existing conditions (or evidence of insurability requirements, in the case of life insurance plans) provided therein for any Affected Employee to the extent not applicable to the participant in any other such Benefit Plan listed on Item 4.12(a) in which the Affected Employee participated immediately prior to participating in the Benefit Plan maintained by Parent or any of its Subsidiaries.

(f) Each Benefit Plan maintained by Parent or any of its Subsidiaries which is a cafeteria plan under Section 125 of the Code, and in which any Affected Employee becomes eligible to participate, shall cause credits and debits for a plan year in respect of any such Affected Employee participating in a Benefit Plan listed on Item 4.12(a) of the Company Letter which is a cafeteria plan under Section 125 of the Code to be transferred to and maintained in such Benefit Plan maintained by Parent or any of its Subsidiaries in which such Affected

Employee may subsequently participate during the same year. Nothing contained in this Section 7.1(f) shall be deemed to constitute an employment Contract between Parent or any Subsidiary of Parent and any individual, or a waiver of Parent's or any its Subsidiaries' right to discharge any employee at any time, with or without cause.

(g) Following the Effective Time, subject to the terms of this Agreement, applicable law and applicable collective bargaining agreements: (i) the Surviving Corporation will, in good faith and consistent with business needs, consider reductions in work force in a fair and equitable manner and in light of the circumstances and the objectives to be achieved, giving consideration to previous work history, job experience and qualifications and (ii) all employees of the Surviving Corporation shall be entitled to fair and equitable consideration in connection with any job opportunities with the Surviving Corporation and its Subsidiaries, in each case without regard to whether employment prior to the Effective Time was with the Company and its Subsidiaries or Parent and its Subsidiaries.

(h) Nothing contained in this Section 7.1 shall be deemed to constitute an employment Contract between Parent or any Subsidiary of Parent and any individual, or a waiver of Parent's or any of its Subsidiaries' right to discharge any employee at any time, with or without cause. Nothing in this Section 7.1 or elsewhere in this Agreement (other than Section 7.9) is intended to confer upon any Person other than the parties hereto any rights or remedies hereunder. Other than as provided in Section 7.9, nothing herein expressed or implied shall confer upon any employee of the Company or its Subsidiaries or Parent or its Subsidiaries, or upon any legal representative of such employee, or upon any collective bargaining agent, any rights or remedies, including any right to employment or continued employment of any specified period, of any nature or kind whatsoever under or by reason of this Agreement. Nothing in this Agreement shall be deemed to confer upon any Person (nor any beneficiary thereof) any rights under or with respect to any plan, program, or arrangement described in or contemplated by this Agreement, and each Person (and any beneficiary thereof) shall be entitled to look only to the express terms of any such plan, program or arrangement for his or her rights thereunder.

Section 7.2 Options. (a) At the Effective Time, each Company Stock Option which is outstanding immediately prior to the Effective Time pursuant to Company Stock Option Plans shall become and represent an option to purchase the number of Parent Shares (a "Substitute Option") (decreased to the nearest full share) determined by multiplying (i) the number of shares of Company Common Stock subject to such Company Stock Option immediately prior to the Effective Time by (ii) the Exchange Ratio, at an exercise price per Parent Share (rounded up to the nearest cent) equal to the exercise price per share of Company Common Stock under such Company Stock Option immediately prior to the Effective Time divided by the Exchange Ratio. After the Effective Time, except as provided in this Section 7.2, each Substitute Option shall be exercisable upon the same terms and conditions as were applicable under the related Company Stock Option immediately prior to or at the Effective Time. The Company shall take all necessary action to implement and make effective the provisions of this Section 7.2.

(b) Subject to Section 7.2(a), as of the Effective Time, all Company Stock-Based Awards, whether vested or unvested, shall cease to represent a right or award with respect to shares of Company Common Stock and shall be converted into a right or award with respect to Parent Shares (an "Assumed Stock-Based Award") on the same terms and conditions as were

applicable under the Company-Stock Based Awards, including all repurchase and forfeiture rights held by the Company. The number of Parent Shares subject to each Assumed Stock-Based Award shall be equal to the number of shares of Company Common Stock subject to such Company Stock-Based Award immediately prior to the Effective Time multiplied by the Exchange Ratio (decreased to the nearest full share). All dividend equivalents and Company Cash Awards credited to the account of each holder of a Company Stock-Based Award as of the Effective Time shall remain credited to such holder's account immediately following the Effective Time, subject to adjustment in accordance with the foregoing. All Unvested Restrictions, including all repurchase and forfeiture rights held by the Company, with respect to each Company Stock-Based Award and each Company Cash Award shall be and hereby are assigned as of the Effective Time to Parent, and the Assumed Stock-Based Awards and Company Cash Awards shall continue to be subject to the same Unvested Restrictions which applied to such Company Stock-Based Award or Company Cash Award immediately prior to the Effective Time, after giving effect to any acceleration, lapse or other vesting occurring by operation of the Merger. The Company shall take all actions necessary to ensure that, from and after the Effective Time, the Surviving Corporation (or its assignee) shall be entitled to exercise the rights held by the Company immediately prior to the Effective Time with respect to all Unvested Restrictions. For purposes of this Agreement, (i) "Company Cash Award" means any award granted under the Company Stock Plans or otherwise other than Company-Stock Based Awards and (ii) "Unvested Restrictions" means all repurchase, cancellation, forfeiture, vesting and other conditions or restrictions applicable to a Company Stock-Based Award or a Company Cash Award.

(c) After the Effective Time, the Surviving Corporation shall file a registration statement on Form S-8 under the Securities Act covering the Parent Shares issuable upon the exercise of Substitute Options, and will maintain the effectiveness of such registration, and the current status of the prospectus contained therein, until the exercise or expiration of such Substitute Options.

(d) Prior to the Effective Time the Company shall cause the Company ESPP and all rights thereunder to be suspended immediately following the close of the Investment Period (as such term is defined in the Company ESPP) ending immediately prior to the Effective Time, with the effect of such suspension being that no offering period and no Investment Period shall commence or continue under such plan during the period of such suspension. Prior to the Effective Time, the Company shall cause the Company DRIP and all rights thereunder to be suspended immediately following the close of the Investment Period (as defined in the Company DRIP) ending immediately prior to the Effective Time, with the effect of such suspension being that no offering period and no Investment Period shall commence or continue under such plan during the period of such suspension. Prior to the Effective Time, the Company shall cause the Company Thrift Plan and Company Employee Savings Plan to be amended to suspend investments in the Company Common Stock Fund and Non-ESOP Company Common Stock Fund (as defined therein, respectively) effective as of the last business day prior to the Effective Time.

Section 7.3 Shareholder Approval; Preparation of Proxy Statement; Other Actions.

(a) As soon as practicable following the date of this Agreement, each of the Company and Parent will duly call, give notice of, convene and hold meetings of their respective shareholders

(including any adjournments or postponements thereof, the "Company Shareholders Meeting" and the "Parent Shareholders Meeting," respectively, and collectively, the "Shareholders Meetings") for the purpose, in the case of the Company, of the holders of Company Common Stock duly approving this Agreement ("Company Shareholder Approval") and, in the case of Parent, of the holders of Parent Shares duly approving the issuance of Parent Shares in the Merger ("Parent Shareholder Approval"). Parent and the Company will use their reasonable best efforts to hold the Parent Shareholders Meeting and the Company Shareholders Meeting on the same date. The Company shall, through its Board of Directors (but subject to the right of the Company's Board of Directors to terminate this Agreement as set forth in Section 9.1(e)) recommend to its shareholders that the Company Shareholder Approval be given. Subject to the remainder of this Section 7.3(a), Parent shall, through its Board of Directors, recommend to its shareholders that the Parent Shareholder Approval be given. Parent shall not withdraw, qualify or modify, or propose to withdraw, qualify or modify, in a manner adverse to the Company, the approval by such Board of Directors of the Parent Share Issuance, the Merger and this Agreement or the recommendation by such Board of Directors of the Parent Share Issuance or such Board of Directors' declaration that this Agreement and the Merger are advisable and fair to and in the best interest of, Parent and its shareholders except to the extent the Board of Directors of Parent determines in its reasonable good faith judgment that the making of, or the failure to withdraw, qualify or modify such recommendation would violate the fiduciary duties of such Board of Directors of Parent under applicable law. Parent shall not take any of the actions set forth in the preceding sentence at any time after the Parent Shareholders Meeting.

(b) The Company and Parent shall promptly prepare and file with the SEC the Proxy Statement and Parent shall prepare and file with the SEC the Registration Statement which will include the Proxy Statement as a prospectus. Each of the Company and Parent shall use its reasonable best efforts to have the Registration Statement declared effective under the Securities Act as promptly as practicable after such filing. As promptly as practicable after the Registration Statement shall have become effective, each of Parent and the Company shall distribute the Proxy Statement to its respective shareholders.

(c) No filing of, or amendment or supplement to, the Registration Statement or the Proxy Statement (other than filings of Annual Reports on Form 10-K, Quarterly Reports on Form 10-Q and Current Reports on Form 8-K) will be made by Parent or the Company without providing the other party the opportunity to review and comment thereon. Parent will advise the Company, promptly after it receives notice thereof, of the time when the Registration Statement has become effective or any supplement or amendment has been filed, the issuance of any stop order, the suspension of the qualification of the Parent Shares issuable in connection with the Merger for offering or sale in any jurisdiction, or any request by the SEC for amendment of the Registration Statement or comments thereon and responses thereto or requests by the SEC for additional information. If at any time prior to the Effective Time any information relating to Parent or the Company, or any of their respective Affiliates or officers or directors, should be discovered by Parent with respect to Parent or any of its Subsidiaries or any of its Affiliates, officers or directors or the Company with respect to the Company or any of its Subsidiaries or any of its Affiliates, officers or directors which should be set forth in an amendment or supplement to any of the Registration Statement or the Proxy Statement, so that any of such documents would not include any misstatement of a material fact or omit to state any material fact necessary to make the statements therein, in light of the circumstances under which they

were made, not misleading, the party which discovers such information shall promptly notify the other parties hereto and an appropriate amendment or supplement describing such information shall be promptly filed with the SEC and, to the extent required by law, disseminated to the shareholders of Parent and the Company.

(d) Each of the Company and Parent shall use reasonable best efforts to cause to be delivered a letter of its independent auditors, dated the date two business days prior to the date on which the Registration Statement shall become effective.

Section 7.4 Access to Information; Transition. (a) Upon reasonable notice and subject to the terms of the Confidentiality Agreement, dated as of August 12, 2004, between the Company and Parent, as the same may be amended, supplemented or modified (the "Confidentiality Agreement") and applicable laws relating to the exchange of information, each of the Company and Parent shall, and shall cause each of its respective Subsidiaries to, afford to the other party, and its respective officers, employees, accountants, counsel and other representatives all reasonable access, during normal business hours during the period prior to the Effective Time, to all their respective properties, books, contracts, commitments and records and, during such period, each of the Company and Parent shall (and shall cause each of its respective Subsidiaries to) make available to the other party or its designated advisors (i) a copy of each report, schedule, registration statement and other document filed or received by it during such period pursuant to the requirements of the federal or state securities laws or the federal Tax laws and (ii) all other information concerning its business, properties and personnel as the other party may reasonably request. After the date hereof, each of the Company or Parent, as the case may be, shall promptly deliver to Parent or the Company, as the case may be, copies of any written notifications it has received after the date hereof of a (i) "reportable condition" or (ii) "material weakness" in the Company's or Parent's, as the case may be, internal controls.

(b) Promptly after the date hereof, Parent and the Company will establish a transition team (the "Transition Team"), the chair of which will be Parent's Executive Vice President and General Counsel (the "Transition Chairperson") or such other person designated by Parent's Chief Executive Officer and the other members of which (the "Transition Coordinators") shall consist of 10 other representatives of Parent and 10 representatives of the Company, or such number as the Chief Executive Officers of Parent and the Company agree, designated by the Transition Chairperson and approved by the Chief Executive Officer (or his designee) of each of Parent and the Company. The Transition Chairperson will assign areas of responsibility to the Transition Coordinators. The parties shall instruct the Transition Coordinators, subject to the terms of the Confidentiality Agreement and applicable laws relating to the exchange of information, to facilitate the collection and exchange of information concerning the business, operations, capital spending and budgets and financial results of Parent and the Company to the extent necessary to identify ways in which the operations of Parent and the Company can be consolidated, coordinated and/or otherwise enhanced following the Effective Time. Prior to the Effective Time, the Transition Team will also coordinate any discussions with lenders or rating agencies in connection with the transactions contemplated by this Agreement or relating to the operations of Parent and the Company following the Effective Time. The Transition Coordinators will provide the Transition Chairperson with periodic reports, subject to applicable laws relating to the exchange of information, on the findings of the Transition Team and will meet periodically in person with the Transition Chairperson to brief the

Transition Chairperson on the activities and recommendations of the Transition Team, business developments and pending material business plans and decisions at each of Parent and the Company. If, at any time, after consultation with the Chairperson of the Transition Team, the taking of any action or failure to take an action is not agreed to by at least a majority of the representatives designated by each of Parent and the Company, the Transition Chairperson, together with at least one dissenting Transition Team member, shall consult with the Chief Executive Officer of each of Parent and the Company with respect thereto.

(c) No investigation or exchange of information or other action pursuant to this Section 7.4 shall be deemed to modify any representation or warranty made by any party to this Agreement. In the event of a termination of this Agreement for any reason permitted hereby, each party shall promptly return or destroy, or cause to be returned or destroyed, all nonpublic information obtained from the other party or any of its Subsidiaries.

(d) In the event of a Parent Acquisition Transaction or the entrance into a definitive agreement providing for a Parent Acquisition Transaction during the period in which the Company is permitted to terminate this Agreement pursuant to Section 9.1(j) Parent shall promptly provide such information to the Company with respect to such Parent Acquisition Transaction or agreement as the Company shall reasonably request in order to evaluate the Parent Acquisition Transaction; provided, however, that the right of the Company to receive such information shall be subject to any confidentiality agreement applicable to the information.

Section 7.5 Fees and Expenses. Except as provided in this Section 7.5 and Section 9.2, all fees and expenses incurred in connection with the Merger, this Agreement and the transactions contemplated hereby shall be paid by the party incurring such fees or expenses, whether or not the Merger is consummated; provided, however, that Parent and the Company shall share equally all fees and expenses of Booz Allen Hamilton Inc. and (other than attorneys' and accounting fees and expenses) incurred in relation to the printing and filing of the Proxy Statement (including any related preliminary materials) and the Registration Statement (including financial statements and exhibits) and any amendments or supplements thereto.

Section 7.6 Public Announcements; Employee Communications. Parent and the Company will consult with each other before issuing any press release or otherwise making any public statements with respect to the transactions contemplated by this Agreement and shall not issue any such press release or make any such public statement prior to such consultation, except as may be required by applicable law, fiduciary duties or by obligations pursuant to any listing agreement with any national securities exchange.

Section 7.7 Transfer Taxes. The Company and Parent shall cooperate in the preparation, execution and filing of all returns, questionnaires, applications or other documents regarding any real property transfer or gains, sales, use, transfer, value added, stock transfer and stamp Taxes, any transfer, recording, registration and other fees and any similar Taxes which are the liability of the Company or Parent under applicable law in connection with the transactions contemplated by this Agreement (together with any related interest, penalties or additions to Tax, "Transfer Taxes").

Section 7.8 State Takeover Laws. If any "fair price" or "control share acquisition" statute or other similar statute or regulation shall become applicable to the transactions contemplated hereby, Parent and the Company and their respective Boards of Directors shall use their reasonable best efforts to grant such approvals and take such actions as are necessary so that the transactions contemplated hereby may be consummated as promptly as practicable on the terms contemplated hereby and otherwise act to minimize the effects of any such statute or regulation on the transactions contemplated hereby.

Section 7.9 Indemnification; Directors and Officers Insurance. (a) The Surviving Corporation agrees that all rights to indemnification and exculpation from liabilities for acts or omissions occurring at or prior to the Effective Time now existing in favor of the current or former directors, officers, employees, agents or fiduciaries under benefit plans currently indemnified by the Company and its Subsidiaries (each an "Indemnified Person"), as provided in their respective certificates of incorporation, by-laws (or comparable organizational documents) or other agreements providing indemnification, shall survive the Merger and shall continue in full force and effect in accordance with their terms. In addition, from and after the Effective Time, Indemnified Persons who become directors, officers, employees or fiduciaries under benefit plans of the Surviving Corporation will be entitled to the indemnity rights and protections afforded to directors, officers, employees and fiduciaries under benefit plans of the Surviving Corporation. Without limiting the generality of the preceding sentence, in the event that any Indemnified Person becomes involved in any actual or threatened action, suit, claim, proceeding or investigation covered by this Section 7.9 after the Effective Time, the Surviving Corporation shall promptly advance to such Indemnified Person his or her legal and other expenses (including the cost of any investigation and preparation incurred in connection therewith), subject to the providing by such Indemnified Person of an undertaking to reimburse all amounts so advanced in the event of a non-appealable determination of a court of competent jurisdiction that such Indemnified Person is not entitled thereto.

(b) The Surviving Corporation shall purchase officers' and directors' liability insurance with an insurer substantially comparable to the insurer under the Company's current policy of at least the same coverage and amounts, containing terms and conditions no less favorable to the insured ("D&O Insurance") for a period of no less than six years after the Effective Time so long as the annual premium therefor is not in excess of 200% of the last annual premium paid prior to the date hereof under the Company's current policy (the "Current Premium"); provided, however, that if the D&O Insurance is at an annual premium in excess of 200% of the Current Premium, then, unless the Board of Directors of the Surviving Corporation approves a higher amount, the Surviving Corporation will obtain as much D&O Insurance as can be obtained for the remainder of such period for a premium of 200% (on an annualized basis) of the Current Premium. Item 7.9 of the Company Letter sets forth the Current Premium.

(c) The provisions of this Section 7.9 are intended to be for the benefit of, and shall be enforceable by, each Indemnified Person, his or her heirs and his or her personal representatives and shall be binding on all successors and assigns of the Surviving Corporation and the Company.

Section 7.10 Appropriate Actions; Consents; Filings. (a) The Company and Parent shall cooperate with each other and use (and shall cause their respective Subsidiaries to use)

reasonable best efforts to take or cause to be taken all actions, and do or cause to be done all things, necessary, proper or advisable on its part under this Agreement and applicable laws to consummate and make effective the Merger and the other transactions contemplated by this Agreement as soon as practicable, including preparing and filing as promptly as practicable all documentation to effect all necessary notices, reports and other filings and to obtain as promptly as practicable all consents, registrations, approvals, permits and authorizations necessary or advisable to be obtained from any third party and/or any Governmental Entity in order to consummate the Merger or any of the other transactions contemplated by this Agreement, including obtaining the Parent Required Statutory Approvals and the Company Required Statutory Approvals in such a form that none of them would constitute a Burdensome Order.

(b) Notwithstanding anything to the contrary in Section 7.10(a), (i) except in compliance with Section 7.10(d), neither the Company nor Parent shall nor shall either permit any of its Subsidiaries to, without the prior written consent of the other party, divest or hold separate or otherwise take or commit to take any action that limits its freedom or the freedom of the other party, or after the Merger, the freedom of action of Parent or any of its Affiliates with respect to its Subsidiaries or the Subsidiaries or any of the businesses, product lines or assets of Parent, the Company or any of their respective Subsidiaries or Affiliates and (ii) neither Parent or any of its Affiliates, nor the Company or any of its Affiliates shall be required to divest or hold separate or otherwise take or commit to take any action that limits its freedom of action with respect to its Subsidiaries, or the Subsidiaries or any of the businesses, product lines or assets of Parent, the Company or any of their respective Subsidiaries or Affiliates, unless such action or actions would not constitute a Burdensome Action.

(c) Subject to applicable laws relating to the exchange of information, Parent and the Company shall have the right to review in advance, and to the extent practicable each will consult the other on, all the material information relating to Parent or the Company, as the case may be, and any of their respective Subsidiaries, that appear in any filing made with, or material written materials submitted to, any third party and/or any Governmental Entity in connection with the Merger and the other transactions contemplated by this Agreement. In exercising the foregoing right, each of the Company and Parent shall act reasonably and as promptly as practicable.

(d) (i) Promptly after the date hereof, Parent and the Company will establish a regulatory approval team (the "Regulatory Approval Team"), the chair of which will be Parent's Executive Vice President, Government & Environmental Affairs and Public Policy or such other person as may be designated by Parent's Chief Executive Officer (the "Regulatory Approval Team Chairperson"), the vice-chair of which will be the Company's Senior Vice President and General Counsel or such other person as may be designated by the Company's Chief Executive Officer (the "Regulatory Approval Team Vice-Chair") and the other members of which (the "Regulatory Approval Coordinators") shall consist of representatives designated by the Chief Executive Officer of the Company (or his designee) (the "Company Regulatory Approval Coordinators") and representatives designated by the Chief Executive Officer of Parent (or his designee) (the "Parent Regulatory Approval Coordinators"), provided that there shall be one more Parent Regulatory Approval Coordinator than Company Regulatory Approval Coordinator. Subject to Section 7.10(d)(ii), the Regulatory Approval Team Chairperson and the Regulatory Approval Team Vice-Chair will assign areas of responsibility to the Regulatory Approval

Coordinators. Subject to the terms and conditions of this Agreement, the Regulatory Approval Team will formulate the approach to be taken with respect to obtaining the Parent Required Statutory Approvals and the Company Required Statutory Approvals and coordinate filings for such approvals as set forth below. The primary responsibility for formulating the approach to be taken with respect to obtaining the Parent Required Statutory Approvals and the Company Required Statutory Approvals and all other approvals to be obtained from federal and foreign Governmental Entities shall reside with the entire Regulatory Approval Team and not a committee thereof.

(ii) The Regulatory Approval Team shall have an Illinois committee, a Pennsylvania committee and a New Jersey committee (collectively, the "State Committees"). The members of each State Committee shall be appointed by the Regulatory Approval Team, with the Illinois and Pennsylvania State Committees and the New Jersey State Committee (i) being chaired by a Parent Regulatory Approval Coordinator and a Company Regulatory Approval Coordinator, respectively, and (ii) consisting of at least a majority of members who are Parent Regulatory Approval Coordinators or Company Regulatory Approval Coordinators, respectively. The Illinois State Committee shall have primary responsibility for formulating the approach to be taken with respect to obtaining the Parent Required Statutory Approvals and the Company Required Statutory Approvals from Illinois Governmental Entities. The Pennsylvania State Committee shall have primary responsibility for formulating the approach to be taken with respect to obtaining the Parent Required Statutory Approvals and the Company Required Statutory Approvals from Pennsylvania Governmental Entities. The New Jersey State Committee shall have primary responsibility for formulating the approach to be taken with respect to obtaining the Parent Required Statutory Approvals and the Company Required Statutory Approvals from New Jersey Governmental Entities. Each Regulatory Approval Team Committee shall report to, and shall consult on a regular basis, with the full Regulatory Approval Team.

(iii) Neither the Company nor Parent, nor any of their respective Subsidiaries nor any committee of the Regulatory Approval Team or any member thereof or of the Regulatory Approval Team shall make or commit to make any concessions, agreements or other undertakings with or to any Governmental Entity or other Person in connection with obtaining the Parent Required Statutory Approvals and the Company Required Statutory Approvals or otherwise consummating the Merger and the other transactions related to the Merger unless such concession, agreement or undertaking has been approved by the Regulatory Approval Team. If, at any time, the taking of any action or failure to take an action is not agreed to by the Regulatory Approval Team Chairperson and the Regulatory Approval Team Vice-Chair, they shall consult with the Chief Executive Officer of each of Parent and the Company with respect thereto. If the Chief Executive Officers do not agree with respect to any such action, the Regulatory Approval Team, with respect to approvals to be obtained from federal and foreign Governmental Entities or approvals not otherwise the responsibility of a State Committee, and the applicable State Committee, with respect to approvals

that are the responsibility of such State Committee, shall determine which of the actions presented to the Chief Executive Officers shall be taken, in any event in compliance with and subject to the terms of this Agreement.

(e) The Company and Parent each shall, through the Regulatory Approval Team, keep the other apprised of the status of matters relating to completion of the transactions contemplated hereby, including promptly furnishing the other with copies of notice or other material communications received by Parent or the Company, as the case may be, or any of its Subsidiaries, from any third party and/or any Governmental Entity with respect to the Merger and the other transactions contemplated by this Agreement. The Company and Parent each shall give prompt notice to the other of any proposed change that is reasonably likely to result in a Material Adverse Effect on the Company or Parent, respectively.

(f) Subject to applicable laws relating to the exchange of information, the Company and Parent each shall, upon request by the other, furnish the other with all information concerning itself, its Subsidiaries, directors, officers and shareholders and such other matters as may be reasonably necessary or advisable in connection with the Proxy Statement, the Registration Statement or any other material statement, filing, notice or application made by or on behalf of Parent, the Company or any of their respective Subsidiaries to any third party and/or any Governmental Entity in connection with the Merger and the transactions contemplated by this Agreement.

(g) No investigation or exchange of information or other action pursuant to this Section 7.10 shall be deemed to modify any representation or warranty made by any party to this Agreement. In the event of a termination of this Agreement for any reason, each party shall promptly return or destroy, or cause to be returned or destroyed, all nonpublic information obtained from the other party or any of its Subsidiaries.

Section 7.11 Section 16 Matters. Assuming that the Company delivers to Parent the Section 16 Information reasonably in advance of the Effective Time, the Board of Directors of Parent, shall prior to the Effective Time adopt a resolution providing that the receipt by the Company Insiders of Parent Shares in exchange for shares of Company Common Stock (including Company Restricted Shares), and of options to purchase Parent Shares upon conversion of Company Stock Options or to receive Parent Shares upon conversion of Company Performance Units, Company Performance Shares or Company RSUs, in each case, pursuant to the transactions contemplated hereby and to the extent such securities are listed in the Section 16 Information provided by the Company to Parent prior to the Effective Time, are intended to be exempt from liability pursuant to Section 16(b) under the Exchange Act such that any such receipt shall be so exempt. For purposes of this Agreement, (a) "Section 16 Information" shall mean information accurate in all material respects regarding the Company Insiders, the number of shares of Company Common Stock held by each such Company Insider and the number and description of Company Stock Options, Company Restricted Shares, Company Performance Units, Company Performance Shares and Company RSUs held by each such Company Insider and (b) "Company Insiders" shall mean those officers and directors of the Company who are subject to the reporting requirements of Section 16(a) of the Exchange Act and who are listed in the Section 16 Information.

Section 7.12 Affiliate Letters. As promptly as practicable, the Company shall deliver to Parent a letter identifying all Persons who are, at the time this Agreement is submitted for adoption by the shareholders of the Company, "affiliates" of the Company for purposes of Rule 145 under the Securities Act. The Company shall use its reasonable best efforts to deliver or cause to be delivered to Parent, prior to the Effective Time, an Affiliate Letter in the form attached hereto as Exhibit B from each such Person.

Section 7.13 Dividends. (a) After the date of this Agreement, notwithstanding anything to the contrary in this Agreement, each of Parent and the Company, respectively, shall have the right to take any action deemed necessary by such party to ensure that holders of Parent Shares and Shares, respectively, shall not receive two dividends, or fail to receive one dividend, for any single calendar quarter with respect to their Parent Shares and/or Shares or any Parent Shares that any such holder receives in exchange for such Shares in the Merger, and each of Parent and the Company shall cooperate with the other in respect of the payment of dividends with respect to the Parent Shares and the Shares and the record dates and payment dates relating thereto in order to achieve the foregoing.

(b) To the extent permitted by applicable law and consistent with the fiduciary duties of the Board of Directors of Parent, Parent shall take all actions necessary so that the first quarterly dividend paid per Parent Share by the Surviving Corporation after the Effective Time multiplied by the Exchange Ratio and rounded to the nearest cent is at least equal to the amount per Share of the most recent quarterly dividend paid by the Company prior to the Effective Time, up to a maximum of \$0.47 per Parent Share (the lesser of \$0.47 dividend per Parent Share and the last quarterly per Share dividend paid by the Company prior to the Effective Time divided by the Exchange Ratio rounded to the nearest cent being referred to as the "Dividend Threshold"). As close to 30 days prior to the anticipated Effective Time as reasonably practicable, Parent shall notify the Company in writing of what Parent believes will be the amount of the first quarterly dividend per Parent Share paid by the Surviving Corporation after the Effective Time. If such amount per Parent Share is less than the Dividend Threshold (the amount of such shortage is referred to as the "Dividend Shortfall"), then the Company shall be permitted to make prior to the Effective Time a one time special cash dividend to the holders of Company Common Stock in an amount per Share equal to the amount, rounded to the nearest cent, obtained by multiplying (i) the Exchange Ratio by (ii) the Dividend Shortfall.

Section 7.14 Governance. (a) At or prior to the Effective Time, Parent shall take all actions necessary to appoint six directors who immediately prior to the Effective Time served as directors of the Company and were designated by the Chief Executive Officer of the Company to the Board of Directors of Parent so that the total number of members of the Board of Directors of the Surviving Corporation is 18. The directors appointed pursuant to this Section 7.14(a) shall be evenly allocated among Class I, Class II and Class III of the Board of Directors of the Surviving Corporation as designated by the Chief Executive Officer of the Company. All appointments made pursuant to this Section 7.14(a) shall be effective as of the Effective Time and shall comply with the applicable listing and corporate governance rules of the NYSE, the applicable provisions of the Exchange Act and all other applicable laws and regulations, in each case, as in effect at the Effective Time.

(b) The headquarters of the Surviving Corporation and certain divisions and Subsidiaries thereof will be as set forth in the Amended and Restated By-laws of the Surviving Corporation.

(c) The tradename and logo of the Surviving Corporation shall be as set forth on Item 7.14(c) of the Parent Letter.

(d) Parent shall cause the Amended and Restated By-laws of Parent to be amended as provided in Exhibit A hereto effective immediately following the Effective Time.

(e) During the four-year period immediately following the Effective Time, the Surviving Corporation shall provide, directly or indirectly, charitable contributions and traditional local community support within the service areas of the Company and each of its Subsidiaries that are utilities at levels substantially comparable to and no less than the levels of charitable contributions and community support provided by the Company and such Subsidiaries within their service areas within the two-year period immediately prior to the Effective Time.

ARTICLE VIII CONDITIONS PRECEDENT

Section 8.1 Conditions to Each Party's Obligation to Effect the Merger. The respective obligations of each party to effect the Merger shall be subject to the fulfillment at or prior to the Effective Time of the following conditions:

(a) Shareholder Approval. Each of the Parent Shareholder Approval and the Company Shareholder Approval shall have been obtained.

(b) No Prohibition. No Governmental Entity of competent jurisdiction shall have enacted, issued, promulgated, enforced or entered any statute, law, ordinance, rule, regulation, judgment, decree, injunction or other order (whether temporary, preliminary or permanent) that is in effect and restrains, enjoins or otherwise prohibits consummation of the Merger or the other transactions contemplated by this Agreement (collectively, an "Order"), and no federal or state Governmental Entity shall have instituted any proceeding that is pending seeking any such Order.

(c) Stock Exchange Listing. The Parent Shares issuable in the Merger shall have been authorized for listing on the NYSE, subject to official notice of issuance.

(d) Registration Statement; Securities Approval. The Registration Statement shall have become effective in accordance with the provisions of the Securities Act and all applicable state blue sky securities filings, permits or approvals shall have been made or received in accordance with applicable law. No stop order suspending the effectiveness of the Registration Statement shall have been issued by the SEC or any state securities administrator and no proceedings for that purpose shall be pending, or to the Knowledge of Parent or the Company, threatened by the SEC or any state securities administrator.

(e) Regulatory Consents.

(i) The waiting period (and any extension thereof) applicable to the consummation of the Merger under the HSR Act shall have expired or been terminated.

(ii) The Parent Required Statutory Approvals and the Company Required Statutory Approvals shall have been obtained and shall have become Final Orders.

(iii) Other than the filings provided for in Section 2.3, all other notices, reports and other filings required to be made prior to the Effective Time by the Company or Parent or any of their respective Subsidiaries with, and all other consents, registrations, approvals, permits and authorizations required to be obtained prior to the Effective Time by the Company or Parent or any of their respective Subsidiaries from, any Governmental Entity in connection with the execution and delivery of this Agreement and the consummation of the Merger and the other transactions contemplated hereby by the Company and Parent shall have been made or obtained, as the case may be, except for those the failure to be made or obtained would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on Parent or the Company or, after giving effect to the Merger, on Parent.

(f) No Burdensome Orders. No Governmental Entity of competent jurisdiction shall have enacted, issued, promulgated, enforced or entered any statute, law, ordinance, rule, regulation, judgment, decree, injunction or other order (whether temporary, preliminary or permanent) in connection with a Company Required Statutory Approval or a Parent Required Statutory Approval that (i) requires Parent or the Company or any of their respective Affiliates to take or commit to take any Burdensome Action or (ii) would otherwise constitute a Burdensome Action (a "Burdensome Order") and is in effect at the time all other conditions in this Article VIII to each party's obligation to effect the Merger have been fulfilled.

Section 8.2 Conditions to the Obligations of the Company to Effect the Merger. The obligation of the Company to effect the Merger shall be subject to the fulfillment at or prior to the Effective Time of the following additional conditions:

(a) Accuracy of Representations and Warranties. The representations and warranties of Parent set forth in Sections 5.3 (Capital Structure), 5.4 (Authority), 5.8 (Information Supplied), 5.21 (Required Vote of Parent Shareholders), 5.22 (State Takeover Statutes), 5.23 (Brokers) and 5.26(b) through (c) (Material Contracts) shall be true and correct with respect to those matters that are qualified by Material Adverse Effect or materiality and shall be true and correct in all material respects with respect to those matters that are not so qualified, in each case as of the date of this Agreement and as of the Effective Time as though made on and as of the Effective Time (except to the extent any such representation and warranty expressly speaks as of a specified date which shall be true and correct in all material respects as of such specified date). The representations and warranties of Parent set forth in this Agreement, other than those listed in the preceding sentence, shall be true and correct as of the date of this

Agreement and as of the Effective Time as though made on and as of the Effective Time (except to the extent any such representation and warranty expressly speaks as of a specified date which shall be true and correct in all respects as of such specified date) unless the inaccuracies (without giving effect to any materiality or Material Adverse Effect qualifications or exceptions contained therein) in respect of such representations and warranties, taking all the inaccuracies in respect of all such representations and warranties together in their entirety, do not result in a Material Adverse Effect on Parent or, after giving effect to the Merger, on Parent. The Company shall have received a certificate signed on behalf of Parent by a duly authorized officer of Parent to such effect.

(b) Performance of Obligations. Parent shall have performed in all material respects all obligations and complied in all material respects with all agreements and covenants of Parent to be performed and complied with by it under this Agreement.

(c) Tax Opinion. The Company shall have received an opinion dated the Closing Date, in form and substance reasonably satisfactory to the Company, of Pillsbury Winthrop LLP, special counsel to the Company, or other law firm of national standing, to the effect that the Merger will be treated for federal income Tax purposes as a reorganization within the meaning of Section 368(a) of the Code, and that each of Parent and the Company will be a party to that reorganization within the meaning of Section 368(b) of the Code. In rendering such opinion, Pillsbury Winthrop LLP (or other law firm of national standing) may rely upon representations contained herein and representations from Parent substantially to the effect of the representations in the Parent Tax Certificate attached to the Parent Letter and representations from the Company substantially to the effect of the representations in the Company Tax Certificate attached to the Company Letter.

(d) Material Adverse Effect. Since the date hereof, there shall not have been any event, effect, change or development that, individually or in the aggregate with other such events, effects, changes or developments, has had, or would reasonably be expected to have, a Material Adverse Effect on Parent.

(e) Consents Under Agreements. Parent shall have obtained the consent or approval of each Person whose consent or approval shall be required under any Contract to which Parent or any of its Subsidiaries is a party, except those for which the failure to obtain such consent or approval would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on Parent, provided that Parent and the Company agree that the failure to obtain any one of the consents or approvals set forth on Item 8.2(e) of the Parent Letter shall not in and of itself be expected to have a Material Adverse Effect on Parent.

Section 8.3 Conditions to the Obligations of Parent to Effect the Merger. The obligation of Parent to effect the Merger shall be subject to the fulfillment at or prior to the Effective Time of the following additional conditions:

(a) Accuracy of Representations and Warranties. The representations and warranties of the Company set forth in Sections 4.3 (Capital Structure), 4.4 (Authority), 4.8 (Information Supplied), 4.20 (Required Vote of the Company Shareholders), 4.21 (State Takeover Statutes), 4.22 (Brokers) and 4.26 (Holdings) shall be true and correct with respect to

those matters that are qualified by Material Adverse Effect or materiality and shall be true and correct in all material respects with respect to those matters that are not so qualified, in each case as of the date of this Agreement and as of the Effective Time as though made on and as of the Effective Time (except to the extent any such representation and warranty expressly speaks as of a specified date which shall be true and correct in all material respects as of such specified date). The representations and warranties of the Company set forth in this Agreement, other than those listed in the preceding sentence, shall be true and correct as of the date of this Agreement and as of the Effective Time as though made on and as of the Effective Time (except to the extent any such representation and warranty expressly speaks as of a specified date which shall be true and correct in all respects as of such specified date) unless the inaccuracies (without giving effect to any materiality or Material Adverse Effect qualifications or exceptions contained therein) in respect of such representations and warranties, taking all the inaccuracies in respect of all such representations and warranties together in their entirety, do not result in a Material Adverse Effect on the Company or, after giving effect to the Merger, on Parent. Parent shall have received a certificate signed on behalf of the Company by a duly authorized officer of the Company to such effect.

(b) Performance of Obligations. The Company shall have performed in all material respects all obligations and complied in all material respects with all agreements and covenants of the Company to be performed and complied with by it under this Agreement.

(c) Consents Under Agreements. The Company shall have obtained the consent or approval of each Person whose consent or approval shall be required under any Contract to which the Company or any of its Subsidiaries is a party, except those for which the failure to obtain such consent or approval would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on the Company or, after giving effect to the Merger, on Parent, provided that Parent and the Company agree that the failure to obtain any one of the consents or approvals set forth on Item 8.3(c) of the Company Letter shall not in and of itself be expected to have a Material Adverse Effect on the Company or, after giving effect to the Merger, on Parent.

(d) Tax Opinion. Parent shall have received an opinion or opinions dated the Closing Date, in form and substance reasonably satisfactory to Parent, of Sidley Austin Brown & Wood LLP, special counsel to Parent, or other law firm of national standing, to the effect that the Merger will be treated for federal income Tax purposes as a reorganization within the meaning of Section 368(a) of the Code, and that each of Parent and the Company will be a party to that reorganization within the meaning of Section 368(b) of the Code. In rendering the opinion referred to in the preceding sentence, Sidley Austin Brown & Wood LLP (or other law firm of national standing) may rely upon representations contained herein and representations from Parent substantially to the effect of the representations in the Parent Tax Certificate attached to the Parent Letter and representations from the Company substantially to the effect of the representations in the Company Tax Certificate attached to the Company Letter.

(e) Material Adverse Effect. Since the date hereof, there shall not have been any event, effect, change or development that, individually or in the aggregate with other such events, effects, changes or developments, has had, or would reasonably be expected to have, a Material Adverse Effect on the Company.

ARTICLE IX TERMINATION AND AMENDMENT

Section 9.1 Termination. This Agreement may be terminated at any time prior to the Effective Time, whether before or after the Company Shareholder Approval or the Parent Shareholder Approval:

(a) by mutual written consent of Parent and the Company;

(b) by either Parent or the Company if (i) any Governmental Entity shall have issued an order, decree or ruling or taken any other action permanently enjoining, restraining or otherwise prohibiting the transactions contemplated by this Agreement and such order, decree or ruling or other action shall have become final and nonappealable or (ii) any Governmental Entity of competent jurisdiction shall have enacted, issued, promulgated, enforced or entered any statute, law, ordinance, rule, regulation, judgment, decree, injunction or other order that is a Burdensome Order which is a Final Order and which is not subject to further appeal;

(c) by Parent if there has been a breach of any representation, warranty, covenant or other agreement made by the Company in this Agreement, or any such representation and warranty shall have become untrue after the date of this Agreement, in each case such that Section 8.3(a) or Section 8.3(b) would not be satisfied and such breach or condition is not curable or, if curable, is not cured within 30 days after written notice thereof is given by Parent to the Company;

(d) by Parent if (i) the Board of Directors of the Company shall not have recommended, or the Board of Directors of the Company (or any committee thereof) shall have withdrawn or shall have qualified or modified in any manner adverse to Parent its recommendation of, this Agreement or its approval of or declaration that this Agreement and the Merger are advisable and fair to, and in the best interests of, the Company and its shareholders or shall have taken any other action or made any other statement in connection with the Company Shareholders Meeting inconsistent with such recommendation, approval or declaration, (ii) the Board of Directors of the Company (or any committee thereof) shall have approved or recommended any Takeover Proposal, (iii) the Board of Directors of the Company (or any committee thereof) shall have proposed or resolved to do any of the foregoing in clauses (i) and (ii), (iv) the Company shall have breached Section 6.2 in any material respect or (v) a tender offer or exchange offer for 20% or more of the outstanding shares of capital stock of the Company is commenced, and the Board of Directors of the Company fails to recommend against acceptance of such tender offer or exchange offer by its shareholders within 10 days after such commencement (including by taking no position with respect to the acceptance of such tender offer or exchange offer by its shareholders);

(e) by the Company prior to the Company Shareholders Meeting if (A) the Board of Directors of the Company authorizes the Company, subject to complying with the terms of this Agreement, to enter into a definitive agreement concerning a transaction that constitutes a Superior Proposal and the Company notifies Parent in writing that it intends to enter into such an agreement, attaching the most current version of such agreement to such notice, (B) Parent does not make, within five business days of receipt of the Company's written notification of its

intention to enter into a definitive agreement for a Superior Proposal, an offer that the Board of Directors of the Company determines, in its reasonable good faith judgment after consultation with its financial advisors, is at least as favorable, from a financial point of view, to the shareholders of the Company as the Superior Proposal and (C) the Company prior to or concurrently with such termination pays to Parent in immediately available funds the amount required by Section 9.2(b). The Company agrees (x) that it will not enter into a definitive agreement referred to in clause (A) above until at least the sixth business day after it has provided the notice to Parent required thereby and (y) to notify Parent promptly in writing if its intention to enter into a definitive agreement referred to in its notification shall change at any time after giving such notification;

(f) by the Company if there has been a breach of any representation, warranty, covenant or other agreement made by Parent in this Agreement, or any such representation and warranty shall have become untrue after the date of this Agreement, in each case such that Section 8.2(a) or Section 8.2(b) would not be satisfied and such breach or condition is not curable or, if curable, is not cured within 30 days after written notice thereof is given by the Company to Parent;

(g) by the Company if (i) the Board of Directors of Parent shall not have recommended, or the Board of Directors of Parent (or any committee thereof) shall have withdrawn or shall have qualified or modified in any manner adverse to the Company its recommendation of, the issuance of Parent Shares in connection with the Merger or its approval of or declaration that this Agreement and the Merger are advisable and fair to, and in the best interests of, Parent and its shareholders or shall have taken any other action or made any other statement in connection with the Parent Shareholders Meeting inconsistent with such recommendation, approval or declaration or (ii) the Board of Directors of Parent or any committee thereof shall have proposed or resolved to do any of the foregoing;

(h) by either the Company or Parent if (i) at the Company Shareholders Meeting (including any adjournment or postponement thereof), the Company Shareholder Approval shall not have been obtained, or (ii) at the Parent Shareholders Meeting (including any adjournment or postponement thereof), the Parent Shareholder Approval shall not have been obtained;

(i) by either Parent or the Company, if the Merger shall not have been consummated by June 20, 2006 (the "End Date"); provided, however, that if all other conditions set forth in Article VIII (other than conditions that by their nature are to be satisfied on the Closing Date) are satisfied other than the condition of obtaining approval of the Merger by FERC under §203 of the Power Act (or any successor thereto) or approval of the Merger by the SEC under PUHCA (or any successor thereto) (collectively, the "Federal Required Statutory Approvals") or, with respect to one or more of the Parent Required Statutory Approvals listed as Items 5, 8, 9 and 12 on Item 5.5(b) of the Parent Letter and one or more of the Company Required Statutory Approvals listed as Items 5, 6 and 10 on Item 4.5(b) of the Company Letter, each of Parent and the Company are reasonably satisfied that the applicable Governmental Entity will not issue such Parent Required Statutory Approval or Company Required Statutory Approval until one or both of the Federal Required Statutory Approvals which have not been obtained are obtained, either Parent or the Company, by written notice delivered prior to the End Date, may extend such period by six months after the End Date; provided, further, that the right

to terminate this Agreement under this Section 9.1(i) shall not be available to any party whose failure to fulfill any obligation under this Agreement has been the cause of or resulted in the failure of the Merger to occur on or before the End Date; or

(j) by either the Company or Parent if a Parent Acquisition Transaction occurs or Parent or any of its Subsidiaries shall enter into a definitive agreement with respect to a Parent Acquisition Transaction; provided, however, that the Company or Parent, as the case may be, shall only be entitled to terminate this Agreement pursuant to this Section 9.1(j) for a period of ten days from the earlier to occur of such a Parent Acquisition Transaction and the public announcement of the entry into such definitive agreement with respect to such Parent Acquisition Transaction; provided, further, that neither the Company nor Parent shall be entitled to terminate this Agreement pursuant to this Section 9.1(j) after the Company Shareholders Meeting or the Parent Shareholders Meeting, respectively; for purposes of this Section 9.1(j), "Parent Acquisition Transaction" means the acquisition, directly or indirectly, for consideration consisting of cash and/or securities, of more than 50% of the voting power of the capital stock of Parent then outstanding or all or substantially all the assets of Parent.

Section 9.2 Effect of Termination. (a) In the event of a termination of this Agreement by either the Company or Parent as provided in Section 9.1, this Agreement shall forthwith become void and there shall be no liability or obligation on the part of Parent or the Company or their respective officers or directors, except with respect to Section 4.22, Section 5.23, Section 7.5, this Section 9.2 and Article X and Section 7.4(c); provided, however, that nothing herein shall relieve any party for liability for any willful or knowing breach hereof.

(b) In the event that this Agreement is terminated (i) by Parent pursuant to Section 9.1(d) or (ii) by the Company pursuant to Section 9.1(e), then the Company shall, on the date of such termination, pay to Parent, by wire transfer of immediately available funds, the amount of \$400 million and all of the fees and out-of-pocket expenses (including financial advisor and attorney fees and expenses) incurred by Parent in connection with this Agreement and the transactions contemplated by this Agreement up to a maximum of \$40 million.

(c) In the event that between the date hereof and the termination of this Agreement a Takeover Proposal existed or any Person shall have directly or indirectly disclosed to the Company and/or publicly disclosed or made known to the Company's shareholders generally that if the Merger is not consummated such Person or one of its Affiliates will make a Takeover Proposal and thereafter, in each case, this Agreement is terminated by Parent or the Company pursuant to Section 9.1(h)(i) or Section 9.1(i), and if concurrently with such termination or within twelve months of such termination the Company or any of its Subsidiaries enters into a definitive agreement with respect to a Takeover Proposal or consummates a Takeover Proposal, then the Company shall, upon the earlier of entry into a definitive agreement with respect to a Takeover Proposal or consummating a Takeover Proposal, pay to Parent, by wire transfer of immediately available funds, the amount of \$400 million and all of the fees and out-of-pocket expenses (including financial advisor and attorney fees and expenses) incurred by Parent in connection with this Agreement and the transactions contemplated by this Agreement up to a maximum of \$40 million.

(d) In the event that this Agreement is terminated by the Company pursuant to Section 9.1(g), then Parent shall, on the date of such termination, pay to the Company by wire transfer of immediately available funds, all of the fees and out-of-pocket expenses (including financial advisor and attorney fees and expenses) incurred by the Company in connection with this Agreement and the transactions contemplated by this Agreement up to a maximum of \$40 million.

(e) In the event that this Agreement is terminated by the Company or Parent pursuant to Section 9.1(j), then Parent shall, on the date of such termination, pay to the Company by wire transfer of immediately available funds the amount of \$400 million and all of the fees and out-of-pocket expenses (including financial advisor and attorney fees and expenses) incurred by the Company in connection with this Agreement and the transactions contemplated by this Agreement up to a maximum of \$40 million.

(f) The Company and Parent acknowledge that the agreements contained in Sections 9.2(b) through (e) are an integral part of the transactions contemplated by this Agreement, and that, without these agreements, Parent or the Company, as applicable, would not enter into this Agreement; accordingly, if the Company or Parent, as applicable, fails to promptly pay the amount due pursuant to Section 9.2(b), (c), (d) or (e), as the case may be, and, in order to obtain such payment, Parent or the Company, as applicable, commences a suit which results in a judgment against the Company or Parent, as applicable, for any of the amounts set forth in Section 9.2(b), (c), (d) or (e), as the case may be, the Company or Parent, as applicable, shall pay to Parent or the Company, as applicable, its costs and expenses (including attorneys' fees) in connection with such suit. Interest shall accrue on any amounts due under Section 9.2(b), (c), (d) or (e) from and after 30 days of the date such amount is due at the prime rate of J.P. Morgan Chase, N.A. in effect on the date such payment was required to be made.

Section 9.3 Amendment. This Agreement may be amended by the parties hereto at any time before or after obtaining the Company Shareholder Approval or the Parent Shareholder Approval, but if (i) the Company Shareholder Approval shall have been obtained, thereafter no amendment shall be made which by law requires further approval by the Company's shareholders without obtaining such further approval or (ii) the Parent Shareholder Approval shall have been obtained, thereafter no amendment shall be made which by law requires further approval by Parent's shareholders without obtaining such further approval. This Agreement may not be amended except by an instrument in writing signed on behalf of each of the parties hereto.

Section 9.4 Extension; Waiver. At any time prior to the Effective Time, the parties hereto, by action taken or authorized by their respective Board of Directors, may, to the extent legally allowed, (i) extend the time for the performance of any of the obligations or other acts of the other parties hereto, (ii) waive any inaccuracies in the representations and warranties contained herein or in any document delivered pursuant hereto or (iii) waive compliance with any of the agreements or conditions contained herein; provided, however, that such extension or waiver shall not operate as a waiver of, or estoppel with respect to, any subsequent or other failure. Any agreement on the part of a party hereto to any such extension or waiver shall be valid only if set forth in a written instrument signed on behalf of such party. The failure of any party to this Agreement to assert any of its rights under this Agreement or otherwise shall not constitute a waiver of those rights.

**ARTICLE X
GENERAL PROVISIONS**

Section 10.1 Non-Survival of Representations and Warranties and Agreements. None of the representations and warranties in this Agreement or in any instrument delivered pursuant to this Agreement shall survive the Effective Time. This Section 10.1 shall not limit any covenant or agreement of the parties which by its terms contemplates performance after the Effective Time of the Merger.

Section 10.2 Notices. All notices and other communications hereunder shall be in writing and shall be deemed given when delivered personally, one day after being delivered to a nationally recognized overnight courier or when sent by facsimile (with a confirmatory copy sent by such overnight courier) to the parties at the following addresses (or at such other address for a party as shall be specified by like notice):

(a) if to Parent, to:

Exelon Corporation
10 S. Dearborn St.
Chicago, Illinois 60603
Attn: General Counsel
Fax No.: (312) 394-2900

with a copy to:

Sidley Austin Brown & Wood LLP
10 S. Dearborn St.
Chicago, Illinois 60603
Attn: Thomas A. Cole
Carol M. Lind
Fax No.: (312) 853-7036

(b) if to the Company, to:

Public Service Enterprise Group Incorporated
80 Park Plaza
Newark, New Jersey 07102
Attn: General Counsel
Fax No.: (973) 622-0271

with copies to:

Pillsbury Winthrop LLP
1540 Broadway
New York, New York 10036
Attn: David P. Falck
Fax No.: (212) 858-1500

Section 10.3 Counterparts. This Agreement may be executed in counterparts, all of which shall be considered one and the same agreement, and shall become effective when one or more counterparts have been signed by each of the parties and delivered to the other parties, it being understood that all parties need not sign the same counterpart.

Section 10.4 Entire Agreement; No Third-Party Beneficiaries. Except for the Confidentiality Agreement, this Agreement constitutes the entire agreement and supersedes all prior agreements and understandings, both written and oral, among the parties with respect to the subject matter hereof. This Agreement, except for the provisions of Section 7.9, is not intended to confer upon any Person other than the parties hereto any rights or remedies hereunder.

Section 10.5 Governing Law and Venue; Waiver of Jury Trial. (a) **THIS AGREEMENT SHALL BE DEEMED TO BE MADE IN AND IN ALL RESPECTS SHALL BE INTERPRETED, CONSTRUED AND GOVERNED BY AND IN ACCORDANCE WITH THE LAW OF THE STATE OF NEW YORK (EXCEPT TO THE EXTENT THE LAWS OF PENNSYLVANIA OR NEW JERSEY ARE MANDATORILY APPLICABLE TO THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT) WITHOUT REGARD TO THE CONFLICT OF LAW PRINCIPLES THEREOF.** Each of the parties irrevocably submits to the exclusive jurisdiction of the United States District Court for the Southern District of New York located in the borough of Manhattan in the City of New York, or if such court does not have jurisdiction, the Supreme Court of the State of New York, New York County, for the purposes of any suit, action or other proceeding arising out of this Agreement or any transaction contemplated hereby. Each of the parties hereto irrevocably and fully waives the defense of an inconvenient forum to the maintenance of such suit, action or proceeding. Each of the parties further agrees that service of any process, summons, notice or document to such party's respective address listed above in one of the manners set forth in Section 10.2 shall be deemed in every respect effective service of process in any such suit, action or proceeding. Nothing herein shall affect the right of any Person to serve process in any other manner permitted by law. Each of the parties hereto irrevocably and unconditionally waives any objection to the laying of venue of any action, suit or proceeding arising out of this Agreement or the transactions contemplated hereby in (a) the United States District Court for the Southern District of New York or (b) the Supreme Court of the State of New York, New York County, and hereby further irrevocably and unconditionally waives and agrees not to plead or claim in any such court that any such action, suit or proceeding brought in any such court has been brought in an inconvenient forum.

(b) **EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS AGREEMENT IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES, AND THEREFORE EACH SUCH PARTY HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT SUCH PARTY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT, OR THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT. EACH PARTY CERTIFIES AND ACKNOWLEDGES THAT (i) NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER, (ii) EACH PARTY**

UNDERSTANDS AND HAS CONSIDERED THE IMPLICATIONS OF THIS WAIVER, (iii) EACH PARTY MAKES THIS WAIVER VOLUNTARILY AND (iv) EACH PARTY HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 10.5.

Section 10.6 Assignment. Neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned by any of the parties hereto (whether by operation of law or otherwise) without the prior written consent of the other parties. Subject to the preceding sentence, this Agreement shall be binding upon, inure to the benefit of, and be enforceable by, the parties and their respective successors and assigns.

Section 10.7 Severability. If any term or other provision of this Agreement is invalid, illegal or incapable of being enforced by any rule of law or public policy, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic and legal substance of the transactions contemplated hereby are not affected in any manner materially adverse to any party. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated by this Agreement may be consummated as originally contemplated to the fullest extent possible.

Section 10.8 Enforcement of this Agreement. In addition to any remedy to which any party hereto is specifically entitled by the terms hereof, each party shall be entitled to pursue any other remedy available to it at law or in equity (including damages, specific performance or other injunctive relief) in the event that any of the provisions of this Agreement were not performed in accordance with their terms or were otherwise breached; provided that, notwithstanding the foregoing, if a termination fee or any expenses in connection with the transactions contemplated by this Agreement are payable pursuant to Section 9.2, then, subject to Section 9.2(a), such termination fee or expenses shall be the sole remedy with respect to the failure or failures to perform or other breach or breaches giving rise to such obligation to pay such termination fee or expenses.

Section 10.9 Obligations of Subsidiaries. Whenever this Agreement requires any Subsidiary of Parent or of the Company to take any action, such requirement shall be deemed to include an undertaking on the part of Parent or the Company, as the case may be, to cause such Subsidiary to take such action.

IN WITNESS WHEREOF, Parent and the Company have caused this Agreement to be signed by their respective officers thereunto duly authorized all as of the date first written above.

EXELON CORPORATION

By: _____

Name:

Title:

**PUBLIC SERVICE ENTERPRISE GROUP
INCORPORATED**

By: _____

Name:

Title:

EXELON ELECTRIC & GAS CORPORATION
AMENDED AND RESTATED BYLAWS

ARTICLE I
Offices and Fiscal Year

Section 1.01 Registered Office. The registered office of the corporation in the Commonwealth of Pennsylvania shall be at 2301 Market Street, Philadelphia, Pennsylvania 19103.

Section 1.02 Corporate Offices. The corporation shall maintain (a) in Chicago, Illinois offices serving as its corporate headquarters, (b) in southeastern Pennsylvania offices serving as the headquarters of the nuclear generation and power trading businesses of the corporation and its subsidiaries, (c) in Newark, New Jersey offices serving as the headquarters of the generation business of the corporation and its subsidiaries and (d) offices in Chicago, Illinois, southeastern Pennsylvania and Newark, New Jersey as the headquarters of ComEd, PECO Energy and PSE&G, respectively.

Section 1.03 Other Offices. The corporation may also have offices at such other places within or without the Commonwealth of Pennsylvania as the board of directors may from time to time appoint or as may be necessary, advisable or appropriate for the business of the corporation.

Section 1.04 Fiscal Year. The fiscal year of the corporation shall begin on the first day of January in each year.

ARTICLE II
Notice - Waivers - Meetings Generally

Section 2.01 Manner of Giving Notice.

(a) General Rule. Whenever written notice is required to be given to any person under the provisions of the Business Corporation Law or by the articles or these bylaws, it may be given to the person either personally or by sending a copy thereof by first class or express mail, postage prepaid, or by telegram (with messenger services specified) or courier service, charges prepaid, or by facsimile transmission, to the address (or to the facsimile transmission telephone number) of the person appearing on the books of the corporation, or as otherwise permitted by applicable law, or, in the case of directors, supplied by the director to the corporation for the purpose of notice. If the notice is sent by mail, telegraph or courier service, it shall be deemed to have been given to the person entitled thereto when deposited in the United States mail or with a telegraph office or courier service for delivery to that person or, in the case of facsimile transmission, when received. Notwithstanding the foregoing, written notice of any meeting of shareholders may be sent by any class of mail, postage prepaid, so long as such notice is sent at least 20 calendar days prior to the date of the meeting. A notice of meeting shall specify the place, day and hour of the meeting and any other information

required by any other provision of the Business Corporation Law, the articles or these bylaws.

(b) Adjourned Shareholder Meetings. When a meeting of shareholders is adjourned, it shall not be necessary to give any notice of the adjourned meeting or of the business to be transacted at an adjourned meeting, other than by announcement at the meeting at which the adjournment is taken, unless the board fixes a new record date for the adjourned meeting or the Business Corporation Law requires notice of the business to be transacted and such notice has not previously been given.

Section 2.02 Notice of Meetings of the Board of Directors.

Notice of a regular meeting of the board of directors need not be given. Notice of every special meeting of the board of directors shall be given to each director by telephone or in writing at least 24 hours (in the case of notice by telephone, facsimile or other electronic transmission) or 48 hours (in the case of notice by telegraph, courier service or express mail) or five days (in the case of notice by first class mail) before the time at which the meeting is to be held. Every such notice shall state the time and place of the meeting. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the board need be specified in a notice of the meeting.

Section 2.03 Notice of Meetings of Shareholders.

(a) General Rule. Written notice of every meeting of the shareholders shall be given by, or at the direction of, the secretary or other authorized person to each shareholder of record entitled to vote at the meeting not less than five nor more than 90 calendar days prior to the date of the meeting. If the secretary neglects or refuses to give notice of a meeting, the person or persons calling the meeting may do so. In the case of a special meeting of shareholders, the notice shall specify the general nature of the business to be transacted.

(b) Notice of Action by Shareholders on Bylaws. In the case of a meeting of shareholders that has as one of its purposes adoption, amendment or repeal of these bylaws, written notice shall be given to each shareholder that the purpose, or one of the purposes, of the meeting is to consider the adoption, amendment or repeal of the bylaws. There shall be included in, or enclosed with, the notice a copy of the proposed amendment or a summary of the changes to be effected thereby.

Section 2.04 Waiver of Notice.

(a) Written Waiver. Whenever any written notice is required to be given under the provisions of the Business Corporation Law, the articles or these bylaws, a waiver thereof in writing, signed by the person or persons entitled to the notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of the notice. Neither the business to be transacted at, nor the purpose of, a meeting need be specified in the waiver of notice of the meeting.

(b) Waiver by Attendance. Attendance of a person at any meeting shall constitute a waiver of notice of the meeting except where a person attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting was not lawfully called or convened.

Section 2.05 Modification of Proposal Contained in Notice. Whenever the language of a proposed resolution is included in a written notice of a meeting required to be given under the provisions of the Business Corporation Law or the articles or these bylaws, the meeting considering the resolution may without further notice adopt it with such clarifying or other amendments as do not enlarge its original purpose.

Section 2.06 Exception to Requirement of Notice.

(a) General Rule. Whenever any notice or communication is required to be given to any person under the provisions of the Business Corporation Law or by the articles or these bylaws or by the terms of any agreement or other instrument or as a condition precedent to taking any corporate action and communication with that person is then unlawful, the giving of the notice or communication to that person shall not be required.

(b) Shareholders Without Forwarding Addresses. Notice or other communications need not be sent to any shareholder with whom the corporation has been unable to communicate for more than 24 consecutive months because communications to the shareholder are returned unclaimed or the shareholder has otherwise failed to provide the corporation with a current address. Whenever the shareholder provides the corporation with a current address, the corporation shall recommence sending notices and other communications to the shareholder in the manner provided by these bylaws.

Section 2.07 Use of Conference Telephone and Similar Equipment. Any director may participate in any meeting of the board of directors or a committee thereof, and the board of directors may provide by resolution with respect to a specific meeting of shareholders or with respect to a class of meetings of shareholders that one or more persons may participate in a meeting of the shareholders of the corporation, by means of conference telephone, video conference or similar communications equipment by means of which all persons participating in the meeting can hear each other. Participation in a meeting pursuant to this Section shall constitute presence in person at the meeting.

ARTICLE III
Shareholders

Section 3.01 Place of Meeting. Meetings of the shareholders of the corporation may be held at such place within or without the Commonwealth of Pennsylvania as may be designated by the Board of Directors, or in the absence of a designation by the Board of Directors, by the chief executive officer and stated in the notice of a meeting.

Section 3.02 Annual Meeting. The annual meeting of the shareholders for the election of directors and the transaction of other business, if any, shall be held on such date and time as may be fixed by the board and stated in the notice of the meetings. If the board does not fix the date or time for the annual meeting, the secretary may fix the date or time for the annual meeting (or, if the board and the secretary fail to designate a date or time, at 10:30 a.m., Eastern Daylight Time on the fourth Wednesday in April of each year or, if such Wednesday is a legal holiday in the Commonwealth of Pennsylvania or in such other jurisdiction where such meeting may be held, the next succeeding business day). Failure to hold such meeting at the designated time or on the designated date or to elect some or all of the members of the board at such meeting or any adjournment thereof shall not affect otherwise valid corporate acts or work a forfeiture or dissolution of the corporation. If the annual meeting shall not have been called and held within six months after the designated time, any shareholder may call the meeting at any time thereafter.

Section 3.03 Special Meetings. Special meetings of the shareholders may be called at any time by resolution of the board of directors, which may fix the date, time and place of the meeting, and shall be called as provided in the terms of the Preferred Stock. If the board does not fix the date, time or place of the meeting, it shall be the duty of the secretary to do so. A date fixed by the secretary shall not be more than 60 calendar days after the date of the action calling the special meeting.

Section 3.04 Quorum and Adjournment.

(a) General Rule. A meeting of the shareholders of the corporation duly called shall not be organized for the transaction of business unless a quorum is present. Except as otherwise provided in the terms of the Preferred Stock, the presence of shareholders entitled to cast at least a majority of the votes that all shareholders are entitled to cast on a particular matter to be acted upon at the meeting shall constitute a quorum for the purposes of consideration and action on the matter. Shares of the corporation owned, directly or indirectly, by it shall not be counted in determining the total number of outstanding shares for quorum purposes at any given time.

(b) Withdrawal of a Quorum. The shareholders present at a duly organized meeting can continue to do business until adjournment notwithstanding the withdrawal of enough shareholders to leave less than a quorum.

(c) Adjournments Generally. Any regular or special meeting of the shareholders, including one at which directors are to be elected and one which cannot be organized because a quorum has not attended, may be adjourned, except as otherwise provided by the Business Corporation Law, for such period and to such place as the shareholders present and entitled to vote shall direct.

(d) Electing Directors at Adjourned Meeting. Those shareholders entitled to vote who attend a meeting called for the election of directors that has been previously adjourned for lack of a quorum, although less than a quorum as fixed in this Section of

these bylaws, shall nevertheless constitute a quorum for the purpose of electing directors.

(e) Other Action in Absence of Quorum. Those shareholders entitled to vote who attend a meeting of shareholders that has been previously adjourned for one or more periods aggregating at least 15 calendar days because of an absence of a quorum, although less than a quorum as fixed in this Section of these bylaws, shall nevertheless constitute a quorum for the purpose of acting upon any matter set forth in the notice of the meeting if the notice states that those shareholders who attend the adjourned meeting shall nevertheless constitute a quorum for the purpose of acting upon the matter.

Section 3.05 Action by Shareholders.

(a) General Rule. Except as otherwise provided in the Business Corporation Law or the articles or these bylaws, whenever any corporate action is to be taken by vote of the shareholders of the corporation, it shall be authorized upon receiving the affirmative vote of a majority of the votes cast by all shareholders entitled to vote thereon and, if any shareholders are entitled to vote thereon as a class, upon receiving the affirmative vote of a majority of the votes cast by the shareholders entitled to vote as a class, in each case at a duly organized meeting of shareholders. Except as otherwise provided in the terms of the Preferred Stock or when acting by unanimous consent to remove a director or directors, the shareholders of the corporation may act only at a duly organized meeting.

(b) Conduct of Business. Only such business will be conducted at an annual or special meeting of shareholders as shall have been properly brought before the meeting by or at the direction of the board of directors, or with respect to an annual meeting, by any shareholder who complies with the procedures set forth in this Section.

(1) For business to be properly brought before an annual meeting by a shareholder, the shareholder must have given to the secretary of the corporation timely written notice of the shareholder's intention to make a proposal, in the manner and form prescribed herein.

(i) To be timely, a shareholder's notice with respect to an annual meeting of shareholders must be addressed to the secretary of the corporation at the principal executive offices of the corporation and received by the secretary not less than 120 calendar days in advance of the first anniversary of the date on which the corporation first mailed its proxy materials to shareholders for the prior year's annual meeting of shareholders, and this notice requirement shall not be affected by any adjournment of said meeting; provided, however, that in the event public announcement of the date of the annual meeting is not made at least 75 calendar days prior to the date of the annual meeting, notice by the shareholder to be timely must be so received not later than the close of

business on the 10th calendar day following the day on which public announcement is first made of the date of the annual meeting.

(ii) A shareholder's notice to the secretary must set forth as to each matter the shareholder proposes to bring before the annual meeting. (A) a description in reasonable detail of the business desired to be brought before the annual meeting and the reasons for conducting such business at the annual meeting, (B) the name and address, as they appear on the corporation's books, of the shareholder proposing such business and of the beneficial owner, if any, on whose behalf the proposal is made, (C) the class and number of shares of the corporation that are owned beneficially and of record by the shareholder proposing such business and by the beneficial owner, if any, on whose behalf the proposal is made, and (D) any material interest of such shareholder proposing such business and the beneficial owner, if any, on whose behalf the proposal is made in such business.

(iii) Notwithstanding the foregoing provisions of these bylaws, a shareholder must also comply with all applicable requirements of the Securities Exchange Act of 1934 (the "Exchange Act") and the rules and regulations thereunder with respect to the matters set forth in this Section. For purposes of this Section, "public announcement" means disclosure in a press release reported by the Dow Jones News Service, Bloomberg Business News, or Reuters Economic Services or in a document publicly filed by the corporation with the Securities and Exchange Commission pursuant to Section 13, 14, or 15(d) of the Exchange Act, or publicly filed by the corporation with any national securities exchange or quotation service through which the corporation's stock is listed or traded, or furnished by the corporation to its shareholders. Notwithstanding the foregoing, no notice of the date of the annual meeting is required for the advance notice provision of this Section 3.05 (b) to be effective if the annual meeting is held on such date as specified in Section 3.02 of these bylaws. Nothing in this Section will be deemed to affect any rights of shareholders to request inclusion of proposals in the corporation's proxy statement pursuant to Rule 14a-8 under the Exchange Act.

(2) At a special meeting of shareholders, only such business may be conducted or considered as is properly brought before the meeting. To be properly brought before a special meeting, business must be (i) specified in the notice of the meeting (or any supplement thereto) given in accordance with Section 2.03 of these bylaws or (ii) otherwise brought before the meeting by the presiding officer or by or at the direction of a majority of the total number of directors that the corporation would have if there were no vacancies on the board of directors (the "Whole Board").

(3) The determination of whether any business sought to be brought before any annual or special meeting of the shareholders is properly

brought before such meeting in accordance with this Section of these bylaws will be made by the presiding officer of such meeting. If the presiding officer determines that any business is not properly brought before such meeting, he or she will so declare to the meeting and any such business will not be conducted or considered.

Section 3.06 Organization.

(a) Presiding Officer and Secretary of Meeting. At every meeting of the shareholders, the chief executive officer, or such other officer of the corporation designated by a majority of the Whole Board, will call meetings of shareholders to order or, in the case of vacancy in office and absence of action of the Whole Board, one of the following officers present in the order stated: The president, if there be one, the vice presidents in their order of rank and seniority shall act as "presiding officer" of the meeting. The term "presiding officer" means an officer who presides over a meeting of shareholders. The secretary or, in the absence of the secretary, an assistant secretary, or, in the absence of both the secretary and assistant secretaries, a person appointed by the presiding officer of the meeting, shall act as secretary of the meeting.

(b) Rules of Conduct. Unless otherwise determined by the board of directors prior to the meeting, the presiding officer of the meeting of shareholders will determine the order of business and have the authority to make such rules or regulations for the conduct of meetings of shareholders as such presiding officer deems necessary, appropriate or convenient for the proper conduct of the meeting, including, without limitation, establishing an agenda or order of business for the meeting, rules and procedures for maintaining order at the meeting and the safety of those present, limitations on participation in such meeting to shareholders of record of the corporation and their duly authorized and constituted proxies, and such other persons as the board of directors or the presiding officer shall permit, restrictions on entry to the meeting after the time fixed for the commencement thereof, limitations on the time allotted to questions or comment by participants and regulation of the opening and closing of the polls for balloting on matters which are to be voted on by ballot. Unless, and to the extent determined by the board of directors or the presiding officer of the meeting, meetings of shareholders need not be conducted in accordance with rules of parliamentary procedure.

Section 3.07 Voting Rights of Shareholders. Unless otherwise provided in the articles, every shareholder of the corporation shall be entitled to one vote for every share standing in the name of the shareholder on the books of the corporation.

Section 3.08 Voting and other Action by Proxy.

(a) General Rule.

(1) Every shareholder entitled to vote at a meeting of shareholders may authorize another person to act for the shareholder by proxy.

(2) The presence of, or vote or other action at a meeting of shareholders by a proxy of a shareholder shall constitute the presence of, or vote or action by, the shareholder.

(3) Where two or more proxies of a shareholder are present, the corporation shall, unless otherwise expressly provided in the proxy, accept as the vote of all shares represented thereby the vote cast by a majority of them and, if a majority of the proxies cannot agree whether the shares represented shall be voted, or upon the manner of voting the shares, the voting of the shares shall be divided equally among those persons.

(b) Form of Proxy. Every proxy shall be in a form approved by the secretary of the corporation or as otherwise provided by the Business Corporation Law.

(c) Revocation. A proxy, unless coupled with an interest, shall be revocable at will, notwithstanding any other agreement or any provision in the proxy to the contrary, but the revocation of a proxy shall not be effective until written notice thereof has been given to the secretary of the corporation. An unrevoked proxy shall not be valid after three years from the date of its execution unless a longer time is expressly provided therein. A proxy shall not be revoked by the death or incapacity of the maker unless, before the vote is counted or the authority is exercised, written notice of the death or incapacity is given to the secretary of the corporation.

(d) Expenses. The corporation shall pay the reasonable expenses of solicitation of votes or proxies of shareholders by or on behalf of the board of directors or its nominees for election to the board, including solicitation by professional proxy solicitors and otherwise.

Section 3.09 Voting by Fiduciaries and Pledges. Shares of the corporation standing in the name of a trustee or other fiduciary and shares held by an assignee for the benefit of creditors or by a receiver may be voted by the trustee, fiduciary, assignee or receiver. A shareholder whose shares are pledged shall be entitled to vote the shares until the shares have been transferred into the name of the pledgee, or a nominee of the pledgee, but nothing in this Section shall affect the validity of a proxy given to a pledgee or nominee.

Section 3.10 Voting by Joint Holders of Shares.

(a) General Rule. Where shares of the corporation are held jointly or as tenants in common by two or more persons, as fiduciaries or otherwise:

(1) if only one or more of such persons is present in person or by proxy, all of the shares standing in the names of such persons shall be deemed to be represented for the purpose of determining a quorum and the corporation shall accept as the vote of all the shares the vote cast by a joint owner or a majority of them; and

(2) if the persons are equally divided upon whether the shares held by them shall be voted or upon the manner of voting the shares, the voting of the shares shall be divided equally among the persons without prejudice to the rights of the joint owners or the beneficial owners thereof among themselves.

(b) Exception. If there has been filed with the secretary of the corporation a copy, certified by an attorney-at-law to be correct, of the relevant portions of the agreement under which the shares are held or the instrument by which the trust or estate was created or the order of court appointing them or of an order of court directing the voting of the shares, the persons specified as having such voting power in the latest document so filed, and only those persons, shall be entitled to vote the shares but only in accordance therewith.

Section 3.11 Voting by Corporations.

(a) Voting by Corporate Shareholders. Any domestic or foreign corporation for profit or not-for-profit that is a shareholder of this corporation may vote at meetings of shareholders of this corporation by any of its officers or agents, or by proxy appointed by any officer or agent, unless some other person, by resolution of the board of directors of the other corporation or a provision of its articles or bylaws, a copy of which resolution or provision certified to be correct by one of its officers has been filed with the secretary of this corporation, is appointed its general or special proxy in which case that person shall be entitled to vote the shares.

(b) Controlled Shares. Shares of this corporation owned, directly or indirectly, by it and controlled, directly or indirectly, by the board of directors of this corporation, as such, shall not be voted at any meeting and shall not be counted in determining the total number of outstanding shares for voting purposes at any given time.

Section 3.12 Determination of Shareholders of Record.

(a) Fixing Record Date. The board of directors may fix a time prior to the date of any meeting of shareholders as a record date for the determination of the shareholders entitled to notice of, or to vote at, the meeting, which time, except as otherwise provided in the articles or in the case of an adjourned meeting, shall be not more than 90 calendar days prior to the date of the meeting of shareholders. Only shareholders of record on the date fixed shall be so entitled notwithstanding any transfer of shares on the books of the corporation after any record date fixed as provided in this Subsection. The board of directors may similarly fix a record date for the determination of shareholders of record for any other purpose, except that the record date fixed to determine the holders of Preferred Stock entitled to receive dividends thereon shall not precede the respective dividend payment date by more than 40 calendar days. When a determination of shareholders of record has been made as provided in this Section for purposes of a meeting, the determination shall apply to any adjournment thereof unless the board fixes a new record date for the adjourned meeting.

(b) Determination When Record Date Is Not Fixed. If a record date is not fixed:

(1) The record date for determining shareholders entitled to notice of or to vote at a meeting of shareholders shall be at the close of business on the day next preceding the day on which notice is given.

(2) The record date for determining shareholders for any other purpose shall be at the close of business on the day on which the board of directors adopts the resolution relating thereto.

(c) Certification by Nominee. The board of directors may adopt a procedure whereby a shareholder of the corporation may certify in writing to the corporation that all or a portion of the shares registered in the name of the shareholder are held for the account of a specified person or persons. Upon receipt by the corporation of a certification complying with the procedure, the persons specified in the certification shall be deemed, for the purposes set forth in the certification, to be the holders of record of the number of shares specified in place of the shareholder making the certification.

Section 3.13 Voting Lists.

(a) General Rule. The officer or agent having charge of the transfer books for shares of the corporation shall make a complete list of the shareholders entitled to vote at any meeting of shareholders, arranged in alphabetical order, with the address of and the number of shares held by each. The list shall be produced and kept open at the time and place of the meeting and shall be subject to the inspection of any shareholder during the whole time of the meeting for the purposes thereof except that, if the corporation has 5,000 or more shareholders, in lieu of the making of the list the corporation may make the information therein available at the meeting by any other means.

(b) Effect of List. Failure to comply with the requirements of this Section shall not affect the validity of any action taken at a meeting prior to a demand at the meeting by any shareholder entitled to vote thereat to examine the list. The original share register or transfer book, or a duplicate thereof kept in the Commonwealth of Pennsylvania, shall be prima facie evidence as to who are the shareholders entitled to examine the list or share register or transfer book or to vote at any meeting of shareholders.

Section 3.14 Judges of Election.

(a) Appointment. In advance of any meeting of shareholders of the corporation, the board of directors may appoint judges of election, who need not be shareholders, to act at the meeting or any adjournment thereof. If judges of election are not so appointed, the presiding officer of the meeting may appoint judges of election at the meeting. The number of judges shall be one or three. A person who is a candidate for an office to be filled at the meeting shall not act as a judge.

(b) Vacancies. In case any person appointed as a judge fails to appear or fails or refuses to act, the vacancy may be filled by appointment made by the board of directors in advance of the convening of the meeting or at the meeting by the presiding officer thereof.

(c) Duties. The judges of election shall determine the number of shares outstanding and the voting power of each, the shares represented at the meeting, the existence of a quorum, and the authenticity, validity and effect of proxies, receive votes or ballots, hear and determine all challenges and questions in any way arising in connection with the right to vote, count and tabulate all votes, determine the result and do such acts as may be proper to conduct the election or vote. The judges of election shall perform their duties impartially, in good faith, to the best of their ability and as expeditiously as is practical. If there are three judges of election, the decision, act or certificate of a majority shall be effective in all respects as the decision, act or certificate of all.

(d) Report. On request of the presiding officer of the meeting or of any shareholder, the judges shall make a report in writing of any challenge or question or matter determined by them, and execute a certificate of any fact found by them. Any report or certificate made by them shall be prima facie evidence of the facts stated therein.

Section 3.15 Minors as Security Holders. The corporation may treat a minor who holds shares or obligations of the corporation as having capacity to receive and to empower others to receive dividends, interest, principal and other payments or distributions, to vote or express consent or dissent and to make elections and exercise rights relating to such shares or obligations unless, in the case of payments or distributions on shares, the corporate officer responsible for maintaining the list of shareholders or the transfer agent of the corporation or, in the case of payments or distributions on obligations, the treasurer or paying officer or agent has received written notice that the holder is a minor.

ARTICLE IV Board of Directors

Section 4.01 Powers.

(a) General Rule. Unless otherwise provided by statute, all powers vested by law in the corporation shall be exercised by or under the authority of, and the business and affairs of the corporation shall be managed under the direction of, the board of directors.

(b) Personal Liability of Directors.

(1) A director shall not be personally liable, as such, for monetary damages (including, without limitation, any judgment, amount paid in settlement, penalty, punitive damages or expenses of any nature, including, without

limitation, attorneys' fees and disbursements) for any action taken, or any failure to take any action before, on or after the date of these bylaws, unless:

(i) the director has breached or failed to perform the duties of his or her office under Subchapter B of Chapter 17 of the Business Corporation Law; and

(ii) the breach or failure to perform constitutes self-dealing, willful misconduct or recklessness.

(2) The provisions of paragraph (1) shall not apply to the responsibility or liability of a director pursuant to any criminal statute, or the liability of a director for the payment of taxes pursuant to local, State or Federal law.

(3) No amendment or repeal of this Section 4.01 shall have any effect on the liability or alleged liability of any director of the corporation for or with respect to any such act on the part of such director occurring prior to the effective date of such amendment or repeal.

(c) Directors. A director shall stand in a fiduciary relation to the corporation and shall perform his duties as a director, including his duties as a member of any committee of the board upon which he may serve, in good faith, in a manner he reasonably believes to be in the best interests of the corporation and with such care, including reasonable inquiry, skill and diligence, as a person of ordinary prudence would use under similar circumstances. In performing his duties, a director shall be entitled to rely in good faith on information, opinions, reports or statements, including financial statements and other financial data, in each case prepared or presented by any of the following:

(1) One or more officers or employees of the corporation whom the director reasonably believes to be reliable and competent in the matters presented.

(2) Counsel, public accountants or other persons as to matters which the director reasonably believes to be within the professional or expert competence of such person.

(3) A committee of the board upon which he does not serve, duly designated in accordance with law, as to matters within its designated authority, which committee the director reasonably believes to merit confidence.

Section 4.02. Qualifications and Selection of Directors.

(a) Qualifications. Each director of the corporation shall be a natural person of full age who need not be a resident of the Commonwealth of Pennsylvania or a shareholder of the corporation, except as may be required under corporate governance

principles approved by the board of directors. For purposes of Section 4.06, a director's failure to hold the number of shares as and when required under corporate governance principles approved by the board of directors shall constitute cause for such director's removal.

(b) Notice of Certain Nominations Required. Nominations for election of directors may be made by any shareholder entitled to vote for the election of directors if timely written notice in proper form (the "Notice") of the shareholder's intent to nominate a director at the meeting is given by the shareholder and received by the secretary of the corporation. To be timely, a shareholder's Notice must be delivered to or mailed and received at the principal executive offices of the corporation not less than 120 calendar days before the first anniversary of the date on which the corporation first mailed its proxy materials for the prior year's annual meeting of shareholders; provided, however, that in the event that public announcement of the date of the annual meeting is not made at least 75 calendar days prior to the date of the annual meeting, Notice by the shareholder to be timely must be so received not later than the close of business on the 10th calendar day following the day on which public announcement is first made of the date of the annual meeting. The requirements of this Subsection shall not apply to a nomination for directors made to the shareholders by the board of directors or a committee thereof.

(c) Contents of Notice. To be in proper written form, the Notice shall be in writing and shall contain or be accompanied by:

- (1) the name and residence address of the nominating shareholder and of the beneficial owner, if any, on whose behalf the nomination is made;
- (2) a representation that the shareholder giving the Notice is a holder of record of voting stock of the corporation entitled to vote at such annual meeting and intends to appear in person or by proxy at the meeting to nominate the person or persons specified in the Notice;
- (3) the class and number of shares of voting stock of the corporation owned *beneficially* and of record by the shareholder giving the Notice and by the beneficial owner, if any, on whose behalf the nomination is made;
- (4) such information regarding each nominee as would have been required to be included in a proxy statement filed pursuant to Regulation 14A of the rules and regulations established by the Securities and Exchange Commission under the Exchange Act (or pursuant to any successor act or regulation) had proxies been solicited with respect to such nominee by the management or board of directors of the corporation;
- (5) a description of all arrangements or understandings between or among any of (A) the shareholder giving the Notice, (B) the beneficial owner on whose behalf the Notice is given, (C) each nominee, and (D) any other person or

persons (naming such person or persons) pursuant to which the nomination or nominations are to be made by the shareholder giving the Notice;

(6) a description of all arrangements or understandings among the shareholder and each nominee and any other person or persons (naming such person or persons) pursuant to which the nomination or nominations are to be made by the shareholder;

(7) a representation that each nominee meets the objective criteria for "independence" under applicable New York Stock Exchange listing standards and any additional objective criteria for "independence" under corporate governance principles approved by the board of directors; and

(8) the signed consent of each nominee to serve as a director of the corporation if so elected.

(d) Determination of Compliance. The presiding officer of the meeting may, if the facts warrant, determine and declare to the meeting that any nomination made at the meeting was not made in accordance with the procedures of this Section and, in such event, the presiding officer will so declare to the meeting, and the defective nomination shall be disregarded. Any such decision by the presiding officer shall be conclusive and binding upon all shareholders of the corporation for any purpose. Notwithstanding the foregoing provisions of this Section, a shareholder must also comply with all applicable requirements of the Exchange Act, and the rules and regulations thereunder, with respect to the matters set forth in this Section or otherwise relating to the nomination of directors by shareholders.

(e) Election of Directors. Except as otherwise provided in these bylaws, directors of the corporation shall be elected by the shareholders only at an annual meeting of shareholders, unless such election of directors is required by the terms of any series of Preferred Stock. In elections for directors, voting need not be by ballot, unless required by vote of the shareholders before the voting for election of directors begins. The candidates receiving the highest number of votes from each class or group of classes, if any, entitled to elect directors separately up to the number of directors to be elected by the class or group of classes shall be elected. If at any meeting of shareholders, directors of more than one class are to be elected, each class of directors shall be elected in a separate election.

Section 4.03 Number and Term of Office.

(a) Number. The board of directors shall consist of such number of directors as may be determined from time to time by resolution of a majority of the Whole Board. Notwithstanding the preceding, during the period beginning at the Effective Time, as defined in the Agreement and Plan of Merger dated as of December 20, 2004 between the corporation and Public Service Enterprise Group Incorporated (the "Merger Agreement") and ending on the date that is three (3) years thereafter (the "Transition Period"), the board of directors shall consist of eighteen (18) directors or such other

number as shall be unanimously approved by the board of directors. At the Effective Time, twelve (12) directors shall be persons who are directors of the corporation immediately prior to the Effective Time (the "Continuing Exelon Directors") and six (6) directors shall be directors of the corporation appointed pursuant to Section 7.14(a) of the Merger Agreement and in accordance with the fiduciary duties of the directors in the case of approval of any individual and the rules of the New York Stock Exchange, the Exchange Act and the rules and regulations thereunder and any other applicable laws (the "Initial PSEG Directors"). The number of Initial PSEG Directors in each class shall be equal and the number of Continuing Exelon Directors in each class shall be equal.

(b) Term of Office. Each director shall hold office until the expiration of the term for which he or she was selected and until a successor has been selected and qualified or until his or her earlier death, resignation or removal. A decrease in the number of directors shall not have the effect of shortening the term of any incumbent director. With respect to the first and second elections of directors by shareholders during the Transition Period, the board of directors or the applicable committee thereof shall nominate for election (subject to the fiduciary duties of the directors in the case of approval of any individual and the rules of the New York Stock Exchange and the Exchange Act and the rules and regulations thereunder) (a) the Initial Sue Directors (or any Sue Director having replaced either such Initial Sue Director pursuant to Section 4.05(b) of these by-laws) currently serving in the class standing for election and (b) the Continuing Gin Directors (or any Gin Director having replaced any such Continuing Gin Director pursuant to Section 4.05(b) of these by-laws) currently serving in the class standing for election. If any such Sue Director or Gin Director declines or is unable to stand for re-election, the board of directors or the applicable committee thereof shall nominate for election (subject to the fiduciary duties of the directors in the case of approval of any individual and the rules of the New York Stock Exchange and the Exchange Act and the rules and regulations thereunder) a person nominated by the board of directors or the applicable committee thereof, and approved by a majority of the remaining Sue Directors or Gin Directors remaining on the board of directors, as applicable.

(c) Resignation. Any director may resign at any time upon written notice to the corporation. The resignation shall be effective upon receipt thereof by the corporation or at such subsequent time as shall be specified in the notice of resignation.

(d) Classified Board of Directors. The directors shall be classified with respect to the time for which they shall severally hold office as follows:

(1) The term of office of at least one class shall expire in each year.

(2) Except as otherwise provided in the terms of the Preferred Stock or in the articles, the members of each class shall be elected for a period of three years provided that the term of any director elected or appointed to fill a vacancy in any class shall expire at the end of the three-year term applicable to that class.

(3) The number of directors constituting each class shall be approximately equal in size.

Section 4.04 Chairman of the Board; Vice Chairman of the Board.

(a) Office of the Chairman; Vice Chairman of the Board. There shall be a chairman of the board of directors, which chairman may or may not be an officer of the corporation. Except as otherwise provided by these bylaws, the chairman of the board shall preside at all meetings of the board of directors and shall, in consultation with the chief executive officer, establish the agenda for meetings of the board of directors and each meeting of the board of directors will be conducted in accordance with such agenda unless otherwise determined by the board of directors. The chairman of the board shall perform such other duties as may from time to time be requested by the chief executive officer. In addition, the board of directors may designate by resolution a vice chairman of the board with such duties as may from time to time be requested by the board of directors.

(b) Transition Period. Provided that Mr. James Ferland is a PSEG Director (as defined in Section 4.05(b)) and, if applicable, is elected as a director of the corporation by the shareholders of the corporation, during the period from the Effective Time through March 31, 2007, Mr. James Ferland shall be the chairman of the board and shall not be an officer of the corporation. As of April 1, 2007, Mr. Ferland shall no longer be the chairman of the board and he shall resign from the board of directors. Upon the earlier of April 1, 2007 and the date that Mr. Ferland is no longer the chairman of the board, the chief executive officer shall be the chairman of the board of directors and shall hold such position for the duration of the Transition Period.

Section 4.05 Vacancies.

(a) General Rule. Except as otherwise provided in the terms of the Preferred Stock or in these bylaws, vacancies in the board of directors, including vacancies resulting from an increase in the number of directors, may be filled by a majority vote of the remaining members of the board though less than a quorum, or by a sole remaining director, and each person so selected shall be a director to serve for the balance of the unexpired term of the class for which such director has been chosen, and until a successor has been selected and qualified or until his or her earlier death, resignation or removal.

(b) Transition Period. During the Transition Period, the board of directors (subject to the fiduciary duties of the directors in the case of approval of any individual and the rules of the New York Stock Exchange, the Exchange Act and the rules and regulations thereunder and any other applicable laws) shall take all action necessary to ensure that any vacancy of a position on the board of directors to be filled by the board (i) that was held by an Initial PSEG Director or any director appointed pursuant to this sentence (a "PSEG Director"), is filled promptly by a person nominated by the board of directors or the applicable committee thereof, and approved by a majority of the PSEG Directors remaining on the board of directors and (ii) that was held by a Continuing

Exelon Director or any director appointed or nominated pursuant to this sentence (a "Exelon Director"), is filled promptly by a person nominated by the board of directors or the applicable committee thereof, and approved by a majority of the Exelon Directors remaining on the board of directors.

(c) Action by Resigned Directors. Subject to Section 4.05(b), when one or more directors resign from the board effective at a future date, the directors then in office, including those who have so resigned, shall have power by the applicable vote to fill the vacancies, the vote thereon to take effect when the resignations become effective.

Section 4.06 Removal of Directors.

(a) Removal by the Shareholders. The entire board of directors, or any class of the board, or any individual director may be removed from office by vote of the shareholders entitled to vote thereon only for cause. In case the board or a class of the board or any one or more directors are so removed, new directors may be elected at the same meeting. The repeal of a provision of the articles or bylaws prohibiting, or the addition of a provision to the articles or bylaws permitting, the removal by the shareholders of the board, a class of the board or a director without assigning any cause shall not apply to any incumbent director during the balance of the term for which the director was selected.

(b) Removal by the Board. The board of directors may declare vacant the office of a director who has been judicially declared of unsound mind or who has been convicted of an offense punishable by imprisonment for a term of more than one year or if, within 60 days after notice of his or her selection, the director does not accept the office either in writing or by attending a meeting of the board of directors.

Section 4.07 Place of Meetings. Meetings of the board of directors may be held at such place within or without the Commonwealth of Pennsylvania as the board of directors may from time to time appoint or as may be designated in the notice of the meeting.

Section 4.08 Organization of Meetings and Executive Sessions of the Board of Directors. At every meeting of the board of directors, the chairman of the board, if there be one, or, in the case of a vacancy in the office or absence of the chairman of the board, the chairman of the corporate governance committee, or, in the case of a vacancy in the office or absence of both the chairman of the board and the chairman of the corporate governance committee, one of the following officers present in the order stated: the chief executive officer, the president, the vice presidents in their order of rank and seniority, or a person chosen by a majority of the directors present, shall act as chairman of the meeting. The secretary or, in the absence of the secretary, an assistant secretary, or, in the absence of the secretary and the assistant secretaries, any person appointed by the chairman of the meeting, shall act as secretary of the meeting. Meetings of the independent directors held in executive session shall be presided over by a lead director appointed by the corporate governance committee after

giving due consideration to all of the members of the board regardless of whether they are PSEG Directors or Exelon Directors.

Section 4.09 Regular Meetings. Regular meetings of the board of directors shall be held at such time and place as shall be designated from time to time by resolution of the board of directors.

Section 4.10 Special Meetings. Special meetings of the board of directors shall be held whenever called by the chief executive officer, if there be one, or by two or more of the directors.

Section 4.11 Quorum of and Action by Directors.

(a) General Rule. A majority of the directors in office of the corporation shall be necessary to constitute a quorum for the transaction of business and except as otherwise provided in these bylaws the acts of a majority of the directors present and voting at a meeting at which a quorum is present shall be the acts of the board of directors.

(b) Action by Written Consent. Any action required or permitted to be taken at a meeting of the directors may be taken without a meeting if, prior or subsequent to the action, a consent or consents thereto by all of the directors in office is filed with the secretary of the corporation.

(c) Notation of Dissent. A director who is present at a meeting of the board of directors, or of a committee of the board, at which action on any corporate matter is taken shall be presumed to have assented to the action taken unless his or her dissent is entered in the minutes of the meeting or unless the director files a written dissent to the action with the secretary of the meeting before the adjournment thereof or transmits the dissent in writing to the secretary of the corporation immediately after the adjournment of the meeting. The right to dissent shall not apply to a director who voted in favor of the action. Nothing in this Section shall bar a director from asserting that minutes of the meeting incorrectly omitted his or her dissent if, promptly upon receipt of a copy of such minutes, the director notifies the secretary, in writing, of the asserted omission or inaccuracy.

Section 4.12 Committees of the Board.

(a) Establishment and Powers. The board of directors may, by resolution adopted by a majority of the directors in office, establish one or more committees to consist of one or more directors of the corporation. Any committee, to the extent provided in the resolution of the board of directors, shall have and may exercise all of the powers and authority of the board of directors except that a committee shall not have any power or authority as to the following:

(1) The submission to shareholders of any action requiring approval of shareholders under the Business Corporation Law.

- (2) The creation or filling of vacancies in the board of directors.
- (3) The adoption, amendment or repeal of these bylaws.
- (4) The amendment or repeal of any resolution of the board that by its terms is amendable or repealable only by the board.
- (5) Action on matters committed by a resolution of the board of directors to another committee of the board.

(b) Alternate Committee Members. The board may designate one or more directors as alternate members of any committee who may replace any absent or disqualified member at any meeting of the committee or for the purposes of any written action by the committee. In the absence or disqualification of a member and alternate member or members of a committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not constituting a quorum, may unanimously appoint another director to act at the meeting in the place of the absent or disqualified member.

(c) Transition Period. During the Transition Period, a PSEG Director shall be the chairman of at least one committee of the board of directors as determined by the governance committee of the board of directors.

(d) Term. Each committee of the board shall serve at the pleasure of the board.

(e) Committee Procedures. The term "board of directors" or "board," when used in any provision of these bylaws relating to the organization or procedures of or the manner of taking action by the board of directors, shall be construed to include and refer to any executive or other committee of the board.

Section 4.13 Compensation. The board of directors shall have the authority to fix the compensation of directors for their services as directors and a director may be a salaried officer of the corporation.

ARTICLE V Officers

Section 5.01 Officers Generally.

(a) Number, Qualifications and Designation. The officers of the corporation shall be a president, one or more vice presidents (which term shall include vice presidents, executive vice presidents and senior vice presidents), a secretary, a treasurer, and a chief executive officer, as the board of directors may designate by resolution, and such other officers as may be elected in accordance with the provisions of Section 5.03. Officers may but need not be directors or shareholders of the

corporation. The president, secretary and treasurer shall be natural persons of full age. Any number of offices may be held by the same person.

(b) Bonding. The corporation may secure the fidelity of any or all of its officers by bond or otherwise.

Section 5.02 Election, Term of Office and Resignations.

(a) Election and Term of Office. The officers of the corporation, except those elected by delegated authority pursuant to Section 5.03, shall be elected by the board of directors, and each such officer shall hold office at the discretion of the board until his or her death, resignation or removal with or without cause.

(b) Resignations. Any officer may resign at any time upon written notice to the corporation. The resignation shall be effective upon receipt thereof by the corporation or at such subsequent time as may be specified in the notice of resignation.

Section 5.03 Subordinate Officers, Committees and Agents. The board of directors may from time to time elect such other officers and appoint such committees, employees or other agents as the business of the corporation may require, including without limitation, one or more vice presidents, one or more assistant secretaries, and one or more assistant treasurers, each of whom shall hold office for such period, have such authority, and perform such duties as are provided in these bylaws, or as the board of directors may from time to time determine. The board of directors may delegate to any officer or committee the power to elect subordinate officers and to retain or appoint employees or other agents, or committees thereof, and to prescribe the authority and duties of such subordinate officers, committees, employees or other agents.

Section 5.04 Removal of Officers and Agents. Any officer or agent of the corporation may be removed by the board of directors with or without cause. The removal shall be without prejudice to the contract rights, if any, of any person so removed. Election or appointment of an officer or agent shall not of itself create contract rights.

Section 5.05 Vacancies. A vacancy in any office because of death, resignation, removal, disqualification, or any other cause, may be filled by the board of directors or by the officer or committee to which the power to fill such office has been delegated pursuant to Section 5.03, as the case may be, and if the office is one for which these bylaws prescribe a term, shall be filled for the unexpired portion of the term.

Section 5.06 Authority.

(a) General Rule. All officers of the corporation, as between themselves and the corporation, shall have such authority and perform such duties in the management of the corporation as may be provided by or pursuant to resolutions or orders of the board of directors or, in the absence of controlling provisions in the resolutions or orders of the board of directors, as may be determined by or pursuant to these bylaws.

(b) Chief Executive Officer. The board of directors may designate from time to time by resolution a chief executive officer. Such chief executive officer may be, but need not be, the president or chairman of the board. For at least the pendency of the Transition Period, Mr. John Rowe shall be the President and Chief Executive Officer of the Corporation.

Section 5.07 The Chief Executive Officer. The chief executive officer, if there be one, may have general supervision over the business and operations of the corporation, subject however, to the control of the board of directors. Such chief executive officer may sign, execute, and acknowledge, in the name of the corporation, deeds, mortgages, bonds, contracts or other instruments, authorized by the board of directors, except in cases where the signing and execution thereof shall be expressly delegated by the board of directors, or by these bylaws, to some other officer or agent of the corporation; and, in general, may perform all duties incident to the office of chief executive officer and such other duties as from time to time may be assigned by the board of directors.

Section 5.08 The President. The president may have general supervision over the business and operations of the corporation, subject however, to the control of the board of directors and the chief executive officer, as applicable. The president may sign, execute, and acknowledge, in the name of the corporation, deeds, mortgages, bonds, contracts or other instruments, authorized by the board of directors, except in cases where the signing and execution thereof shall be expressly delegated by the board of directors, or by these bylaws, to some other officer or agent of the corporation; and, in general, may perform all duties incident to the office of president and such other duties as from time to time may be assigned by the board of directors and the chief executive officer, as applicable.

Section 5.09 The Vice Presidents. The vice presidents (which term shall include vice presidents, executive vice presidents and senior vice presidents) shall perform such duties as may from time to time be assigned to them by the board of directors or by the chief executive officer.

Section 5.10 The Secretary. The secretary or an assistant secretary shall attend all meetings of the shareholders and of the board of directors and shall record all the votes of the shareholders and of the directors and the minutes of the meetings of the shareholders and of the board of directors and of committees of the board in a book or books to be kept for that purpose; shall see that notices are given and records and reports properly kept and filed by the corporation as required by law; shall be the custodian of the seal of the corporation and see that it is affixed to all documents to be executed on behalf of the corporation under its seal; and, in general, shall perform all duties incident to the office of secretary, and such other duties as may from time to time be assigned by the board of directors or by the chief executive officer.

Section 5.11 The Treasurer. The treasurer or an assistant treasurer shall have or provide for the custody of the funds or other property of the corporation; shall collect and receive or provide for the collection and receipt of moneys earned by or in any

manner due to or received by the corporation; shall deposit all funds in his, or its custody as treasurer in such banks or other places of deposit as the board of directors may from time to time designate; shall, whenever so required by the board of directors, render an account showing all transactions as treasurer, and the financial condition of the corporation; and, in general, shall discharge such other duties as may from time to time be assigned by the board of directors or by the chief executive officer.

Section 5.12 Salaries. The salaries of the officers elected by the board of directors shall be fixed from time to time by the board of directors or by such officer or committee as may be designated by resolution of the board. The salaries or other compensation of any other officers, employees and other agents shall be fixed from time to time by the officer or committee to which the power to elect such officers or to retain or appoint such employees or other agents has been delegated pursuant to Section 5.03. No officer shall be prevented from receiving such salary or other compensation by reason of the fact that the officer is also a director of the corporation.

ARTICLE VI

Certificates of Stock, Transfer, Etc.

Section 6.01 Share Certificates.

(a) Form of Certificates. Certificates for shares of the corporation shall be in such form as approved by the board of directors, and shall state that the corporation is incorporated under the laws of the Commonwealth of Pennsylvania, the name of the person to whom issued, and the number and class of shares and the designation of the series (if any) that the certificate represents. Certificates for shares of the corporation shall set forth upon the face or back of the certificate (or shall state on the face or back of the certificate that the corporation will furnish to any shareholder upon request and without charge), a full or summary statement of the designations, voting rights, preferences, limitations and special rights of the shares of each class or series authorized to be issued so far as they have been fixed and determined and the authority of the board of directors to fix and determine the designations, voting rights, preferences, limitations and special rights of the classes and series of shares of the corporation.

(b) Share Register. The share register or transfer books and blank share certificates shall be kept by the treasurer or by any transfer agent or registrar designated by the board of directors for that purpose.

Section 6.02 Issuance. The share certificates of the corporation shall be numbered and registered in the share register or transfer books of the corporation as they are issued. They shall be executed in such manner as the board of directors shall determine.

Section 6.03 Transfer. Transfers of shares shall be made on the share register or transfer books of the corporation upon surrender of the certificate therefor, endorsed by the person named in the certificate or by an attorney lawfully constituted in writing,

or, in the case of shares not represented by certificates, upon presentation of a duly executed instrument of assignment in form and substance satisfactory to the treasurer or any transfer agent or registrar for the corporation. No transfer shall be made inconsistent with the provisions of the Uniform Commercial Code, 13 Pa.C.S. §§ 8101 et seq., and its amendments and supplements.

Section 6.04 Record Holder of Shares. The corporation shall be entitled to treat the person in whose name any share or shares of the corporation stand on the books of the corporation as the absolute owner thereof, and shall not be bound to recognize any equitable or other claim to, or interest in, such share or shares on the part of any other person.

Section 6.05 Lost, Destroyed or Mutilated Certificates. The holder of any shares of the corporation shall immediately notify the corporation of any loss, destruction or mutilation of the certificate therefor, and the officers of the corporation may, in their discretion, cause a new certificate or certificates to be issued to such holder, in case of mutilation of the certificate, upon the surrender of the mutilated certificate or, in case of loss or destruction of the certificate, upon satisfactory proof of such loss or destruction and, if such officers shall so determine, the deposit of a bond in such form and in such sum, and with such surety or sureties, as any of them may direct.

ARTICLE VII

Indemnification of Directors, Officers and Other Authorized Representatives

Section 7.01 Right to Indemnification. Each person who was or is made a party or is threatened to be made a party to or is otherwise involved in any claim, action, suit or proceeding, whether civil, criminal, administrative or investigative (hereinafter a "proceeding"), by reason of the fact that he or she is or was a director or an officer of the corporation or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation or of a partnership, joint venture, trust or other enterprise, including service with respect to an employee benefit plan (hereinafter an "indemnitee"), whether the basis of such proceeding is alleged action in an official capacity as a director, officer, employee or agent or in any other capacity while serving as a director, officer, employee or agent, shall be indemnified and held harmless by the corporation to the fullest extent permitted or required by the Business Corporation Law, as the same exists or may hereafter be amended (but, in the case of any such amendment, only to the extent that such amendment permits the corporation to provide broader indemnification rights than such law permitted the corporation to provide prior to such amendment), against all expense, liability and loss (including attorneys' fees, judgments, fines, ERISA excise taxes or penalties and amounts paid in settlement) reasonably incurred or suffered by such indemnitee in connection therewith; provided, however, that, except as provided in Section 7.03 of this Article VII with respect to proceedings to enforce rights to indemnification, the corporation shall indemnify any such indemnitee in connection with a proceeding (or part thereof) initiated by such indemnitee only if such proceeding (or part thereof) was authorized by the board of directors of the corporation.

Section 7.02 Right to Advancement of Expenses. The right to indemnification conferred in Section 7.01 of this Article VII shall include the right to be paid by the corporation the expenses (including, without limitation, attorneys' fees and expenses) incurred in defending any such proceeding in advance of its final disposition (hereinafter an "advancement of expenses"); provided, however, that, if the Business Corporation Law so requires, an advancement of expenses incurred by an indemnitee in his or her capacity as a director or officer (and not in any other capacity in which service was or is rendered by such indemnitee, including, without limitation, service to an employee benefit plan) shall be made only upon delivery to the corporation of an undertaking (hereinafter an "undertaking"), by or on behalf of such indemnitee, to repay all amounts so advanced if it shall ultimately be determined by final judicial decision from which there is no further right to appeal (hereinafter a "final adjudication") that such indemnitee is not entitled to be indemnified for such expenses under this Section 7.02 or otherwise. The rights to indemnification and to the advancement of expenses conferred in Sections 7.01 and 7.02 of this Article VII shall be contract rights and such rights shall continue as to an indemnitee who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the indemnitee's heirs, executors and administrators. Any repeal, amendment or modification hereof shall be prospective only and shall not affect any rights or obligations then existing. Each person who shall act as an indemnitee of the corporation shall be deemed to be doing so in reliance upon the rights provided by this Article.

Section 7.03 Right of Indemnitee to Bring Suit. If a claim under Section 7.01 or 7.02 of this Article VII is not paid in full by the corporation within 60 calendar days after a written claim has been received by the corporation, except in the case of a claim for an advancement of expenses, in which case the applicable period shall be 20 calendar days, the indemnitee may at any time thereafter bring suit against the corporation to recover the unpaid amount of the claim. If successful in whole or in part in any such suit, or in a suit brought by the corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the indemnitee shall be entitled to be paid also the expense of prosecuting or defending such suit. In (i) any suit brought by the indemnitee to enforce a right to indemnification hereunder (but not in a suit brought by the indemnitee to enforce a right to an advancement of expenses) it shall be a defense that, and (ii) any suit brought by the corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the corporation shall be entitled to recover such expenses upon a final adjudication that the indemnitee has not met any applicable standard for indemnification set forth in the Business Corporation Law. Neither the failure of the corporation (including its board of directors, independent legal counsel or shareholders) to have made a determination prior to the commencement of such suit that indemnification of the indemnitee is proper in the circumstances because the indemnitee has met the applicable standard of conduct set forth in the Business Corporation Law, nor an actual determination by the corporation (including its board of directors, independent legal counsel or shareholders) that the indemnitee has not met such applicable standard of conduct, shall create a presumption that the indemnitee has not met the applicable standard of conduct or, in the case of such a suit brought by the indemnitee, be a defense to such suit. In any suit brought by the indemnitee to enforce a right to indemnification or to an advancement of expenses hereunder, or brought by

the corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the burden of proving that the indemnitee is not entitled to be indemnified, or to such advancement of expenses, under this Article VII or otherwise shall be on the corporation.

Section 7.04 Non-Exclusivity of Rights. The rights to indemnification and to the advancement of expenses conferred in this Article VII shall not be exclusive of any other right which any person may have or hereafter acquire under any statute, the articles, these bylaws, agreement, vote of shareholders or disinterested directors or otherwise.

Section 7.05 Insurance. The corporation may maintain insurance, at its expense, to protect itself and any director, officer, employee or agent of the corporation or another corporation, partnership, joint venture, trust or other enterprise against any expense, liability or loss, whether or not the corporation would have the power to indemnify such person against such expense, liability or loss under the Business Corporation Law.

Section 7.06 Indemnification of Employees and Agents of the Corporation. The corporation may, to the extent authorized from time to time by the board of directors, grant rights to indemnification and to the advancement of expenses to any employee or agent of the corporation to the fullest extent of the provisions of this Article VII with respect to the indemnification and advancement of expenses of directors and officers of the corporation.

Section 7.07 Interpretation. The provisions of this Article are intended to constitute bylaws authorized by Section 1746 of the Business Corporation Law.

ARTICLE VIII Emergency Bylaws

Section 8.01 Scope of Article. This Article shall be applicable during any emergency resulting from a catastrophe as a result of which a quorum of the board of directors cannot readily be assembled. To the extent not in conflict with this Article, these bylaws shall remain in effect during the emergency.

Section 8.02 Special Meetings of the Board. A special meeting of the board of directors may be called by any director by means feasible at the time.

Section 8.03 Emergency Committee of the Board.

(a) Composition. The emergency committee of the board shall consist of nine persons standing highest on the following list who are available and able to act:

The chief executive officer.

Members of the board of directors.

President.

The individual who, immediately prior to the emergency, was the senior officer in charge of nuclear operations.

The individual who, immediately prior to the emergency, was the senior officer in charge of other operations.

The individual who, immediately prior to the emergency, was the senior officer in charge of finance operations.

Other officers.

Where more than one person holds any of the listed ranks, the order of precedence shall be determined by length of time in rank. Each member of the emergency committee thus constituted shall continue to act until replaced by an individual standing higher on the list. The emergency committee shall continue to act until a quorum of the board of directors is available and able to act. If the corporation has no directors, the emergency committee shall cause a special meeting of shareholders for the election of directors to be called and held as soon as practicable. Powers. The emergency committee shall have and may exercise all of the powers and authority of the board of directors, including the power to fill a vacancy in any office of the corporation or to designate a temporary replacement for any officer of the corporation who is unavailable, but shall not have the power to fill vacancies in the board of directors.

(b) Quorum. A majority of the members of the emergency committee in office shall constitute a quorum.

(c) Status. Each member of the emergency committee who is not a director shall during his or her service as such be entitled to the rights and immunities conferred by law, the articles and these bylaws upon directors of the corporation and upon persons acting in good faith as a representative of the corporation during an emergency.

ARTICLE IX Miscellaneous

Section 9.01 Corporate Seal. The corporation may have a corporate seal in the form of a circle containing the name of the corporation, the year of incorporation and such other details as may be approved by the board of directors from time to time.

Section 9.02 Checks. All checks, notes, bills of exchange or other orders in writing shall be signed by such person or persons as the board of directors or any person authorized by resolution of the board of directors may from time to time designate.

Section 9.03 Contracts. Except as otherwise provided in the Business Corporation Law in the case of transactions that require action by the shareholders, the board of directors may authorize any officer or agent to enter into any contract or to

execute or deliver any instrument on behalf of the corporation, and such authority may be general or confined to specific instances.

Section 9.04 Interested Directors or Officers; Quorum.

(a) General Rule. A contract or transaction between the corporation and one or more of its directors or officers or between the corporation and another domestic or foreign corporation for profit or not-for-profit, partnership, joint venture, trust or other enterprise in which one or more of its directors or officers are directors or officers or have a financial or other interest, shall not be void or voidable solely for that reason, or solely because the director or officer is present at or participates in the meeting of the board of directors that authorizes the contract or transaction, or solely because his, her or their votes are counted for that purpose, if:

(1) the material facts as to the relationship or interest and as to the contract or transaction are disclosed or are known to the board of directors and the board authorizes the contract or transaction by the affirmative votes of a majority of the disinterested directors even though the disinterested directors are less than a quorum;

(2) the material facts as to his or her relationship or interest and as to the contract or transaction are disclosed or are known to the shareholders entitled to vote thereon and the contract or transaction is specifically approved in good faith by vote of those shareholders; or

(3) the contract or transaction is fair as to the corporation as of the time it is authorized, approved or ratified by the board of directors or the shareholders.

(b) Quorum. Common or interested directors may be counted in determining the presence of a quorum at a meeting of the board which authorizes a contract or transaction specified in Subsection (a).

Section 9.05 Deposits. All funds of the corporation shall be deposited from time to time to the credit of the corporation in such banks, trust companies or other depositories as the board of directors may approve or designate, and all such funds shall be withdrawn only upon checks signed by such one or more officers or employees as the board of directors shall from time to time determine.

Section 9.06 Corporate Records.

(a) Required Records. The corporation shall keep complete and accurate books and records of account, minutes of the proceedings of the incorporators, shareholders and directors and a share register giving the names and addresses of all shareholders and the number and class of shares held by each. The share register shall be kept at either the registered office of the corporation in the Commonwealth of Pennsylvania or at its principal place of business wherever situated or at the office of its

registrar or transfer agent. Any books, minutes or other records may be in written form or any other form capable of being converted into written form within a reasonable time.

(b) Right of Inspection. Every shareholder shall, upon written verified demand stating the purpose thereof, have a right to examine, in person or by agent or attorney, during the usual hours for business for any proper purpose, the share register, books and records of account, and records of the proceedings of the incorporators, shareholders and directors and to make copies or extracts therefrom. A proper purpose shall mean a purpose reasonably related to the interest of the person as a shareholder. In every instance where an attorney or other agent is the person who seeks the right of inspection, the demand shall be accompanied by a verified power of attorney or other writing that authorizes the attorney or other agent to so act on behalf of the shareholder. The demand shall be directed to the corporation at its registered office in the Commonwealth of Pennsylvania or at its principal place of business wherever situated.

Section 9.07 Amendment of Bylaws.

(a) General Rule. Except as otherwise provided in the express terms of any series of the shares of the corporation or as otherwise provided by Section 9.07(b), any one or more of the foregoing bylaws and, except as otherwise stated in this Section 9.07(a), any other bylaws made by the board of directors or shareholders may be altered or repealed by the board of directors. The shareholders or the board of directors may adopt new bylaws except that the board of directors may not adopt, alter or repeal bylaws that the Business Corporation Law specifies may be adopted only by shareholders, and the board of directors may not alter or repeal any bylaw adopted by the shareholders that presumes that such bylaw shall not be altered or repealed by the board of directors.

(b) Supermajority Vote. Sections 1.02(a), 4.01(b), 4.03(a) and (b), 4.04, 4.05, 4.08 (but only with respect to the alteration or repeal of the last sentence thereof, or a change to the bylaws having substantially the same effect), 4.12(c), 5.01(a), 5.06(b), 5.07 and 5.08 and this Section 9.07(b) may be altered or repealed only by a vote of 80% of the Whole Board.

(c) Effective Date. Any change in these bylaws shall take effect when adopted unless otherwise provided in the resolution effecting the change.

As adopted [Effective Time].

FORM OF COMPANY AFFILIATE LETTER

_____, 200_

Exelon Corporation
10 S. Dearborn St.
Chicago, Illinois 60603

Ladies and Gentlemen:

I have been advised that, as of the date hereof, I may be deemed to be an "affiliate" of Public Service Enterprise Group Incorporated, a New Jersey corporation (the "Company"), as such term is defined for purposes of paragraphs (c) and (d) of Rule 145 of the Rules and Regulations (the "Rules and Regulations") of the Securities and Exchange Commission (the "Commission") under the Securities Act of 1933, as amended (the "Securities Act").

Pursuant to the terms of the Agreement and Plan of Merger, dated as of December 20, 2004 (as it may be amended, supplemented or modified from time to time, the "Merger Agreement"), between the Company and Exelon Corporation, a Pennsylvania corporation ("Parent"), the Company will be merged with and into Parent (the "Merger"). Capitalized terms used herein but not defined herein shall have the meanings ascribed to such terms in the Merger Agreement.

I have been advised that the issuance of Parent Shares pursuant to the Merger will be registered with the Commission under the Securities Act on a Registration Statement on Form S-4. I have also been advised, however, that since I may be deemed to be an affiliate of the Company at the time the Merger Agreement is submitted to a vote of the shareholders of the Company, my ability to sell, assign or transfer any Parent Shares that I receive in exchange for any shares of Common Stock, no par value per share, of the Company ("Company Common Stock") pursuant to the Merger may be restricted unless such sale, assignment or transfer is registered under the Securities Act or an exemption from such registration is available. I understand that such exemptions are limited and I have obtained advice of counsel as to the nature and conditions of such exemptions, including information with respect to the applicability to the sale of such Parent Shares of Rules 144 and 145(d) promulgated under the Securities Act.

I hereby represent and warrant to and covenant with Parent that I will not sell, assign or transfer any Parent Shares except (i) pursuant to an effective registration statement under the Securities Act, (ii) by a sale made in conformity with the volume and other limitations of Rule 145 (and otherwise in accordance with Rule 144 under the Securities Act, if I am an affiliate of Parent and if so required at the time) or (iii) in a transaction which, in the opinion of independent counsel reasonably satisfactory to Parent or as described in a "no-action" or interpretive letter from the Staff of the Commission reasonably satisfactory to Parent, is not required to be registered under the Securities Act. In the event of a sale of Parent Shares pursuant to Rule 145, I will supply Parent with evidence of compliance with such Rule, in the form of customary seller's and broker's Rule 145 representation letters or as Parent may otherwise reasonably request.

I understand that Parent is under no obligation to register the sale, assignment, transfer or other disposition of Parent Shares by me or on my behalf under the Securities Act or to take any other action necessary in order to make compliance with an exemption from such registration available solely as a result of the Merger.

I acknowledge and agree that appropriate legends will be placed on certificates representing Parent Shares delivered to me or held by a transferee thereof, which legends will be removed (i) by delivery of substitute certificates upon receipt of a letter from the Staff of the Commission, or an opinion of counsel in form and substance reasonably satisfactory to Parent, to the effect that such legends are no longer required for the purposes of the Securities Act and the rules and regulations thereunder or (ii) in the event of a sale of Parent Shares which has been registered under the Securities Act or made in conformity with the provisions of Rule 145.

I further understand and agree that Parent may instruct the registrar for the Parent Shares not to register the transfer of any Parent Shares held by me unless any such transfer is made in accordance with this letter agreement.

Execution of this letter should not be considered an admission on my part that I am an "affiliate" of the Company as described in the first paragraph of this letter, or as a waiver of any rights I may have to object to any claim that I am such an affiliate on or after the date of this letter.

This letter agreement constitutes the complete understanding between Parent and me concerning the subject matter hereof. This letter agreement shall be governed by and construed and interpreted in accordance with the laws of the Commonwealth of Pennsylvania applicable to contracts to be performed wholly in the Commonwealth of Pennsylvania.

If you are in agreement with the foregoing, please so indicate by signing below and returning a copy of this letter to the undersigned, at which time this letter shall become a binding agreement between us.

Very truly yours,

Name:

Accepted this ____ day
of _____, 200_.

EXELON CORPORATION

By: _____
Name:
Title:

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

JOINT APPLICATION OF PECO ENERGY
COMPANY AND PUBLIC SERVICE ELECTRIC
AND GAS COMPANY FOR APPROVAL OF THE
MERGER OF PUBLIC SERVICE ENTERPRISE
GROUP INCORPORATED WITH AND INTO
EXELON CORPORATION

APPLICATION

DOCKET NO. A - 110550F0160

OK
9-22-05
phila

VOLUME I

DOCKETED
NOV 10 2005

JOINT APPLICATION OF PECO ENERGY COMPANY
AND PUBLIC SERVICE ELECTRIC AND GAS COMPANY

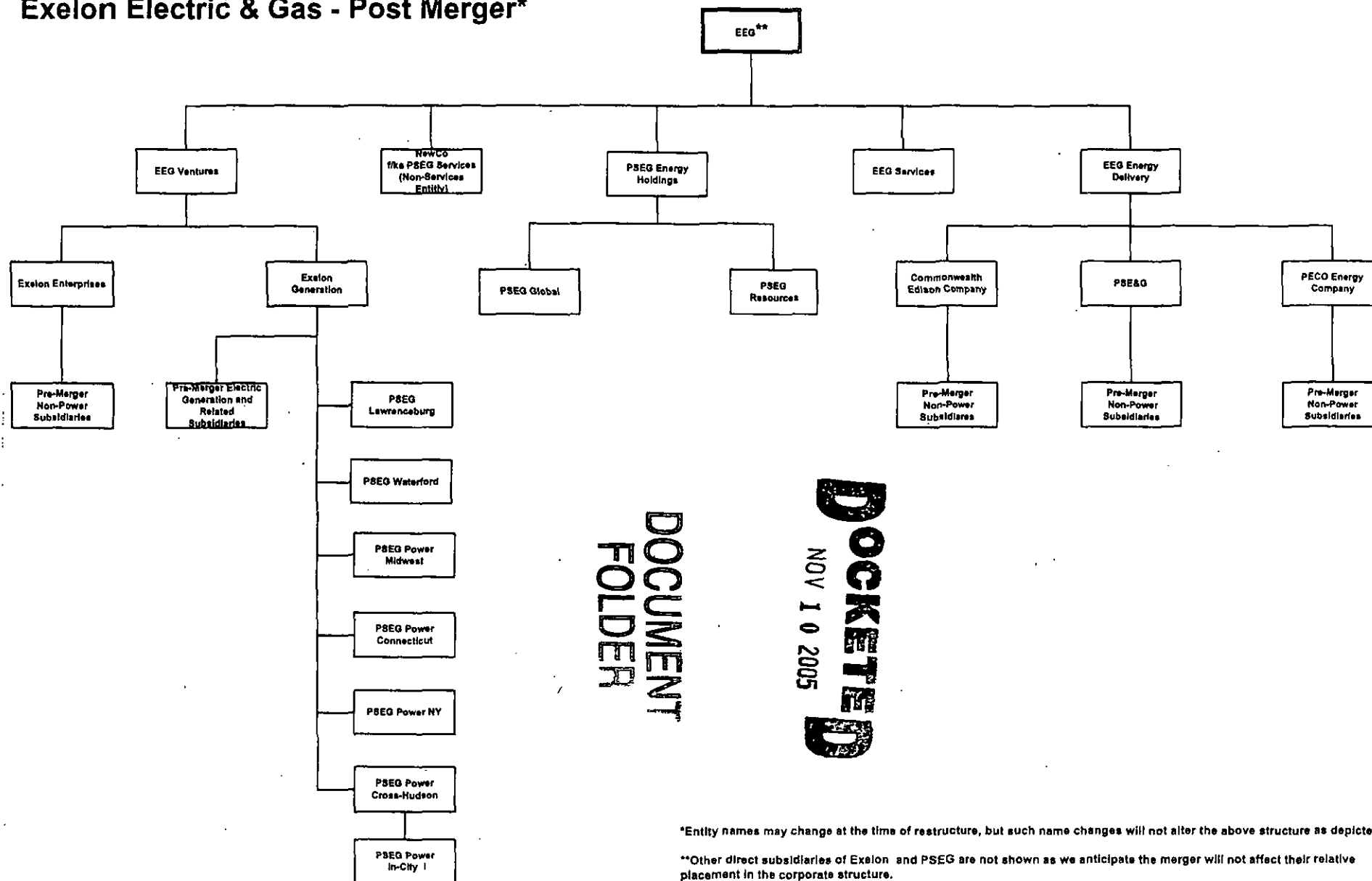
**DOCUMENT
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SEP 26 2005

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Exelon Electric & Gas - Post Merger*



DOCUMENT
FOLDER

DOCKETED
NOV 10 2005

*Entity names may change at the time of restructure, but such name changes will not alter the above structure as depicted.

**Other direct subsidiaries of Exelon and PSEG are not shown as we anticipate the merger will not affect their relative placement in the corporate structure.

Estimated Value of Intervener Requests (in millions)

	Amount	Source
OCA		
CAP discount to 800kwh	\$ 38.0	Alexander p.38
CAP Rate Arrearage Forgiveness	\$ 11.0	Alexander p.39-40
Elimination of USFC	\$ 31.0	Alexander p.42
OSBA		
Rate Reduction	\$ 347.0	Kalcic pp.8,12
Penn Future		
Tuffy - Energy Efficiency	\$ 20.0	Tuffy p.18
Tuffy - Renewables	\$ 60.5	Tuffy p. 18
Plunkett - Energy Efficiency	\$ 203.0	Plunkett p.7
Action Alliance		
MEAF Shortfall Payment	\$ 5.0	Geller p.24
MEAF Ongoing	\$ 8.0	Geller p.25
7 Additional CARES workers	\$ 2.8	Geller p.27
DEP		
Desmond	\$ 160.0	Response to PECO Request DEP-11
SDF		
	\$ 30.0	Milford p.19
Total with 4 yrs of Low Income costs	\$ 916.3	
Total with 5 yrs of Low Income costs	\$ 938.1	

Note: Amount does not include service compensation plan proposed by OCA witness Alexander.

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

JOINT APPLICATION OF PECO: DOCKET NO.
ENERGY COMPANY AND PUBLIC: A-11955070160
SERVICE ELECTRIC AND GAS :
COMPANY FOR APPROVAL OF :
THE MERGER OF PUBLIC :
SERVICE ENTERPRISE GROUP :
INCORPORATED WITH AND :
INTO EXELON CORPORATION :
- - -

July 25, 2005
- - -

Oral deposition of BARBARA
ALEXANDER, held in the offices of PECO
Energy Company, 2301 Market Street, 26th
Floor, Philadelphia, Pennsylvania 19103,
commencing at 1:00 p.m., on the above
date, before Joseph Calavetta, a
Registered Professional Reporter and a
Commissioner of the Commonwealth of
Pennsylvania.

ESQUIRE DEPOSITION SERVICES
1880 John F. Kennedy Boulevard
15th Floor
Philadelphia, Pennsylvania 19103
(215) 988-9191

1 regard to that platform?

2 A. Yes, I think I made that
3 clear in my testimony that I did not
4 indicate that I felt that the new
5 billing platform had any defects in and
6 of itself.

7 Q. Let's see if we could find
8 what we are talking about. That's all
9 right. Turn to page 26 of your
10 testimony.

11 A. Yes.

12 Q. I offer you the opportunity
13 to review page 26. I have a number of
14 questions on it starting with the
15 reliability standards. Tell me when you
16 are ready?

17 A. Yes.

18 Q. This testimony on page 26
19 pertains to your description of the
20 performance standards that you are
21 proposing be incorporated as a condition
22 to this merger; is that correct?

23 A. Yes.

24 Q. I will direct your

1 A. I was relying on the actual
2 2000 merger settlement and building on
3 that as a model to carry forward and
4 reviewed the promises made in the
5 application in this proceeding about
6 improvements similar to the promises
7 that were made in the prior merger
8 application which resulted in a
9 settlement of 10 percent and feeling
10 that it was reasonable to propose an
11 additional 10 percent for an additional
12 five-year period based on that history.

13 Q. And PECO would -- referring
14 to the next sentence which you could
15 read into the record?

16 A. "This performance should
17 be measured annually with an expectation
18 of a two percent improvement each year,
19 similar to the approach of the 2000
20 merger settlement."

21 Q. Ms. Alexander, maybe here
22 some of my prior questions will start to
23 come to light. If I could keep you on
24 page 26 for a moment I see you flipping

1 attention to page 26 under reliability
2 standard and I would like you to read
3 the first full sentence.

4 A. "The proposed standard for
5 the 12-month and 36-month reliability
6 standard reflect the 10 percent
7 improvement promised and delivered over
8 a five-year period as a result of the
9 2000 merger settlement with an added 10
10 percent to reflect the benefits that
11 should be provided to PECO's customers
12 as a result of this proposed merger."

13 Q. Is it fair to say that what
14 you did is part out the requirement of
15 the 2000 merger which was a 10 percent
16 improvement?

17 A. Um-hum.

18 Q. And you added an additional
19 10 percent improvement over those
20 standards; is that correct?

21 A. Yes.

22 Q. Why 10 percent? Why not 15
23 percent, for example? What made you
24 settle on 10?

1 back and forth?

2 A. I will be able to do that
3 no matter what page you're on.

4 Q. Remember I asked you about
5 the five-year time period to increase
6 performance 10 percent?

7 A. Yes.

8 Q. Are you adopting another
9 five-year period here?

10 A. Yes.

11 Q. The idea is to mimic what
12 was done here with regard to the 2000
13 merger agreement?

14 A. Yes.

15 Q. 2000 merger agreement gives
16 10 percent. This merger agreement gives
17 another 10 percent off those standards;
18 is that correct?

19 A. Yes.

20 Q. "In recent years PECO has
21 for the most part complied with these
22 proposed standards." What do you mean
23 for the most part. You testified
24 earlier PECO had met all of the

1 standards?
 2 A. I am talking about the
 3 proposed standard I am proposing here.
 4 Q. I see.
 5 A. Yes. Right.
 6 Q. Turning back to the charts
 7 I want to understand how you derive
 8 these numbers on page 25?
 9 A. Yes.
 10 Q. The middle column is the 10
 11 percent improvement compared to the PUC
 12 standard in effect in 2000; is that
 13 correct?
 14 A. Yes.
 15 Q. And, then, you propose --
 16 and, then, the last column entitled
 17 proposed 2005 merger standard is a 20
 18 percent improvement over the middle
 19 column, not a ten percent improvement.
 20 Why did you say in your narrative 10
 21 percent yet adjusted 20 percent in the
 22 column?
 23 A. I think there's a
 24 typographical error here.

1 arithmetic error?
 2 A. It may not be, but I would
 3 want to double-check that with the
 4 historical data before I give an answer.
 5 I would like to defer an answer to it.
 6 Q. When would you like to
 7 resume this, what day?
 8 A. Why don't you ask me in a
 9 data request and I will answer it.
 10 Q. There's some serious
 11 questions with regard to the chart, if
 12 you are asking to adjourn the deposition
 13 on this subject matter I would like to
 14 resume this deposition.
 15 A. You could ask a quick
 16 question such as the one you're asking
 17 with regard to that, as soon as I can go
 18 back to my office and find out what the
 19 answer is.
 20 Q. I am actually, Ms.
 21 Alexander, not speaking with you at this
 22 point. I am speaking with your
 23 attorney.
 24 A. You can do that.

1 Q. But it's more than that.
 2 It's 20 percent of the calculation;
 3 isn't that correct?
 4 A. I have to --
 5 Q. I brought a calculator for
 6 you.
 7 A. That's not the issue. No,
 8 I am trying to figure out how that
 9 happened.
 10 Q. In any event, Miss
 11 Alexander, what you intended was a 10
 12 percent, not 20 percent improvement; is
 13 that correct?
 14 A. Well, just a minute. Okay.
 15 Q. That's fine.
 16 A. I would like an opportunity
 17 to go back and look at my material on
 18 that because I am wondering if I, in the
 19 first column, listed the 2000 baseline
 20 and then calculated 10 and 10 for the --
 21 10 for the first five years and ten for
 22 the second or whether or not there's a
 23 mistake made.
 24 Q. I understand. It is not an

1 MR. DOMINGUEZ: I'm sorry.
 2 Is there a time tomorrow that we
 3 could resume this?
 4 THE WITNESS: I am not
 5 available the rest of this week.
 6 MR. DOMINGUEZ: We have
 7 testimony due the 29th on this
 8 subject.
 9 MR. CHESKIS: I suggest Ms.
 10 Alexander be given an opportunity
 11 to correct that factual mistake.
 12 THE WITNESS: It may not be
 13 a mistake.
 14 MR. CHESKIS: If you are
 15 right we be allowed to go back and
 16 check that and if you have any
 17 additional questions after she
 18 files that response we could
 19 address that at that time, whether
 20 it be a formal deposition or
 21 through some other manner, we
 22 could worry about that then.
 23 BY MR. DOMINGUEZ:
 24 Q. Ms. Alexander, and perhaps

1 we could work through this. I am trying
2 to understand what additional analysis
3 you need to undertake. We may have
4 resource materials here that may allow
5 you to do that during the course of this
6 deposition.

7 A. You might.

8 Q. Is it my understanding what
9 you are concerned about, the middle
10 column may simply be the 2000 standard
11 in effect for SAIFI taking the first row
12 without the 10 percent performance
13 improvement already in there?

14 A. That's correct.

15 Q. And, therefore, your 20
16 percent improvement over the 2000
17 standard in the last column would be
18 accurate from a calculation standpoint?

19 A. That's possible.

20 Q. That is what you are trying
21 to figure out?

22 A. Yes.

23 Q. Is there anything else you
24 are trying to figure out in this

1 impossibility, but the important thing
2 is to allow me on this timely matter to
3 look at -- it's the classic request. It
4 could have been asked weeks ago in a
5 data request, and I would be happy to
6 answer it, but I won't sit here and go
7 through calculations.

8 Q. Could I show you the 2000
9 standards?

10 A. You could show me.

11 Q. Would you compare it to
12 what's in the middle column or you don't
13 even want to do that here?

14 A. You can do that. I am just
15 saying what I would like to give you is
16 a more complete answer and what I would
17 have to do to give you a more complete
18 answer is go back and look over the
19 materials I used to generate this chart.

20 Q. It's obviously more
21 important to me to understand the
22 methodology than the calculations.

23 A. Absolutely.

24 MR. DOMINGUEZ: I think with

1 additional work you want to do?

2 A. That would be the key thing
3 that I would need to figure out. I
4 would need to go back to my materials
5 and see whether the --

6 Q. It sounds to me like you
7 need the 2000 standard which I happen to
8 have?

9 A. I am not going to do it
10 here.

11 MR. CHESKIS: I will object.
12 BY MR. DOMINGUEZ:

13 Q. You are refusing to answer
14 the question?

15 A. I am refusing to go through
16 a calculation here. What I would like
17 to do and I should have the right to do
18 is go back to the material I used when I
19 generated these charts and when I have
20 done that I can provide you with a
21 specific factual response and clear up
22 any ambiguities that might exist or
23 correct the testimony one or the other.
24 I will acknowledge that as a theoretical

1 regard to this we could capture it
2 in a data request just thinking
3 through it. Let me have one
4 second off the record and think
5 through, if that makes sense, or
6 whether there is any additional
7 questions because frankly I did
8 not anticipate.

9 MR. CHESKIS: Having to do
10 another day.

11 MR. DOMINGUEZ: I did, but I
12 did not anticipate Ms. Alexander
13 would refuse to do the
14 calculation.

15 MR. DOMINGUEZ: Off the
16 record.

17 - - -

18 (Whereupon, an
19 off-the-record discussion was
20 held.)

21 - - -

22 (Recess taken.)

23 - - -

24 BY MR. DOMINGUEZ:

1 Q. Ms. Alexander, it appears
2 we are not going to conclude your
3 deposition this week before PECO can
4 file your testimony understanding the
5 methodology, if not necessarily the
6 math, that you have applied, okay?

7 A. That's up to you.

8 MR. CHESKIS: One
9 clarification before the last
10 point before we went off the
11 record. I don't believe we are
12 objecting to or that Ms. Alexander
13 is not going to do the
14 calculation. We have concerns
15 about changing her testimony based
16 on any calculation she may do
17 here.

18 The other point we would
19 like to catch the six o'clock
20 train which leaves at 5:55 and
21 feel we have reached a point where
22 you have additional questions we
23 will have to deal with that at
24 that time.

1 BY MR. DOMINGUEZ:

2 Q. It wouldn't be meaningful.
3 We have to file rebuttal testimony. We
4 may seek another deposition of you
5 before you appear. I understand your
6 methodology, that is the point I am
7 trying to make.

8 A. I understand. I would like
9 to be responsive and I would do so, and
10 I would like to do a question for you
11 and you could rest assure I would give
12 it my prompt attention.

13 Q. I understand. Now that I
14 understand your methodology, is there
15 anything else I need to know about your
16 derivation about your numbers that
17 appear on page 25?

18 A. Not today.

19 Q. Let's turn to the service
20 quality improvement plan?

21 A. Do you have a page?

22 Q. Wait one second. I direct
23 your attention to the testimony that
24 begins at page 29?

1 MR. DOMINGUEZ: Okay. What
2 I will do to accommodate your
3 schedule, I don't want to make a
4 deal of it, let's see how far we
5 can get. If there are still
6 questions I will consider the
7 deposition adjourned, you will
8 consider what you want to do and
9 we will talk to the judge if it's
10 necessary, but let me try to move
11 on and not -- with Ms. Alexander's
12 testimony being in the state it is
13 with regard to the reliability
14 issues we will respond with what
15 we have.

16 MR. CHESKIS: She has 40
17 pages of testimony. We don't see
18 four hours to do a deposition is
19 really necessary.

20 MR. DOMINGUEZ: All right.
21 Good.

22 THE WITNESS: Can I just ask
23 are you going to submit a data
24 request?

1 A. Yes.

2 Q. As I understand your
3 testimony there is a risk post-2005 for
4 PECO's customer service concerning
5 PECO's customer service commitments?

6 A. There are risks with regard
7 to any merger of this kind and, also,
8 promises made by PECO in this filing
9 that I am intending to reflect in
10 specific performance standards. So that
11 your promises are not vague, but in fact
12 specific and that there are consequences
13 attached to the failure to meet them.

14 Q. The question I had was
15 going back again to page 4 your summary
16 of conclusions. You indicate, as we
17 talked, about that these obligations
18 that were part of the 2000 merger
19 agreement expires at the end of 2005; is
20 that correct?

21 A. Yes.

22 Q. You would agree with me
23 that the commission has now issued new
24 reliability standards in 2004; is that

1 that exist in Maine, in Massachusetts,
2 in Washington, in California, in New
3 York, and many other states.
4 Q. But not in Pennsylvania?
5 A. At the moment, no.
6 Q. That's despite the fact
7 that the OCA recommended compensation
8 plans is part of the 2004 reliability
9 rule making; isn't that correct?
10 A. That is correct.
11 Q. So the commission concluded
12 that it did not want to follow Maine and
13 the other states that you identified; is
14 that correct?
15 A. At that time it did. I
16 think the commission ought to re-think
17 that position in light of the merger we
18 have in front of us and the experience
19 it has with First Energy in which the
20 failure to adopt enforceable standards
21 with automatic results led in my opinion
22 to the lengthy and multi-year
23 investigation that had to be conducted
24 to follow up on deterioration that, in

1 same time that was occurring.
2 Q. The First Energy crisis
3 occurred right around the same time of
4 May of 2004. Is that your testimony?
5 A. No. The investigation was
6 ongoing during that period, I believe.
7 The resolution of that may not have
8 occurred at that time.
9 Q. It was before the
10 commission at or around the same time as
11 far as you recall today?
12 A. Yes.
13 Q. The commission had before
14 it and the reliability of rule making;
15 is that correct?
16 A. Yes.
17 Q. The OCA proposed a service
18 compensation plan like you proposed
19 today; is that correct?
20 A. Yes.
21 Q. It was rejected by the
22 commission; is that correct?
23 A. Yes.
24 Q. You wish the commission

1 fact, occurred after that merger was
2 consummated.
3 Q. You think the commission
4 ought to rethink its position?
5 A. I am hopeful that it does.
6 Q. But the final rule just
7 issued last year and became effective
8 September of 2004; isn't that true?
9 A. That rule was not
10 undertaken in the context of a merger
11 proposal.
12 Q. Answer my question, please,
13 the final rule on the 2004 rule making
14 became effective in September of 2004;
15 is that correct?
16 A. That's my recollection.
17 Q. When was the final order
18 issued, if you know?
19 A. I don't have that date in
20 my head, I'm sorry.
21 Q. It was issued May of 2004,
22 I represent to you, is that before or
23 after the First Energy issues?
24 A. It was right around the

1 would reconsider that rejection; is that
2 correct?
3 A. There's reasonable grounds
4 that it should and, in fact may do so.
5 Q. Did you work on the service
6 reliability -- excuse me, the
7 compensation plan that was proposed as
8 part of the 2004 reliability rule
9 making?
10 A. Certainly I have every
11 reason to believe the OCA made use of
12 comments that I have given them in that
13 context.
14 Q. You have every reason to
15 believe it because you saw what the OCA
16 filed that, correct?
17 MR. CHESKIS: Objection.
18 Argumentative.
19 THE WITNESS: I saw what
20 they filed, yes.
21 BY MR. DOMINGUEZ:
22 Q. In their filing did they
23 incorporate the thoughts that you had
24 concerning these service compensation

1 conflict since Tiny McClusky, the senior
2 legal person at the OCA, is a member of
3 the LIURP advisory committee meeting and
4 the meetings you are discussing and
5 obviously I have communicated with her
6 on an ongoing basis.

7 Q. This is going to get into
8 an area that I'll admit is privileged,
9 but if you want to tell me about your
10 conversations with Tiny McClusky we
11 could talk about that.

12 MR. CHESKIS: I will object.
13 BY MR. DOMINGUEZ:

14 Q. Or are you going to
15 withdraw your answer? Do you have any
16 personal knowledge, Ms. Alexander, of
17 whether or not the recommendations you
18 made conflict with the consensus
19 modifications?

20 A. My personal knowledge is
21 that I am sure that they do not as a
22 result of the OCA's ongoing involvement
23 in that and their review and
24 consultation with me about my testimony.

1 So there would be no basis for assuming
2 there is any.

3 Q. You haven't reviewed the
4 consensus modifications and compared
5 those to the conditions you have set
6 forth in your testimony?

7 A. I have not.

8 Q. You are assuming if they
9 were in conflict someone from the OCA
10 would have told you that; is that
11 correct?

12 A. That's correct.

13 Q. That is the sole basis of
14 your personal knowledge?

15 A. About that particular
16 matter, yes.

17 Q. Ms. Alexander, you propose
18 an increase for CAP Rate B through CAP
19 E, customers from 500 kilowatt to 800
20 kilowatt; is that correct?

21 A. Proposing an increase in
22 the usage level so the customer has a
23 larger discount on a more significant
24 part of the bill, that's correct.

1 Q. It's your testimony that
2 you assume that that increase is
3 consistent with the consensus
4 modifications?

5 A. I assume that that is not
6 -- let's put it this way.

7 My recommendation was not
8 intended here to complement the
9 consensus modifications. My proposal
10 was to expand the USF program beyond
11 that currently in effect and agreed to
12 and, again, we are talking about a
13 merger benefits proposal here and not
14 intending to suggest that the prior
15 merger will deal with this matter in any
16 definitive way.

17 - - -
18 (Recess taken.)
19 - - -

20 MR. DOMINGUEZ: All right.
21 We are ready.

22 BY MR. DOMINGUEZ:

23 Q. The increase in the level
24 from 800 to 500 kilowatts comes at a

1 cost of 10.3 million dollars?

2 A. That is the estimate that
3 PECO has given us in response to that
4 matter.

5 Q. Who ought to pay for that
6 in your estimation. Is this to be born
7 by shareholder, shareholders and
8 ratepayers in combination or just
9 ratepayers?

10 A. In the context of this case
11 the theory is one thing, but the context
12 this is proposed as a merger related
13 benefit. When the future base rate
14 happens with whether it's 2006 or 2010
15 or 2011 or whatever the date is there
16 will be a reckoning with regard to the
17 actual cost of the program, the benefits
18 of the program and the net cost will and
19 should be paid for by other customers.

20 Q. So as a matter of theory
21 you agree customers ought to pay for
22 this type of program the CAP program; is
23 that correct?

24 A. Sure, of course.

1 appropriate for the commission as a
2 condition to order a certain level of
3 charitable giving?

4 A. It has done so in the past
5 in these kind of cases.

6 Q. What kind of cases?

7 A. I'm talking about the
8 merger settlement that was previously
9 negotiated. I think there were
10 provisions about that.

11 Q. That was a settlement
12 though; is that right?

13 A. Yes.

14 Q. I am asking, are you aware
15 of any commission precedent where the
16 commission ordered a certain level of
17 charitable giving?

18 A. That is a different
19 question. I would have to defer to
20 further research in that respect.

21 Q. The answer today is you are
22 unaware of any?

23 A. I don't have an answer for
24 you today that could give you an

1 it was part of the prior merger
2 settlement and you were trying to mimic
3 the reliability to some of the terms of
4 that prior settlement?

5 A. Yes.

6 Q. I assume your position
7 remains the same. You don't want to go
8 back and recalculate the tables
9 appearing on page 26 and 20 --

10 A. I really don't. I have
11 materials back in my office that I would
12 like to have the opportunity to review.
13 I am out of town until Friday which
14 doesn't help you at all. So we have a
15 problem here in that regard, but I just
16 wish you had asked me that data request
17 weeks ago and I would have promptly
18 provided you with an answer, and I
19 apologize for that and I can't don't do
20 that here. I don't feel comfortable
21 doing it here.

22 Q. Our position remains the
23 same. We are entitled to ask you to do
24 that here. We will provide any resource

1 example, no, I can't.

2 Q. Is there a difference in
3 your view in a commission ordering
4 things that cannot be recoverable in
5 rate base from those things that can be
6 recovered, as a matter of policy based
7 on your many years of experience in this
8 area?

9 A. That's certainly a
10 legitimate concern with this category in
11 particular. I would acknowledge that.

12 Q. Why?

13 A. Because there is a certain
14 amount of discretion by any corporation
15 with respect to its giving patterns, to
16 whom it gives and in what categories,
17 and I acknowledge the management
18 discretion that exists with regard to
19 this issue. I think the reason you find
20 it here is because it had some
21 historical basis in the prior settlement
22 and the desire by the public to keep a
23 handle on this if at all possible.

24 Q. You incorporate it because

1 material you ask I will have it
2 available. In fact, I have it in this
3 room, I believe.

4 MR. CHESKIS: I will raise
5 my objection, I stated before, to
6 the extent you're asking for some
7 key strokes on a calculator that's
8 one thing but, but at this point
9 we are not prepared to change her
10 testimony at this point. Give as
11 you opportunity to go back and
12 look at it. If it's wrong we will
13 make the correction.

14 I will also note on the
15 record in this proceeding doesn't
16 close for several months weeks and
17 to the extent you issue some
18 follow-up discovery on that we
19 would be more than happy to
20 answer.

21 MR. DOMINGUEZ: I suppose I
22 have nothing to do today. You
23 won't answer the question. So it
24 makes no sense in me asking them

BARBARA ALEXANDER

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1 go through the work, but I'm sorry
2 if you think I should have sent a
3 data request. I had a deposition
4 notice some time ago. The data is
5 wrong and appears to be wrong by
6 your own witness' recognition
7 today. That is not my fault.

8 I wish you could devote your
9 witness' attention before the
10 rebuttal was due and we could
11 reconvene tomorrow, but the
12 witness is not available, that
13 prejudices PECO and we have to go
14 forward on the 29th without having
15 all the data. You take those
16 arguments and present them to the
17 judge if you see fit to avoid a
18 second deposition. I will offer,
19 however, the committee to work
20 with you to get to the answers
21 given the witness' available, and
22 I'm sorry that you feel I should
23 have conducted the testimony in a
24 different manner.

1 CERTIFICATE
2 I hereby certify that the
3 witness was duly sworn by me and that
4 the deposition is a true record of the
5 testimony given by the witness.
6
7
8
9

10 JOSEPH CALAVETTA, RPR
11 Court Reporter
12 Dated: July 26, 2005
13
14
15
16
17
18

19 (The foregoing
20 certification of this transcript does
21 not apply to any reproduction of the
22 same by any means, unless under the
23 direct control and/or supervision of the
24 certifying shorthand reporter.)

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1 I wish the witness had
2 correctly calculated the table.
3 That is not the case.

4 MR. CHESKIS: I am not
5 trying to be argumentative. I
6 won't respond to your comments. I
7 just wanted to place that on the
8 record.

9 MR. DOMINGUEZ: Thank you.
10 That concludes your testimony, Ms.
11 Alexander. Provided we don't
12 reconvene we will see each other
13 at the hearing.

14 THE WITNESS: Thank you.

15 MR. DOMINGUEZ: Thank you.

16 - - -

17 (Deposition adjourns at 4:25
18 p.m.)
19
20
21
22
23
24

1 INSTRUCTIONS TO WITNESS

2 Please read your deposition
3 over carefully and make any necessary
4 corrections. You should state the
5 reason in the appropriate space on the
6 errata sheet for any correction that is
7 made.

8 After doing so, please sign
9 the errata sheet and date it.

10 You are signing same
11 subject to the changes you have noted on
12 the errata sheet, which will be attached
13 to your deposition.

14 It is imperative that you
15 return the original errata sheet to the
16 deposing attorney within thirty (30)
17 days of receipt of the deposition
18 transcript by you. If you fail to do
19 so, the deposition transcript may be
20 deemed to be accurate and may be used in
21 court.
22
23
24

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

JULY 26, 2005

Oral deposition of
FRANK P. KUDERS, taken pursuant to
notice, was held at the offices of PECO
Energy Company, 2301 Market Street, 26th
Floor, Philadelphia, Pennsylvania,
commencing at 4:05 p.m., on the above
date, before DOTTYANN Y. WALSH, a
Certified Shorthand Reporter and Notary
Public in the Commonwealth of
Pennsylvania.

ESQUIRE DEPOSITION SERVICES
1880 John F. Kennedy Boulevard
15th Floor
Philadelphia, Pennsylvania 19103
(215) 988-9191

1 A. No. 2 Q. Do you sit on the Exelon 3 coordinating council? 4 A. Yes, I do. 5 Q. Could you describe what the 6 Exelon coordinating council is. 7 A. That is a council that is 8 made up of the unions that come under the 9 Exelon umbrella, there is six unions 10 there. 11 Q. And are you sitting on that 12 council only as a representative of 614? 13 A. Yes. 14 Q. What other unions are part 15 of that coordinating council? 16 A. There is Local 1289, 17 Local 777, Local 1306, Local 51 and 18 Local 15. 19 Q. Now, Local 777 represents 20 workers at Three Mile Island, is that 21 correct? 22 A. Correct. 23 Q. And do any of the other 24 locals that you identified include any	14 1 contract negotiations? 2 A. Yes. 3 Q. And in fact there are 4 presently contract negotiations ongoing 5 between PECO Energy and 614, correct? 6 A. Correct. 7 Q. Do any of your members 8 include any lawyers working for Exelon in 9 a lawyer capacity? 10 A. No. 11 Q. How about any accountants 12 working in an accounting capacity? 13 A. No. 14 Q. How about engineers working 15 in an engineering capacity? 16 A. There are classifications of 17 engineering techs, I don't know if that 18 meets your requirement or not. 19 Q. Let me distinguish between 20 that, engineering tech category and a 21 degreed engineer who would be working o 22 system design for example. 23 A. No. 24 Q. Mr. Kuders, describe your
15 1 workers for PECO Energy Company? 2 A. No. 3 Q. What are your 4 responsibilities as president of 614 5 besides sitting on the coordinating 6 council that you have just described? 7 A. Well, I represent just over 8 1400 members at this point. 9 Q. How many of those work at 10 PECO or Exelon Generation? 11 A. All 1400. 12 Q. How many of those work at 13 PECO as compared to Exelon Generation? 14 A. I think there is -- ED is 15 1,075 I believe. 16 Q. You use the phrase ED, what 17 are you referring to? 18 A. That is your transmission, 19 distribution, your gas, electric, your 20 back office people, like that. 21 Q. Do you understand ED to be 22 PECO only or PECO and ComEd? 23 A. I believe it is PECO only. 24 Q. Do you also represent 614 in	17 1 formal education. 2 A. High school diploma. 3 Q. Have you ever taken any 4 college courses? 5 A. No. 6 Q. Have you ever taken any 7 seminars, for example? 8 A. I had a real estate license 9 for some years. 10 Q. Other than the real estate 11 education that you got in order to obtain 12 the license, did you attend any other 13 seminars? 14 A. No. 15 Q. Have you ever had any 16 seminars in economics? 17 A. No. 18 Q. Have you ever taken any 19 courses outside of high school on 20 economics? 21 A. No. 22 Q. Have you reviewed in 23 connection with your testimony here any 24 economic treatises?

25 1 you are distinguishing that between 2 PECO's regulated and non-regulated 3 operations? Are there any non-regulated 4 operations that PECO has? 5 A. I can't say. 6 Q. And when you say regulated, 7 regulated by whom or by what? 8 A. I would say the Public 9 Utility Commission. 10 Q. You agree with me that 11 PECO's operations are regulated to some 12 degree by the Public Utility Commission, 13 correct? 14 A. Correct. 15 Q. And it is your testimony 16 that Exelon's generation activities are 17 not regulated by the Public Utilities 18 Commission, correct? 19 MR. RUBIN: Object. That 20 calls for a legal conclusion. 21 MR. DOMINGUEZ: This is his 22 testimony so far. 23 MR. RUBIN: No, it is what 24 you are trying to turn into his	26 1 Utility Commission as a non-regulated 2 entity? 3 A. No. 4 Q. So you would agree with me 5 that the job reductions at Exelon 6 Generation are not subject to the review 7 of the Public Utility Commission, 8 correct? 9 A. As far as I know, yes. 10 Q. And you are speaking today 11 not only as an individual but as 12 president of 614, correct? 13 A. Correct. 14 Q. How many of the 250 jobs 15 that you reference in your testimony are 16 PECO jobs versus Exelon Generation jobs 17 A. At this point, I don't know. 18 Q. But you indicate in your 19 testimony that a lot of the jobs are not 20 job losses are not occurring in PECO's 21 regulated operations, how do you know 22 that? 23 A. I simply take the 24 information that I got from the --
27 1 testimony. His testimony -- 2 MR. DOMINGUEZ: Your 3 objection is on the record, Scott. 4 Let him answer if he can. 5 THE WITNESS: Would you 6 repeat that. 7 BY MR. DOMINGUEZ: 8 Q. Did you testify earlier that 9 Exelon Generation's activities are 10 unregulated in your vocabulary as you are 11 using it here on Page 6 and 7 of your 12 testimony? 13 A. Yes. 14 Q. And they are not regulated 15 by the Pennsylvania Utility Commission 16 based on your understanding, correct? 17 A. Correct. 18 Q. If Exelon Generation had 19 decided before this merger or suppose the 20 merger had never occurred, if Exelon 21 Generation decided to reduce its 22 workforce by 10 employees, is it your 23 understanding that it has to seek the 24 approval of the Pennsylvania Public	29 1 information that the company put out, I 2 took it at face value, they were 3 eliminating possibly 250 jobs. 4 Q. But you say a lot of those 5 jobs are not occurring at PECO. How did 6 you distinguish between those 250 overall 7 jobs and the jobs that are being lost at 8 PECO in order to allow you to conclude 9 that a lot of the job losses are not in 10 PECO's regulated operations? 11 A. I don't know. 12 Q. Did you write this? 13 A. Portions of it, yes. 14 Q. Did you write this portion 15 of it? 16 A. I would say I concurred with 17 my attorney. 18 Q. Go back one page to Page 5 19 of your testimony, and I'm going to ask 20 you to take a look at the question and 21 answer that begins on Line 18. Tell me 22 when you are there. 23 A. Okay. 24 Q. The question that you were

1 correct? 2 A. Yes. 3 Q. Let's take a break. 4 (Recess at 4:41 p.m.) 5 (Resumed at 4:45 p.m.) 6 BY MR. DOMINGUEZ: 7 Q. Mr. Kuders, are you sure you 8 don't remember an Exelon corporate 9 communication on the severance package 10 available to separated employees? 11 A. I don't recall one. 12 Q. I will see if I can get my 13 hands on it and see if I can refresh your 14 memory on it. I will do that. I will 15 represent to you that the severance 16 package provides for certain health 17 benefits to continue for outplacement 18 services and for a number of weeks of 19 severance pay depending on the length of 20 service of the employee. And from what I 21 understand from your testimony, you 22 didn't consider that in your economic 23 harm analysis, any component of that in 24 your economic harm analysis, correct?	42	1 that help you remember whether you ever 2 read this before? 3 MR. RUBIN: I will interrupt 4 here just to try to save you the 5 trouble. At the time of that 6 document. Local 614 didn't exist, 7 and they are obviously not a party 8 to it. Mr. Kuders does refer to 9 certain portions of that in his 10 testimony. The portions he refers 11 to are portions I provided him 12 with. I did not provide him with 13 the entire document. 14 MR. DOMINGUEZ: I 15 understand. If there is any 16 misunderstanding, that is where it 17 is coming from. 18 BY MR. DOMINGUEZ: 19 Q. I will direct you to 20 Paragraph 23. 21 A. Of which document? 22 Q. PECO Exhibit 11. Which is 23 on Page 14. If you could tell me whether 24 you have read this section. It pertains	44
1 A. Correct. 2 Q. I will hand you what has 3 been marked PECO Exhibit Number 11. Do 4 you recognize this document? It is 5 titled the Joint Petition for Settlement 6 in the Application of PECO Energy Company 7 pursuant to Chapters 11, 19, 21, 22 and 8 28 of the Public Utility Code for 9 approval of a plan of corporate 10 restructuring including the creation of a 11 holding company and the merger of the 12 newly formed holding company and Unicom 13 Corporation. Have you ever read this 14 document before? 15 A. Not in its entirety I would 16 say no. 17 Q. Have you read any portion of 18 it? 19 A. If these are some things 20 that come across my plate, I would be 21 happen to read it. 22 Q. It is the merger settlement 23 in connection with the transaction that 24 brought PECO and Unicom together, does	43	1 to the company's reliability commitment 2 as a result of the last merger. 3 A. No. 4 Q. Do you have any 5 understanding whatsoever whether the 6 company has met its reliability 7 commitments that were made as a result of 8 the past merger? 9 A. No. 10 Q. You have done no analysis of 11 the company's reliability performance to 12 determine whether or not it fulfilled its 13 commitments in the last merger agreement, 14 correct? 15 A. Correct. 16 Q. Do you have an opinion as to 17 the company's reliability performance 18 over the last five years? 19 A. Yes, I do. 20 Q. What is your opinion? 21 A. My opinion is that the 22 reliability has gone down. 23 Q. What is it based upon? 24 A. On the feedback I get from	45

1 my members. 2 Q. Other than what you have 3 been told by your members, have you done 4 any analysis of the actual data? 5 A. No. 6 Q. Can you identify today what 7 members have told you that the company's 8 reliability has suffered? 9 A. On an individual basis, no. 10 Q. Can you tell us today 11 whether or not they have indicated that 12 the System Average Interruption Frequency 13 Index has gone up or down over the last 14 five years? 15 A. No. 16 Q. Do you understand the term 17 SAIFI -- the acronym SAIFI? 18 A. Safety? 19 Q. SAIFI. 20 A. No. 21 Q. Have you ever heard of the 22 acronym CAIDI? 23 A. No. 24 Q. Which stands for Customer	1 what you are referring to where that 2 language is picked up? 3 A. Yes. 4 Q. The word company, the 5 company, in the section that you have 6 picked up at Page 11 of your testimony, 7 to which entity does that refer? 8 A. I would refer to that as 9 Exelon. 10 Q. Is it based on that 11 understanding that you compared Exelon's 12 safety record to the language that you 13 quote on Page 11? 14 A. Say that again, please. 15 Q. Sure. Here is what I'm 16 trying -- I'm not trying to trick you 17 here, I'm just trying to understand what 18 your testimony is. At Page 11 on 19 Line 16, you say, I am concerned because 20 PECO and Exelon have not lived up to the 21 promises they made in the last merger 22 case about providing a safe working 23 environment for their employees. Do you 24 see that?
1 Average Interruption Duration Index. 2 Have you heard of that? 3 A. I have seen it in writing, 4 yes. But once again, I don't deal with 5 the electric side. 6 Q. I will direct your attention 7 to Paragraph 24 of the merger settlement, 8 it appears on Page 15. Have you ever 9 read this paragraph before? 10 A. No. 11 Q. I will specifically direct 12 your attention to the last bullet in 13 Paragraph 24. You said no pretty quickly 14 so let me give you a chance to get there. 15 Have you ever read that bullet point 16 before? 17 A. I believe that is what is 18 included in our testimony. 19 Q. So you have read that 20 before? 21 A. Yes. 22 Q. Could you point it out in 23 your testimony? I will ask you to turn 24 to Page 11, Line 20 through 22. Is that	1 A. Yes. 2 Q. You say PECO and Exelon, is 3 it your position that Exelon made any 4 commitments in the last merger regarding 5 safety? 6 A. I don't know. 7 Q. If you take a look at the 8 next sentence, it says in Paragraph 24 of 9 the settlement, in the merger between 10 PECO and Commonwealth Edison's parent 11 Unicom, it doesn't say PECO committed in 12 the area of OSHA loss work day cases. Do 13 you see that? 14 A. Yes. 15 Q. It doesn't say PECO and 16 Exelon, correct? 17 A. Correct. 18 Q. Does that lead you to 19 believe that it was just PECO that made 20 the commitment and not Exelon? 21 A. I don't know. 22 Q. Sir, I will direct your 23 attention to Exhibit 11 again, and I'm 24 going to go to the page that starts with

13 (Pages 46 to 49)

50 1 the sentence, this joint petition for 2 settlement is submitted by the following 3 parties, which is Page 3 of Exhibit 11. 4 Go to the third page, you will see it. 5 A. Okay. 6 Q. Do you see it defines what 7 entity is the company in that first 8 sentence? 9 A. Yes. 10 Q. What entity is it? 11 A. PECO. 12 Q. Doesn't include Exelon, 13 correct? 14 A. Correct. 15 Q. Or any other Exelon entity, 16 correct? 17 A. Correct. 18 Q. Does that -- if it helps 19 you, it helps you, if it doesn't help 20 you, it doesn't help you. Does that help 21 you to understand whether PECO on the one 22 hand or Exelon as a whole made 23 commitments as part of the prior merger 24 settlement? If you still don't know, you	52 1 Line 2 of your testimony on Page 12, the 2 September 2002 presentation by Exelon 3 CEO? 4 A. I believe so, yes. 5 Q. Let me continue reading from 6 Line 14, it shows that PECO achieved a 7 rate of .76 per 100 employees, correct? 8 A. Yes. 9 Q. You then say, while better 10 than Exelon's overall performance, that 11 still fails to even reach top 25 percent 12 performance. My question to you is, what 13 is top 25 percent performance? 14 A. I don't know. 15 Q. Sir, is this another part of 16 your testimony that others wrote? 17 A. I would say yes. 18 Q. I have a number of questions 19 for you on the safety part of your 20 testimony. Was that written by other 21 people? I want to save you some time. 22 A. Yes. 23 Q. And aggravation quite 24 frankly. Go to Page 13, Line 13, it
51 1 don't know. 2 A. I would say I don't know at 3 this point. 4 Q. Sir, what was the top 5 10 percent for lost work day rate in 6 2001? 7 A. Where are you referring to 8 that? 9 Q. Sure. I'm directing your 10 attention to Page 12 of your testimony, 11 beginning on Line 13. 12 A. I think that is part of a 13 chart under FK-11. 14 Q. All right, I'm at FK-11. 15 What is it that you want to point out in 16 FK-11? 17 A. I'm trying to find where it 18 is referenced. What was your question 19 again, please? 20 Q. It says, further, that same 21 presentation shows the loss work day rate 22 for PECO in 2001. What presentation are 23 we talking about? Are you referring to 24 the presentation that is referenced on	53 1 says, it then describes some of the 2 efforts made in 2004 to improve the 3 safety culture at Exelon. And you are 4 referring here to a report called 5 Realizing the Promise, correct? 6 A. Yes. 7 Q. And your sentence at Line 14 8 continues, but notes that, quote, Exelon 9 Power did not meet its safety goals in 10 2004, correct? 11 A. Yes. 12 Q. Exelon Power is not PECO 13 Energy, correct? 14 A. Yes. 15 Q. You then say in Line 16, in 16 other words, PECO has failed to live up 17 to its promise that it would be a top 18 10 percent performer in worker safety. 19 Do you see that? 20 A. Yes. 21 Q. If Exelon Power and PECO are 22 separate companies, what does it matter 23 what Exelon's performance is with regard 24 to PECO's specific promises?

14 (Pages 50 to 53)

53

1 Commonwealth Edison's billing platform
2 will be good for customers and relatively
3 free of problems. Do you see that?

4 A. Yes.

5 Q. What are you referring to?

6 A. That if there are needs,
7 they go onto Commonwealth Edison's
8 billing platform, it would be a better
9 situation.

10 Q. That is the company's
11 representation?

12 A. That was the company's
13 assumption.

14 Q. And you don't believe that
15 to be true?

16 A. No.

17 Q. Why?

18 A. Well, from the statistics
19 that are in this report, they don't firm
20 that up.

21 Q. Please explain what you
22 mean.

23 A. Well, according to the
24 statistics in this report, Commonwealth

53

1 mean. Explain that to me.

2 Q. You don't believe that
3 updating the PECO system to the
4 Commonwealth Edison platform is good for
5 customers, correct?

6 A. Correct.

7 Q. Have you conducted any
8 analysis whatsoever of the two platforms
9 to reach that conclusion?

10 A. No.

11 Q. On the next page, Page 9 of
12 your testimony, Lines 1 through 5, you
13 quote from a 1998 article that appeared
14 in the Chicago Tribune, correct?

15 A. Yes.

16 Q. And that was an article that
17 was critical of the conversion to the
18 Commonwealth Edison platform, correct?

19 A. Yes.

20 Q. Have you read any articles
21 since 1998 about the Commonwealth
22 Edison's platform?

23 A. No.

24 Q. Do you know how it is

50

59

1 Edison's was worse than Exelon's or
2 PECO's.

3 Q. Are you talking about the
4 customer billing platform or the call
5 center performance, which are you talking
6 about?

7 A. Overall performance as far
8 as I know.

9 Q. Do you know anything about
10 the software used in the Commonwealth
11 Edison's customer billing platform?

12 A. No.

13 Q. Have you done any analysis
14 of how that software compares to the
15 package PECO is presently using?

16 A. No.

17 Q. Do you agree with me that
18 updating the software in the customer
19 service platforms might provide some
20 benefits to customers?

21 A. That remains to be seen.

22 Q. You don't think it will
23 happen?

24 A. I don't understand what you

59

1 performing today?

2 A. No.

3 Q. Did you know how it was
4 performing in 1999, a year after this
5 article was written?

6 A. No.

7 Q. Have you asked any questions
8 in discovery specifically aimed at
9 understanding how well the customer
10 platform is presently operating?

11 A. No.

12 Q. How did you get this
13 article?

14 A. I --

15 Q. Did you read it in 1998?

16 A. No.

17 Q. Who provided it to you?

18 A. My attorney.

19 Q. Have you ever worked in a
20 call center?

21 A. No.

22 Q. Doesn't sound like it. You
23 never supervised a call center, right?

24 A. No.

61

52 1 Q. Between yourself on the one 2 hand and people who manage call centers 3 for a living, who is the better person in 4 your view to decide what the appropriate 5 staffing level is for a call center? 6 MR. RUBIN: I will object to 7 that. And I will ask him not to 8 answer that. That is an 9 argumentative question. You don't 10 have to do that to him. 11 MR. DOMINGUEZ: I'm not 12 trying to do anything to him. 13 MR. RUBIN: When you started 14 to say, do you believe someone 15 else is a better person than you 16 are, you started that. 17 BY MR. DOMINGUEZ: 18 Q. Do you feel that you are a 19 person qualified in the area of a call 20 center operations? 21 A. No. 22 Q. Have you done any analysis 23 of how many people should be in the PECO 24 call center, for example?	5 1 PSE&G after the merger? 2 A. No. 3 Q. I will direct your attention 4 to Page 9, Line 19 of your testimony. 5 You write, third, it appears that Exelon 6 is attempting to use Commonwealth 7 Edison's call center operation as a mode 8 for PECO, is that correct? 9 A. Yes. 10 Q. How does that appear to you? 11 In other words, what information did yo 12 use to reach the conclusion that it 13 appears that Exelon is attempting to use 14 ComEd's call center operation as the 15 model for PECO? 16 A. Just the information I have 17 in this -- I guess would be FK-8. 18 Q. Could you show me where in 19 FK-8 it says that? 20 A. No, I can't. 21 Q. I will direct your attention 22 to Page 21 of your testimony. The first 23 page that begins on -- first question 24 that begins on Line 1, I would like you
63 1 A. No. 2 Q. Have you done any analysis 3 of how many people should be in the 4 Commonwealth Edison call center? 5 A. No. 6 Q. How about the combined call 7 center that would exist after the merger, 8 have you done any analysis of the 9 staffing levels actually required to 10 perform the work? 11 MR. RUBIN: Object to the 12 form of that question. There is 13 no foundation for there being a 14 combined call center after the 15 merger. That is not what the 16 company has indicated. 17 MR. DOMINGUEZ: Answer the 18 question. 19 THE WITNESS: Repeat it. 20 BY MR. DOMINGUEZ: 21 Q. Have you done any analysis 22 of the call center operations and the 23 staffing levels required to support the 24 call center operations for Exelon and	65 1 to just review that and tell me when you 2 are ready to answer questions on it. 3 Review the question and the answer, 4 please. 5 A. Okay. 6 Q. Sir, the merger agreement 7 that you are talking about here is the 8 merger agreement that I showed you that 9 is Exhibit 11, right? 10 A. I assumed it is. 11 Q. You said you hadn't seen 12 that except for select portions that 13 Mr. Rubin provided to you. Did you have 14 any role in negotiating the merger 15 settlement when it was negotiated back in 16 2000? I assume no. 17 A. No. 18 Q. Is the union or any of the 19 parties you represent a party to the 20 agreement? 21 A. The union only came into 22 existence in 2003 so I would say no. 23 Q. The numbers that you have 24 provided in your answer and I'm

55 1 specifically referring to the number that 2 is at Line 9 and 10 of your answer, 883 3 people. That doesn't include 4 contractors, is that correct? 5 A. Correct. 6 Q. Why didn't you include 7 contractors? 8 A. Basically just dealing with 9 employees. 10 Q. You understand the company 11 has on staff contractors and employees, 12 correct? 13 A. Yes. 14 Q. Why did you just use the 15 employee number and not include the 16 contractor number in the overall staffing 17 levels? 18 A. My understanding they were 19 employee -- employees, not contractors. 20 Q. Well, you can employ a 21 contractor, can't you? 22 A. Yes. 23 Q. Did you make the decision to 24 use only employees in your response?	53 1 MR. RUBIN: I may have heard 2 it wrong. 3 MR. DOMINGUEZ: Read it 4 back. 5 (The record is read back.) 6 BY MR. DOMINGUEZ: 7 Q. Mr. Kuders, assume for 8 purposes of my next questions that 9 contractors are properly supposed to be 10 included in the overall staffing levels 11 as it pertains to the commitment that you 12 are referencing on Page 21 of your 13 testimony. Okay? 14 A. Okay. 15 Q. Do you have any idea as you 16 sit here today whether the total number 17 of employees and contractors working for 18 PECO during the years that the merger 19 agreement was in effect were higher than 20 the staffing level commitments required 21 by this provision of the merger. 22 agreement? 23 A. No. 24 MR. DOMINGUEZ: Mark this
67 1 MR. RUBIN: I'm going to 2 object to that. You are assuming 3 that the company provided numbers 4 on contractors, which I don't 5 believe they did. I'm not sure it 6 is a decision he could have made 7 one way or the other. 8 BY MR. DOMINGUEZ: 9 Q. Let me ask the question. If 10 contractors are properly included in the 11 staffing levels, do you have any 12 understanding of whether or not the 13 combined employees and contractors are 14 sufficient to meet the staffing level 15 commitments in the agreement? 16 MR. RUBIN: I object to that 17 question. I will direct him not 18 to answer. It is an inaccurate 19 question. You said properly 20 included and I don't think that 21 was established. 22 MR. DOMINGUEZ: I will have 23 her read back the question. I'm 24 asking him to assume that.	69 1 PECO-17. 2 (Exhibit PECO-17 marked for 3 identification.) 4 (Recess at 5:20 p.m.) 5 (Resumed at 5:24 p.m.) 6 BY MR. DOMINGUEZ: 7 Q. Mr. Kuders, I would like you 8 to go to Page 15 of your testimony. Read 9 the question and answer that begins at 10 Line 7 and end at Line 20. 11 MR. RUBIN: Are you asking 12 him to read it to himself? 13 MR. DOMINGUEZ: Yes, please. 14 THE WITNESS: Okay. 15 BY MR. DOMINGUEZ: 16 Q. I will begin reading from 17 Line 12, it says, in addition, PPL sold 18 one of its power plants, the Sunbury 19 station. Do you see that? 20 A. Yes. 21 Q. Then I'm going to go down to 22 Line 16 and read the following sentence, 23 quote, the important thing about those 24 sales, however, was that the selling

32 1 proceeding. 2 MR. RUBIN: I will ask him 3 not to answer that. You are 4 trying to negotiate with him 5 during a deposition. The company 6 filed an application asking for 7 unconditional approval. 8 Mr. Kuders has filed testimony 9 that asks for unconditional denial 10 of that application. If the 11 company and the union want to talk 12 about conditions, that is not 13 appropriate for today. He's not 14 going to answer questions on that. 15 I don't think that is appropriate. 16 The testimony is the application 17 as filed should be denied. If the 18 company modifies the application, 19 that might change the union's 20 position. If the company offers 21 conditions which it has not 22 offered thus far, that also 23 changes things. But we are not 24 going to negotiate that here. And	3. 1 been discussed with the company at this 2 point, so I can't really discuss the 3 entire thing with you. 4 Q. I'm not trying to negotiate, 5 but I'm trying to understand how in you 6 mind you have connected the 614 7 negotiations to the issue of safety and 8 reliability. 9 A. Manpower, job descriptions, 10 things of that nature. 11 Q. Those are some of the 12 concerns, some of the safety and 13 reliability concerns you have about this 14 merger, correct? 15 A. Yes. 16 Q. Let me see if you would 17 accept this question phrased in this way: 18 Mr. Kuders, I'm not trying to understand 19 all of the conditions nor am I trying to 20 negotiate with you conditions for the 21 acceptance of the merger. Do you 22 understand that? 23 A. Yes. 24 Q. The security of the workers
83 1 he's not going to lay out a 2 position during a deposition. 3 MR. DOMINGUEZ: I'm not 4 negotiating with the witness. I'm 5 trying to understand the position 6 that is laid out in front of the 7 Public Utility Commission, that 8 is, there are no conditions that 9 you could foresee that would allow 10 the union to support the merger, 11 is that correct? 12 MR. RUBIN: I'm directing 13 him not to answer, I think that is 14 the same question. 15 BY MR. DOMINGUEZ: 16 Q. Are the 614 negotiations in 17 your mind connected to the issue of 18 safety and reliability? 19 A. The current negotiations? 20 Q. Correct. 21 A. Yes. 22 Q. How so? 23 A. Well, we just started 24 negotiations. Everything isn't -- hasn't	85 1 that are presently working for Exelon is 2 of concern to you, correct? 3 A. Yes. 4 Q. The reliability of the 5 system is a concern to you, correct? 6 A. Yes. 7 Q. And you tied to that 8 reliability the contract negotiations for 9 614, correct? 10 A. Yes. 11 Q. So if we were to start to 12 understand the issues that the union has 13 with regard to the merger in a manner 14 that would allow us to have a road map on 15 solving those problems, we would have to 16 solve the 614 contract, correct? 17 MR. RUBIN: I don't think 18 I'm objecting. I don't understand 19 what you just asked him. 20 BY MR. DOMINGUEZ: 21 Q. Would the 614 issues be one 22 of those things that would have to be 23 solved in order for the unions to support 24 the merger?

1 MR. RUBIN: I'm going to 2 direct him not to answer. Is it 3 okay if we go off the record? 4 MR. DOMINGUEZ: Yes, let's 5 go -- I'm trying to understand. 6 MR. RUBIN: We can do it 7 here. Off the record. 8 (Discussion off the record.) 9 MR. DOMINGUEZ: Back on the 10 record. Counsel had a discussion 11 off the record surrounding the 12 permissible scope of the 13 questioning concerning the 14 possible conditions that might 15 allow the union to support the 16 merger. Counsel has advised that 17 he will direct his witness not to 18 answer any questions concerning 19 conditions necessary for the union 20 to withdraw its objection that are 21 not set forth in the testimony of 22 Mr. Kuders. Is that correct? 23 MR. RUBIN: That is 24 accurate.	35 3 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 CERTIFICATE I HEREBY CERTIFY that the witness was duly sworn by me and that the deposition is a true record of the testimony given by the witness. It was requested before completion of the deposition that the witness, FRANK P. KUDERS, have the opportunity to read and sign the deposition transcript. <u>DOTTYANN Y. WALSH, a</u> Certified Shorthand Reporter and Notary Public for the Commonwealth of Pennsylvania Dated: July 27, 2005 (The foregoing certification of this transcript does not apply to any reproduction of the same by any means, unless under the direct control and/or supervision of the certifying reporter.)
87 1 MR. DOMINGUEZ: That 2 concludes the deposition. Thank 3 you, Mr. Kuders. 4 MR. RUBIN: I have no 5 questions. 6 (Witness excused.) 7 (Deposition concluded at 8 approximately 5:49 p.m.) 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24	89 1 INSTRUCTIONS TO WITNESS 2 3 Please read your deposition 4 over carefully and make any necessary 5 corrections. You should state the reason 6 in the appropriate space on the errata 7 sheet for any corrections that are made. 8 After doing so, please sign 9 the errata sheet and date it. 10 You are signing same subject 11 to the changes you have noted on the 12 errata sheet, which will be attached to 13 your deposition. 14 It is imperative that you 15 return the original errata sheet to the 16 deposing attorney within thirty (30) days 17 of receipt of the deposition transcript 18 by you. If you fail to do so, the 19 deposition transcript may be deemed to be 20 accurate and may be used in court. 21 22 23 24

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J.D. Power and Associates Reports:
Electric Utility Business Customer Satisfaction Increases across the Nation

Providing Service and Billing Options Improves Satisfaction among Business Customers

FOR IMMEDIATE RELEASE: March 4, 2005

WESTLAKE VILLAGE, Calif.—Electric utility companies across all regions in the United States are showing an increase in overall satisfaction among business customers, according to the J.D. Power and Associates 2005 Electric Utility Business Customer Satisfaction StudySM released today.

The expanded study, now in its second year, is based on interviews with representatives of more than 11,000 businesses that spend between \$500 and \$50,000 monthly on electricity. Overall customer satisfaction is based on six factors: power quality and reliability; customer service; company image; billing and payment; price; and communications.

The study finds that many utilities are receiving higher customer satisfaction rates due to improved options for businesses to directly contact their utility, either through a business call center or an assigned representative. In 2005, 69 percent of businesses surveyed indicated they have direct access options, compared to 61 percent in 2004. Businesses with an assigned account representative report an overall average Customer Satisfaction Index (CSI) score of 110—seven points higher than the industry average.

“One of the best ways utilities are improving satisfaction is by providing options to their customers, allowing customization of services and billing,” said Alan Destribats, executive director of the utility practice at J.D. Power and Associates. “Businesses that take advantage of the variety of rate

(Page 1 of 3)

plans and those that use alternative methods of paying monthly bills, such as on the utility's Web site, are much more satisfied overall."

Businesses also perceive experiencing fewer and shorter power outages in 2004. Among those that did experience outages of more than five minutes, 22 percent said their utility companies re-contacted them to confirm that power had been restored. These businesses rate their utilities significantly higher for power quality and reliability than those that were not re-contacted.

East Region

PPL Electric Utilities ranks highest in the East Region with an overall CSI score of 109 points. PPL performs very well across all six factors. Other strong performers in the region are Exelon-PECO, Baltimore Gas and Electric, and Energy East.

Midwest Region

MidAmerican Energy ranks highest in the Midwest Region with an index score of 113 points—the highest in the nation. MidAmerican receives particularly high ratings in power quality and reliability. Other utilities in the region with strong performances include We Energies, Alliant Energy, LG&E Energy and Xcel Energy-Midwest.

South Region

The South Region leads all regions in every satisfaction component. Despite the hurricanes that battered Florida in 2004, businesses perceived that Florida utilities handled power restoration well, and the scores reflect a small improvement in power quality and reliability ratings.

Southern Company ranks highest in overall satisfaction in the South Region with 111 index points and particularly high ratings in price and company image. Other strong performers in the region include Duke Power, Progress Energy, City Public Service and Tampa Electric.

West Region

Salt River Project ranks highest in overall satisfaction in the West Region with an index score of 111. It receives high marks in company image, customer service and communications. Other utilities in the region with strong performances include Arizona Public Service, Puget Sound Energy and Portland General Electric.

Headquartered in Westlake Village, Calif., J.D. Power and Associates is an ISO 9001-registered global marketing information services firm operating in key business sectors including market research, forecasting, consulting, training and customer satisfaction. The firm's quality and satisfaction measurements are based on responses from millions of consumers annually. Media e-mail contact: michael.greywitt@jdpa.com or john.tews@jdpa.com

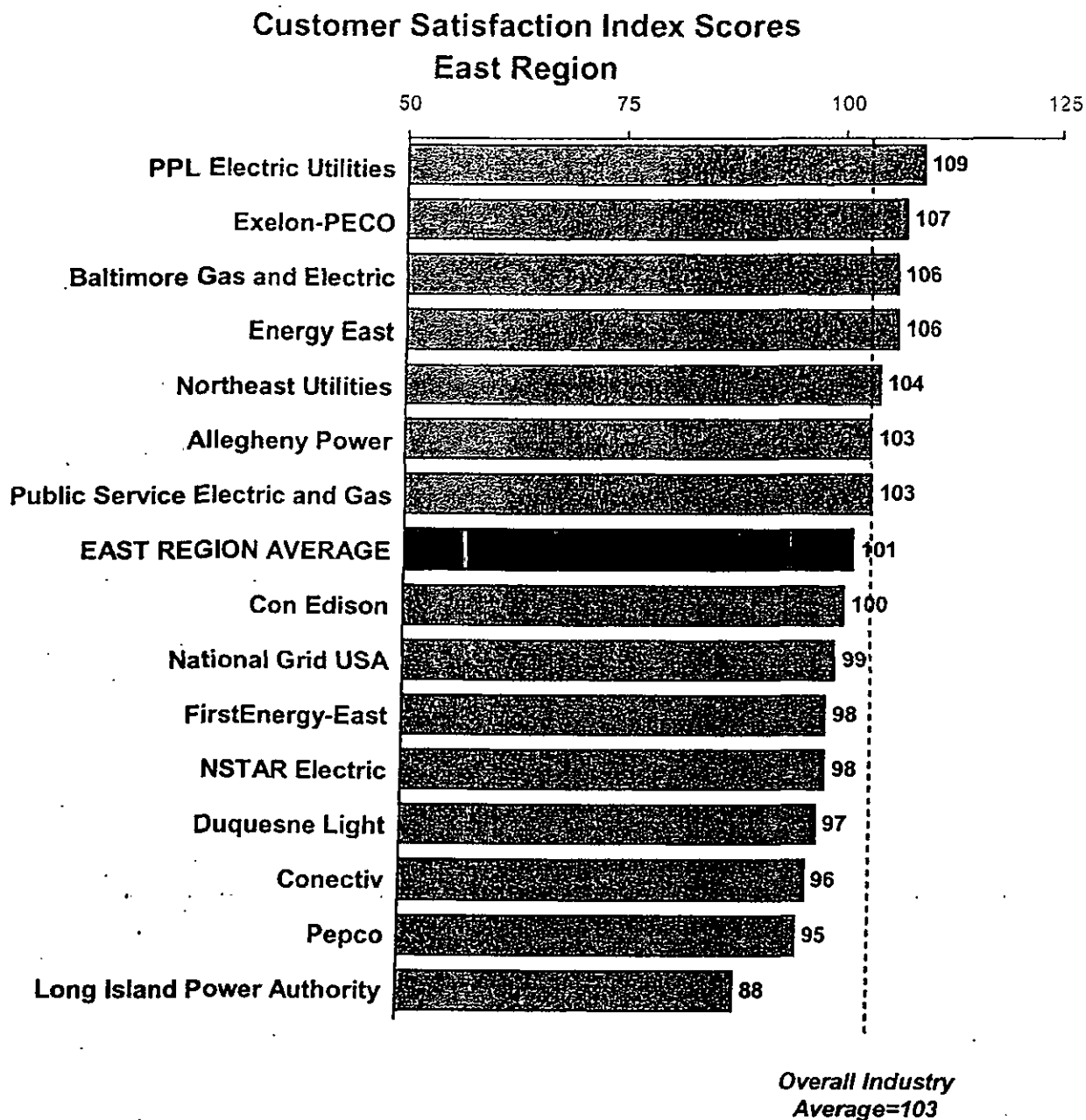
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(Page 3 of 3)

NOTE: Four charts follow.

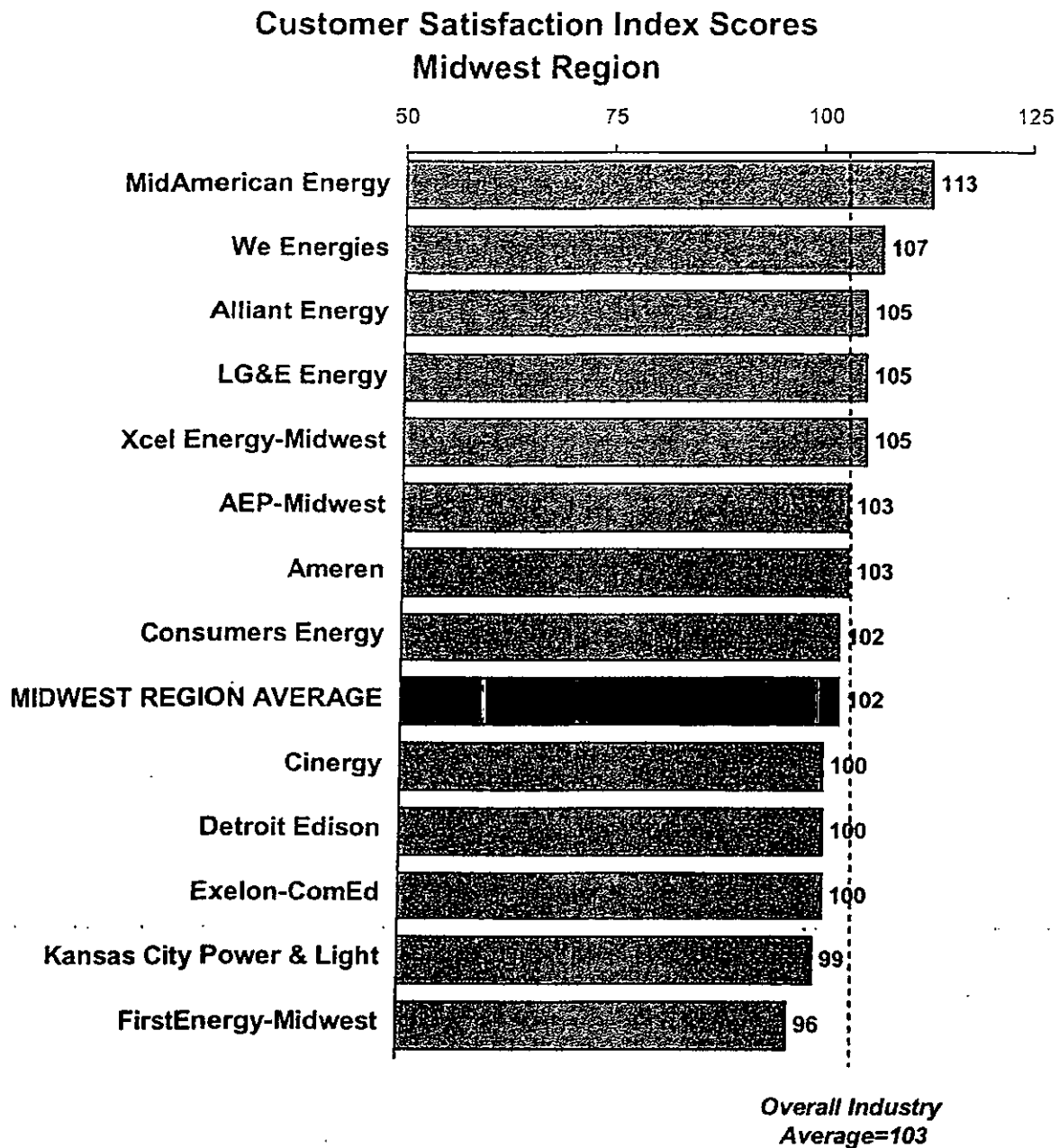
J.D. Power and Associates 2005 Electric Utility Business Customer Satisfaction StudySM



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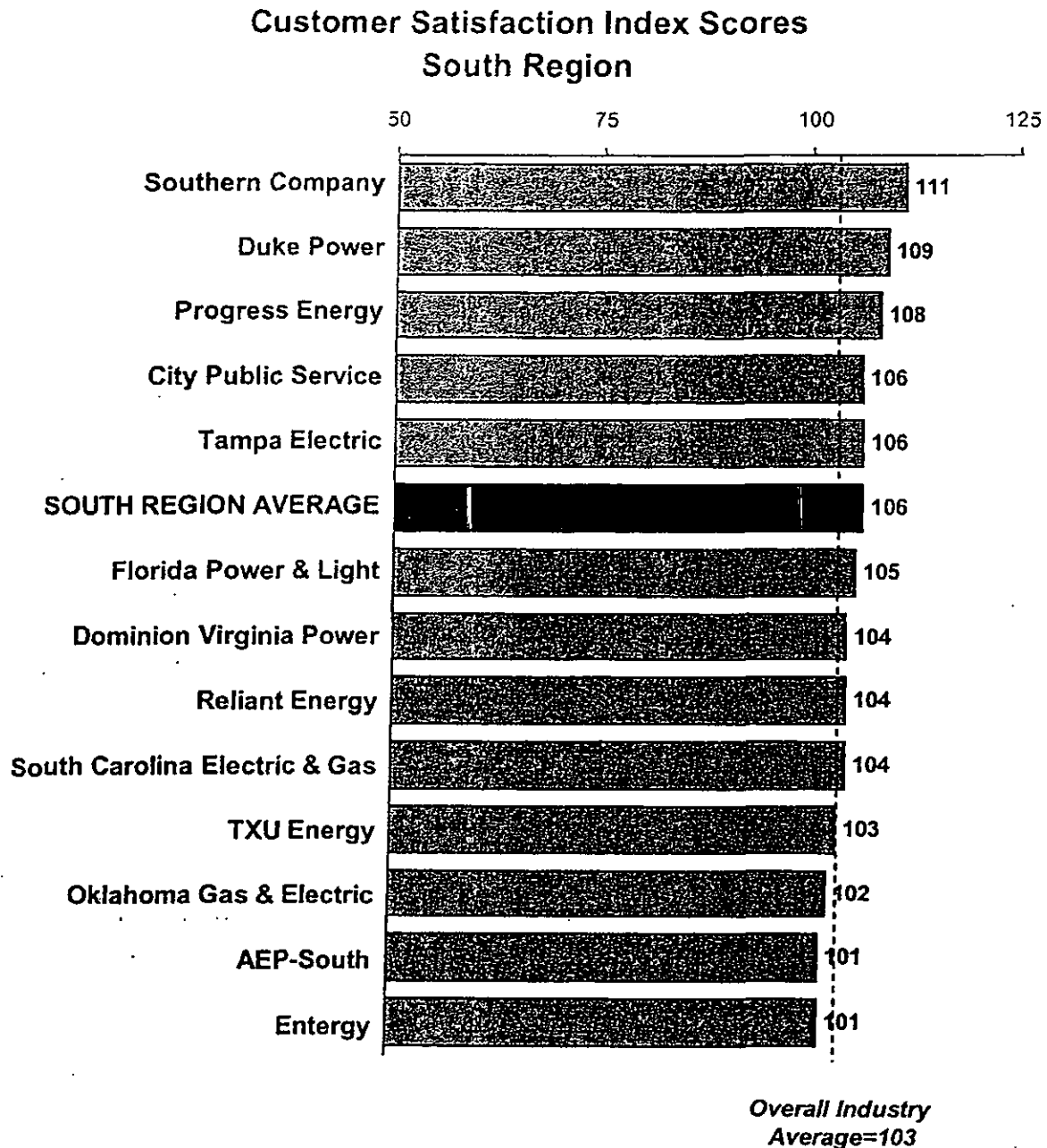
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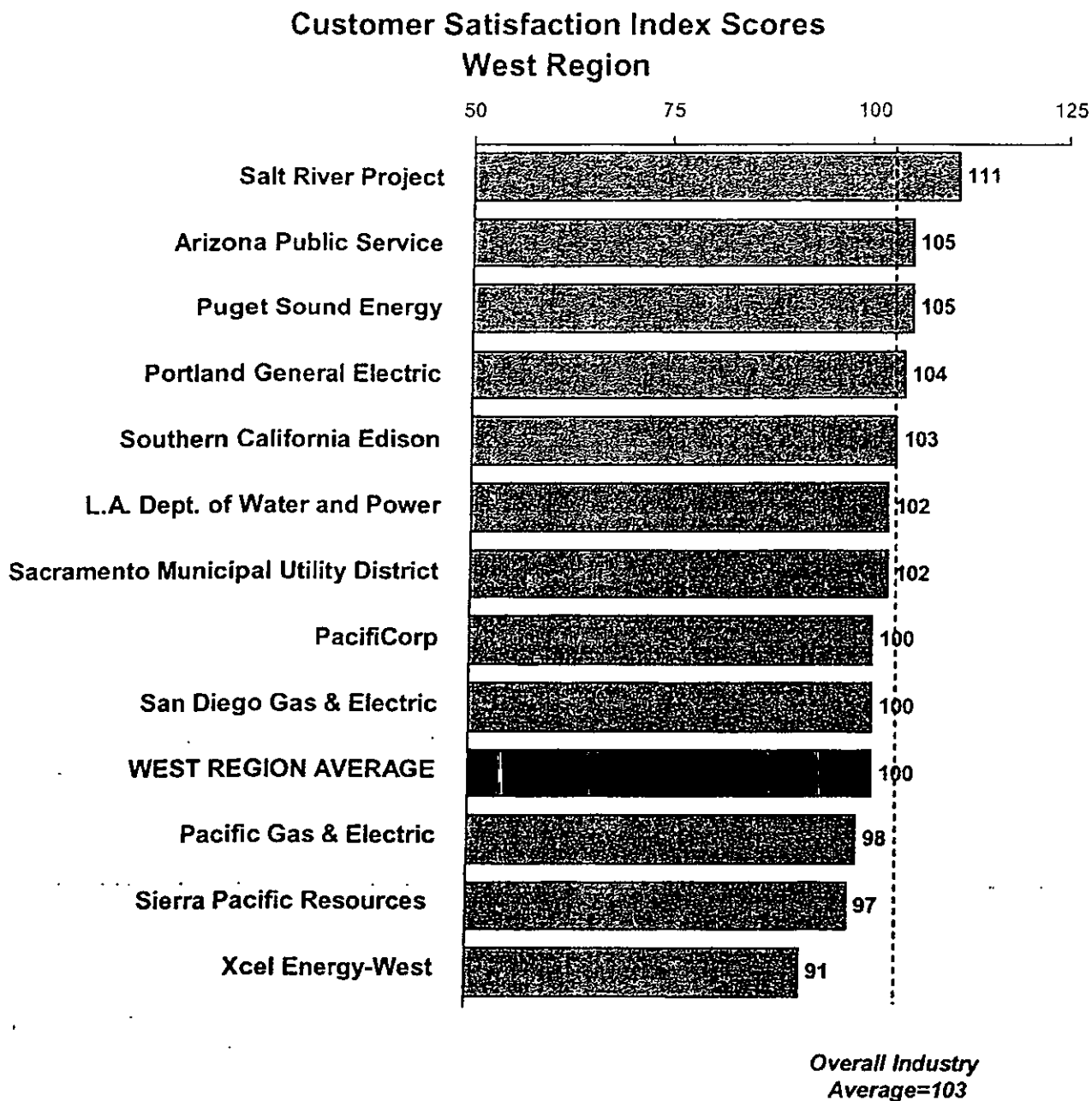
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SITE Selection

September 2003

www.site-selection.com

Spanning The Globe

The 2003 Global Infrastructure Report

The Rion-Antirion Bridge will connect Greece's primary mainland to the Peloponnesian peninsula across the Gulf of Corinth.

**Top Utilities &
Annual Utilities Directory**

Q&A: Georgia Gov. Sonny Perdue

**Industry Spotlights: Semiconductors,
Medical Devices, Logistics**

Area Focus

Georgia, Florida, Kansas, Massachusetts,
Texas, West Virginia, Upper Midwest States,
Rocky Mountain States, Quebec

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Resilience Pays Off For Top Utilities

Economy, deregulation don't stop these energy companies from producing big results in economic development.

by RON STARNER

ron.starner@conway.com

When Siemens Medical Solutions needed a corporate headquarters last year for its American sales and services divisions, PECO Energy provided the location data the company sought.

The result? Siemens moved its U.S. medical headquarters to Great Valley Corporate Center in Malvern, Pa., in Chester County, bringing 3,000 jobs and US\$75 million in capital investment to southeastern Pennsylvania.

When GlaxoSmithKline needed to expand its pharmaceutical R&D operations in the Quaker State in 2002, PECO helped seal the deal. As a result, GSK is expanding its operations into a \$40-million, 200,000-sq.-ft. (18,580-sq.-m.) building at the Renaissance

Corporate Center in Upper Merion Township in Montgomery County. About 800 workers will move into the five-story building.

Results like these helped propel PECO Energy (www.peco.com) into the ranks of *Site Selection's* Top Utilities of 2002. An annual competition based upon economic development performance in four categories — capital investment, job creation, capital investment per capita and jobs per 10,000 population — the award tests the ability of energy companies to remain resilient in the face of increasing competition.

Due to a tie in this year's rankings, the competition actually produced 11 winners: Cinergy Corp., DTE Energy, Entergy Arkansas, FirstEnergy Corp.,

TOP UTILITIES OF 2002

Utility Company	HQ Location
Cinergy Corp.	Plainfield, Ind.
Northeast Utilities	Hartford, Conn.
Georgia Power	Atlanta, Ga.
PECO Energy	Philadelphia, Pa.
Entergy Arkansas	Little Rock, Ark.
Niagara Mohawk	Syracuse, N.Y.
DTE Energy	Detroit, Mich.
FirstEnergy Corp.	Akron, Ohio
Omaha Public Power District	Omaha, Neb.
Hoosier Energy	Bloomington, Ind.
Progress Energy	Raleigh, N.C.

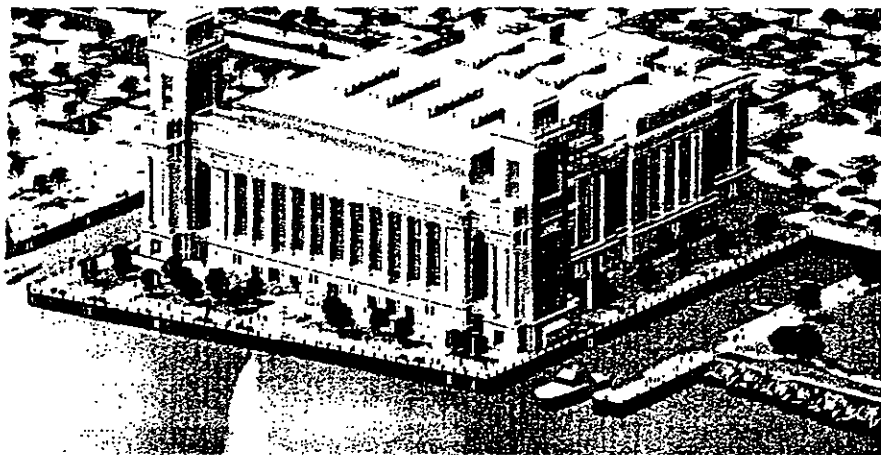
Note: Due to a tie in the rankings, 11 companies made the list this year.

Georgia Power, Hoosier Energy, Niagara Mohawk, Northeast Utilities, Omaha Public Power District, PECO Energy and Progress Energy.

The annual *Site Selection* ranking honoring performance in economic development among North American utilities began in 1999. Since the inception of the award, two utilities — Cinergy and Georgia Power — have won the award every time.

Their five-peat just edges PECO, which this year became only the third utility to register a four-peat. Greg Byrnes, director of economic development for PECO, says his company's success is attributable to the fact that, in Philadelphia, the utility takes the lead in economic development.

"We really have been the regional



The large Gothic building was constructed between 1916 and 1918, and designed by John T. Windram, who also designed Philadelphia's 30th Street Station, the Franklin Institute and other well-known Greater Philadelphia buildings. PECO Energy used the facility to generate electricity for homes and businesses until 1980. In 2000, Preferred Real Estate Investments purchased the property from PECO and began the revitalization process. Renovations on the facility are nearing completion and several tenants are scheduled to occupy space this fall.

leader for economic development, whereas in some areas it tends to be the chamber of commerce or some other entity," says Byrnes.

TOP JOBS

Company	No. of Jobs
DTE Energy	8,780
Georgia Power	8,507
Northeast Utilities	8,182
Cinergy Corp.	7,731
Alabama Power	7,411
FirstEnergy Corp.	6,693
Progress Energy	6,556
PECO Energy	4,984
CenterPoint Energy	4,539
Niagara Mohawk	4,440

PECO's record is even more impressive when one considers that the utility has achieved this honor despite a sluggish national economy since 2000, the increasing pressures of utility deregulation and mounting competition from regions eager to recruit companies out of the Northeast.

"Our success is the result of year-in, year-out accumulation," Byrnes said. "There have been a number of activities here — two new sports stadiums,

the Siemens headquarters project and others — and we are looking at a number of major projects in the pipeline right now. We truly anticipate becoming much more aggressive in the region. For example, we know that in the future we will be very strong in the pharmaceutical and biotech industry."

PECO's dominance is evidenced by the fact that it achieved the highest total capital investment of any utility in 2002, registering \$1.005 billion. FirstEnergy Corp. of Akron, Ohio, was close behind at \$950.4 million, followed by Cinergy of Plainfield, Ind., at \$956.6 million and Georgia Power of Atlanta at \$925.6 million.

Hoosier Energy of Bloomington, Ind., claimed the top spot in investment per capita at \$320.17, edging second-place Entergy Arkansas of Little Rock, which had \$286.58. DTE Energy of Detroit's territory produced the most jobs, 8,780, just ahead of Georgia Power's 8,507 jobs. In jobs created per 10,000 population, Entergy Arkansas claimed the No. 1 honor, registering 29.86 jobs per 10,000, while Omaha Public Power District ranked second with 27.2 jobs created per 10,000.

TOP JOBS PER 10,000 POPULATION

Company	Jobs per 10,000
Entergy Arkansas	29.86
Omaha Public Power	27.20
Douglas Electric	25.64
Northeast Utilities	18.18
Cinergy Corp.	16.17
PacificCorp	13.56
Hoosier Energy	12.93
Niagara Mohawk	12.69
PECO Energy	9.97
Georgia Power	9.94

Anatomy of a Five-Peat

Georgia Power's record run of five consecutive Top 10 rankings (matched by Cinergy) was no fluke, says W. Craig Barrs, vice president of community and economic development for the Southern Company affiliate in Atlanta.

"Despite the sluggish economy in 2002, Georgia Power's Community & Economic Development organization had another excellent year, fueled in part by several newly developed programs," Barrs wrote in his nomination package.



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TOP INVESTMENT

Company	Investment
PECO Energy	\$1.005 billion
FirstEnergy Corp.	\$980.4 million
Cinergy Corp.	\$956.6 million
Georgia Power	\$925.6 million
Niagara Mohawk	\$842.3 million
DTE Energy	\$749.1 million
Progress Energy	\$673.1 million
Northeast Utilities	\$458.0 million
Oncor	\$428.6 million
Hydro-Quebec	\$400.0 million

Among the tools Georgia Power developed to help corporate site selectors was an enhanced Web site. "Over the years the site has been continually upgraded, but in 2002 a complete overhaul was performed in order to increase the overall functionality and make the site easier for visitors, especially those who may not be 'Web-savvy,'" noted Barrs.

Georgia Power beefed up its Web portal (www.georgiapower.com/grc) by increasing its response speed, adding new slide-out menus and adding more dynamic information. New information

was added to area maps, including flood-plain designations, hydrological features, railroads, and commercial and international airports.

Perhaps the most innovative feature added, however, was an icon that allows Web site visitors to "ring a bell for service." One click of this icon immediately sends a request for help to the desktop of a Georgia Power staff member.

The Peach State utility also implemented a new real estate broker program, in order to inform the Atlanta offices of major and international real estate firms of the services offered by the project managers at Georgia Power, as well as to form closer partnership with those offices.

"Since its inception, this program has resulted in a noticeable increase in leads from real estate firms," Barrs commented. "It has strengthened the relationship between Georgia Power and the brokers, and it has assisted new project managers in making contacts in the real estate brokerage community."

These new efforts paid off. Last year, Georgia Power secured 59 major corporate real estate projects. Shaw

Industries brought a \$6-million warehouse/distribution project and 30 jobs to Cartersville. Pier One selected Savannah for a \$30-million, 50-job logistics center. Pine Hall Brick announced it would build a \$25-million factory for making stone, clay and glass in Fairmount and employ 40 workers.

TOP INVESTMENT PER CAPITA

Company	Investment per capita
Hoosier Energy	\$320.17
Entergy Arkansas	\$286.58
Nebraska Public Power	\$246.07
Niagara Mohawk	\$240.67
Omaha Public Power	\$209.53
PECO Energy	\$201.07
Cinergy Corp.	\$200.09
Georgia Power	\$108.13
Northeast Utilities	\$101.78
FirstEnergy Corp.	\$88.32

Source: Site Selection's Annual Utility Survey

Elan Corp. brought a 100-worker, \$40-million chemical and pharmaceutical plant to Gainesville. And Aero Plastics announced it would bring 200 jobs and \$15 million in capital investment in the form of a plastic and rub-



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ber products factory in McDonough, outside Atlanta.

Cinergy: 'Beyond Expectations'

Utility companies don't take a high profile in every state's economic development efforts. But they do in Indiana.

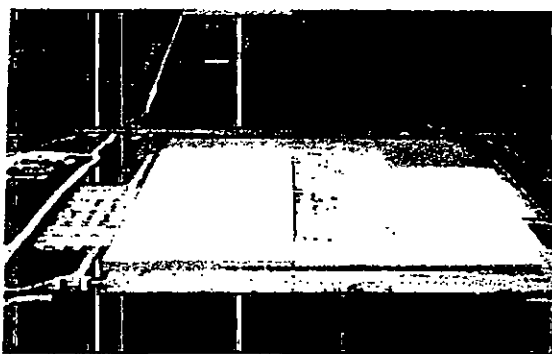
Commenting on the role Cinergy plays in industrial recruitment in the Hoosier State, Indiana Lt. Gov. Joseph E. Kernan says, "Whether we are creating a Web page, evaluating a program, planning an international trade mission or responding to a client, Cinergy is there — performing beyond our expectations."

Cinergy's challenge is especially unique because its territory is so vast. The utility's service area spans 16 million acres (6.5 million hectares) and includes all or portions of 69 counties in Indiana, all or portions of 10 Ohio counties including Cincinnati and the suburbs, and all or portions of six counties in Kentucky.

Last year, Cinergy played a role in

securing 7,731 new jobs and \$956.6 million in capital investment for its service area of 4.78 million people.

In fact, Cinergy scored the highest



Oncor provided economic development services in helping to attract this 1.35-million-sq.-ft. (125,415-sq.-m.) distribution center for Target Corp. to a site in the 1,700-acre (688-hectare) Railport business park in Midlothian, Texas. Oncor is a subsidiary of TXU, which has 19,000 megawatts of generated and contracted capacity in its primary market of Texas.

overall ranking of any utility in this year's *Site Selection* survey by placing third in capital investment, fourth in job creation, fifth in jobs created per 10,000 population, and seventh in investment per capita.

Like Georgia Power, Cinergy invests heavily into its databases of information and Web site. The Indiana Partners' Web site (www.indiana.cinergy.com) serves as the primary economic development portal for the state. The interactive site offers a searchable property database that combines the latest GIS mapping technology with community profiles, up-to-date demographics and aerial photographs.

The Cinergy Web portal has been consistently recognized as one of the best economic development sites in the country, and is regularly used as the portal of choice for site selection consultants seeking locations.

Top expansion projects worked by Cinergy in 2002 included a \$450-million

Chrysler transmission plant in Kokomo, Ind., a \$44.2-million customer-service/back-office center for Fifth Third Bank in Madisonville, Ohio, and a \$35-million auto parts plant for Keco Industries in Florence, Ky. SITE

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- Pre-cast concrete 31,824 sq. ft. cold storage building with sub-slab air flow, structural steel racks with in-rack dry sprinkler, 5,400 pallet positions (four high), and 931,000 cubic feet. Cold storage has dedicated 750 kva transformer, with chilling

provided by two (2) 200 hp Sullair ammonia screw compressors. Freezer operates at -10 degrees F.

- Structural improvements in production area included glazed tile walls, gravity flow trench drains, and Stanhard floor finishes
- 7,500 sq. ft. segregated cooler, with two (2) Sullair compressors
- 390' well, with 15,000 gallon partially submerged storage tank, provides non-potable cleaning water
- One (1) 70', 100,000-lb. truck scale with fully improved scale house
- Two (2) Cleaver-Brooks gas-fired process boilers (600 hp-300 psi / 200 hp-150 psi)
- Ventilated and humidity controlled raw product storage areas
- Alternativesites available immediately for build-to-suit development

Jeffrey J. Counsell
Managing Director, Global Food Property Solutions Group
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Available Building

Piedmont Triad West

Building Size: 70,000 sf. (70,000 sf. Expansion)
Lot Size: 10.47 Acres
Site Location: Piedmont Triad West Corporate Park
Surry County, North Carolina
Building Type: Load Bearing Tilt-Up Concrete Exterior
Roof: Single-Ply EPDM Ballasted Membrane
Clear Height: 24.0' Clear
Bay Spacing: 40.0' x 50.0'
Dock Area: 4 Dock Doors (4 "Knock-Outs")
1 Drive-In Door (14' x 14')
Parking: 80 Spaces (Expandable to 115)
Primary Use: Manufacturing / Distribution
Contact: Jan R. Critz, President
Surry County ED Partnership
PO Box 1282, Dobson, NC 27017
surryedp@surry.net / www.surryedp.com
336-386-4781 / 336-386-4893 (fax)

Available Building

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The 2004 Global Infrastructure Report

- *The Rise of the 'Aerotropolis'*
- *Seaports Prepare for Mega Freighters*
- *Bridge, Rail and Tunnel Update*

Top Utilities

Annual Utility Directory

Logistics & Transportation

**Industry Spotlights: Semiconductors,
Medical Device Manufacturing**

Inside San Joaquin County, California

The Port of Duisburg in Germany, Europe's largest inland port, is the site of a new Tower Automotive components plant.

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Tipping Points

Utility economic development departments from 21 U.S. states and a Canadian province replied to this year's Utility Survey in order to be considered for *Site Selection's* sixth annual Top Utilities ranking. Based on 2003 project results from their territories drawn from Conway Data's New Plant Database, the rankings examined four distinct criteria: total capital investment, investment per capita, total new jobs created and jobs per 10,000 residents. By adding up points of the top finishers in each category, the editors of *Site Selection* arrived at the Top 10 and ties.

As it happens, three of these elite ED performers — Alabama Power, Georgia Power and Mississippi Power — fall under the corporate umbrella of perhaps the ultimate power player in the United States: Atlanta-based Southern Company. But their ED departments only answer to the operating company executives — demonstrating a "business unit"-like operating independence that may explain better than anything else their competitive edge. What's more, in the corporate parent's succession plan, the new CEOs of these utilities bring with them a high degree of economic development seasoning.

Are the Top Utilities category leaders bellwethers of the times? Combined, the top 10 job attractors saw 61,080 new jobs come to their territories in 2003. That's a 10-percent decline from the 67,823 new jobs created by the top 10 in 2002, consistent with the touted jobless recovery that only began to add jobs in 2004. But a look at the capital investment top performers shows that the Top 10 for 2003 welcomed \$11.6 billion up 57 percent from \$7.4 billion in 2002.

Here's a look at some of the programs that earned that growth and earned their keep:

The critical mass of large parent corporations helped drive economic development efforts at the Top Utilities of 2003.

by ADAM BRUNS

adam.bruns@conway.com

Top Utilities of 2003

Company	Headquarters	Territory Population	Capital Investment	New Jobs
Alabama Power	Birmingham, Ala.	3,000,000	\$727 million	4,500
Cinergy Corp.	Plainfield, Ind.	4,780,897	\$1.56 billion	8,354
Entergy Arkansas	Little Rock, Ark.	1,413,722	\$289 million	2,226
FirstEnergy	Akron, Ohio	10,100,000	\$1.93 billion	7,958
Georgia Power	Atlanta, Ga.	8,560,000	\$645.8 million	6,513
LG&E	Louisville, Ky.	3,049,728	\$711 million	5,301
Mississippi Power	Gulfport, Miss.	970,000	\$361.8 million	2,840
Northeast Utilities	Hartford, Conn.	4,500,000	\$540.4 million	9,460
PECO Energy	Philadelphia, Pa.	3,900,000	\$883.6 million	2,380
Progress Energy	Raleigh, N.C.	12,278,077	\$694.5 million	9,339
TXU	Dallas, Texas	6,905,000	\$3.39 billion	4,371

Alabama Power

www.alabamaeconomicdevelopment.com

Ever since the Alabama Power Economic and Community Development department came into being 80 years ago as the "new industries" division, it's built up an arsenal of technical, planning and legislative expertise that has helped land an equally impressive arsenal of top-flight companies. In addition to attracting four of the world's nine largest automotive companies, the state is seeing continuing investment in the aerospace and defense sectors, and Alabama Power is there to light the candle.

CINERGY.

Cinergy Corporation

www.indiana.cinergy.com

For evidence of Cinergy's ED ties to its territory, look no further than the directorship of the Indiana Dept. of Commerce's Region 7, part of the state's new 12-region ED plan. That Indianapolis-area position is being

filled by loaned Cinergy ED professional Scott Fulford.

Cinergy is similarly embedded in the foundation of the State of Indiana's fledgling site and building database. And it's launched such efforts as a virtual building site program called "Permits to Projects," local training for economic development professionals and the Cinergy Economic Development Network. The utility has simultaneously published maps oriented toward foreign companies and toward the life sciences sector, which has seen a rash of new projects recently. The utility also serves all or portions of 10 Ohio counties and six Kentucky counties, and helps lead ED efforts in the still-growing Cincinnati/Northern Kentucky metro.



Entergy Arkansas

www.ConsiderArkansas.com

With major investments in the automotive, food processing and oil and chemical sectors, Arkansas rode an

upsurge in investment in 2003, with a more-than-able assist from Entergy Arkansas.

Among the organization's other successes during the year was the accreditation by the International Economic Development Council of the University of Arkansas at Little Rock's Mid-South Basic Economic Development Course. In the field, a direct-mail industry campaign had the direct effect of catching the attention of Eakas Corp., which reversed an earlier assessment of the state and chose to locate its second U.S. plant in the town of Wynne. Finally, Entergy has provided guidance and project management skills to a 10-month study of the Metro Little Rock region due to help target specific industries when its results came available in summer 2004.

FirstEnergy Corp. *FirstEnergy*
www.firstenergycorp.com/ed

Stretched across the states of Ohio, Pennsylvania and New Jersey, the service territory of FirstEnergy Corp. is

Total Capital Investment

Company	Headquarters	Investment
1. TXU	Dallas, Texas	\$3,358,500,000
2. FirstEnergy Corp.	Akron, Ohio	\$1,928,291,900
3. Cinergy Corp.	Plainfield, Ind.	\$1,564,034,019
4. PECO Energy	Philadelphia, Pa.	\$883,564,278
5. Alabama Power	Birmingham, Ala.	\$727,000,000
6. LG&E	Louisville, Ky.	\$711,102,255
7. Progress Energy	Raleigh, N.C.	\$694,502,300
8. Georgia Power	Atlanta, Ga.	\$645,830,000
9. CenterPoint Energy	Houston, Texas	\$559,600,000
10. Northeast Utilities	Hartford, Conn.	\$540,350,000

part of the U.S. industrial backbone. And as such, its ED department is deeply involved in promoting U.S. goods through its many-faceted Export Now program.

In 2003, building on this long-term commitment, the utility coordinated a trade mission that took seven customers to three cities in Mexico. Not only were sales leads worth millions of dollars established, but meetings were held with 18 large Mexican companies with investment interest in the U.S.

The company's Synchronist business

retention software program was licensed to seven counties in 2003, helping them assess their regional economies with the kind of attention to detail that brings necessary attention to existing companies. FirstEnergy in 2003 also developed a simulation program for measuring the impact of a new investment on an area's economy.

Among the latest partnerships to punctuate the utility's 40 years in Ohio is Team NEO, a coalition formed with six Northeastern Ohio communities.



Georgia Power

www.georgiapower.com/grc

A founding member of the ED coalition Georgia Allies, Georgia Power uses its Atlanta base to full advantage. Its ED team also uses technology, whether in the field or on the Web. One of its latest innovations is 360-degree views of "hot" industrial buildings on the market. Building on that is a customized Web portal for prospects, complete with FTP capabilities that



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SITE Selection

September 2002

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IBM's Smart Site

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"Intelligent" Communities
Top Utilities for 2001;
The Annual Utilities Directory
Global Infrastructure Update
Where Advanced Manufacturing
Projects Are Landing

Area
Focus:
Atlantic Canada,
California, Florida, Ohio,
Tennessee, Great Lakes Region,
South Atlantic States, The Southwest

Big Fish In a Murky Pond

Top 10 U.S. Utilities in Economic Development Find Ways to Navigate the Dickey Terrain of M&A, Deregulation and the Enron Backlash.

How can you help your region grow when you're busy managing your own growth?

That is one of several questions facing the economic development arms of utilities big and small around the United States. As a recent benchmarking and best practices survey by the Utility Economic Development Association found, utilities are taking hard looks at the metrics and financial performance of their ED initiatives.

"Deregulation is a part of the reason that our industry is changing so quickly," says Lisa Payne of Louisville-based LG&E Energy Corp., chair of the UEDA research committee. "Economic development generally has been on the regulated side. We have to figure out where it best fits."

Sometimes the hard looks result in hard decisions, such as the step taken by PP&L to eliminate 600 jobs, including the bulk of the ED team. "Implicit in our balanced strategy approach is a commitment to aggressively manage our costs," said company Chairman, CEO and President William F. Hecht in announcing the 7-percent work force reduction.

Realignment is evident throughout the power generation and distribution cycle, as proven in late July with announced downsizing by GE Power Systems, which is cutting 2,500 jobs over the next nine months at plants in

Greenville, S.C., and Schenectady, N.Y., even as it moves some generator manufacturing activity to Schenectady from Pensacola in order to free capacity in Florida for producing a new line of wind turbine blades. The overall dip in electrical generation equipment

by ADAM BRUNS

adam.bruns@conway.com

But Payne points out that the merger and acquisition process is actually prompting utilities to "create new economic development initiatives, look for new products and services and how they can be combined. It's still a very important part of each company, especially in regard to the distribution process within each state. I think there is a place for economic development, and that we are in a changing environment right now and we are looking to find the best place for that department to stay and help the company."

Given the maelstrom of activity, it's hard to believe anybody had time to respond to *Site Selection's* Utility Companies Editorial Questionnaire for 2001. But respond they did, and from all indications, the teams we have selected

Top 10 Utilities for Economic Development 2001 (in alphabetical order)

Utility	City	Service Area Population	New Investment \$	New Jobs
Alliant Energy	Cedar Rapids, Ia.	3 million	\$157,225,000	3,804
Cinergy	Plainfield, Ind.	4.8 million	\$669,176,000	6,748
Columbia Gas of Virginia	Richmond, Va.	2 million	\$750,000,000	9,000
DTE Energy Co.	Detroit, Mich.	8.7 million	\$4,300,000,000	19,856
FirstEnergy	Reading, Pa.	4.3 million	\$1,768,566,000	6,251
Georgia Power	Atlanta, Ga.	8.3 million	\$761,000,000	10,221
LG&E Energy Corp.	Louisville, Ky.	4 million	\$1,000,000,000	3,689
PECO Energy	Philadelphia, Pa.	3.9 million	\$890,776,030	8,786
PPL Electric Utilities	Allentown, Pa.	4.8 million	\$288,482,250	8,883
Progress Energy	Raleigh, NC	10.6 million	\$986,900,000	6,958

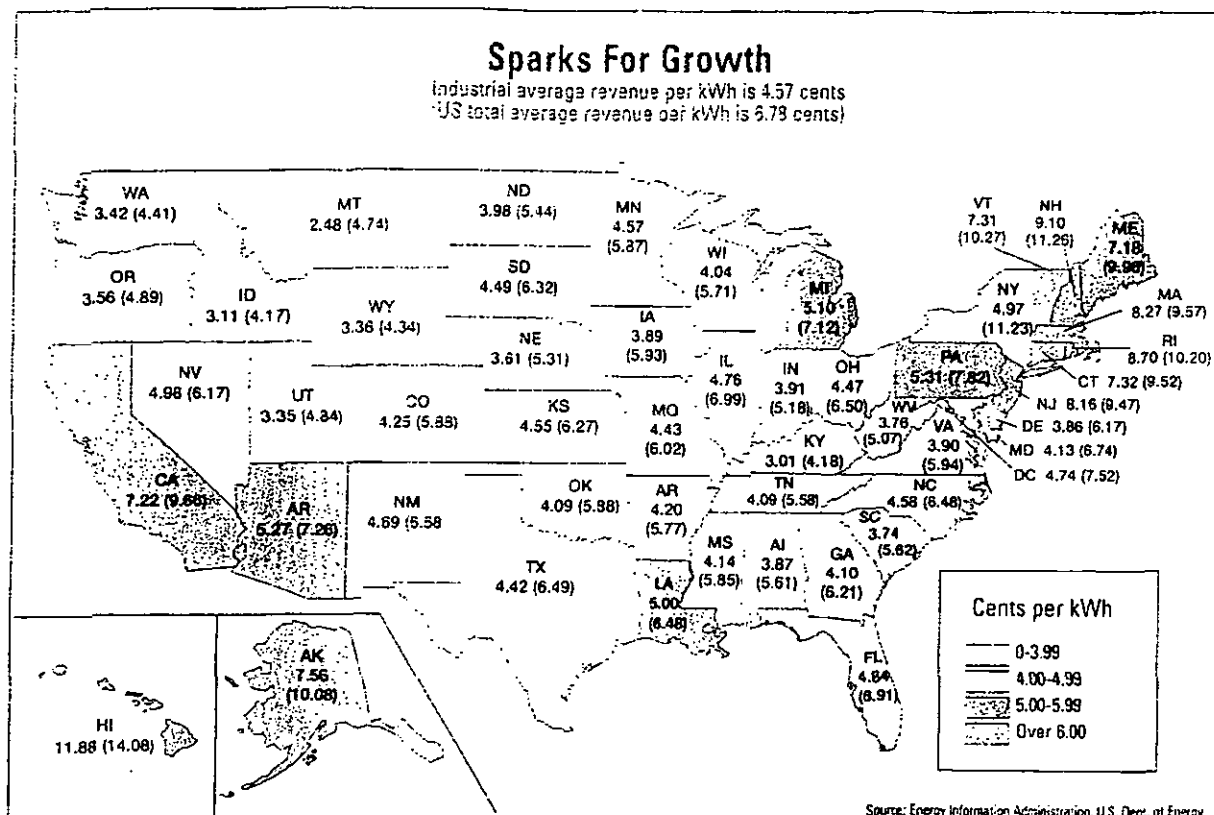
orders is to blame for the cutbacks — gas turbines, for instance, are expected to experience an 80-percent drop in orders over the next two years, a GE spokesman said.

Whereas the past saw utilities grappling to traverse the terrain they served with infrastructure, utility economic developers face another obstacle: the sheer geographic reality of their own organizations. First, their huge territories and interwoven functions sometimes work at odds with the notion of promoting one region over another. Second, in an age of "focusing on core strengths," the job of utility ED often is left on the periphery.

from that pool for our Top 10 Utilities respond even more heartily to the clients and communities they serve.

Of course we recognize them based foremost on the hard numbers (both new jobs and new capital investments in general and per capita). But we also look at them through the more subjective lens of impact on their service areas through such un-measurable (and immeasurably valuable) criteria as innovative partnership programs and expanded site selection services.

Here, in alphabetical order, we give those that helped their clients and their communities their just desserts as our Top 10 Utilities of 2001.



ALLIANT ENERGY.

Alliant Energy, Cedar Rapids, Iowa
www.midwestsites.com

Bolstered by its Web site and by media training for the communities it serves, Alliant Energy, whose parent company is based in Madison, Wisc., helped bring 3,804 new jobs and more than \$157 million in new capital to the heartland. Among the companies pursuing projects were Cargill, Civco Medical Instruments, Bio Growth, Rubbermaid and Worley Warehousing.

Forty-one percent of company sales came from industrial customers in 2001. The company is building a \$600-million 1,100-megawatt natural gas combined-cycle power plant in western Michigan in partnership with Dallas-based Panda Energy International, expected to become operational in 2004.

CINERGY.

Cinergy, Plainfield, Ind.
www.cinergy.com/cedn

Yes, the company is based in Indiana, even though it's most associated with

Cincinnati, a city which draws a lot of its ED power from Northern Kentucky. Such is the cross-pollinating nature of this tri-state area. And such is the nature of one of the nation's dominant utilities, which helped to attract 6,748 new jobs and more than \$669 million in new capital to its service area, spanning some 25,000 square miles in those three states.

"Teamwork continues to be the key to our success," writes Scott Fulford, manager of economic development marketing. Defining that success were a \$100-million warehouse location by Indianapolis stalwart Eli Lilly (further expansions were announced this spring); a \$138-million expansion by North American Stainless in Carroll County, Ky.; and a \$36-million corporate office center location in Mason, Ohio by LensCrafters.

Columbia Gas of Virginia

A NiSource Company

Columbia Gas of Virginia, Richmond
www.columbiagasva.com/business

Helping to attract 9,000 new jobs and \$750 million in new investment in 2001, Columbia Gas of Virginia, a

NiSource company, is a vital link for businesses that locate in its service area, which comprises 65 percent of the land mass in the very hot location of Virginia.

"The big project was Capital One," says Economic Development Manager Elizabeth Moran of the company's decision to bring gas service to its \$700-million, 2-million-sq.-ft. (185,800-sq.-m.) campus location, now under construction in Goochland County, outside of Richmond. Other projects included a \$15-million investment by Motion Control in South Hill.

DTE Energy



DTE Energy Co., Detroit
www.dteenergy.com

With the acquisition of natural gas provider MichCon, DTE Energy's service area almost tripled to 21,000 square miles, and its customer list topped three million. The growth merely enhanced the utility's ED outreach, in partnership with dozens of development organizations around the state. The 270 projects completed during 2001 resulted in 19,856 jobs created and almost \$4.3 billion in new

investment, helped in a major way by the Pfizer location in Ann Arbor. One of the major tools DTE wielded was the Michigan Site Network (www.MiSiteNet.com).

"Particularly noteworthy in 2001 was the leadership role assumed by our development team in convincing the collective commercial real estate community throughout Michigan to adopt MiSiteNet as their 'official' commercial listing service," writes Lennox E. Sheppard, manager, economic development, for DTE Energy.

FirstEnergy

FirstEnergy, Reading, Pa.
www.firstenergycorp.com/ed

FirstEnergy brought 6,251 new jobs and more than \$1.7 billion to its service area of 4.3 million customers, stretching from the Ohio-Indiana border to the New Jersey shore. Much of the utility's effort is concentrated in northern and eastern Ohio, including high-functioning partnerships with the chambers of commerce in Youngstown-Warren, Akron, Cleveland

and Toledo. Among the companies locating or expanding in the FirstEnergy service area were Bayer Corp., American Express, Whirlpool and Ford Motor Co.

Typical of the direction major utilities are headed, FirstEnergy recently inked a service agreement with Corning Corp. that will entail energy-use analysis at 29 of the company's facilities in 10 states, many of them beyond the utility's normal service area.



Georgia Power, Atlanta
www.georgiapower.com/grc

The Peach State's most visible utility helped to bring in 10,221 new jobs and \$761 million in new investment in 2001. Chief among the locations were a \$30-million, 1,000-employee manufacturing plant in Norcross by Project Gene; a \$40 million, 225-employee Procter & Gamble distribution facility in Albany and the \$100-million Ritz Carlton Lodge at Reynolds Plantation in Greensboro.

Special reports compiled by the utility included a look at the state's scope of automotive manufacturing and "New Options for Urban Site Seekers" in central Atlanta.

Unlike many other utilities, Georgia Power's position in its market allows the offering of retention and expansion incentives as well as services. That is as it should be, given that the company became the state's first economic developer in 1927.

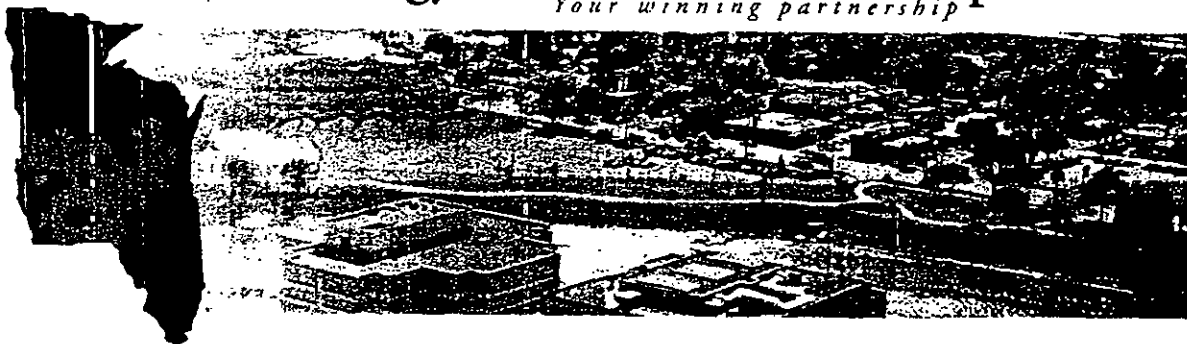
LG&E ENERGY

LG&E Energy Corp., Louisville
www.site-selection.com

Serving more than 1.1 million combined electricity and natural gas customers in 99 of Kentucky's 120 counties, LG&E Energy Corp. has helped entice and then weathered the buy-out/merger sequence officially concluded in July by E.ON's purchase of new LG&E parent Powergen. One reason for the utility's attractiveness is how it continues to get it right when it comes to economic development. In 2001, that meant getting 3,689 new

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jobs and more than \$1 billion new dollars for the Commonwealth.

Among the major locations were new plants for Covers Unlimited and Quadrant Technology Corp. The ED team, spread among Louisville, Lexington and Henderson, helped LG&E garner the No. 1 ranking for customer satisfaction among mid-size business customers during 2001, according to J.D. Powers and Associates.



PECO Energy, Philadelphia, Pa.
www.peco.com/economic

To further enhance the attraction of Pennsylvania's Keystone Opportunity Zones (KOZs), PECO Energy established a new KOZ electric tariff rider in 2001.

Such an innovation was just one way that PECO helped to attract 8,786 reported new jobs and more than \$890.7 million in capital investment. Among the year's highlights were the \$32-million Research Enterprise Center at Drexel University (devoted to life

sciences), the move of 500 employees into offices in Chester City by Synvgy and the location of a \$61.5-million distribution center by Marshall's.

PPL Electric Utilities, Allentown, Pa.
www.pplweb.com/econdev

PPL Electric Utilities is based in the same city as its parent corporation. And its new headquarters is part of Allentown's current wave of rejuvenation and redevelopment. Meanwhile, in 2001, the development team helped to bring 8,833 new jobs and more than \$288 million in new capital to its service area of 10,000 square miles in eastern and central Pennsylvania.

The utility also kicked in some capital of its own, primarily to support a host of business park projects like Lehigh Valley Industrial Park VI. PPL's Blue Ribbon Partnership awards program provides as much as 75 percent of the cost of marketing initiatives (up to \$6,000) to local and regional ED organizations. Among the major projects attracted were a \$21-million investment by CTC, a \$70-million invest-

ment by Wal-Mart and a \$7-million expansion by Best Foods.



Progress Energy, Raleigh
www.progress-energy.com/economic

Progress Energy helped to attract 6,953 new jobs and almost \$987 million in new capital to projects in its 50,000-sq.-mile service area in parts of the Carolinas and Florida that came about as a result of the December 2000 merger between Carolina Power & Light and Florida Progress.

"This increase in our service territory (and in the size of our organization) enables us to better serve our prospects, who might be considering several states in the Southeast," writes research analyst Sarah Walas, who notes that a new commercial/industrial service rider in Florida gave the utility some discounting flexibility in working with business customers. Among the new and expanding companies were Akzo Nobel, International Paper, Borg-Warner, Celestica and Siemens.



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Top 10 Utility Companies of 2000

Site Selection's picks for the annual listing proved crucial to the success of their service area's economic efforts.

With the current state of affairs in California and the success of the Julia Roberts' Oscar vehicle *Erin Brockovich*, utilities were not seen in the best light in 2000. But those in the corporate real estate field know better. They realize the important role utilities play in site selection and expansion.

Site Selection editors couldn't agree more. This year, *Site Selection's* Top 10 Utilities of 2000 played a role in landing major corporate locations and new industries to their service areas. Some of the Top 10 went so far as to partici-

pate in turning around markets in their service areas, making accessible new locations for further investment.

In choosing this year's top 10 utilities, *Site Selection* editors looked at two sets of criteria derived from responses to the magazine's annual utilities survey. First and foremost were the numbers: the total number of new jobs created in a utility's service area and amount of capital investment made in the service area. To level the playing field for those utilities in less populated service areas, *Site Selection* also looked at per capita numbers including number of new jobs per 1,000 population and amount of capital investment per capita.

Secondly, *Site Selection* editors took into consideration the services provided by the utilities. Innovative programs that may potentially impact the community or services provided to corporate customers weighed heavily on the final decision.

This year's top 10 proved to be successful not only in helping land jobs and investment, but in providing exceptional customer service. Here's a look at the winners.

American Electric Power Gahanna, Ohio www.aep.com

With more than 23,000 jobs and US\$3 billion in investment coming to American Electric Power's (AEP) 11-state service area (the largest geographic area of any U.S. electric company), this utility is a true powerhouse in economic development. The group worked with other local economic developers to land 171 industrial, distribution and office projects during 2000.

Honorable Mentions

Carolina Power & Light —
Raleigh, N.C.
Carroll Electric Membership Corp. —
Carrollton, Ga.
Detroit Edison — Detroit
Greenville Utilities Commission —
Greenville, N.C.
PPL Electric Utilities — Allentown, Pa.

Among some of the biggest announcements were Kimberly Clark Corp.'s \$200 million expansion in Bixby, Okla.; General Motors Corp. \$700 million, 1.5 million-sq.-ft. (139,355-sq.-m.) expansion in Shreveport, La.; and AM General's new \$210 million plant in Mishawaka, Ind., which will employ 1,500 in the production of a new Hummer-based sport utility vehicle.

The secret behind AEP's success is the depth of its economic development team, says David Canter, manager of business development at AEP's headquarters in Gahanna, Ohio. AEP's team consists of 40 economic development professionals. "Our depth allows us to offer additional resources to assist in location searches," he adds. "This includes a research function whose task is to assist the rest of the AEP team with a variety of products designed to assist in recruitment and community development initiatives."

Among the many programs AEP offers is Procure, a Web-based interactive database of site/building/community information; a shell building program that provides debt service financing to local economic development groups to assist in building a shell building; and the Building Blocks pro-

by TRACY HEATH
tracy.heath@conway.com

Top 10 Utilities of 2000

American Electric Power —
Gahanna, Ohio
Cinergy Corp. — Plainfield, Ind.
Consumers Energy/CMS Energy —
Grand Rapids, Mich.
Dominion Virginia Power —
Richmond, Va.
Georgia Power — Atlanta
Memphis Light, Gas and Water
Division — Memphis, Tenn.
Metropolitan Utilities District —
Omaha, Neb.
PECO Energy Co. — Philadelphia
Tennessee Valley Industrial
Development Association —
Nashville, Tenn.
TXU Electric & Gas — Dallas

grant, which provides a virtual concept of a shell building including the architectural drawings of the facility.

**Cinergy Corp.
Plainfield, Ind.**

www.cinergy.com/cedn

"Whether we are evaluating existing programs, planning an international trade mission, responding to a client or developing a Web page, Cinergy is always there to assist," says Indiana Lt. Gov. Joseph E. Kernan. "After four years in this post, I have become very familiar with what it takes to attract and retain quality companies. Though often unheralded, utilities are an important player in that mix, and Cinergy is simply one of the best."

In 2000, Plainfield, Ind.-based Cinergy was especially involved in Chrysler's \$500 million, 748-job expansion of its transmission plant in Kokomo, Ind. Cinergy's involvement consisted of facilitating meetings with local and state officials and assisting with their tax abatements, reports Scott Fulford, manager of economic development marketing with Cinergy. This expansion opened up between 800 and

1,000 acres (324 to 405 hectares) for additional industrial growth in Howard County and boosted Chrysler's employment in Kokomo to 9,600.

In total, Cinergy's 25,000-sq.-mile (6.5 million-hectare) service area of Indiana, Southwestern Ohio and Northern Kentucky saw some 8,548 new jobs and more than \$2.9 billion in investments. Other big investors in Cinergy's service area include GAF Building Materials, Medtronic Sofamor Danek, New Millennium Building, Takanichi-USA and TOA USA. These five companies alone committed more than \$145 million in capital investments and created some 865 jobs.

Cinergy also worked with local economic development representatives, state officials and the U.S. Army to form the agreement on the transfer of the U.S. Army facility in Charlestown, Ind., to the local re-use authority. The group worked with outside consultants to develop a master plan/best-use study for redevelopment of the site. "This is a huge facility on a large parcel of land and encompasses numerous buildings," Fulford notes. "Although difficult to deal with, it presents a tremen-

dous opportunity to build a world-class commercial/manufacturing facility. The most unique part of this process is that we brought in our real estate services group to act as project manager for the site, overseeing the maintenance, the grounds and infrastructure, and the current operations using the facilities. Additionally, we are assisting in development of marketing materials. This is an example of our willingness to be creative and seek and fulfill needs where we can."

**Consumers Energy/CMS Energy
Grand Rapids, Mich.**

www.consumersenergy.com

Michigan couldn't be the winner of *Site Selection's* Governor's Cup for the fourth consecutive year without a lot of elbow grease being put into the effort. Consumers Energy/CMS Energy is part of the team that made that happen. In 2000, there were more than 14,700 jobs created in the group's 9.9-million-population service area. Total investment exceeded \$3.1 billion.

Being home to Motor City means that much of that investment came from the automotive industry. Delphi

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Automotive Systems, for instance, invested some \$51.8 million and created 600 jobs in Troy, Mich., in 2000. Other major auto investments came from Behr America, Behr Industries, General Motors, Hayes Lemmerz, Michigan Automotive Compress, Tower Automotive Inc. and Yorozu Automotive North America. Together with Delphi, these automotive giants invested \$303.2 million in Michigan last year, creating more than 2,500 jobs.

Though automotive is still king in Michigan, Consumers Energy Director of Domestic Economic Development Douglas A. Buikema says that his organization has helped the region diversify. "Michigan is coming on strong in the life sciences and the biotech area," he reports. "CMS Energy/Consumers Energy works closely with the state economic development agency to bring these companies to the state."

Consumers Energy/CMS operates an international economic development organization with a wide range of economic development experience. "Our company supplies economic development training in business attraction and retention, as well as pro-

vide expertise to local companies in exporting their products and services internationally," Buikema says. "We financially support the efforts of communities with economic development programs, and we stay close to the capital markets, often leading the way to supply capital requirements that new business requires."

Dominion Virginia Power Richmond, Va. www.dom.com

With investments from such energy-dependent operations as Intel Online Services' \$50 million Internet data center in Fairfax County, Va., and Infineon Technologies' \$1.1 billion semiconductor expansion in Henrico County, Va., it's no surprise that Dominion Virginia Power, which recently merged with Consolidated Natural Gas, would be among the top utility companies for 2000.

"In addition to economic development, the Infineon expansion announcement involved the support of our bulk power group, which engineered, constructed and maintained a power supply to the semiconductor

facility that resulted in no outages or power disturbances in nearly four years of operation," says Kent Hill, senior manager of economic development with the Richmond, Va.-based utility.

Such involvement with existing business is key to Dominion Virginia's and its service area's (the eastern two-thirds of Virginia) success. Last year, Dominion Virginia played a significant role in moving the Richmond economy in a new direction with its involvement in a Capital One announcement that will result in more than 4,000 new jobs in Goochland County, Va. "Our company was very involved in the early stages of site analysis as electric reliability, pricing and construction lead times were critical elements of the site selection criteria," says Hill.

Georgia Power Atlanta www.georgiapower.com/grc

Of the \$994 million of investments recorded by Georgia Power during 2000, there were a large number of telecommunications projects, many of which were Internet hosting facilities. TelePlace and MCI/Worldcom are

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good examples.

"While not labor-intensive, these facilities are big energy users and bring significant revenue to Georgia Power," says Becky Blalock, vice president of community and economic development with the Atlanta-based utility. "We played an important role in landing these projects. And it was, in fact, this type of project which brought about the need for one of the new services we developed in 2000, our interactive telecom database."

This database was created to meet the demand for data on central office locations and points of presence needed for the telecommunications industry. Typically gathering this information required meeting independently with many service providers. Georgia Power used its GIS capabilities to build a data set, with mapping capabilities, to capture information on points of presence, carrier availability and switch center locations.

Georgia Power has also been involved with bringing new industries to its namesake state. The statewide utility helped land a biotech firm in Atlanta and Athens — a relatively new industry target for the state. Merial Ltd., the world's leading animal health company and manufacturer of Frontline and Heartgard, decided to relocate its North American operations, both headquarters and R&D, from New Jersey to Atlanta and Athens, Ga., respectively. The project, which came to the utility from Staubach, involves 41 new jobs and a \$32 million investment. Blalock says, "This is the first time Georgia has successfully recruited and located a headquarters of a major biomedical company, and it is an exciting development as Georgia continues to build its biotech industry."

Memphis Light, Gas and Water Division Memphis, Tenn. www.mlgw.com

One project that stands out in the mind of Memphis Light, Gas and Water's Manager of Economic Development Sherry DuBose is International Paper's merger with Union Camp and Champion and its subsequent expansion. The new Memphis area facilities include expanded financial and customer services operations, test-

ing laboratories, design and graphic arts, equipment storage and distribution for worldwide operations.

"It encompasses three separate expansion projects totaling more than 950 new employees and some \$71.2 million in capital investment," DuBose says.

MLGW helped bring 12,250 new jobs to Memphis last year and more than \$1.8 billion in capital investment by putting emphasis on supporting both existing and new local startup companies. Two programs stand out in the utility's repertoire: Existing Business Breakfast meetings and the new Memphis Business Incubator.

MLGW hosted two existing business breakfasts last year that focused on the state's Manufacturing Means Jobs work-force development program and a new community health plan that enables small businesses to offer health coverage to uninsured employees.

The business incubator was needed to support Memphis's emerging technology sector, explains DuBose, who serves on the incubator's executive committee of the board as well as chairs the personnel committee. "Until last year, Memphis was the largest city in the U.S. without a business incubator," she adds. "Memphis Incubator Systems offers its clients business counsel, financial oversight, access to business development firms and low overhead shared services."

Currently there are 15 companies with more than 75 employees residing in the incubator.

Metropolitan Utilities District Omaha, Neb. www.mudomaha.com

Operating in Douglas County and parts of Sarpy, Washington and Saunders counties in eastern Nebraska, Metropolitan Utilities District (MUD) has been a big component of the area's success. Last year, the group helped win some 3,000 jobs and more than \$1.77 billion in investment.

Among some of the big investors in MUD's 451,100-population service area were West Corp., Cargill Dow Polymers, ConAgra Foods, Union Pacific, Quest Communications and Caterpillar Claas. Together these companies created 1,200 jobs and invested \$515 million in eastern Nebraska.

TVIDA and the Tennessee Valley are able to attract," says Sam Burke, managing director with TVIDA. "Wal-Mart also announced substantial investments in two TVIDA served locations. Shelbyville, Tenn., and Hopkinsville, Ky., were selected as sites for distribution centers. These announcements represent the creation of well over 1,000 new jobs and will bring significant capital investment to the local areas."

In terms of new programs and services, TVIDA seems to follow the "if it

ain't broke, don't fix it" philosophy, except that there is always tweaking along the way, according to Burke. For example, the group continues to modify its strategies and has broadened its target industry focus to include sectors in the new, high-tech economy. "And Site Selector, TVIDA's Web-based site selection tool (www.tvida-siteselector.com), is constantly being updated and refined to provide customers with the most important, accurate information possible."

TXU Electric & Gas Dallas

www.locationtexas.com

The bigger the better is a common philosophy in Texas. The same holds true for the state's utilities and economic development efforts. Take for example TXU Electric & Gas. This utility serves 136 counties, including 658 incorporated cities, in northern, central, eastern and western Texas — an area encompassing some 7.6 million people. Even more impressive are the 112,704 new jobs the utility helped land in its service area last year.

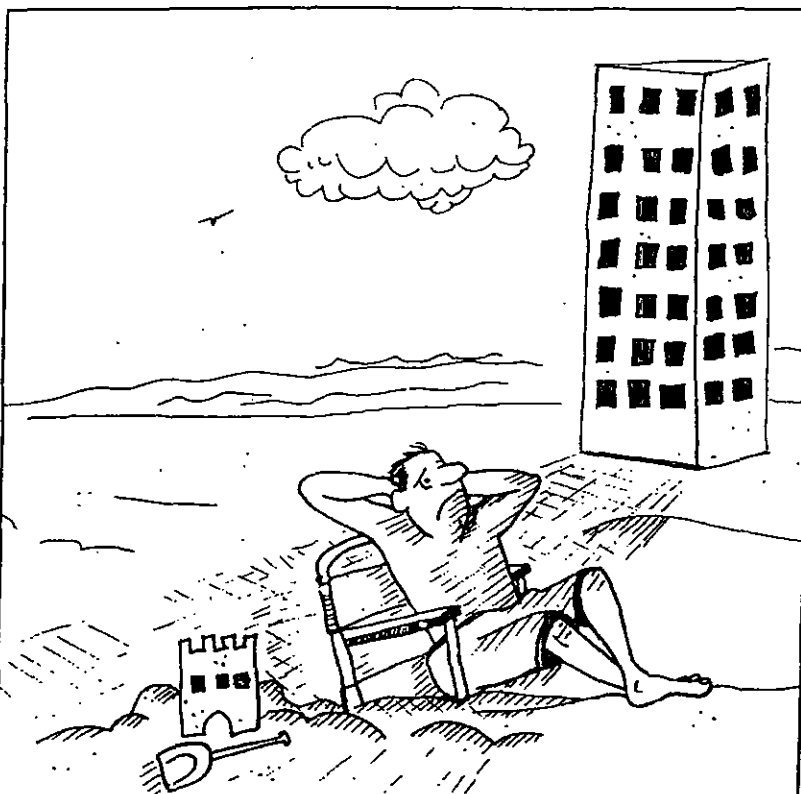
For TXU, 2000 was the year of warehouse and distribution centers. Some of biggest job producers in the warehouse distribution arena include Ford Motor Co. (874 jobs in two expansions), JCPenny Co. (1,356), Walgreen's (1,104), Wal-Mart (1,310 jobs in two expansions), Mackie Automotive Systems (1,130) and Fleming (1,104).

"There were a total of 66 new locations and expansions by the end of the year," says Mike McKinney, manager of economic development for TXU. "Moving the warehouse closer to the customers ensures flow-through delivery and supports just-in time manufacturing and assembly programs as well as quick-response policies. Texas ended up being a prime location for new technologically enhanced warehouse and distribution facilities."

One distribution-type facility that McKinney views as a big success for his service area is TATUNG Co. of America's 227,000-sq.-ft. (21,089-sq.-m.) operation in Arlington, Texas. TATUNG will repackage assembly of PC-related products and then distribute them to locations east of the Mississippi River.

"TXU Electric & Gas's economic development department contacted TATUNG Corp. during a marketing trip to Taipei, Taiwan, in spring of 2000," McKinney notes. "We spent a lot of time discussing the economics of product distribution out of Texas to the rest of the United States as opposed to distributing from California, which is where TATUNG's U.S. corporate office is located. The Arlington facility will be their first location in the U.S. outside of California."

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MUD worked particularly close with one of the biggest announcements made in its service area last year. First National Bank invested \$200 million in its new 40-story tower in downtown Omaha. Mari Matulka, director of communications with MUD, says, "We worked with First National Bank to install a fuel cell operation to eliminate electrical disruptions for their credit card processing operations."

Like many areas, eastern Nebraska is also looking to expand its industry base, and MUD is helping to further that goal. In another deal that is considered a breakthrough for the area, Cargill Dow will invest \$300 million in Blair, Neb., for its NatureWorks PLA facility. The new plant will use 40,000 bushels of locally grown corn per day to produce polymer that can be used in consumer goods ranging from clothing and furnishings to cups, food containers and candy wrappers. The plant will employ 100 workers.

PECO Energy Co.
Philadelphia
www.peco.com/economic

CODENAME: Project Centurion.
CONTACT: Deloitte & Touche. Sometimes confidentiality is extremely important, and if you're involved in a project like T.J. Maxx's 1.1 million-sq.-ft. (102,193-sq.-m.), 1,500-job warehouse that landed in northeast Philadelphia, then confidentiality is extremely important — not an easy accomplishment when you are involved in a project from the beginning.

"A reputable site location consultant contacted us with the lead," says Greg Byrnes, director of economic development with PECO Energy. "We analyzed the requirement and provided a comprehensive package of information on four suitable development sites. We supplied radial demographics and detailed information on the quality and availability of the labor force. We explained the tax advantages of Pennsylvania's Keystone Opportunity Zone program. We helped secure a major developer for the project, Liberty Property Trust. We coordinated efforts with the city of Philadelphia and the state's commerce department, and we stepped aside at the appropriate time and let the deal happen."

This kind of involvement is not

unusual to PECO. Last year, the utility helped land some 15,290 jobs and \$389 million in investments for its five-county service area of Philadelphia. Joining T.J. Maxx in the top investors category last year are The Vanguard Group (\$500 million, 10,000 jobs over 10 years), CB Technologies (\$19 million, 400 jobs), 833 Chestnut Street (\$42 million, 500 jobs) and the Journal Register (\$39 million, 150 jobs).

Sometimes there's more to economic development than bringing in new industries. PECO, for instance, contributed heavily to the rebirth of the city of Chester in Delaware County, Pa. The utility transferred ownership of an old generating facility in Chester to Preferred Real Estate Investments for redevelopment. To be known as The Wharf at Rivertown, Preferred Real Estate will redevelop the 150-acre (61-hectare) site while preserving the historic, Gothic-style power plant. The building will be converted into 400,000-sq.-ft. (37,161-sq.-m.) of office space. Preferred plans to invest \$225 million in the project that is expected to create 3,000 jobs. The project has already won its first tenant: High-tech software

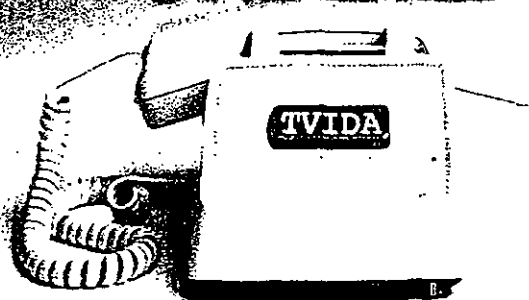
developer Synergy has taken 200,000 sq. ft. (13,581 sq. m.) of space there.

Tennessee Valley Industrial Development Association
Nashville, Tenn.
www.tvida.com

Tennessee Valley Industrial Development Association was involved in the recruitment and expansion efforts of many companies in 2000. In fact, TVIDA helped attract some 53,617 new jobs and \$976.3 million in investments to its 80,000-sq.-mile (21 million-hectare) service area in Tennessee, north Georgia, north Alabama, southwest Kentucky, southwest Virginia, western North Carolina and north Mississippi.

Among the many signature projects revealed last year is Nissan, which announced that it intends to expand its existing operations in Decherd and Smyrna, Tenn. Other significant announcements in 2000 include New Century Pharmaceuticals in Huntsville, Ala., and Iowa Beef Packers' \$40 million to \$60 million investment in Nashville, Tenn. "These projects illustrate the diversity of companies

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a newsletter for corporate real estate executives

Vol. 3, No. 8

August 2004

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Do the Charleston

It's official: IAMC will hold its Spring 2005 Professional Forum at the Charleston Place Hotel, a 4-Star, 4-Diamond property in beautiful and historic Charleston, S.C., March 19-23, 2005.

South Carolina is home to 12 IAMC members, including David Ginn, president and CEO of the Charleston Regional Development Alliance (www.crda.org).

Since 1995, more than \$5 billion in corporate investment has come to the Charleston region by way of new and expanding businesses. Much of it is connected to the military: in July, mine and ballistic-protected vehicle maker Force Protection nearly tripled the space it occupies.



**Fall 2004 IAMC Professional Forum,
Memphis, Tenn., September 25-29, 2004**
To register, visit www.iamc.org.

It's an Honor

IAMC has named the first three recipients for its new Honorarium Program, which selects non-member corporate real estate executives for a free one-year membership and registration for an IAMC Professional Forum (including travel costs and accommodations). Listed here are the members of the first group selected for the program.

To learn more about IAMC's Honorarium Program, go to www.iamc.org/pdf/iamchonorbroch.pdf.

- **Marilyn Kasko**, vice president, corporate real estate, **Abbott Laboratories**, based in Abbott Park, Ill.
- **James Winter**, manager, corporate real estate, **Alcoa**, based in Pittsburgh, Pa.
- **Terri Beattie**, executive vice president, LMC Properties, a **Lockheed Martin** company based in Baltimore, Md.

Research and Resources

A May 2004 report from the U.S. Census Bureau says Seattle has the highest percentage of adults 25-and-over with a **college education**, at 48.8 percent. The Washington city is followed by Raleigh, N.C. (48.0 percent); San Francisco (47.8 percent); and Atlanta, Ga. (41.2 percent). States with some of the highest overall percentages of college graduates were: Massachusetts (35.5 percent); Colorado (33.5 percent); Maryland (33.1 percent); Connecticut (32.9 percent); and Virginia (31.7 percent). Additionally, 42.5 percent of residents of the District of Columbia, a state equivalent, had bachelor's degrees. Visit www.census.gov.

According to a study from the Center for Labor Market Studies at Northeastern University in Boston, 2.06 million **new immigrants** found work in the U.S. between 2001 and 2004. During that same period, the number of longer-term

immigrant and native-born workers declined by 1.3 million. For the manufacturing industry, which, with construction, employs a full 28 percent of employed immigrants, the following statement in the report stands out: "Nearly 320,000 new immigrants obtained employment in the nation's manufacturing industries at a time when total wage and salary employment in these industries declined by more than 2.7 million positions." Copies of the full report may be downloaded at www.nupr.neu.edu/7-04/immigration_july04.shtml.

In Boca Raton, Fla., Edmond Prins and wife Ellen Austin-Prins have formed the Idled Assets Group, Inc., specifically to "create and execute the best financial solutions" for Fortune 1000 companies' **idled land, plants, equipment and labor**. "The best way to think of us is as crisis managers and outplacement coun-

selors for land, plant and equipment," said CEO Ed Prins in July. Between 1994 and 2004, their firm was known as Corporate Asset Advisors. For more, visit www.idledassets.com.

According to a survey by Australian property company LandMark White, 75 percent of leading Australian companies would **prefer not to own** corporate property, and instead invest the capital in core business operations. Sale/leaseback was a leading option for these companies, followed by outright divestment.

A spring 2004 survey by *Disaster Recovery Journal* found that the percentage of respondents **without a written crisis management plan** has fallen from 20 percent in Sept. 2001 to 9 percent in 2004. But 47 percent of those plans still do not address terrorism threats. However, a full 36 percent of respondents reported a "significant" increase in disaster planning resources since the attacks.

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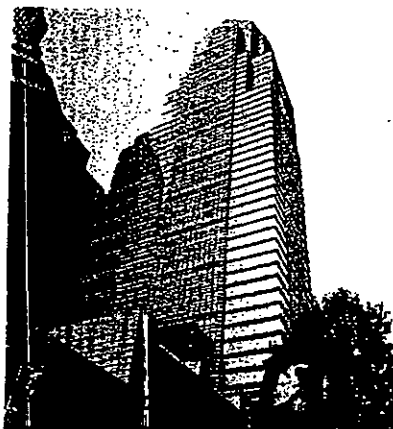
Helping to attract more than \$883 million in corporate project capital investment and create 2,380 jobs in metro Philadelphia in 2003, PECO Energy, an Exelon company, is synonymous with Greater Philadelphia economic development. So the company was a crucial part of creating the new Select Greater Philadelphia Web site, at www.selectgreaterphiladelphia.com. The site is emblematic of a regional partnership that has to encompass 11 counties and three states.

The range of projects in such a dynamic area stretched from a \$100-million refinery expansion for Sunoco in Marcus Hook to the \$36-million expansion by biomedical device manufacturer **Kensey Nash** in the Chester Co. community of Exton. But the city is perhaps best known for its insurers. So it was big news this spring when two of those companies — **Ace Ltd.** and **Cigna** — re-upped. Ace chose to

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purchase a building for an in-city relocation of its 1,000 employees from a leased property. Cigna's 10-year lease renewal will commence in 2006, with two five-year renewal options on 400,000 sq. ft. (37,160 sq. m.) at the same building Ace is vacating. Two Liberty Place (below). Cigna employs 1,300 at its Philly headquarters.



The American Planning Association, in partnership with American Rivers, has published *Ecological Riverfront Design: Restoring Rivers, Connecting Communities*. The 177-pp. report features detailed case studies, schematics, and photographs from **riverfront reclamation projects** throughout the U.S., with special chapters looking at projects involving the Chicago River and the Willamette River in Oregon. For more, visit www.planning.org.

According to a survey of 100 large New York City-based employers conducted for "New Jobs for New York" by City University of New York Computer Science Prof. Howard Rubin, when costs from such factors as transition and remote management are added into the **offshoring** equation, the cost differential for IT or business process outsourcing is not as great as it appears on the surface. However, the average cost savings cited by those companies was 44 percent over New York City. The full report may be accessed at www.newjobsfornewyork.org.

8. Page 9, lines 10-12: Please explain why the "new company" should be required to "compensate" the Commonwealth for DEP's "nuclear safety, emergency preparedness and environmental surveillance activities." Also, please indicate the amount of "compensation" that Mr. Allard believes should be paid.

A: Given the Commonwealth's experience with the Three Mile Island Unit 2 accident, the Pennsylvania legislature determined, through The Radiation Protection Act, (Act 147 of 1984) that the Commonwealth must take an active role in protecting its citizens from unnecessary and harmful exposure to radiation by establishing a comprehensive radiation protection program that specifically includes environmental radiation monitoring around nuclear power plants, and establishing a nuclear safety program to "make evaluations of all nuclear power plants in the Commonwealth." This includes maintaining the technical ability to response to radiological emergencies. The Pennsylvania legislature also made the determination, first through the Radiation Protection Act and later through section 510-4.2 of the Administrative Code, that entities operating nuclear power plants be responsible for the costs incurred by the Commonwealth in implementing its statutory obligations.

The current nuclear power plant fees of \$400K per site (or a total of \$2M per year) do not cover current Department expenses mandated by Act 147 and should be expanded to included the full costs of the Department's statutory activities. For fiscal year 2004, nuclear power plant related expenses for the Department were about \$2.20M. This figure does not include the costs to purchase, operate and maintain a real-time radiation monitoring system. In addition salaries, benefits and other program costs are expected to continue to rise. The exact program expenses for fiscal year 2005 will be known in the next several months. The expected increases in salaries, benefits and other program costs for fiscal year 2006 and 2007 will be known then.

9/23/05 Philo dx

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PA PUBLIC UTILITY COMMISSION
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Marlane R. Chestnut
Pennsylvania Public Utility Commission
1302 Philadelphia State Office Building
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Philadelphia, PA 19130

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

Dear Judge Chestnut:

As you are aware, PECO Energy Company and Public Service Electric & Gas Company (the "Joint Applicants") included, as part of their merger application at the above-captioned docket, the direct testimony of Dr. William H. Hieronymus (PECO Statement No. 3). Attached as Exhibit WHH-1 to that testimony was a written statement comprising testimony and related exhibits, also prepared by Dr. Hieronymus, that was filed contemporaneously with the Federal Energy Regulatory Commission (the "FERC") in support of the proposed merger. In his FERC testimony, Dr. Hieronymus describes in detail the "Appendix A" analysis that he performed in compliance with the FERC's merger guidelines and explains the merger partners' recommended generation mitigation plan.

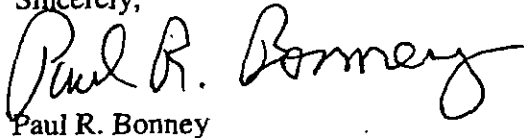
The FERC application was duly noticed in the *Federal Register* and interested parties were given until April 11, 2005 to file protests and/or petitions to intervene. Numerous protests were submitted, including several that specifically challenged Dr. Hieronymus' market concentration analysis and the mitigation proposal. In response to those protests, Dr. Hieronymus reran his analysis to determine whether the adoption of certain changes proposed by the protestants materially affected his conclusions. In addition, and in order to quell the concerns of some of the parties, Exelon and PSEG, upon condition of FERC approval of the merger without a hearing (1) substantially expanded their recommended mitigation plan and (2) eliminated many of the

Marlane R. Chestnut
May 27, 2005
Page 2

limitations on qualifying buyers of divested energy and capacity that had been initially proposed. Dr. Hieronymus' supplemental analysis, setting forth his findings and describing the revised mitigation plan, was submitted to the FERC on May 9, 2005.

Although the Joint Applicants served copies of the May 9, 2005 FERC filing on all parties to this proceeding, it was not formally submitted for the record of this proceeding at that time. We are doing so now, and have pre-marked Dr. Hieronymus' supplemental FERC testimony as Exhibit WHH-2, so that other parties can address the additional information provided by Dr. Hieronymus in their direct testimony, which is to be filed on or before June 28, 2005. Please let me know if you have any questions.

Sincerely,

A handwritten signature in cursive script that reads "Paul R. Bonney". The signature is written in dark ink and is positioned above the printed name.

Paul R. Bonney

Cc: Secretary James J. McNulty

Parties of record

EXHIBIT WHH-2 IS REFERENCED IN THIS SECTION AS
EXHIBIT NOS. J-17 THROUGH J-29 (FERC TESTIMONY)

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**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

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

**SUPPLEMENTAL TESTIMONY AND EXHIBITS OF
WILLIAM H. HIERONYMUS
ON BEHALF OF EXELON CORPORATION**

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I. SUMMARY

Q. WHAT IS THE PURPOSE OF YOUR SUPPLEMENTAL TESTIMONY?

A. I have been asked by Exelon Corporation and its subsidiaries ("Exelon") to provide supplemental analysis in support of its Application and to respond to the testimony of intervenors concerning issues relevant to competition. I respond in particular to the testimony of Dr. Joseph Kalt on behalf of PPL; Ms. Julia Frayer on behalf of FirstEnergy; Mr. Whitfield Russell on behalf of Hoosier; Dr. Charles Cicchetti on behalf of PHI; Dr. Peter Fox-Penner and Mr. Johannes Pfeifenberger on behalf of Ameren; Mr. Frank Graves on behalf of Dominion; Dr. George Briden and Dr. Andrew Kleit on behalf of Direct Energy; and Mr. Bruce Biewald and Mr. David Schlissel, and Mr. Richard LeLash on behalf of the New Jersey Division of the Ratepayer Advocate.¹

Q. WHAT IS YOUR OVERALL CONCLUSION AFTER REVIEWING INTERVENORS' TESTIMONY?

A. My opinions and conclusions are largely unchanged by intervenors' testimony. The merger as proposed by Applicants will not harm competition. Setting aside the increased divestiture that many intervenors are requesting to allow large buyers to participate in Applicants' proposed divestiture, there are no additional mitigation requirements supported by these analyses. In particular, I will show that the additional divestiture found necessary by Ms. Frayer and Dr. Kalt (apart again from amounts needed to relax buyer restrictions) is due solely to misapplication of Applicants' proposed mitigation. The additional mitigation in the western part of PJM that Dr. Fox-Penner and Mr. Pfeifenberger argue is needed is a figment of having constructed a geographic market inconsistent with Commission policy and with the facts.

Several intervenors assert that Applicants' proposed ICAP mitigation is insufficient since under some conditions they still could have the incentive to withhold capacity. Applicants

¹ My testimony should be read in conjunction with Applicants' Answer to Protests that responds to intervenor assertions for which expert testimony is not required.

1 have responded to this by agreeing to bid 100 percent of their net ICAP position into the
2 PJM daily ICAP market at a zero price. Hence, this issue is moot.

3 Intervenor's have asserted that my analysis contains various errors. It should be noted that
4 the results of Appendix A analyses tend to be highly robust to modest changes in inputs
5 such as intervenors have suggested. I have made those changes that are warranted and find
6 my conclusions wholly unaffected. My revised analysis is included in Exhibits J-18 and J-
7 19.

8 The largest category of such supposed errors have to do with forecasts of fuel costs and
9 electricity prices. However, electricity prices and fuel costs move together. Changes in
10 fuel costs do not change the merit order of plants under any plausible forecast: nuclear
11 remains cheaper than coal and coal cheaper than gas. Plants with lower heat rates are
12 dispatched before plants with higher heat rates using the same fuel type. For these reasons,
13 fuel cost assumptions do not change what is economic during various time periods and
14 hence do not change HHIs and Applicants' market shares. This is demonstrated by Ms.
15 Frayer's analysis. Despite very substantial fuel cost errors in her analysis, her results are
16 fully consistent with mine if Applicants' proposed mitigation is implemented properly in
17 her analysis.

18 The foregoing is important because it demonstrates that supposed factual issues that might
19 cause this transaction to be set for hearing simply do not matter to the key issue of the
20 sufficiency of proposed mitigation. No analysis has been presented that the Commission
21 reasonably would find to raise valid issues concerning the sufficiency of mitigation.²

22 Two intervenors have suggested that I should have analyzed additional relevant markets.
23 As I demonstrate below, singling out portions of PJM for reasons other than transmission
24 constraints is inconsistent with the Appendix A methodology and would be inappropriate in
25 this case.

² Some intervenors assert that virtual divestiture should not be acceptable. This is a policy issue to which Applicants respond in their Answer.

1 Two parties have argued that the transaction may have vertical effects arising from
2 Applicants' reservations on interstate pipelines serving PJM East. It is clear that the
3 transaction has no vertical effects. Even if one were to assume otherwise, the analysis
4 underlying these arguments is demonstrably without merit and turns entirely on how the
5 Commission's vertical market screen should be implemented, not on any dispute
6 concerning underlying facts.

7 The final category of interventions concerns the buyer restrictions that Applicants had
8 proposed. Various analyses are presented to show the amount of additional mitigation that
9 would be necessary to allow various hypothetical parties to buy divested capacity without
10 causing material screen failures. However, I am aware of no requirement that merger
11 applicants must over-mitigate their market power to account for the potentiality that
12 divested assets are purchased by entities with large pre-existing market shares.
13 Nevertheless, Applicants have responded to these concerns by proposing to divest an
14 additional 1,100 MW of generation. This allows for the elimination of the previously tight
15 *ex ante* buyer restrictions and substantial relaxation of any *de facto* limitations on who
16 actually can buy the divested plants. The Applicants also have proposed to make a
17 compliance filing at the end of the divestiture process to demonstrate that the actual (rather
18 than some hypothetical) divestiture adequately preserves market competitiveness. Hence,
19 there are no issues of fact concerning this issue.

20 For these reasons, I recommend that the Commission approve this transaction, as proposed,
21 without instituting a hearing.

22 **Q. CAN YOU SUMMARIZE THE INTERVENOR TESTIMONY WITH RESPECT**
23 **TO HORIZONTAL COMPETITION?**

24 **A.** Yes, there are several themes running through the testimony. These can be grouped as
25 fact issues, analysis issues, policy issues and mitigation issues. Policy issues are largely
26 covered in Applicants' Answer, as are mitigation issues insofar as they affect the
27 rationale for Applicants' original mitigation and updated mitigation commitments.
28 Below, I discuss the fact issues and the analysis issues, and mitigation insofar as
29 Applicants' updated commitments require analytic support.

1 **Fact Issues.** There are really only four fact issues raised by intervenors: (1) Hoosier's
2 claim that I neglected to include an Exelon contract with Hoosier for the delivery of
3 power into Cinergy; (2) PPL's claim that I did not include a recently-completed PPL
4 generating facility in my analysis; (3) PHI's claim that I erred in counting capacity
5 controlled by PHI in PJM East; and (4) Dominion's claim that I neglected to reflect its
6 native load commitments in my Available Economic Capacity analysis even though I had
7 claimed to do so. The intervenors are correct on each of these issues, but none has a
8 material effect on my analysis, nor are they harbingers of any lack of credibility in my
9 analysis: each is an inadvertent and minor error. Nevertheless, as I discuss below, I have
10 updated my analysis to correct for these errors.

11 **Analysis Issues.** There are a number of analytical/modeling issues raised by intervenors,
12 including the treatment of the expected increase in PSEG's nuclear capacity factors, the
13 allocation method for transmission, assumptions in import studies, treatment of new
14 builds and retirements, market price and fuel price assumptions, and market definition. I
15 have considered each of these issues that intervenors contend undercut my analytical
16 results and demonstrate below why my analysis remains robust.

17 **Mitigation** Intervenors argue for additional mitigation, typically in the range of 1,000
18 MW. The assertion that additional mitigation is needed arises from several sources:
19 flaws in the intervenor analyses, misconstruing of Applicants' mitigation, concerns over
20 the efficacy of virtual divestiture and ICAP mitigation, and a desire to relax buyer
21 restrictions to permit sales to larger market participants that have the effect of
22 reconcentrating the market. As discussed in the Answer and detailed below, Applicants
23 have enhanced and modified their mitigation proposal. The analysis I present below
24 provides support for Applicants' mitigation commitments. I also analyze Applicants'
25 proposed enhanced mitigation to show that 1) it provides a significant "safety margin" to
26 further assure that the mitigation is sufficient and 2) provides "headroom" for much
27 liberalized opportunities for existing market participants to buy Applicants' divested
28 generation.

1 Q. HOW IS THE REMAINDER OF YOUR TESTIMONY ORGANIZED?

2 A. In the following section, I describe the minor corrections to my analysis that I have
3 incorporated into a revised Appendix A analysis. Then, I review the various criticisms of
4 my analysis. Finally, in the last section, I discuss Applicants' additional mitigation
5 commitments and present the requisite analysis to demonstrate that these commitments
6 more than adequately address any concerns raised by the merger.

7 II. MINOR CORRECTIONS TO MY ANALYSIS

8 Q. YOU INDICATED THAT INTERVENORS CORRECTLY POINTED TO FOUR
9 FACTUAL ERRORS IN YOUR ANALYSIS. PLEASE ADDRESS THE FIRST.

10 A. Hoosier (page 2) states that my market power analysis erred by not including two power
11 sales agreements (totaling 400 MW) under which Hoosier sells power to PECO delivered
12 at Cinergy. Hoosier is correct that the analysis did not reflect the referenced power sales
13 agreements; however, only one of the contracts (200 MW) is relevant to the 2006
14 analysis conducted by Applicants since the other will have terminated by then. This
15 inadvertent omission has no material impact on the results of my analyses. Since this
16 contract is for delivery in the Cinergy control area (now part of the Midwest ISO
17 ("MISO")), and Exelon has no firm transmission for this power into PJM, the only issue
18 is how much of this supply located in the Cinergy control area would have been prorated
19 into PJM East, PJM Pre-2004 and Expanded PJM. I examined my prior analysis and
20 determined that Cinergy's pro rata share of Economic Capacity in these three markets
21 implies that inclusion of 200 MW of Exelon supply in Cinergy would have increased the
22 capacity controlled by Exelon in relevant markets less than 0.05 percent.

23 My revised analysis in Exhibit J-18 corrects for this error.

24 Q. WHAT IS THE SECOND CORRECTION?

25 A. PPL (page 44) cites as a factual error in my analysis the exclusion of PPL Companies'
26 recently completed Lower Mount Bethel combined cycle facility, suggesting that this has
27 a potentially critical effect on the proposed mitigation. However, to the extent new

capacity has been inadvertently excluded in the market analysis, my analysis is conservative in that it overstates Applicants' market share. A lower market share for Applicants would theoretically reduce, not increase, required mitigation.

My revised analysis in Exhibit J-18 corrects for this error.

Q. WHAT IS THE THIRD CORRECTION?

A. Pepco Holdings ("PHI") states (page 32) that I incorrectly attributed 4,800 MW of generation in PJM East to CESI rather than the 2,595 MW they claim is CESI's capacity in that market. Curiously, Pepco provided no details concerning its claim despite the fact that Pepco and its consultants had ready access to my workpapers that contained details of which units were attributed to CESI. However, in response to a request by Applicants' counsel, Pepco, on April 29, provided the details concerning its claim. The details do not fully support their claim of 2,595 MW (see Exhibit J-20 for a reconciliation of the data). Nevertheless, to the extent appropriate, my revised analysis incorporates the corrections that CESI describes.³

Of these changes, only one has a potentially material impact on my analysis, and that is the location of CESI's Bethlehem plant. I had modeled it in Eastern PJM, based on my review of the transmission system, and CESI now informs me that it is not located in the East. The remainder of the changes relate primarily to IPP generation in PJM East that PHI states is not controlled by a CESI-affiliate, but for which the MAAC EIA-411 attributed the generation to a CESI-affiliate. Since this generation remains in the East, its attribution to CESI has no material effect on my analysis.

³ With respect to some of the generation, CESI's counsel indicates that the generation is properly attributed to a CESI affiliate for purposes of ICAP, but "is not necessarily Conectiv/CESI capacity for purposes of a FERC Appendix A analysis since elements of control of the units under some or all of the contracts remain with the plant owner." Without further substantiation of the issue of who controls the generation, I have left it as CESI-affiliated generation in my updated Appendix A analysis. The attribution of less than 500 MW to a particular owner has an immaterial effect on the results of my analysis and, indeed, attributing it to CESI is conservative in terms of the calculation of market HHIs since CESI has a relatively large market share.

1 **Q. WHAT IS THE FINAL CORRECTION?**

2 A. Dominion Energy, Inc. (page 6) states that I erred in claiming to take into account
3 Dominion's native load requirements. Dominion is correct. My testimony described my
4 intended treatment of Dominion's load requirements, but this assumption was
5 inadvertently not implemented in my modeling. This affects the Available Economic
6 Capacity analysis only, primarily the Expanded PJM results. Correct implementation of
7 this modeling results in some changes in the Available Economic Capacity screens
8 (market HHIs are lower, but HHI changes are slightly higher), but this assumption has no
9 effect on the level of Applicants' uncommitted capacity and the efficacy of the
10 mitigation. My corrected analysis reflects this change along with the changes described
11 above.⁴ See Exhibit J-20.

12 It also is worth pointing out that separate from the results of the AEC analysis, Exelon
13 and PSEG have no more than 1,900 MW and 8,300 MW of AEC in PJM East,
14 respectively, relative to Applicants' original mitigation commitments of 4,877 MW, and
15 revised mitigation commitment of 5,059 MW. (Capacity reflects deratings for outages.)
16 Regardless of the level of other parties' load commitments in PJM, Applicants have
17 committed to mitigation on about 50 percent of their uncommitted supply, and generally
18 well more than the pre-merger supply of the smaller of the two parties in all time periods.
19 This latter result means that the transaction cannot cause the market to become more
20 concentrated unless capacity is divested to parties with large pre-existing shares of
21 Available Economic Capacity. In any event, Applicants' additional mitigation
22 commitments coincident with this filing reduce the incremental Available Economic
23 capacity to zero (actually, negative) in all but one instance.⁵

⁴ Mr. Graves also states that I have understated winter loads and overstated shoulder loads. He is correct in that the winter loads were reported as shoulder and vice versa. This has been corrected in Exhibit J-19 as well.

⁵ The exception is the winter super-peak in Expanded PJM; however, the market is very unconcentrated and the mitigation further eliminates any concerns.

1 Q. HAVE YOU REVISED YOUR ANALYSIS TO REFLECT THESE CHANGES?

2 A. Yes. Exhibit J-18 provides Economic Capacity results (before mitigation). Exhibit J-19
3 provides Available Economic Capacity results. Exhibit J-21 provides corrected results
4 for the ICAP market. My post-mitigation analyses are discussed in section IV below.

5 **III. OTHER ANALYSIS ISSUES**

6 Q. WHAT OTHER ANALYSIS ISSUES DO YOU ADDRESS IN YOUR
7 SUPPLEMENTAL TESTIMONY?

8 A. I address a number of claims by various intervenors that my analysis is flawed. I
9 differentiate these from the corrections described in the previous section, which relate to
10 inadvertent errors in my analysis rather than these alleged errors in assumptions. The
11 claims include:

- 12 ▪ That I should have reflected increases in PSEG's nuclear capacity factor, which, it is
13 claimed, would indicate an increased competitive effect of the merger
- 14 ▪ That I should have used unit-specific outages for generation and considered
15 transmission outages or deratings
- 16 ▪ That I should have used different import assumptions
- 17 ▪ That I should have taken into account other consolidation that will occur in the energy
18 supply sector
- 19 ▪ That I should have reflected fewer new builds and more retirements in my analysis
- 20 ▪ That I should have used an economic allocation of transmission rather than a pro rata
21 allocation
- 22 ▪ That Financial Transmission Rights ("FTRs") need to have been taken into
23 consideration
- 24 ▪ That my market prices do not provide a sufficient examination of the effects of the
25 merger under varying market conditions

- 1 ▪ That further scrutiny is required of the impact of the merger on PJM capacity and
- 2 ancillary services markets
- 3 ▪ That additional market definitions should have been considered
- 4 ▪ That a strategic bidding analysis would lead to a different conclusion
- 5 ▪ That mitigation should reduce HHI changes to 50 points
- 6 ▪ That various additional commitments (not simply additional divestiture) are required
- 7 before this merger can be approved
- 8 ▪ That my analysis of the upstream market is incorrect

9 **Increased Nuclear Capacity Factor**

10 **Q. IS IT TRUE, AS OCA CLAIMS, THAT YOU DID NOT TAKE INTO ACCOUNT**
 11 **INCREASES IN PSEG'S NUCLEAR CAPACITY FACTOR?**

12 **A.** The fact is that I assume that both Exelon's and PSEG's nuclear capacity factors are
 13 equivalent to the industry average capacity factor, both pre- and post-merger. This is
 14 consistent with my treatment of all other generation; each generating unit is assumed to
 15 have the availability characteristics typical for its type, calculated on the basis of NERC
 16 GADS data.⁶ Some PSEG units have lower availabilities than the nuclear average. Thus,
 17 even if OCA's complaint is accepted on its face, the implication is that I might be faulted
 18 for not reflecting a lower capacity factor for PSEG pre-merger. However, OCA
 19 significantly overstates the effect of this issue on the analytic results and, indeed, comes
 20 to exactly the wrong conclusion. At low-priced time periods, if my competitive analysis
 21 had taken into account the market expanding effect of the increased nuclear capacity, the
 22 HHI calculations would reflect a lower, not a higher, HHI change. The mathematics of
 23 this can be seen using the detailed report included in my original workpapers. For
 24 purposes of this analysis, I use the shoulder off-peak period in PJM East, and I assume, as

⁶ Ms. Frayer's analysis follows this same convention.

OCA claims, that PSEG's nuclear output increases by 600 MW. As shown, in this example in Exhibit J-22, the HHI changes are actually less if the market expanding effect of PSEG's increased nuclear capacity factor is taken into account. While this example may not be reflective of the results under all market conditions, it follows that no material increases in mitigation would be required to offset these market-expanding effects.

Numerical results aside, it is important to remember what is at issue. What OCA is describing is an increase in the output of energy generated by nuclear units. Thus, what is involved is an increase in low-cost supply to the market, which, by definition, is procompetitive. This would be true even if, as OCA wrongly assumes, reflecting an increase in PSEG's nuclear output would increase HHIs.

Generation and Transmission Outages

Q. IS MR. BIEWALD CORRECT THAT YOU SHOULD HAVE USED UNIT-SPECIFIC GENERATION OUTAGE RATES AND YOU SHOULD HAVE REFLECTED TRANSMISSION OUTAGES OR DERATINGS?

A. No, he is not. Mr. Biewald (page 12) argues that by using generic outage rates for generation and not including transmission outages or deratings I have not "accurately and realistically" reflected market conditions. I understand his criticism to be that there are hypothetical, essentially transient conditions in which some combination of non-Applicant outages and transmission outages might create a more concentrated market in which Applicants' shares are higher. While it logically must be true that one can construct a hypothetical market condition consistent with this criticism, such construction is not required by Appendix A, any more than the DOJ/FTC *Guidelines* require analyses of markets when a blizzard hypothetically has shut down all highways and airports. Using derated generation is a universal Appendix A practice and properly measures market structure under typical conditions. Any conditions that so radically depart from those shown thereby necessarily will be atypical, extreme and transient. The screens are intended to identify sustainable market power, not random or episodic events. To the extent outages – generation or transmission – significantly alter the market conditions outside of the norm such events will be handled by the PJM market monitor.

Assumptions for Import Limits**Q. ARE YOUR IMPORT ASSUMPTIONS REASONABLE?**

A. Yes, my import assumptions are robust and not contested by most intervenors. Hoosier, and its witness Mr. Russell, claim (page 8 of brief, page 5 of Russell affidavit) that I should have relied on the historic use of transmission into PJM East rather than PSEG's transmission study that calculated the simultaneous import limit ("SIL"). Hoosier is simply wrong in asserting that actual use data is the appropriate transmission limit. The correct assumption in the delivered price test is the simultaneous import limit ("The applicant must provide simultaneous transfer capability data..."). The delivered price test is about the capability to supply a market. Hoosier raises no issues of material fact about the SIL study submitted by Applicants, merely that historical ATC should have been used. I used historical data about actual imports into PJM Pre-2004 merely because Applicants were not in a position to do a transmission study of PJM Pre-2004 as they were for PJM East. Finally, while Mr. Russell says that PJM's historical ATC indicates it would be "more appropriate" to use 6,500 MW into PJM East, he does not provide support for his calculation.

Future Industry Consolidation**Q. SHOULD YOU HAVE TAKEN INTO ACCOUNT FUTURE INDUSTRY CONSOLIDATION IN YOUR ANALYSIS?**

A. Absolutely not. Hoosier argues (page 9) that I should have taken into account further consolidation that may occur in the energy supply sector, and that sensitivity studies should have been conducted to reflect such consolidation. On its face, this argument is without merit – merger analysis is intended to determine the effect of the merger on competitive conditions as they exist at the time of the merger. Any future consolidation that might occur in relevant energy markets will begin with the current market structure at the starting point of the competition analysis for that merger, as the Exelon-PSEG merger has, not some speculative view of a future market structure. In Order 642, the Commission stated: "As part of its merger analysis, the Commission intends to consider

1 current and reasonably foreseeable regional developments and to seek additional relevant
2 data and information.” This is what I did in my analysis – I took into account all
3 reasonably likely future developments of which I am aware. Hoosier provides nothing
4 specific about potential future market consolidations that I have not included in my
5 analysis – indeed, Hoosier cites only to general comments about market consolidation,
6 rather than any specific plan with respect to PJM participants.

7 In any event, even if one takes Hoosier’s arguments into consideration, from the
8 standpoint of a Competitive Screen Analysis, consolidation within PJM possibly could
9 increase the market HHIs, but the HHI changes associated with this transaction would
10 remain the same, and Applicants’ mitigation still would be sufficient to cure screen
11 failures. Only if the hypothetical transaction were so large that it increased market
12 concentration to the highly concentrated level would my analysis be impacted. However,
13 a post-merger, post-mitigation change in market concentration of this amount occasioned
14 by a hypothetical future transaction implies a transaction that would not pass the
15 Commission’s merger screens.

16 Dr. Cicchetti (page 19) argues a related point that once this merger is accomplished, “no
17 existing eastern generation owner could merge with another that had 5,300 MW of
18 capacity.” This statement is flatly wrong and wholly unsupported by any quantitative or
19 even qualitative demonstration. Applicants’ originally-proposed limitations on who
20 could buy divested capacity were designed to assure that purchases by other larger
21 suppliers in the markets examined would not undo the HHI reductions that the mitigation
22 of this merger was designed to accomplish. Any subsequent transaction would have to be
23 evaluated on its own merits. The only “chilling effect” of this transaction is that in some
24 markets in some time periods the merger will increase market concentration from
25 unconcentrated to the low end of moderately concentrated. Absent this merger, certain
26 small transactions would have not triggered screen failures for that reason. However, Dr.
27 Cicchetti’s concern is with large mergers. Such mergers will be little affected by the
28 quite small HHI changes that result from this transaction. This does not mean that a large
29 supplier in a PJM market could acquire a 5,300 MW supplier without mitigation, any
30 more than this merger could be accomplished without mitigation. However, there is no
31 material nexus between this merger and any such hypothetical future transaction.

1 **Entry and Retirements**

2 **Q. DID YOUR ANALYSIS REFLECT TOO MUCH CAPACITY AS A RESULT OF**
3 **YOUR ASSUMPTIONS ABOUT ENTRY AND RETIREMENTS?**

4 A. No, my assumptions were consistent with information available at the time of my
5 analysis. Ms. Frayer (pages 31-32) claims she "adjusted downward the new entry
6 assumptions" in my database and "included...[additional] retirements in our analysis."
7 However, while Ms. Frayer says she makes these adjustments, I cannot find any such
8 adjustments in her analysis. This is unsurprising since I did not use the new construction
9 assumptions that she contends I used.

10 Let me preface my discussion by noting the reference in my testimony to entry and
11 retirements in PJM that she cites was not a description of the assumptions in my analysis,
12 but rather a discussion of barriers to entry. On page 41 of my testimony, I said:

13 With respect to new generation, I only included generation already under
14 construction and expected to be on-line by 2006; I did not include any
15 additional planned generation not yet under construction. With respect to
16 retirements, I included only units already retired or already approved by
17 PJM for retirement prior to 2006.

18 Then, in discussing barriers to entry on page 74, I said:

19 Although PJM has been capacity-long in the past few years, its reserve
20 margin is expected to decline relatively quickly given planned retirements
21 and load growth. PJM forecasts retirements of approximately 3,000 MW
22 and additions of approximately 5,000 MW by 2006/2007.

23 Ms. Frayer cites to PJM documents that post-date Applicants' filing to indicate that PJM
24 forecasts fewer additions (likely because some had already come on-line) and more
25 retirements. She says she reduces new entry approximately 1,000 MW, and increases
26 retirements by 103 MW. Importantly, I never added 5,000 MW of planned additions in
27 my database (indeed, I believe PSEG's Linden plant was the only new build I added). As
28 already noted, PPL criticized me for not including their 580 MW plant in my database.
29 With respect to retirements, the alleged difference of 103 MW is on its face trivial and, I
30 have added 30 MW of retirements into my corrected analysis to reflect the retirements
31 Pepco indicated in their response to Applicants' questions.

It also is notable that while Ms. Frayer criticized my construction and retirement assumptions at length, she did not implement her own criticisms. I examined her workpapers to identify which new units she thought would not come on-line and which units she thought would be retired. The capacity she used for her ICAP analysis matched mine exactly (before adjustment for outages). In other words, I could not identify any units eliminated from my database, as shown below.

ICAP Market - Total Capacity (MW)			
	Hieronymus - Exhibit J - 9	Frayer - UCAP HHI Analysis (Exhibit 22) ¹	Difference
Capacity located in PJM East	32,602	32,602	-
Imports	7,300	7,300	-
Total PJM East Capacity	39,902	39,902	-
Capacity located in Expanded PJM	167,150	167,150	-
Imports	7,500	7,500	-
Total Expanded PJM Capacity	174,650	174,650	-
¹ Before outages.			

I did a similar reconciliation between our databases for the delivered price test. There I found some minor differences, but none of them can be attributed to additional retirements or fewer new builds. Indeed, the total difference between our two databases of generation in PJM East consists of (1) a 179 MW difference in rating for PSEG's Linden plant (2) the two small PHI plants (27 MW of derated capacity) that retired in 2005 and which, as discussed earlier, I have corrected in my revised analysis; and (3) a 25 MW NUG plant. For PJM Expanded, the difference between our two databases is slightly greater (1,254 MW), but again the differences are not traceable to retirements or new builds. In addition to the differences in PJM East I already outlined, Ms. Frayer for some reason excludes Reliant's share of Keystone and Conemaugh (540 MW), excludes two units in PJM that are already built and in operation in Illinois (Cordova Energy Center (463 MW) and River Energy Center (280 MW)), and excludes a few small plants totaling less than 100 MW. This is summarized below and detailed in Exhibit J-23.

S_SP1 Capacity (MW)	Hieronimus	Fraye	Difference
Capacity located in PJM East	30,744	30,872	127
Imports	7,300	7,300	-
Total PJM East Capacity	38,044	38,172	127
Capacity located in Expanded PJM	156,189	154,935	(1,254)
Imports	7,500	7,500	-
Total Expanded PJM Capacity	163,689	162,435	(1,254)

Allocation Method

Q. IS THERE A RATIONALE FOR USING AN ECONOMIC ALLOCATION OF IMPORTS RATHER THAN THE PRO RATA ALLOCATION YOU USED?

A. No. Two parties argue that economic allocation rather than pro rata allocation of imports is appropriate. Hoosier argues (Russell, pages 5-6) that pro rata allocation systematically reduces the HHI. PPL similarly argues (page 45 and Kalt page 33) that use of pro rata allocation skews the results of the analysis by understating the allocation of import capability to Applicants' low cost generation.

Despite claims to the contrary (PPL, page 45), I supported my use of pro rata allocation (see Exhibit J-4, page 10), and Commission precedent supports this approach. Dr. Kalt entirely misrepresents the Commission's Order in the Ameren merger, which he cites for the proposition of "encouraging applicants to test the sensitivity of their results to changes in critical parameters in the context of determining proper allocation of transmission capacity into relevant geographic markets." (Kalt, footnote 31.) The Commission, in the cited paragraph, does, indeed, encourage applicants to test the sensitivity of critical parameters in their analysis. But, the reference to a critical parameter has nothing whatsoever to do with allocation of scarce transmission; it is about the measurement of transmission capacity by ATC or FCITC. There has been no change in Commission preference or precedent with respect to pro rata allocation.

Moreover, the allegations of both Hoosier and PPL overlook the critical fact that lower-cost generation is adequately represented in the analysis of lower market prices. Thus, when examining results at market prices of \$20, \$25 or \$30 per MWh. I allocate this

1 transmission capacity exclusively to extremely low-cost generation.⁷ By mitigating
2 screen failures at these lower market prices, Applicants have adequately addressed the
3 shares of low-cost generation that Applicants own outside of the relevant markets.

4 It also is notable that my use of pro rata allocation is not opportunistic. I always have
5 used pro rata allocation. Based on my extensive experience, this has been found to
6 produce more reasonable results. The reason arises from the fact that economic
7 allocation excessively allocates transmission to low cost hydro and nuclear generation. A
8 simplifying assumption of the DPT is that each market analyzed is the only sink for
9 generation. Hence, under the DPT low variable cost generation will be deemed to travel
10 long distances to each market analyzed and, indeed, the same low cost generation is
11 allocated, over and over, to each market as such markets are analyzed independently. For
12 example, Canadian hydro generation would absorb a large proportion of imports into
13 PJM via MISO and via New York. Once hydro was fully utilized (i.e., up to the
14 transmission limits from Quebec, Ontario and Alberta) the transmission capacity would
15 be allocated to primarily nuclear. In reality, however, the generation that competes for
16 imports into PJM East will be (depending on time period) primarily coal and combined
17 cycle capacity located nearer to the East market.

18 In this context it also is notable that Mr. Russell confuses how PJM allocates
19 transmission with how transmission is allocated for study purposes. He states (page 6)
20 that "A least-cost access method might enable low-cost suppliers to secure firm
21 transmission rights which would preclude access by more expensive suppliers." Here, he
22 is talking about how PJM determines what supplies gain access to transmission, not about
23 how a DPT should allocate transmission. Under PJM's method of "allocating"
24 transmission, the closest approximation would be to allocate transmission to the supplies
25 that 1) are not economic for meeting load in their local area and 2) are in the market in
26 the importing area. This is a far cry from allocating transmission to the lowest cost
27 supplies outside of the interface.

⁷ Ironically, some intervenors, including PPL, criticize my use of a \$20/MWh price to bound the market conditions I examined on the basis that such low prices were less than typically occur in PJM.

1 **Market-Based Rate Screens**

2 **Q. IS IT NECESSARY TO HAVE ANALYZED THE COMMISSION'S SCREENS**
3 **FOR MARKET RATE AUTHORITY IN THE CONTEXT OF EVALUATING THE**
4 **EFFECT OF THIS MERGER ON COMPETITION?**

5 **A. No.** As Applicants' Answer makes clear, such an analysis will be made under Section
6 205 of the Federal Power Act and, at that time, Applicants will be required to present the
7 results of the Commission's market-based rate screens. For that reason, I do not respond
8 to the intervenor witnesses who provide their own analysis under these screens (see, for
9 example, Frayer and Fox-Penner/Pfeifenberger), but I do want to point out a fundamental
10 error in Ms. Frayer's analysis.

11 In conducting her analysis, Ms. Frayer (page 43) says she used simultaneous import
12 capability "not used by Applicants given their first tier holdings, to uncommitted
13 competing supply." Ms. Frayer relies on the Commission's April 14th Order relating to
14 market-based rate analysis and hence incorrectly overstates Applicants' share of imports.
15 This particular instruction (paragraph 95 of the April 14th Order) was clarified and
16 altered by the Commission's July 8th Order in that docket. Paragraph 45 of the
17 Commission's July 8th Order states:

18 45. In response to the argument that the April 14 Order improperly directs
19 applicants to first allocate simultaneous transmission import capability to their
20 own uncommitted remote generation, we clarify that only the portion of an
21 applicant's uncommitted remote generation capacity that has firm or network
22 reservations should be modeled in the base case and subtracted from available
23 simultaneous transmission import capability. (Emphasis added)

24 **FTRs**

25 **Q. THAT LEADS TO THE NEXT CRITICISM, NAMELY THAT YOU DID NOT**
26 **ANALYZE THE IMPACT OF FTRS ON THE MARKET. PLEASE RESPOND.**

27 **A. PPL** (Kalt, page 34) criticizes Applicants for not identifying the impact of financial
28 transmission rights ("FTRs") on the market and reflecting them in their analysis.

1 It is not possible to perform a useful analysis of FTRs in PJM, however. There is no
 2 single way that FTRs are allocated that can be used to model ownership of FTRs in PJM.
 3 Instead, FTRs – which do not have a duration of more than one year – are sold at auction,
 4 are potentially convertible from Auction Revenue Rights (“ARRs”), and are actively
 5 traded on the secondary market.

6 Market Prices and Input Costs

7 **Q. THERE ARE A NUMBER OF CHALLENGES TO YOUR CHOICE OF MARKET**
 8 **PRICES, TO THE EFFECT THAT YOUR RESULTS ARE BIASED. DO YOU**
 9 **AGREE?**

10 A. Obviously I do not agree. Choosing market prices to analyze for purposes of the DPT is
 11 as much an art as it is a science. There is no single methodology for choosing market
 12 prices. But, market prices are not a stand-alone assumption driving the screen results. It
 13 is the interaction between assumed prices and costs that determine what generation is
 14 economic at various market prices. If one analyzes a full range of market prices, the
 15 results of the Competitive Analysis Screen reflect a full range of results. I analyzed
 16 market prices between \$20/MWh and \$65/MWh in the Shoulder, \$30/MWh and
 17 \$80/MWh in the Winter, and \$25/MWh and \$250/MWh in the Summer. (Analyzing the
 18 same price in each season can yield different results, reflecting different seasonal fuel
 19 costs and outages.) In total, I analyzed prices at \$20, \$25, \$30, \$45, \$55, \$65, \$80 and
 20 \$250/MWh. There are no intentional – and certainly no obvious – price gaps in this
 21 range.

22 Turning to Dr. Kalt’s challenge first, he argues (starting at page 25) that because different
 23 price levels will change the generation economic at a particular price, the results of the
 24 analysis could change significantly. He argues this by example of the Bergen units,
 25 whose projected variable costs are near \$55/MWh when gas prices are \$6.55/mmbtu.
 26 From these facts, he argues that a minor increase in variable operating costs would
 27 exclude them from economic supply below the \$55/MWh level and cause the mitigation
 28 to be much higher than currently proposed. But Dr. Kalt creates a inapt example. In my
 29 analysis, the variable cost of the Bergen units Dr. Kalt references is \$55.88/MWh,

1 consisting of \$54.48/MWh in fuel cost and \$1.40/MWh in variable operating cost.
2 Generation within 105 percent of the market price of \$55/MWh is \$57.75/MWh. This
3 means that non-fuel operating costs would have to more than double to cause Bergen to
4 no longer be economic at the market price of \$55/MWh. I assume that Dr. Kalt refers to
5 increases in non-fuel variable operating costs in his analysis, because certainly it must be
6 apparent that if fuel costs increase, market prices would also increase. Indeed, a uniform
7 change in non-fuel price forecasts (e.g., for environmental adders) also would yield
8 nearly identical increases in market prices and in the dispatch price of near-marginal
9 generators.

10 Ms. Frayer argues that market prices should have been differentiated between the PJM
11 markets I analyzed, and does an extensive analysis that yields resulting market prices
12 (page 29), the effect of which is to examine a much narrower band of prices than
13 analyzed by me. She used electricity prices in PJM East that were 2 to 15 percent higher
14 than in the rest of PJM. But, she ignores the fact that delivered gas prices in PJM
15 reflected similar differences: for example, the delivered price of gas to PJM East (Tetco
16 M3) was 1 to 18 percent higher than the delivered price to Ohio. While I used the same
17 electricity market prices, I also used the same delivered gas costs. Ms. Frayer asserts that
18 the differences in our electricity market prices material reason why she achieves different
19 results, but on its face, the effect of taking interregional price and cost differences is not
20 material. The actual primary difference between our analyses is addressed below.

21 **Q. A COROLLARY CRITICISM TO YOUR CHOICE OF MARKET PRICES**
22 **COMES FROM MS. FRAYER'S CHALLENGE OF YOUR FUEL COST**
23 **ASSUMPTIONS? IS SHE CORRECT?**

24 **A.** She is correct that fuel cost forecasts continue to escalate. But, her analysis is flawed and
25 does not undermine my analysis in any way.

26 Ms. Frayer criticizes my reliance on natural gas fuel escalators from EIA rather than
27 projecting current trends of rapidly increasing prices based on NYMEX market forward
28 prices; as a result of her assumptions, she uses gas prices about 20 percent higher than

1 those used by me. I used data publicly available at the time I was conducting my
2 analysis, and I calibrated my assumed market prices to match the fuel input prices.

3 Ms. Frayer's examination of fuel markets causes her to examine a much narrower range
4 of market conditions than I did. For example, for the highest priced summer time period
5 for PJM Expanded, Ms. Frayer uses a price of \$113/MWh. In doing so, Ms. Frayer
6 excludes from the market about 8,000 MW of capacity whose cost is above \$113/MWh
7 (plus 5 percent). While I do not suggest that the market price at peak is necessarily
8 \$250/MWh, by examining this price point I am able to assess a snapshot of the market if
9 all generation is needed. This is true at the bottom of the stack as well – nuclear
10 generation may rarely set the market price (particularly given the large amount of coal-
11 based energy from inflexible plants running at or near minimum load), but by analyzing a
12 shoulder off-peak price that allows only nuclear generation to be economic, I am able to
13 consider the effect of the merger under this condition.

14 A substantial error in Ms. Frayer's analysis clearly results in materially wrong fuel cost
15 inputs for coal units. For example, Ms. Frayer estimates delivered coal costs of
16 \$4.93/MMBtu at Big Sandy River (the Central Appalachian Coal price point for
17 NYMEX), which equates to roughly \$125/ton coal prices. Similar prices are used for all
18 coal generation. In contrast, this type of coal is currently trading for about \$60/ton on a
19 forward basis for 2006. It appears that what Ms. Frayer has done is to assume that the
20 tons-to-MMBtu conversion factor (roughly 25,000) is a conversion of pounds to MMBtu
21 which she then multiplied by 2,000 pounds per ton. This explains why her coal prices are
22 nearly twice the actual forward prices.⁸ This has the effect of dramatically raising the
23 dispatch price of all coal-fired generation in her analysis.

⁸ Exhibit 7.xls in Ms. Frayer's workpapers contains a table showing her conversion of NYMEX forward prices in \$/ton to the \$/MMBtu used in the model. It indicates that a conversion rate of 28,000 was used. I presume that this was meant to be 28 million Btu/ton. However, she appears to have confused Btu per ton with Btu per pound. No coal in the world has a heat content approaching 28,000 Btu per pound. In any event she converts to \$/MMBtu by first dividing the price by 28, then multiplying it by 2. This converts the price for, for example, July 2006 from \$56.75/ton to \$4.05/MMBtu. In fact, the contract heat content for Central Appalachian coal is 12,000 Btu/pound, or 24 million per ton. The correct price would have been \$2.36, not \$4.05.

1 Her attempt to "bound" the results by changing her market prices by 25 percent is also
2 not persuasive and is inconsistent with the requirements of Appendix A. Generally,
3 sensitivity analyses are conducted to evaluate the impact of reasonable changes in key
4 variables in the analysis. Changing her estimated market prices by 25 percent (for a total
5 range of 50 percent) is not informative. More importantly, it is also not consistent with
6 her assumed input costs, which are not altered in her sensitivity analyses. A proper
7 sensitivity of this type would have changed fuel costs and then computed resultant prices.
8 Simply changing prices without changing fuel costs means that her measure of economic
9 capacity at a given price includes units that in reality are not economic at that price (when
10 the price is increased by 25 percent) or exclude units that are in reality economic (when
11 the price is reduced by 25 percent).

12 **Q. WHAT IS YOUR RESPONSE TO MS. FRAYER'S CRITICISMS OF YOUR**
13 **ENVIRONMENTAL COMPLIANCE COST ASSUMPTIONS?**

14 **A.** Ms. Frayer's (pages 34-35) criticisms of my assumptions about the cost of SO₂ and NO_x
15 are not consequential. Ms. Frayer's assumptions reflect more current information than
16 relied on by me (information that became available since the filing). However, the
17 difference between our environmental assumptions has no impact on the analysis. My
18 SO₂ allowance price is about 8% below and my NO_x allowance price is about 5% below
19 hers. The impact of these differences on the variable costs of units is small, as
20 environmental costs are only a small component of dispatch costs. For example, for a
21 new combined-cycle unit, the difference in NO_x costs translates to only \$0.07/MWh. For
22 a 9,500 MMBtu/kWh heat rate coal unit, the effect is only about \$0.71/MWh for SO₂ and
23 \$0.36/MWh for NO_x. Clearly, the different environmental cost assumptions would not
24 change the dispatch order of the units in either of our generation databases;
25 environmental costs will have essentially no impact on the rank order of generation
26 dispatch costs and hence on which units are in the market at any point in time. Further,
27 differences in environmental costs for near-marginal units should be reflected one-for-
28 one in market prices, so the units that are economic also will not change.

1 **Q. RECOGNIZING THAT YOU AND MS. FRAYER HAVE DIFFERENT DETAILS**
2 **IN YOUR ENERGY MARKET ANALYSES, DO THESE DIFFERENCES**
3 **ACTUALLY MATTER TO YOUR RESPECTIVE CONCLUSIONS?**

4 A. No, they do not. Despite the differences in our analyses (of which the greatest is her
5 major overstatement of coal prices), detailed analysis demonstrate that assumptions make
6 little difference unless there is 1) a significant mis-match between costs and prices (as in
7 Ms. Frayer's sensitivities) or 2) a change in the ordinal ranking of units. The differences
8 between our analyses, which relate primarily to fuel costs and hence to market prices, do
9 not materially affect the rank ordering of generating plants along the supply curve. Thus,
10 despite Ms. Frayer's major error in computing coal prices, coal remains more expensive
11 than nuclear and less expensive than oil and gas. Moreover, since the error was identical
12 for all units, the ordering among coal units remains the same (i.e., remains based
13 primarily on heat rates). The seeming difference between our results, where she finds a
14 few time periods in which additional mitigation is required, is not because of differences
15 in the analysis but because her modeling of Applicants' mitigation proposal is different
16 than mine, and is incorrect.

17 **Q. HOW IS MS. FRAYER'S IMPLEMENTATION OF APPLICANTS' MITIGATION**
18 **INCORRECT?**

19 A. Ms. Frayer's Exhibit 14 shows two time periods in which the market screen is failed,
20 *summer rest-of-peak and shoulder rest-of-peak*. In each case, the market price is between
21 \$65 and \$69/MWh. I should note that parts of her Exhibit 14 are simply wrong and are
22 inconsistent with her workpapers. In particular, the column "EEG MW" is computed by
23 subtracting Applicants' total proposed mitigation from their capacity, irrespective of the
24 price bands. In order to observe what mitigation she actually assumed in each time
25 period, I have used the version of Exhibit 14 that appears in her workpapers and lacks
26 this defect.

1 Consider first the failure of mitigation in the summer rest of peak period. In my analysis,
2 Applicants' mitigation in this period was 3,947 MW.⁹ In her analysis it is only 2,718
3 MW. Why she assumed different mitigation is not explained. Had she made the same
4 assumption as I did, there would be no screen failure.

5 In my analysis, the price in that period was \$55/MWh. As shown in my Exhibit J-13, the
6 only non-nuclear units that can mitigate this screen failure are the Yards Creek hydro
7 unit, Applicants' PJM East coal units (Cromby, Hudson, Mercer and Eddystone) and the
8 two PJM East PSEG combined cycle units (Bergen and Linden). Per my analysis,
9 Applicants had committed to divest 3,947 MW (summer rating, derated for outages) from
10 mid-merit units and from the nuclear virtual divestiture. At Ms. Frayer's summer rest-of-
11 peak price, these units all are economic. Hence, the divested amount that she should have
12 included would need to include the divestiture from these units, which necessarily is the
13 same as my divestiture.

14 The cause of her screen failure in the shoulder rest-of-peak is different, but flows also
15 from a mis-match of what is in the market with the mitigation proposal. In this case, her
16 assumed mitigation is the same 2,196 MW of derated capacity that I used. What is
17 different, however, is what is in the market. At Ms. Frayer's price of \$65/MWh, both
18 Bergen and Linden (as well as Applicants' cheaper units) are in the market. At my
19 \$45/MWh price for the same period, they were not. This explains the amount of
20 mitigation that I used. However, had I included Bergen and Linden as being economic in
21 the time period, I would have shown a higher level of mitigation. This is because the
22 amount of divestiture needed in other time periods (such as summer rest-of-peak, or in
23 my terms summer peak) includes the divestiture of 3,233 MW of shoulder-rated capacity,
24 *i.e.*, the same units that account for the 3,947 MW of divestiture counted in the summer
25 rest-of-peak season.

26 To summarize, had Ms. Frayer been consistent between the types of units that were
27 economic given her price levels and the types of units that Applicants have committed to

⁹ In my analysis, consistent with Applicants' commitments, a portion of the mid-merit generation to be divested consists of units economic below a market price of \$55/MWh. This was intended specifically to cure screen failures at this price level.

divest, she would have found that Applicants' proposed divestiture was adequate in all time periods. Specifically, the amount of additional divestiture that she finds necessary to cure these "screen failures," 890 MW, is less than the amount by which she underutilized Applicants' proposed mitigation in the two time periods in which the alleged failures occur.

Q. DO ANY OTHER WITNESSES MAKE THIS SAME ERROR?

A. Yes. Dr. Kalt commits the same error. At pages 25-27 of his testimony he discusses the possibility that small changes in fuel costs could affect the dispatch costs of particular generating units and hence whether they would be effective in mitigating merger effects at particular price levels. He uses the example of the Bergen unit. He notes that Bergen is barely economic at the \$55/MWh price level and posits that if Bergen had a slightly higher dispatch price, selling it would be a sale of a unit not in the market at \$55/MWh and hence would not mitigate the market under this price condition.

First of all, if Bergen is near-marginal and its dispatch costs increase, presumably because fuel prices are higher (as posited by Dr. Kalt), a similar unit's costs also will be higher and market prices will have increased by the same amount. Hence, Bergen would still be in the market and its sale still would be effective mitigation. Second, the \$55/MWh market requires the mitigation that it does because of the amount of Applicants' capacity that my analysis includes as economic at that price. Removing Bergen from the market by pricing it out of the market would reduce Applicants' economic capacity during that price time period by the same amount as divesting it.

Documentation of Analysis

Q. WAS YOUR ANALYSIS FULLY DOCUMENTED?

A. Yes. Despite claims to the contrary, my analysis was well documented and my assumptions are described in detail in my testimony, exhibits and workpapers.

APPA/NRECA argue (page 12) that "Dr. Hieronymus' Competitive Analysis Screen embodied specific assumptions that are nowhere set forth in the application and indeed

1 differ from those in the application.” This is an interesting allegation given the extent of
2 my testimony, exhibits and workpapers that apparently were sufficient to allow several
3 other intervenors to replicate – and attempt to rebut – my analysis. To support their
4 assertion, APPA/NRECA identify my calculation of the effect of mitigation, which they
5 claim requires that specific units need to be identified as well as the acquiring firms.
6 They are incorrect; it is possible to calculate the effect of mitigation mathematically by
7 staying within the parameters and commitments made by Applicants. Once again, other
8 intervenor witnesses conducted their own analyses of the effect of varying levels of
9 mitigation and varying assumptions about the purchasers.

10 In order to conduct my analysis, I did have to create a hypothetical set of customers to
11 which to divest generation as well as identify blocks of generating units with the
12 appropriate economic characteristics. The pre-mitigation market shares of potential
13 purchasers were based on my market share calculations included in my workpapers. As
14 APPA/NRECA points out, I assumed that non-nuclear mitigation was divided among
15 three market participants. In fact, I conducted my analysis in a conservative manner,
16 given the purchaser restrictions originally proposed by Applicants. Now, of course,
17 Applicants have committed to greater mitigation to allow these purchaser restrictions to
18 be loosened, the effect of which is addressed later in my testimony.

19 APPA/NRECA also argues (page 14) that I have not presented an explanation of why the
20 nuclear mitigation should be attributed to two new market entrants. As I stated in my
21 testimony, “The amount of a contract with any single party will be no more than one-half
22 of the virtual divestiture amount.” On the other hand, Applicants also proposed an
23 alternative mitigation whereby a baseload auction will sell nuclear generation in 25 MW
24 blocks. My assumption that the mitigation will be sold to two market participants with
25 no current market share reflects a balance between sales under the auction and the long-
26 term contract alternatives. Again, I present later in my testimony the revised analysis that
27 I have performed to reflect the Applicants’ additional mitigation proposal.

PJM Capacity and Ancillary Services Markets

Q. IS IT YOUR OPINION THAT THE COMMISSION CAN ADEQUATELY ANALYZE THE IMPACT ON THE PJM CAPACITY MARKET EVEN WHILE THE STRUCTURE OF SUCH MARKET IS IN FLUX?

A. Yes, particularly in light of Applicants' commitment to make a compliance filing within 30 days after closing to adjust their ICAP mitigation proposal to conform to any changes in the PJM ICAP markets. This commitment is further strengthened by Applicants' enhanced commitment to bid their entire net capacity position into the PJM daily capacity market at a zero price until such time as changes are made to the ICAP market.

FirstEnergy (pages 27-29) argues that my analysis fails to take into account pending changes in the PJM markets, and under FERC policy, must do so prior to approval of the merger. FirstEnergy makes various suggestions for how a fuller record might be developed concerning the effects of the merger on future PJM ICAP markets, revolving principally about a proposal that the issue be set for hearing and that "the Commission should direct the Applicants to file an analysis of the range of effects of the forthcoming capacity market redesign and explain how their proposed mitigation will be an effective measure to deter the exercise of market power."

First, this is not even the appropriate issue. The merger-related issue is whether the merger will enhance the likelihood of market power being exercised, not whether there will be market power exercisable by some party (including a non-merged Applicant) under a hypothetical capacity market structure. In any event, my ICAP analysis has focused on the two ICAP geographic market definitions most likely to implicate the merger: the expanded PJM area which is known to be the near-term proposed market and a PJM East market, that includes the greatest overlap between the merging parties. No other definition is likely to show a greater impact from the merger. For example, a New Jersey zone would exclude most of Exelon's generation. FirstEnergy's proposal would drag into this proceeding the ongoing dispute within PJM concerning what the restructured ICAP market is likely to be, an issue with its own venues. Moreover, in view of the ongoing dispute, the FirstEnergy proposal risks making the schedule for

1 approving the Transaction hostage to the unknown timetable for resolving the ICAP
2 market design since it would keep the record open while the ICAP proposals continue to
3 change. Applicants have offered a compliance filing to assure the Commission that their
4 mitigation is sufficient to cure any merger-related issues shortly after the merger is
5 approved, as best the design is known at that time. This commitment gives the
6 Commission the maximum amount of time to learn what the ICAP proposal actually will
7 be. Based on what is now known, my view is that the existing analysis of the PJM East
8 market will prove to be robust against whatever design ultimately is adopted.

9 **Q. WERE THERE OTHER CRITICISMS OF YOUR ICAP ANALYSIS?**

10 A. Yes, Ms. Frayer claims that my ICAP analysis is incorrect and hence understates the
11 amount of capacity that must be divested to eliminate market power concerns. Her
12 assertions are incorrect.

13 Ms. Frayer (page 52) asserts that I have understated Applicants' share of the capacity
14 market by using installed capacity as a proxy for UCAP. Her contention is that the
15 higher proportion of nuclear generation in Applicants' generation portfolio combined
16 with lower forced outage rates on nuclear plants means that Applicants' market shares are
17 actually larger than I calculate.

18 Ms. Frayer claims to have made a UCAP adjustment using the NERC GADS data base,¹⁰
19 but does not present separate results from this change. Her Exhibit 21 incorporates all of
20 her recommended changes, not just the treatment of outages. Her analysis, however, is
21 flawed. I have already agreed that forced outage rates are relevant to adjust ICAP to
22 UCAP (footnote 82 of my testimony): "The use of ICAP is tantamount to assuming that
23 the fleet of capacity owned by each market participant has the same forced outage rate.
24 While not literally true, this will be nearly correct and any variation in forced outage rates
25 could either increase or decrease market HHIs by small amounts." Indeed, typically my

¹⁰ As an aside, I also note that elsewhere Ms. Frayer (page 33) criticizes my delivered price test for reliance on an outdated (2000) GADS report. While one of my workpapers may have mistakenly referred to a 2000 GADS report, my analysis, as described in my testimony, was based on the most recent data available at the time of my analysis. As such, I used a GADS report from November 2004, covering the 1999-2003 period.

analysis for Economic Capacity at the very highest summer peak period is a reasonable proxy for UCAP, since it takes into account forced outages.

In Ms. Frayer's analysis, she appropriately relies on the NERC GADS database to assign a forced outage rate by type of unit. Unfortunately she errs in her application of this methodology by applying the incorrect outage rate. The *PJM Unforced Capacity Market Business Rules* indicate that the appropriate forced outage rate to use is EFORD (Equivalent Forced Outage Rate demand), not the EFOR (Equivalent Forced Outage Rate) Ms. Frayer used:

35. A unit's EFORD will be fixed for the entire interval and will be the rolling twelve-month EFORD bridged to eCapacity no less than 5 business days prior to the beginning of a commitment interval.¹¹

The practical effect of using EFORD is to lower the forced outage rate on many unit types, particularly combustion turbines. Shown below is a sample comparison of the EFOR rates Ms. Frayer used relative to the EFORD rates correctly applied in calculating UCAP.

FORCED OUTAGES used for deriving UCAP					
Outage	Unit Type	All Sizes	Size (in Megawatts)		
			1-19	20-49	50 Plus
EFOR	CCNG	36.22%	55.91%	48.15%	27.93%
EFORD	CCNG	7.45%	8.59%	9.45%	6.72%

Source: Workpaper to Frayer Exhibit 22.

To examine the effect of applying outage rates – be it EFOR or EFORD – relative to installed capacity, I used Ms. Frayer's database and proved that there is no material difference in Applicants' market shares, particularly if the correct forced outage rates are used. The results are summarized below and detailed in Exhibit J-24.

¹¹ <http://www.pjm.com/markets/capacity-credit/downloads/20030619-int-struct-biz-rules.pdf>

Effect on Market Share of Different Forced Outage Rates			
	ICAP	UCAP EFOR	UCAP EFORd
PJM East Market Shares			
Exelon	21.7%	22.6%	21.7%
PSEG	31.0%	31.4%	31.0%
Expanded PJM Market Shares			
Exelon	15.8%	16.0%	15.9%
PSEG	8.5%	8.5%	8.5%
Outages as a Percent of ICAP			
Exelon		10.7%	6.6%
PSEG		11.0%	5.8%
Market		11.8%	6.8%

Source: Based on data in Frayer Exhibit 21 workpapers.

My analysis also shows that using this UCAP proxy, the HHIs and changes in HHIs in the Expanded PJM and PJM East markets are below both Ms. Frayer's erroneous calculation and my calculation. In other words, while Ms. Frayer posits that using UCAP will increase the Applicants' market share, a calculation using her own UCAP data shows the opposite.

Q. IS THERE SOMETHING ELSE DRIVING MS. FRAYER'S ICAP RESULTS?

A. Yes. In order to calculate an HHI for the ICAP market, one has to determine how to treat imports. In my analysis, I assumed that imports were assigned to four equal-sized parties not located in the market. Both Ms. Frayer and OCA challenge this assumption.

I stated this assumption explicitly on Exhibit J-9, but it is important to note that I applied this assumption only in the calculation of the ICAP market, not in my analyses of Economic Capacity and Available Economic Capacity. In fact, this treatment of imports in the ICAP analysis is conservative in terms of the effect on market HHIs: imports will tend to be far more fragmented than four equal-sized suppliers. Certainly, if I had allocated ICAP imports in the same way as I allocated energy imports (i.e., consistent with Appendix A) the supply of ICAP imports would have been very much more fragmented. The assumption that I used results in four parties supplying more than 1,800 MW of ICAP each from external sources. In fact, import supplies will be a combination of external generators wanting to sell ICAP into the markets, marketers, load serving entities with load (hence, ICAP responsibility) in the market and existing market suppliers. In any event, the effect of this assumption on the ICAP market HHIs should be

1 on its face immaterial; based on my analysis shown in Exhibit J-9, the ICAP market for
2 PJM East would be moderately concentrated and the ICAP market for Expanded PJM
3 would be unconcentrated. Who is assumed to supply imported ICAP could theoretically
4 affect the mitigation required, but Applicants' mitigation is sufficient to eliminate screen
5 failures regardless of the assumption about imports unless such assumptions are extreme.

6 In her analysis, Ms. Frayer assumes two scenarios. In the first, the ICAP imports are
7 allocated to the four largest market suppliers excluding Applicants. In the second, it is
8 allocated to each of the existing ICAP suppliers, including Applicants.

9 There is, however, no need to argue in most instances about who gets the imported ICAP
10 or about the ICAP versus UCAP and forced outage rate issues. Ms. Frayer asserts that
11 necessary ICAP mitigation in the East is 5,385 MW or 5,621 MW depending on the
12 scenario. In Expanded PJM she finds a requirement of 4,201 MW with equal blocks to
13 all suppliers. Only in the case where she assumes that imports are controlled by the four
14 largest suppliers is the mitigation requirement materially larger than I had found, 7,550
15 MW. This is an "AEP-Dominion" effect: by assuming that they (and the next two
16 largest suppliers, PPL and APS) control 100 percent of imports, she drives up the market
17 HHIs and hence the mitigation requirement.¹² Factually, it is hard to justify the notion
18 that Dominion and AEP, both of whom have enough capacity to meet their ICAP
19 requirements, would contract for a quarter of import capacity. The same is true for PPL
20 and APS.

21 In any event, Applicants have expanded their divestiture (and hence their ICAP
22 divestiture) beyond the amounts needed to meet Ms. Frayer's ICAP divestiture
23 requirement in PJM East and in her less extreme analysis of divestiture needed in
24 Expanded PJM. Moreover, Applicants now have agreed to bid all of their net ICAP
25 position into the PJM market at a zero price. Since Applicants thus are pure price takers,
26 there should be no concern about their exercising hypothetical market power in the ICAP
27 market.

¹² I have verified that the difference in our results is due neither to different assumptions about Applicants' shares nor the size of the market. The difference is solely due to assumptions about who controls imports.

1 Q. SEVERAL INTERVENORS HAVE ASSERTED THAT APPLICANTS'
2 PROPOSAL TO OFFER THE LESSER OF THEIR NET UNCOMMITTED
3 CAPACITY OR 2,400 MW INTO THE DAILY ICAP MARKET IS INEFFECTIVE,
4 SINCE SUCH CAPACITY STILL WOULD BENEFIT FROM WITHHOLDING
5 OTHER CAPACITY. IS THIS CRITICISM STILL VALID?

6 A. No. Applicants have now agreed to bid all of their net ICAP position into the daily
7 market at a zero price. Since they will now have nothing that they hypothetically could
8 withhold, this mitigation is fully effective.

9 Q. FIRSTENERGY ALSO ARGUES THAT APPLICANTS' POTENTIAL FOR
10 MARKET POWER IN ANCILLARY SERVICES SHOULD BE SCRUTINIZED
11 CAREFULLY. DOES IT MAKE A PERSUASIVE CASE?

12 A. No. FirstEnergy makes several arguments in this regard.

13 First, it argues that HHI studies of ancillary services are inadequate since the Commission
14 has found in other contexts that generators can have highly local market power in
15 ancillary services. Here, however, there is a clear PJM definition of relevant geographic
16 markets actually used for selecting and pricing ancillary service supplies that my analysis
17 has addressed.

18 Second, it argues that divestiture may not cure screen failures since the divested units
19 may go to buyers that have significant ancillary services market shares. While
20 hypothetically this is true, it also is the case that Applicants have sought (and FirstEnergy
21 opposed) measures to limit the associated sales of generation to those who do not have
22 large shares in the energy market. Practically speaking, FirstEnergy's complaint is
23 unanswerable, with or without a hearing, since neither Applicants nor the Commission
24 can know 1) who will buy the divested units or 2) what their pre-existing ancillary
25 services capability is.

26 Third, FirstEnergy points out that Applicants have not demonstrated that they will sell
27 sufficient spin capability to reduce the change in HHI to a level that passes the screen.
28 Note however, that Exelon has only 196 MW of spin capability in the relevant market.

1 Curing the screen failure would require sale of 147 MW as part of the divestiture. Since
 2 Exelon has only about 5,300 MW of non-nuclear generation in the PJM Pre-2004 market,
 3 the proposed divestiture is equivalent to a very substantial proportion of equivalent
 4 capacity. Moreover, the pattern of proposed non-nuclear divestiture should be relatively
 5 rich in spin capability. Applicants' coal and combined cycle units that form the bulk of
 6 the divestiture have more than twice the amount of spin capability that is needed to cure
 7 the screen failure for spin.

8 Finally, relying on Ms. Frayer's testimony, FirstEnergy urges that Exelon be required to
 9 provide sophisticated statistical analysis to support my observation that spin and
 10 regulation cannot readily be analyzed separately from each other or from energy as a
 11 result of PJM's procurement rules. Such analysis is not required. The basis for my
 12 statement is the procurement rules themselves. Manifestly, if PJM jointly procures these
 13 services and takes energy bids into account in selecting ancillary services providers, the
 14 markets will be linked.

15 Relevant Geographic Markets

16 **Q. WHAT OTHER RELEVANT GEOGRAPHIC MARKETS DID INTERVENORS**
 17 **CLAIM YOU SHOULD HAVE CONSIDERED?**

18 A. Several intervenors criticize my analysis of relevant geographic markets, arguing that I
 19 should have considered Northern New Jersey (PPL, Pepco), PJM Classic (PPL),¹³ "PJM
 20 West"¹⁴ (Ameren) and "PJM Rest"¹⁵ (Ameren).

21 Despite the suggestion that I did not adequately consider a possible Northern New Jersey
 22 market, I point to the analysis I included in my testimony and my workpapers (Exhibit J-
 23 1, pages 53-54 and workpapers). There, I presented my reasoning for rejecting Northern

¹³ PJM Classic differs from PJM Pre-2004 by the exclusion of the former Allegheny Power ("AP") control area.

¹⁴ PJM West refers to the portion of PJM that is west of PJM Pre-2004 (or, to say it differently, Expanded PJM minus PJM Pre-2004).

¹⁵ PJM Rest refers to the portion of PJM excluding PJM East (or, to say it differently, PJM Pre-2004 or PJM Classic less PJM East).

1 New Jersey as a relevant geographic market (because, among other things, only one of
2 the Applicants owns generation within the market). Nevertheless, I conducted an
3 Appendix A analysis of Northern New Jersey as if it were a relevant market and noted
4 that Applicants had committed to mitigation to cure screen failures should the
5 Commission deem it necessary.

6 As to the other markets, while I did not present specific evidence that these are not
7 relevant markets, they plainly are not.

8 **Q. WHY IS PJM PRE-2004 RATHER THAN PJM CLASSIC THE PROPER**
9 **DEFINITION OF THE MARKET?**

10 A. Dr. Kalt (pages 28-29) cites to transmission constraints between the former Allegheny
11 Energy control area and PJM Classic (in effect, between ECAR and MAAC) as possibly
12 creating a separate PJM Classic market. Dr. Fox-Penner and Mr. Pfeifenger (page 20)
13 similarly cite to constraints on the Bedington-Black Oak line as the basis for finding that
14 the former AP control area should not be included with the rest of PJM Pre-2004. I am
15 well aware of the transmission constraint referenced by intervenors, and I considered it in
16 reaching my conclusion that the PJM Pre-2004 is the proper market to consider. My
17 reasoning was as follows: prior to AP's integration into PJM (April 1, 2003), this
18 transmission constraint separated AP from PJM Classic. However, once integrated into
19 PJM, PJM began operating the system so that when constraints arise at the western (i.e.,
20 AP) interface, certain generation units in PJM are re-dispatched, preserving the flows
21 from west to east. The effect is that lower-priced power imports across the western
22 interface are still possible, meaning that Allegheny and PJM Classic are not in separate
23 markets. The PJM 2004 State of the Market Report, explains:

24 Prior to the integration of the AP Control Zone into PJM on April 1, 2002,
25 the primary controlling action for these constraints had been for AP to
26 restrict energy transfers through its system, including transfers from
27 western resources to PJM and Dominion Virginia Power (VAP). This
28 action had the effect of raising the overall PJM dispatch rate higher than it
29 would have been if the transactions had not been curtailed. The result was
30 increased energy prices for the entire PJM Mid-Atlantic Region,
31 regardless of location. There was no impact on measured congestion
32 because the entire PJM system was affected.

After the AP Control Zone was integrated into the PJM market and the redispatch of PJM generation was used to control AP transmission facilities, a significant change in price impacts occurred. Rather than simply restricting relatively low-cost energy transfers, higher cost generating units were dispatched out of merit order (redispatched) in order to serve load in the transmission-constrained areas. As a result, the price of energy in the constrained areas was higher than elsewhere and congestion occurred. Higher LMPs resulted only at those locations directly limited by a constrained facility while lower LMPs occurred elsewhere. The PEPCO Control Zone was the most directly affected by these constrained facilities, followed by the BGE Control Zone.¹⁶

Thus, rather than making PJM Classic a separate market, the constraint on the western interface is now simply controlled through redispatch. Moreover, the price impact of redispatch is not in PJM East.

Dr. Fox-Penner and Mr. Pfeifenberger (pages 20-21) argues further that a potential transmission constraint on the Wylie Ridge transformers is further evidence of a separate geographic markets. However, my understanding is that the Wylie Ridge transformers are located the western edge of the Allegheny system, not the eastern edge of the Allegheny system, and thus at the western boundary of the PJM Pre-2004 market that I analyzed.¹⁷

Q. WHY ARE PJM WEST AND PJM REST NOT PROPER DEFINITIONS OF THE MARKET?

A. Because they ignore the fundamental market reality that transmission in PJM flows in an eastward direction. Transmission constraints occur at PJM's interfaces where the power is moving eastward, but not for power moving westward. On this basis, I analyzed PJM

¹⁶ PJM 2004 State of the Market Report, pages 218-219. While I am citing here to the most recent PJM State of the Market Report, this same statement is included in the 2003 State of the Market Report, page 166. The 2003 Report was published prior to my testimony; the 2004 Report after my testimony.

¹⁷ Dr. Fox-Penner (page 20) erroneously states that 90 percent of the Wylie Ridge constraints were during on-peak hours in 2004. He simply misstates the fact, based on the source he cites: the 2004 State of the Market Report states that 19 percent of the congestion hours occurred on-peak. ("During 2004, congestion on the Wylie Ridge 345/500 kV transformers increased to 642 hours, compared to 537 hours in 2003. Nineteen percent of all congestion occurred during on-peak periods.") (2004 State of the Market Report, page 60). In any event, I further understand that a Special Protection Scheme has been installed at Wylie Ridge that will reduce congestion. (See: <http://oasis.pjm.com/impact.htm>.)

1 East as a separate market. But PJM East's status as a separate market due to these
 2 transmission constraints does not render the areas to the west separate markets as well.
 3 Power from the eastern portions of PJM is free to move westward and serve those areas,
 4 and therefore PJM East electricity is properly included in the market under the delivered
 5 price test.

6 The Commission has on numerous occasions considered the transmission constraints in
 7 PJM Classic by examining submarkets within PJM as separate markets. Never has the
 8 Commission analyzed the western portions of PJM as a separate market, which is
 9 essentially what Ameren is suggesting. Support for this proposition is found in the
 10 Commission's decision in *Wisvest-Connecticut*: "Clearly, during periods when
 11 transmission becomes so constrained such that no additional imports from outside the
 12 region are possible and generators located inside the region are the only suppliers that can
 13 sell inside the region (i.e., the region is a "load pocket"), the region should be defined as
 14 a separate relevant geographic market."¹⁸ My analysis was consistent with this approach.
 15 In this instance, neither PJM West nor PJM Rest are load pockets.

16 Further, the PJM West and PJM Rest market definitions also contradict the
 17 Commission's Merger Policy Statement, with respect to the treatment of opportunity
 18 costs. The delivered price test specifically ignores opportunity costs. Yet, the underlying
 19 premise for Fox-Penner/Pfeifenberger's argument (page 19) that PJM West and PJM Rest
 20 are relevant markets is that the competitive analysis should take into account the
 21 opportunity costs of moving power from one market to another. Fox-
 22 Penner/Pfeifenberger, in effect, are saying that, since flows from "higher-priced" markets
 23 (e.g., PJM East) to "lower-priced" markets (e.g., PJM West or PJM Rest) will not occur,
 24 given opportunity costs, separate markets exist to the west of PJM East. This is not what
 25 the Commission's merger policy contemplates.

26 The concept of opportunity cost is simply that a seller will not sell a resource for less than
 27 it can get elsewhere. As each seller seeks the highest value for its resources, prices will
 28 tend to equilibrate across markets. Hence, opportunity costs necessarily involve

¹⁸ *Wisvest-Connecticut, LLC*, 96 FERC ¶ 61,101 (2001).

1 decisions by suppliers concerning where they will sell their power. In contrast, the
2 destination market approach requires that each market is considered in isolation. Within
3 the destination market approach, local capacity is entirely available within its home
4 market; competitive capacity is limited to that which can reach it economically and
5 physically.

6 There is a symmetry within the Commission's destination market approach in that the
7 market structure includes all local Economic Capacity but also all of the potential
8 competitive Economic Capacity that is deliverable to the market. In contrast, Fox-
9 Penner/Pfeifenberger's approach mixes the concept of keeping local capacity captive,
10 regardless of the alternatives available, but limiting other capacity to that which has no
11 better alternatives.

12 Here, no intervenor has asserted that there are westbound transmission constraints within
13 PJM, because, as noted, there are not. Indeed, Fox-Penner/Pfeifenberger note (page 19)
14 that "the typical constraints are nearly always west to east," not east to west. Adopting
15 Fox-Penner/Pfeifenberger's approach would thus undermine Commission policy.

16 I note further that there is no factual support for the markets defined by these intervenors.
17 In particular, Dr. Fox-Penner and Mr. Pfeifenberger assert the existence of a "rest-of-
18 expanded-PJM market" and conclude that, since it is highly concentrated (as a result of
19 AEP's market share) an additional 900 MW of divestiture is needed in that "market".
20 However, there is no showing that such a market exists. In addition to artificially wholly
21 excluding Dominion and PJM Pre-2004 from that market, they also severely limit market
22 participation by non-PJM members. However, there is no showing whatsoever, that the
23 PJM portion of the Midwest should be considered separate from non-PJM portions of the
24 same geography. Given the intermingling of MISO and PJM, the seams agreement
25 between them, and the substantial amount of transmission between them, it is improper to
26 simply assume that whether a supplier is physically located in MISO or PJM determines
27 whether its output can freely be used to discipline prices in the Midwestern part of PJM.

1 **Strategic Bidding Analysis**

2 **Q. DID YOU CONDUCT ANY BEHAVIORAL ANALYSIS IN CONNECTION WITH**
3 **YOUR ASSESSMENT OF THIS MERGER?**

4 A. I did not. The Commission's Revised Filing Requirements clearly set forth the analytical
5 requirements to demonstrate that the competitive effect of a merger based on a general
6 method that has been in use for more than 20 years, and, for this reason I am reluctant to
7 abandon an Appendix A structural model in favor of a behavioral model. Moreover, the
8 Commission has not established a standard whereby it would determine whether a
9 behavioral analysis demonstrated that a merger would, or would not, pose competitive
10 issues.

11 Behavioral modeling poses several challenging issues of methodology and interpretation,
12 including, but not limited to: 1) How, if at all, is demand response modeled? 2) How are
13 load requirements modeled? 3) Does the implicit assumption of perfect market
14 information on the part of the merged company bias the results? 4) How does one isolate
15 the market power arising from the merger from pre-existing market power? As a
16 practical matter, these types of studies almost always will find significant market power,
17 far more than actually is present in real markets. Likewise, the Commission should reject
18 Dr. Kleit's assertion (pages 3-4) that the Commission's Appendix A analysis does not
19 provide a valid basis for analyzing of unilateral effects. It manifestly is the case that the
20 Appendix A analysis is the Commission's screen for market power associated with
21 mergers and acquisitions, without distinguishing between unilateral market power and
22 implications for tacit collusion. The DOJ/FTC Horizontal Merger Guidelines make it
23 clear that it is appropriate to use the HHI to screen for unilateral effects of a merger as
24 well as collusion effects.

25 **Q. DID YOU REVIEW DR. KLEIT'S STRATEGIC BIDDING ANALYSIS?**

26 A. Yes, I did, and found that his analysis is filled with errors and questionable assumptions.
27 Dr. Kleit provides a largely academic discussion of the incentive to bid a generation unit
28 above its margin cost and presents an abbreviated analysis that purports to show that the

1 merged companies potentially could engage in strategic bidding under certain assumed
2 conditions.

3 **Q. HOW IS DR. KLEIT'S STRATEGIC BIDDING ANALYSIS FLAWED?**

4 A. The most basic flaw in Dr. Kleit's analysis is that he fails to take account for Applicants
5 fixed-price load and sales obligations. A behavioral analysis should include all known
6 conditions that affect a firm's incentives. Indeed, Dr. Kleit (page 18) acknowledges that
7 these commitments reduce the incentive to withhold capacity, but he attempts to skirt this
8 issue by claiming that stranded cost recovery charges in Pennsylvania negate Exelon's
9 retail load obligations because wholesale market prices affect the duration of the
10 payments. He either does not know or ignores the fact that Exelon's stranded cost
11 charges are specified in a fixed schedule through December 31, 2010, and that changes in
12 wholesale generation prices have no effect on the timing of the payments. Hence, his
13 reason for ignoring the Exelon retail load obligations has no merit. Dr. Kleit similarly
14 provides no reason for dismissing PSEG's fixed-price retail obligations for BGS in New
15 Jersey.

16 Accounting for Applicants' retail load obligations reverses Dr. Kleit's conclusion. Dr.
17 Kleit's basic point is that as a company's baseload generation increases, its incentive to
18 withhold its marginal units increases. But under this rubric, Dr. Kleit's own data shows
19 that the merger will actually reduce Applicants' ability to engage in strategic bidding:
20 The figures in Exhibit J-8 demonstrate that after the merger and mitigation (and Exhibit
21 J-19 after the new mitigation proposal), the combined company will have less available
22 capacity that is not committed to retail load than PSEG has today.

23 Numerous other flaws in Dr. Kleit's analysis further undercut his conclusions and render
24 it unreliable. For example, Dr. Kleit (page 18) acknowledges that a market monitor, such
25 as PJM has, may result in a firm with market power choosing not to exercise that market
26 power. But he dismisses the fact that the PJM has a market monitor because it is "very
27 difficult to quantify" the effect in his analysis. Just because he does not quantify the
28 effect does not mean that it does not exist or that Commission-approved market power
29 monitoring and mitigation would not be effective. Dr. Kleit's analysis also assumes that

1 EEG would be equipped with perfect knowledge of market conditions at the time it enters
2 its bid. In fact, bidders face significant uncertainties, including the exact level of loads,
3 the bidding actions of the other sellers, and the possibility of forced outages of generating
4 units within PJM. A complete analysis of the incentive for strategic bidding would allow
5 for these uncertainties. Dr. Kleit's calculations do not.

6 **Mitigation**

7 **Q. IS MITIGATION TO AN HHI CHANGE OF 100 POINTS (OR A MARKET HHI**
8 **OF 1000 OR LESS) SUFFICIENT IN THE CONTEXT OF MERGER?**

9 A. Yes, despite FirstEnergy's argument that because PJM East is highly concentrated post-
10 merger (but before mitigation), HHI changes must be reduced to below 50 points.
11 Specifically, FirstEnergy (page 33 of its protest), claims that the threshold measure for
12 HHI changes in the PJM East market must be 50 HHI points rather than the 100 points
13 used by me, because the post-merger (but pre-mitigation) market will be highly
14 concentrated. In support for this proposition, it notes that in discussing the HHI
15 standards, the DOJ/FTC Guidelines refer to post-merger concentration, not post-
16 mitigation concentration. This is sophism. As used by the Guidelines, post-merger
17 means the condition of the market based on the transaction as filed for H-S-R purposes.
18 In cases where applicants have anticipated antitrust concerns and proposed to spin out or
19 sell overlapping business interests, the agencies would regard "post-merger" as inclusive
20 of this "mitigation". This transaction is no different. The "post-merger" market structure
21 is the structure resulting from the terms of the merger as it has been proposed to both
22 FERC and the agencies. This structure appropriately takes the proposed mitigation into
23 account. Even Ms. Frayer's flawed analysis shows that once the Applicants' proposed
24 mitigation is taken into account, none of the markets examined are highly concentrated.
25 This is true not only for her base case but also for her sensitivity cases.

1 **Q. DR. CICHETTI CRITICIZES THE "ONE-FOR-ONE" REDUCTION IN**
 2 **APPLICANTS' VIRTUAL DIVESTITURE REQUIREMENT FOR UNIT SALES**
 3 **OR RETIREMENTS AND CERTAIN TRANSMISSION ENHANCEMENTS.**
 4 **PLEASE EXPLAIN THE LOGIC OF THESE REDUCTIONS.**

5 **A.** There are three possible causes of reductions: sale of nuclear facilities to an unaffiliated
 6 third party, retirement of nuclear facilities in PJM East¹⁹ and (under specified conditions)
 7 transmission expansion into PJM East. Considering the first, this simply is an outright
 8 divestiture of capacity. The capacity would stay in the market with the intended
 9 mitigating effect. Dr. Cicchetti does not discuss or oppose this as a basis for reducing
 10 mitigation.

11 The second possibility is retirement of a nuclear unit. In his Table 4, Dr. Cicchetti shows
 12 that as a numeric matter this may cause the market to become more concentrated because
 13 the size of the market shrinks. This is correct; however, exactly the same effect would
 14 have occurred if Applicants' had divested the unit outright and the new owner had retired
 15 it. Hence, this is not a valid criticism of virtual divestiture, nor of the proposal for a one-
 16 for-one retirement offset. Moreover, it should be noted that the principal reason that
 17 Applicants had proposed virtual divestiture of nuclear energy was in anticipation of
 18 concerns that their enlarged nuclear capacity would enhance incentives to withhold non-
 19 nuclear capacity. To the extent that retirements reduce their nuclear capacity, this
 20 concern goes away.

21 The proposed transmission enhancement offset has a different, and two-fold genesis.
 22 First, the Commission has found that enhanced transmission that restores the pre-
 23 acquisition level of competitive alternatives can be effective mitigation, notwithstanding
 24 that HHIs may be higher: "The purpose of mitigation is not to restore the HHIs to their
 25 pre-Transaction levels, but to restore competition. Indeed the purpose of the HHIs is to
 26 identify possible harm to competition that requires market power mitigation measures."²⁰

¹⁹ At page 27, Dr. Cicchetti asserts that divestiture of older inefficient fossil plants would reduce the divestiture requirement. This simply is incorrect.

²⁰ *Oklahoma Gas & Electric Company*, 108 FERC ¶ 61,004 (2004).

Second, Applicants were acting on the belief that the Commission would view favorably merger-related incentives to enhance transmission capability and reduce costly and potentially competition-reducing bottlenecks. Moreover, I note that Dr. Cicchetti's Table 5, which seeks to show that enhanced transmission when coupled with a one-for-one reduction in nuclear mitigation, is inapt. His result is due solely to his assumption that half of the new transmission will be used by EEG. However, if EEG actually is producing incremental energy that flows into PJM East, it necessarily is inframarginal in PJM East and will reduce PJM East prices in precisely the same manner that energy produced by others would reduce prices. While his Table 5 is indicative of the fact that EEG would be allocated some of the increased capability under Appendix A, it masks the fact that actual expansion in competitive alternatives would fully offset the reduction in nuclear mitigation. Indeed, since import expansion would result in a one-for-one increase in total market supply in PJM East, and the nuclear capacity would not disappear from the market, the combination of increased imports and a reduction in mitigation is, taken as a whole, competition enhancing.

Q. A NUMBER OF INTERVENORS PRESENTED THEIR CALCULATIONS OF ADDITIONAL MITIGATION REQUIREMENTS. PLEASE COMMENT.

A. I already have discussed the asserted need for additional mitigation arising from misapplication of Applicants' proposed mitigation (Ms. Frayer and Dr. Kalt) and from ill-conceived and unsupported geographic market definitions (Dr. Fox-Penner and Mr. Pfeifenberger). The other analyses of additional mitigation required all are premised on various scenarios concerning who can and hypothetically would buy the divested capacity. Each such scenario, some of which are quite extreme in assuming that all of the divested capacity goes to large PJM suppliers, is inconsistent with Applicants' mitigation plan as modeled in my Direct Testimony.

Applicants now have agreed to lift the *ex ante* restrictions on who can buy divested capacity and significantly increased the amount of divested capacity. Intervenors had argued that additional mitigation was needed to allow for relaxation of restrictions and Applicants have complied with this desire.

Intervenors provide numerous scenarios of how much additional generation should be divested in order to relax buyer restrictions. Dr. Cicchetti suggests 400-900 MW. Mr. Graves' scenarios result in 150-1,750 of additional divestiture. Dr. Kalt suggests 1,100-1,600 MW. Most of these scenarios assume quite adverse outcomes (from a market concentration perspective) in terms of who buys the divested capacity.

It would be overkill to require Applicants *ex ante* to divest enough that any conceivable outcome of the divestiture can be accommodated without creating screen failures. Applicants have been responsive in substantially increasing the divested amounts to accommodate larger buyers. As I address below, the implied limits are far less stringent than had been required previously and there are very many potential outcomes of the divestiture process that will result in no screen failures.

Q. IS IT NECESSARY TO ATTACH ADDITIONAL CONDITIONS TO THE MERGER, UNRELATED TO APPLICANTS' MITIGATION PROPOSAL?

A. No, it is not. PEPCO (pages 44-46) argues that miscellaneous conditions should be attached to approval of the Transaction. The proposed conditions are in most cases unrelated to the transaction, unsupported by any evidence and often factually wrong.

The unsupported claim is made that the Merrill Creek reservoir is an essential facility to which open access should be granted by Applicants. No evidence is given and no nexus to the transaction is offered.

It also is proposed that Applicants give up their PJM interconnection queue positions. The bald assertion is made that these queue positions can be used to block entry. This is absolutely untrue. Nor does PHI explain how deferring supply-enlarging new generation will make the market more competitive, as plainly it will not. Further, as Dr. Cicchetti notes, most of PSEG's queue positions (which are not merger related) are for generation that is under construction. To the extent that such generation is expected to come on line in 2005-6, it already is reflected in Applicants' analysis.

PHI also requests a "hold-harmless" for transmission. First, PHI would seek assurance that Applicants hold other PJM members harmless for the cost of any transmission

enhancements required as merger conditions. This is a cynical sort of blackmail, since PHI's own witness, Dr. Cicchetti, proposes that such transmission enhancements be proposed as a merger condition required by the Commission. The core of the proposal is that a hypothetical merger-related increase in transactions between the parties to the merger could alter transmission flows in PJM from which other PJM members should be held harmless. This concern reflects a lack of understanding about how PJM operates. In LMP markets, transactions between PSEG and Exelon will be purely financial and not affect power flows on the system. There is no basis to believe that the merger will cause patterns of generation to be altered.

Lastly, PHI would require Applicants divest emission credits and FTRs (if any) associated with divested plants as part of the divestiture. No reason is given, other than such rights are "valuable". Utterly no attempt is made to demonstrate that Exelon and PSEG, pre- or post-merger, have market power in the emission credit market or in FTRs. With respect to the latter, the annual nature of FTR ownership means that the requested divestiture is a non sequitur. I also have addressed the FTR issue earlier in my testimony.

Vertical Market Power

Q. HOW DID YOUR INITIAL TESTIMONY TREAT THE QUESTION OF VERTICAL EFFECTS OF THE MERGER?

A. I explained that I do not think that the merger will have any vertical effects that require analysis. This is a merger between two utilities whose gas operations are limited to local distribution systems that do not overlap with each other. I then went on, nonetheless, to demonstrate that the upstream (interstate pipeline) market is not highly concentrated in any case. No intervenor has sought to refute the former, but some intervenors have criticized my upstream analysis.

Q. WHAT CRITICISMS WERE MADE OF YOUR UPSTREAM ANALYSIS?

A. There are two criticisms levied against my analysis, which concluded that the upstream gas market in PJM East was not highly concentrated. The first of the criticisms is Direct

Energy's claim (page 8) that I overstated the supply (and, hence understated the concentration) in upstream markets by including volumes that were contracted for deliveries to further upstream markets in New York and New England. The second is OCA's claim (LeLash, page 4) that I should have analyzed the storage market. As I explained in my testimony, under the Commission's regulations, both the upstream or downstream market must be highly concentrated to trigger a failure of the Competitive Analysis Screen. While I determined that downstream markets were highly concentrated, I found that upstream markets were not (with an HHI of 1572, as shown in Exhibit J-16), and thus the screen is passed.

With respect to the first criticism, Direct Energy reflects a misunderstanding of how contracts in the natural gas markets work and, in any event, reaches the wrong conclusion about the effect on HHIs of eliminating the capacity further upstream.

My understanding is that natural gas capacity that is deliverable into New York or New England may be, and is frequently, sold into PJM East. For instance, PSEG serves 99 percent of the residential customers on the PSE&G system, but a substantial portion of PSEG's natural gas capacity is considered "into New York" capacity, because it is deliverable on a firm basis past the Linden "bottleneck" and to the New York City city gate. The recent expansion of the Iroquois pipeline, as well as the entry of the Portland Natural Gas Transmission System, and the Maritimes and Northeast pipelines in New England, means that at least some firm capacity that travels through PJM East to the New York and New England is likely to be released or used for bundled sales in the PJM East market.²¹ According to EIA data, these pipelines have added more than 600 MMcf/d of capacity to the northeast region.

²¹ Industry pricing data indicate that profitable trading opportunities exist between these markets. *Gas Daily* data covering the period from April 30, 2003 through April 30, 2005 reveal that on 7% of days, the index price is lower in New York (Transco Zone 6 New York) than in southern New Jersey (Transco Zone 6 Non NY); on 84% of days, the New York common low prices are less than the New Jersey common high; and that on 98% of days, the absolute New York low was less the absolute high for New Jersey. The data are similar for New England: 15% of days have an index price (Algonquin City gates) lower than in southern New Jersey; 51% of days have common low prices less than the New Jersey common high; and 79% of days have absolute low prices less than the New Jersey absolute high. This means that on most days New Jersey-"bound" and New York- or New England-"bound" gas have prices sufficiently close that an increase in New Jersey prices would attract additional supplies from the northern markets.

1 Thus, New York- and New England-“bound” capacity actually helps prevent
2 discrimination against generators within PJM East, precisely the concern the Commission
3 is analyzing in its upstream screen analysis. Even if Applicants attempted to
4 disadvantage rival generators with their own capacity, the generators could purchase
5 replacement supplies from “northern-bound” shippers. Indeed, given that rival generators
6 can connect to interstate pipelines running through PJM, there can be no claim that the
7 merger creates a vertical market power issue.

8 More important, excluding this “northern-bound” capacity from the market share
9 calculation would not cause the upstream market to become highly concentrated as Dr.
10 Briden claims. Even assuming his theory is correct, which it is not, Dr. Briden made two
11 fundamental errors in his calculation. First, he adjusted the total capacity into PJM East
12 to remove capacity delivering to further upstream markets. In doing so, Dr. Briden
13 cannot pick and choose which contracts to include in the market calculation and which to
14 remove. If he removes some New York- and New England-deliverable capacity, he
15 must remove it all. Yet, he neglected to exclude PSE&G’s capacity on Transco, which,
16 like the other excluded “northern-bound” capacity, is destined for residential customers in
17 the northern New Jersey and New York City area. Second, he made a simple, but crucial,
18 mathematical mistake in calculating his HHIs. Dr. Briden’s Exhibit No. GEB-4 shows an
19 entry for “other” suppliers representing a 11.7 percent market share. But, the HHI
20 attributable to these suppliers is not 11.7 percent squared; rather, it is the sum of the
21 squares of the individual market shares for each of the small suppliers accounting for the
22 11.7 percent market share. This has a significant effect on the calculation of the market
23 HHI. Making these two corrections to Dr. Briden’s data, results in an HHI for the
24 upstream market of 1651, thereby passing the Commission’s vertical screen threshold and
25 precluding any claim of vertical concerns. See Exhibit J-25.²²

26 Intervenor (Mr. LeLash) also are wrong that I failed to adequately consider the effect of
27 storage capacity on the upstream market. Applicants do not own storage facilities, and

²² Note that my exhibit totals 4,855 MDth relative to Dr. Briden’s 4,525 MDth. This is because the sum of the contracts (that he, too, relies on) total 4,855 MDth. I could scale the sum back to 4,525 MDth, but if I do so on a pro rata basis, the market share and HHI would be unchanged.

1 their contracts for relatively small amounts of storage capacity cannot reasonably be
 2 claimed to create a competitive concern. Prior studies of storage capacity that have been
 3 accepted by the Commission have demonstrated that the market for firm capacity relevant
 4 to Exelon and PSEG is not highly concentrated.²³ Exelon currently has about 16 Bcf of
 5 storage capacity serving PJM East under contract, and PSEG has about 82 Bcf.²⁴
 6 Relative to a market size of approximately 840 Bcf, Applicants' combined storage
 7 capacity is less than 12 percent. Thus, if I had taken the storage market into
 8 consideration, Applicants' overall shares of upstream pipeline and storage capacity are
 9 less than I reported as shares of pipeline capacity only.

10 **IV. MITIGATION AND POST-MITIGATION ANALYSIS**

11 **Q. HAVE YOU ANALYZED THE EFFECT OF APPLICANTS' REVISED**
 12 **MITIGATION COMMITMENTS?**

13 A. Yes I have, under a number of scenarios. As I noted earlier, several intervenors
 14 expressed concerns over the buyer restrictions that Applicants had proposed and, as a
 15 result, Applicants have (1) agreed to relax the buyer restrictions;²⁵ (2) proposed an
 16 additional 1,100 MW of non-nuclear plant divestiture; and (3) proposed to make a post-
 17 divestiture compliance filing to demonstrate that the actual divestitures will not cause
 18 screen failures relative to the analyses submitted herein.

19 **Q. PLEASE DESCRIBE APPLICANTS' ADDITIONAL COMMITMENTS.**

20 A. Applicants' additional commitments are described in Table 1 below that is an update of
 21 Table 1 in my Direct Testimony.

²³ See, e.g., Affidavit of Dr. John R. Morris, *El Paso Corporation and The Coastal Corporation*, FERC Docket No. EC00-73-000, Exh. JRM-30 (Mar. 31, 2000).

²⁴ Based on the FERC Index of Customers data.

²⁵ There remains a restriction that a single buyer can purchase no more than 50 percent of the virtual divestiture of nuclear energy.

Table 1: Revised Mitigation Commitments (MW)

Generation Type	PJM East	PJM Pre-2004*	Total
Nuclear	2,400	200	2,600
Coal	550	150	700
Mid-Merit <\$55**	650	550	1,200
Mid-Merit >\$55	900	0	900
Peaking	1,000	200	1,200
Total	5,500	1,100	6,600
* The additional 1,100 MW of commitment can be delivered anywhere in PJM Pre-2004, including PJM East.			
** Mid-Merit generation that is economic within 105% of a market price of \$55/MWh.			

As shown, Applicants are committing to an additional 1,100 MW, subject to Commission approval without a hearing. In total, Applicants intend to divest the equivalent of 6,600 MW of energy, consisting of 2,600 MW of nuclear virtual divestiture (as committed to previously) plus 4,000 MW of non-nuclear plant divestiture (an increase of 1,100 MW). Also as shown in Table 1 and Exhibit J-26, of this 4,000 MW of plant divestiture, 3,100 MW must be from generation located in PJM East and 900 MW may be from generation located in the rest of PJM Pre-2004. Exhibit J-12 of my Direct Testimony detailed Applicants' units eligible for mitigation in PJM East; the remainder of Applicants' generation listed on Exhibit J-3 as being located in the MAAC region will be eligible for the rest of PJM Pre-2004 mitigation requirement at various price levels.

Q. HOW DID YOU ANALYZE THE EFFECT OF THIS NEW MITIGATION PROPOSAL?

A. I analyzed it under three scenarios: (1) using purchaser assumptions identical to those in my Direct Testimony; (2) using assumptions that significant market participants would purchase the divested generation; and (3) assuming that a single current non-participant in the market purchased the divested generation.

Q. WHAT DID YOU ASSUME ABOUT NUCLEAR DIVESTITURE?

A. In the first of my scenarios, I assumed, as I did previously, that the nuclear generation is divested to two parties that do not currently own capacity in PJM. In the second and third

scenarios, I developed a proxy for a mix of buyers – both parties that currently own capacity and those that do not – based on the results of recent New Jersey BGS auctions. I assumed that the nuclear divestiture was purchased on a pro rata basis to the winners in the 2004 and 2005 auctions (excluding PSEG); in other words, if a party had won 5 percent of the tranches in the 2004-2005 auctions, they were assumed to buy 5 percent of the nuclear divestiture.²⁶

Q. WHO DID YOU ASSUME PURCHASES THE NON-NUCLEAR PLANTS?

A. In the first of my scenarios, I assumed, as I did previously, that one party bought 50 percent, and two parties each bought 25 percent of the total non-nuclear divestiture.²⁷

For the second scenario, I assumed equal shares were sold to each of the four largest owners of capacity in PJM East: PPL, Reliant, Conectiv and FirstEnergy.

For the third scenario, as I noted, I assumed that a new buyer in the market bought 100 percent of the divested non-nuclear generation.

Q. GIVEN THE REVISIONS IN YOUR ANALYSIS, DOES THE REVISED MITIGATION PROPOSAL ELIMINATE SCREEN FAILURES UNDER THE FIRST SCENARIO?

A. Emphatically, yes. As I said, the changes to my analysis did not materially affect the results. Hence, this revised mitigation proposal has the effect of substantially over-mitigating the competitive effects of the merger, as shown in Exhibit J-27 and summarized below for PJM East and PJM Pre-2004.

²⁶ The winners of the most recent two BGS auctions included, in addition to PSEG, BP, Conectiv, Consolidated Edison, Constellation, DTE, FPL, J Aron, Morgan Stanley, NRG, Reliant, Select and Tractebel.

²⁷ For purposes of my original analysis as well as here, I used EME, Mirant and Constellation as potential purchasers. This was a conservative application of the purchaser restrictions, which required that only one buyer with a market share between 3 and 5 percent could buy 25 percent of the divested capacity.

Economic Capacity Results, PJM East, Post-Mitigation (Original Purchasers)

Period	Price	Pre-Merger						Post-Merger				Mitigation and Post-Mitigation Results					
		Exelon		PSEG		EEG		Mkt		HHI		Mitigation		Mkt		HHI	
		MW	Share	MW	Share	Mkt Size	HHI	MW	Share	HHI	Chg	MW	Nuclear	Share	HHI	Chg	Summer
S_SP1	\$250	6,948	18.5%	9,653	25.7%	37,610	1,282	16,600	44.1%	2,230	948	5,059	2,201	30.7%	1,287	5	5,500
S_SP2	\$80	6,016	18.6%	7,750	23.9%	32,384	1,207	13,766	42.5%	2,096	889	4,129	2,201	29.8%	1,233	26	4,500
S_P	\$55	5,105	21.9%	5,948	25.5%	23,362	1,347	11,052	47.3%	2,480	1,113	4,129	2,201	29.6%	1,209	(138)	4,500
S_OP	\$25	4,887	31.0%	2,631	16.7%	15,779	1,486	7,518	47.6%	2,519	1,033	2,201	2,201	33.7%	1,482	(4)	2,400
W_SP	\$80	6,404	19.5%	7,790	23.7%	32,900	1,220	14,194	43.1%	2,142	922	4,243	2,289	30.2%	1,254	34	4,500
W_P	\$55	5,435	22.5%	5,762	23.8%	24,188	1,314	11,197	46.3%	2,385	1,071	4,243	2,289	28.8%	1,175	(139)	4,500
W_OP	\$30	5,167	26.8%	3,594	18.7%	19,258	1,328	8,761	45.5%	2,327	1,001	2,833	2,289	30.8%	1,299	(27)	2,950
SH_SP	\$65	4,877	20.4%	5,087	21.3%	23,872	1,189	8,964	41.7%	2,060	871	3,386	1,800	27.6%	1,150	(39)	4,500
SH_P	\$45	4,675	26.2%	2,935	16.4%	17,863	1,257	7,610	42.6%	2,117	860	2,196	1,800	30.3%	1,288	31	2,950
SH_OP	\$20	4,338	30.6%	2,051	14.5%	14,180	1,413	6,389	45.1%	2,298	885	1,800	1,800	32.4%	1,386	(17)	2,400

Economic Capacity Results, PJM Pre-2004, Post-Mitigation (Original Purchasers)

Period	Price	Pre-Merger						Post-Merger				Mitigation and Post-Mitigation Results					
		Exelon		PSEG		EEG		Mkt		HHI		Mitigation		Mkt		HHI	
		MW	Share	MW	Share	Mkt Size	HHI	MW	Share	HHI	Chg	MW	Nuclear	Share	HHI	Chg	Summer
S_SP1	\$250	10,508	13.5%	11,210	14.4%	77,815	877	21,718	27.9%	1,266	389	6,070	2,385	20.1%	931	54	6,600
S_SP2	\$80	9,545	13.7%	9,288	13.3%	69,950	865	18,834	26.9%	1,227	382	4,953	2,385	19.8%	929	64	5,400
S_P	\$55	7,976	14.5%	7,455	13.6%	54,840	934	15,431	28.1%	1,329	395	4,953	2,385	19.1%	945	11	5,400
S_OP	\$25	6,416	26.1%	3,189	13.0%	24,609	1,220	9,605	39.0%	1,896	678	2,385	2,385	29.3%	1,280	60	2,600
W_SP	\$80	9,899	14.0%	9,334	13.2%	70,720	864	19,233	27.2%	1,233	389	5,083	2,480	20.0%	928	64	5,400
W_P	\$55	8,299	14.9%	7,273	13.1%	55,722	937	15,571	27.9%	1,325	388	5,083	2,480	18.8%	942	5	5,400
W_OP	\$30	7,701	17.7%	4,946	11.4%	43,416	988	12,648	29.1%	1,390	404	3,172	2,480	21.8%	1,047	61	3,300
SH_SP	\$65	7,866	15.4%	6,263	12.2%	51,221	923	14,129	27.6%	1,299	376	4,066	1,950	19.6%	958	33	5,400
SH_P	\$45	6,936	17.3%	4,070	10.1%	40,127	1,005	11,006	27.4%	1,355	350	2,454	1,950	21.3%	1,078	73	3,300
SH_OP	\$20	5,472	26.6%	2,440	11.8%	20,590	1,209	7,912	38.4%	1,839	630	1,950	1,950	29.0%	1,245	36	2,600

Q. DOES THE REVISED MITIGATION PROPOSAL ELIMINATE SCREEN FAILURES UNDER THE SECOND SCENARIO?

A. Yes. Clearly, reasonably aggressive assumptions about who might purchase this capacity has a material impact on the mitigation required to eliminate the screen failures. Applicants' revised mitigation proposal is sufficient to eliminate the screen failures under my assumption that the four largest market participants in PJM East will each buy 25 percent of the divested generation. This is not to suggest that they ultimately will be the buyers; indeed, all of them may be interested in buying more than 25 percent and all of them could be interested in buying zero. In any event, Applicants' commitment to a compliance filing will ensure the screens are passed. The results of my analysis are shown in Exhibit J-28 and summarized below.

Economic Capacity Results, PJM East, Post-Mitigation (New Set of Purchasers)

Period	Price	Pre-Merger							Post-Merger				Mitigation and Post-Mitigation Results				
		Exelon		PSEG		Mkt Size	HHI		EEG		HHI	Chg	Mitigation		Mkt	HHI	Chg
		MW	Share	MW	Share				MW	Share			MW	Nuclear			
S_SP1	\$250	6,948	18.5%	9,653	25.7%	37,610	1,282		16,600	44.1%	2,230	948	5,059	2,201	30.7%	1,377	95
S_SP2	\$80	6,016	18.6%	7,750	23.9%	32,384	1,207		13,768	42.5%	2,096	889	4,129	2,201	29.8%	1,298	91
S_P	\$55	5,105	21.9%	5,948	25.5%	23,362	1,347		11,052	47.3%	2,460	1,113	4,129	2,201	29.6%	1,259	(88)
S_OP	\$25	4,887	31.0%	2,631	16.7%	15,779	1,486		7,518	47.6%	2,519	1,033	2,201	2,201	33.7%	1,465	(21)
W_SP	\$80	6,404	19.5%	7,790	23.7%	32,900	1,220		14,194	43.1%	2,142	922	4,243	2,289	30.2%	1,318	98
W_P	\$55	5,435	22.5%	5,762	23.8%	24,188	1,314		11,197	48.3%	2,385	1,071	4,243	2,289	28.8%	1,231	(83)
W_OP	\$30	5,167	26.8%	3,594	18.7%	19,258	1,326		8,761	45.5%	2,327	1,001	2,833	2,289	30.8%	1,316	(10)
SH_SP	\$65	4,877	20.4%	5,087	21.3%	23,872	1,189		9,964	41.7%	2,060	871	3,386	1,800	27.6%	1,218	29
SH_P	\$45	4,675	26.2%	2,935	16.4%	17,883	1,257		7,610	42.6%	2,117	860	2,196	1,800	30.3%	1,310	53
SH_OP	\$20	4,338	30.6%	2,051	14.5%	14,180	1,413		6,389	45.1%	2,298	885	1,800	1,800	32.4%	1,389	(24)

Economic Capacity Results, PJM Pre-2004, Post-Mitigation (New Set of Purchasers)

Period	Price	Pre-Merger							Post-Merger				Mitigation and Post-Mitigation Results				
		Exelon		PSEG		Mkt Size	HHI		EEG		HHI	Chg	Mitigation		Mkt	HHI	Chg
		MW	Share	MW	Share				MW	Share			MW	Nuclear			
S_SP1	\$250	10,508	13.5%	11,210	14.4%	77,815	877		21,718	27.9%	1,268	389	6,070	2,385	20.1%	982	105
S_SP2	\$80	9,545	13.7%	9,288	13.3%	69,950	865		18,834	26.9%	1,227	382	4,953	2,385	19.8%	968	103
S_P	\$55	7,976	14.5%	7,455	13.6%	54,840	934		15,431	28.1%	1,329	395	4,953	2,385	19.1%	998	62
S_OP	\$25	6,416	26.1%	3,189	13.0%	24,609	1,220		9,605	39.0%	1,896	676	2,385	2,385	29.3%	1,292	72
W_SP	\$80	9,899	14.0%	9,334	13.2%	70,720	864		19,233	27.2%	1,233	369	5,083	2,480	20.0%	967	103
W_P	\$55	8,299	14.9%	7,273	13.1%	55,722	937		15,571	27.9%	1,325	388	5,083	2,480	18.8%	995	58
W_OP	\$30	7,701	17.7%	4,946	11.4%	43,416	886		12,648	29.1%	1,390	404	3,172	2,480	21.8%	1,079	93
SH_SP	\$65	7,866	15.4%	6,263	12.2%	51,221	923		14,129	27.6%	1,299	376	4,066	1,950	19.6%	1,007	84
SH_P	\$45	6,936	17.3%	4,070	10.1%	40,127	1,005		11,006	27.4%	1,355	350	2,454	1,950	21.3%	1,105	100
SH_OP	\$20	5,472	26.6%	2,440	11.9%	20,590	1,209		7,912	38.4%	1,839	630	1,950	1,950	29.0%	1,257	48

Q. FINALLY, IS THE MITIGATION SUFFICIENT IF ONE PURCHASER BUYS ALL THE CAPACITY?

A. Yes, if that purchaser is someone that presently has no material capacity ownership in PJM. The results of my analysis are shown in Exhibit J-29.

V. CONCLUSION

Q. DOES THIS COMPLETE YOUR SUPPLEMENTAL TESTIMONY?

A. Yes.

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

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

AFFIDAVIT

County of Suffolk	§	
Commonwealth of Massachusetts	§	
	§	

WILLIAM H. HIERONYMUS being duly sworn, deposes and states: that he prepared the Supplemental Testimony and Exhibits of William H. Hieronymus and that the statements contained therein and the Exhibits attached hereto are true and correct to the best of his knowledge and belief.

/s/ William H. Hieronymus
William H. Hieronymus

SUBSCRIBED AND SWORN TO BEFORE ME, this the __ day of May 2005.

Notary Public, Commonwealth of
Massachusetts

Printed Name: _____

My Commission Expires: _____

Economic Capacity (Pre-mitigation)

Period	Price	Pre-Merger						Post-Merger			
		Exelon		PSEG		Mkt Size	HHI	EEG		HHI	HHI Chg
		MW	Mkt Share	MW	Mkt Share			MW	Mkt Share		
PJM East											
S_SP1	\$250	6,948	18.5%	9,653	25.7%	37,610	1,282	16,600	44.1%	2,230	948
S_SP2	\$80	6,016	18.6%	7,750	23.9%	32,384	1,207	13,766	42.5%	2,096	889
S_P	\$55	5,105	21.9%	5,948	25.5%	23,362	1,347	11,052	47.3%	2,460	1,113
S_OP	\$25	4,887	31.0%	2,631	16.7%	15,779	1,486	7,518	47.6%	2,519	1,033
W_SP	\$80	6,404	19.5%	7,790	23.7%	32,900	1,220	14,194	43.1%	2,142	922
W_P	\$55	5,435	22.5%	5,762	23.8%	24,186	1,314	11,197	46.3%	2,385	1,071
W_OP	\$30	5,167	26.8%	3,594	18.7%	19,258	1,326	8,761	45.5%	2,327	1,001
SH_SP	\$65	4,877	20.4%	5,087	21.3%	23,872	1,189	9,964	41.7%	2,060	871
SH_P	\$45	4,675	26.2%	2,935	16.4%	17,863	1,257	7,610	42.6%	2,117	860
SH_OP	\$20	4,338	30.6%	2,051	14.5%	14,180	1,413	6,389	45.1%	2,298	885
PJM Pre-2004											
S_SP1	\$250	10,508	13.5%	11,210	14.4%	77,815	877	21,718	27.9%	1,266	389
S_SP2	\$80	9,545	13.7%	9,288	13.3%	69,950	865	18,834	26.9%	1,227	362
S_P	\$55	7,976	14.5%	7,455	13.6%	54,840	934	15,431	28.1%	1,329	395
S_OP	\$25	6,416	26.1%	3,189	13.0%	24,609	1,220	9,605	39.0%	1,896	676
W_SP	\$80	9,899	14.0%	9,334	13.2%	70,720	864	19,233	27.2%	1,233	369
W_P	\$55	8,299	14.9%	7,273	13.1%	55,722	937	15,571	27.9%	1,325	388
W_OP	\$30	7,701	17.7%	4,946	11.4%	43,416	986	12,648	29.1%	1,390	404
SH_SP	\$65	7,866	15.4%	6,263	12.2%	51,221	923	14,129	27.6%	1,299	376
SH_P	\$45	6,936	17.3%	4,070	10.1%	40,127	1,005	11,006	27.4%	1,355	350
SH_OP	\$20	5,472	26.6%	2,440	11.9%	20,590	1,209	7,912	38.4%	1,839	630
PJM Expanded											
S_SP1	\$250	24,354	14.8%	12,929	7.9%	164,249	768	37,283	22.7%	1,002	234
S_SP2	\$80	23,384	15.1%	11,006	7.1%	154,731	789	34,390	22.2%	1,004	215
S_P	\$55	18,813	15.3%	9,153	7.4%	123,042	893	27,966	22.7%	1,120	227
S_OP	\$25	16,950	22.3%	3,189	4.2%	75,898	1,452	20,139	26.5%	1,639	187
W_SP	\$80	24,013	15.3%	11,053	7.1%	156,732	798	35,067	22.4%	1,014	216
W_P	\$55	19,150	15.2%	8,973	7.1%	125,619	898	28,123	22.4%	1,116	218
W_OP	\$30	18,373	17.9%	4,946	4.8%	102,839	1,104	23,319	22.7%	1,276	172
SH_SP	\$65	19,460	16.3%	7,672	6.4%	119,305	841	27,133	22.7%	1,051	210
SH_P	\$45	15,842	16.6%	5,462	5.7%	95,744	933	21,304	22.3%	1,122	189
SH_OP	\$20	12,975	21.9%	2,440	4.1%	59,286	1,433	15,415	26.0%	1,613	180

Available Economic Capacity

PJM East

PECO and PSE&G Load Only

		Pre-Merger						Post-Merger				Effect of Mitigation		
		Exelon		PSEG				EEG				Mitig	New HHI	
Period	Price	MW	Mkt Share	MW	Mkt Share	Mkt Size	HHI	MW	Share	HHI	Change	Share	Chg	Divest
S_SP1	\$250	1,861	5.8%	8,329	26.1%	31,865	1,131	10,190	32.0%	1,436	305	16.1%	(332)	5,059
S_SP2	\$80	1,583	5.8%	6,669	24.2%	27,513	1,045	8,252	30.0%	1,324	279	15.0%	(284)	4,129
S_P	\$55	1,034	5.4%	5,185	27.3%	19,021	1,136	6,219	32.7%	1,432	296	11.0%	(416)	4,129
S_OP	\$25	1,221	10.1%	1,838	15.1%	12,139	844	3,059	25.2%	1,149	305	7.1%	(116)	2,201
W_SP	\$80	2,082	7.8%	5,629	21.0%	26,869	937	7,711	28.7%	1,262	325	12.9%	(208)	4,243
W_P	\$55	1,274	7.0%	3,646	20.0%	18,265	894	4,920	26.9%	1,173	279	3.7%	(164)	4,243
W_OP	\$30	1,701	11.7%	1,889	13.0%	14,519	799	3,590	24.7%	1,104	305	5.2%	(89)	2,833
SH_SP	\$65	1,034	5.5%	3,309	17.6%	18,756	892	4,343	23.2%	1,086	194	5.1%	(152)	3,386
SH_P	\$45	1,033	7.9%	1,365	10.4%	13,083	787	2,398	18.3%	952	165	1.5%	-	2,196
SH_OP	\$20	1,246	12.0%	611	5.9%	10,430	784	1,858	17.8%	924	140	0.6%	-	1,800

		Pre-Merger						Post-Merger	
		Load Met by Generation In East		Load Met by Generation In Central		Load Met by Generation In Far West		Total PJM Load	
Period	Price	Exelon	PSEG	Exelon	PSEG	Exelon	PSEG	Exelon	PSEG
S_SP1	\$250	4,566	1,180	2,791	1,020	676	-	8,033	2,200
S_SP2	\$80	3,942	929	2,791	1,020	336	-	7,069	1,949
S_P	\$55	3,758	583	1,798	1,020	-	-	5,556	1,603
S_OP	\$25	3,309	331	1,045	1,020	-	-	4,354	1,351
W_SP	\$80	4,072	1,958	1,721	1,026	-	265	5,793	3,249
W_P	\$55	3,990	1,932	1,051	1,026	-	-	5,041	2,958
W_OP	\$30	3,260	1,479	1,051	1,026	-	-	4,311	2,505
SH_SP	\$65	3,507	1,609	1,496	831	262	25	5,266	2,465
SH_P	\$45	3,403	1,376	1,098	831	-	-	4,501	2,208
SH_OP	\$20	2,753	997	856	831	-	-	3,609	1,829

Note: For purposes of this analysis, mitigation is assumed to be split between two parties that do not have a material market share.

Available Economic Capacity

PJM Pre-2004

PECO and PSE&G Load Only

Pre-Merger								Post-Merger				Effect of Mitigation		
		Exelon		PSEG				EEG						
Period	Price	MW	Mkt Share	MW	Mkt Share	Mkt Size	HHI	MW	Mkt Share	HHI	Change	Mitig Share	New HHI Chg	Divest
S_SP1	\$250	2,475	3.7%	9,010	13.3%	67,582	836	11,485	17.0%	934	98	8.0%	(87)	6,070
S_SP2	\$80	2,476	4.1%	7,340	12.1%	60,932	824	9,816	16.1%	922	98	8.0%	(65)	4,953
S_P	\$55	2,420	5.1%	5,852	12.3%	47,681	887	8,272	17.4%	1,012	125	7.0%	(74)	4,953
S_OP	\$25	2,062	10.9%	1,838	9.7%	18,904	845	3,900	20.6%	1,057	212	8.0%	(70)	2,385
W_SP	\$80	4,106	6.7%	6,085	9.9%	61,679	790	10,192	16.5%	922	132	8.3%	(39)	5,083
W_P	\$55	3,258	6.8%	4,314	9.0%	47,723	871	7,572	15.9%	994	123	5.2%	(44)	5,083
W_OP	\$30	3,390	9.3%	2,441	6.7%	36,600	892	5,832	15.9%	1,015	123	7.3%	(40)	3,172
SH_SP	\$65	2,600	6.0%	3,798	8.7%	43,490	858	6,398	14.7%	963	105	5.4%	(40)	4,066
SH_P	\$45	2,435	7.3%	1,862	5.6%	33,418	953	4,298	12.9%	1,035	82	5.5%	(27)	2,454
SH_OP	\$20	1,863	12.3%	612	4.0%	15,153	836	2,475	16.3%	935	99	3.5%	-	1,950

Pre-Merger			
PJM Load			
Period	Price	Exelon	PSEG
S_SP1	\$250	8,033	2,200
S_SP2	\$80	7,069	1,949
S_P	\$55	5,556	1,603
S_OP	\$25	4,354	1,351
W_SP	\$80	5,793	3,249
W_P	\$55	5,041	2,958
W_OP	\$30	4,311	2,505
SH_SP	\$65	5,266	2,465
SH_P	\$45	4,501	2,208
SH_OP	\$20	3,609	1,829

Note: For purposes of this analysis, mitigation is assumed to be split between two parties that do not have a material market share.

Available Economic Capacity

PJM Pre-2004

PECO, PSE&G and PJM Pre-2004 Load

		Pre-Merger						Post-Merger				Effect of Mitigation		
		Exelon		PSEG				EEG						
Period	Price	MW	Mkt Share	MW	Mkt Share	Mkt Size	HHI	MW	Mkt Share	HHI	Change	Mitig Share	New HHI Chg	Divest
S_SP1	\$250	2,393	14.8%	9,010	55.8%	16,138	3,451	11,403	70.7%	5,107	1,656	33.0%	(1,537)	6,070
S_SP2	\$80	2,394	16.0%	7,340	49.0%	14,976	2,785	9,734	65.0%	4,352	1,567	31.9%	(1,091)	4,953
S_P	\$55	2,338	20.2%	5,852	50.7%	11,552	3,147	8,190	70.9%	5,197	2,050	28.0%	(1,271)	4,953
S_OP	\$25	2,010	26.8%	1,838	24.5%	7,511	1,932	3,848	51.2%	3,241	1,309	19.5%	(431)	2,385
W_SP	\$80	4,024	19.1%	6,085	28.9%	21,081	1,445	10,110	48.0%	2,547	1,102	23.8%	(338)	5,083
W_P	\$55	3,176	27.6%	4,314	37.4%	11,529	2,358	7,490	65.0%	4,419	2,061	20.9%	(752)	5,083
W_OP	\$30	3,338	36.4%	2,441	26.7%	9,160	2,371	5,779	63.1%	4,314	1,943	28.5%	(628)	3,172
SH_SP	\$65	2,519	25.8%	3,798	38.9%	9,755	2,375	6,317	64.8%	4,386	2,011	23.1%	(781)	4,066
SH_P	\$45	2,354	31.1%	1,862	24.6%	7,571	1,944	4,216	55.7%	3,474	1,530	23.3%	(505)	2,454
SH_OP	\$20	1,811	29.5%	612	10.0%	6,144	1,899	2,422	39.4%	2,486	587	7.7%	-	1,950

Pre-Merger				
Total PJM Load				
Period	Price	Exelon	PSEG	Rest of PJM
S_SP1	\$250	8,033	2,200	51,444
S_SP2	\$80	7,069	1,949	45,956
S_P	\$55	5,556	1,603	40,076
S_OP	\$25	4,354	1,351	30,957
W_SP	\$80	5,793	3,249	40,598
W_P	\$55	5,041	2,958	36,194
W_OP	\$30	4,311	2,505	31,606
SH_SP	\$65	5,266	2,465	35,317
SH_P	\$45	4,501	2,208	32,082
SH_OP	\$20	3,609	1,829	26,004

Note: For purposes of this analysis, mitigation is assumed to be split between two parties that do not have a material market share.

Available Economic Capacity

Expanded PJM

PECO, PSE&G, ComEd, AEP and DOM Load

Pre-Merger								Post-Merger				Effect of Mitigation		
Period	Price	Exelon		PSEG		Mkt Size	HHI	EEG		HHI	Change	Mitig Share	New HHI Chg	Divest
		MW	Mkt Share	MW	Mkt Share			MW	Share					
S_SP1	\$250	1,937	1.9%	10,729	10.5%	101,792	558	12,666	12.4%	598	40	6.5%	(55)	6,070
S_SP2	\$80	1,932	2.0%	9,057	9.4%	96,251	527	10,989	11.4%	565	38	6.3%	(40)	4,953
S_P	\$55	2,183	2.8%	7,550	9.8%	77,262	610	9,734	12.6%	666	56	6.2%	(45)	4,953
S_OP	\$25	4,123	10.1%	1,838	4.5%	41,004	870	5,961	14.5%	960	90	8.7%	(28)	2,385
W_SP	\$80	6,834	6.7%	7,804	7.6%	102,566	500	14,638	14.3%	602	102	9.3%	(3)	5,083
W_P	\$55	4,038	5.2%	6,015	7.7%	78,050	589	10,053	12.9%	669	80	6.4%	(24)	5,083
W_OP	\$30	5,697	9.2%	2,441	4.0%	61,842	722	8,138	13.2%	795	73	8.0%	(23)	3,172
SH_SP	\$65	2,991	4.2%	5,207	7.3%	71,705	522	8,198	11.4%	583	61	5.8%	(21)	4,066
SH_P	\$45	2,156	3.8%	3,254	5.8%	56,586	585	5,410	9.6%	629	44	5.2%	(11)	2,454
SH_OP	\$20	2,022	7.3%	612	2.2%	27,913	720	2,634	9.4%	752	32	2.5%	-	1,950

Pre-Merger						Post-Merger		
Period	Price	Total PJM Load		Supplied by PJM East Generation		Other Load		
		Exelon	PSEG	Exelon	PSEG	COMED	AEP	DOM
S_SP1	\$250	8,033	2,200	4,566	1,180	18,342	21,198	18,000
S_SP2	\$80	7,069	1,949	3,942	929	15,359	19,098	16,217
S_P	\$55	5,556	1,603	3,758	583	11,074	15,782	13,402
S_OP	\$25	4,354	1,351	3,309	331	8,473	12,336	10,476
W_SP	\$80	5,793	3,249	4,072	1,958	11,387	18,245	15,493
W_P	\$55	5,041	2,958	3,990	1,932	10,071	16,489	14,002
W_OP	\$30	4,311	2,505	3,260	1,479	8,365	14,738	12,515
SH_SP	\$65	5,266	2,465	3,507	1,609	11,204	15,766	13,388
SH_P	\$45	4,501	2,208	3,403	1,376	9,186	14,079	11,955
SH_OP	\$20	3,609	1,829	2,753	997	7,344	11,814	10,032

Note: For purposes of this analysis, mitigation is assumed to be split between two parties that do not have a material market share.

Reconciliation of CESI Capacity with Dr. Hieronymus's Assumptions

	MW	Explanation
Hieronymus's per Exhibit J-9	4,800	MW
CESI Corrections (per Gentile email)		
Bethlehem	(880)	^{1/} Is not in PJM East
Mobile NUG 1-3	(44)	Behind the meter generation
PCLPIPP	(111)	Not owned by CESI affiliate
Delaware City	(181)	Not owned by CESI affiliate
CCLP NUGIPP (partial)	(59)	Not owned by CESI affiliate
Logan (KCS) IPP (partial)	(19)	Not owned by CESI affiliate
Deepwater GTA	(19)	Retired in 2005
Madison Street 1	(11)	Retired in 2005
Subtotal, Adjustments	(1,324)	
Adjusted CESI Total to Exhibit J-9	3,476	
CESI's Claim (page 33 of Intervention)	2,595	
Unreconciled MWs	881	
Potential Additional Adjustment to Appendix A Energy Analysis (per CESI)		
CCLP NUGIPP (partial)	(186)	Maybe not fully controlled by CESI
Logan (KCS) IPP (partial)	(200)	Maybe not fully controlled by CESI
DRMI IPP	(75)	Maybe not fully controlled by CESI
Subtotal, Additional Adjustments	(461)	
Adjusted CESI Total	3,015	
CESI's Claim (page 33 of Intervention)	2,595	
Unreconciled MWs	420	CESI admits BL England is its affiliated generation

^{1/} Note that Bethlehem is a 1,050 MW unit, but Dr. Hieronymus's analysis had used an 880 MW rating.

PJM Capacity Market

	ICAP: PJM East			ICAP: Expanded PJM		
	MW	Market Share	HHI	MW	Market Share	HHI
Exelon	7,180	18.3%	336	26,465	15.1%	228
PSEG	10,134	25.9%	670	14,137	8.1%	65
AEP	-	0.0%	-	23,980	13.7%	187
Allegheny Energy	-	0.0%	-	9,724	5.5%	31
Conectiv	3,476	8.9%	79	5,717	3.3%	11
Constellation Energy Group, Inc.	152	0.4%	0	7,279	4.2%	17
DPL, Inc.	-	0.0%	-	4,799	2.7%	7
Dominion	-	0.0%	-	21,700	12.4%	153
Duke Energy	-	0.0%	-	2,736	1.6%	2
Edison Mission Energy	-	0.0%	-	8,298	4.7%	22
FirstEnergy	1,117	2.9%	8	3,732	2.1%	5
Mirant	-	0.0%	-	6,051	3.5%	12
NRG Energy	1,060	2.7%	7	2,834	1.6%	3
PPL	2,653	6.8%	46	9,493	5.4%	29
Reliant Energy, Inc.	2,226	5.7%	32	6,805	3.9%	15
Imports	7,300	18.6%	87	7,500	4.3%	5
Others	3,862	9.9%	12	13,984	8.0%	4
Total	39,160	100.0%	1,278	175,232	100.0%	797
Post-Transaction HHI			2,226			1,041
HHI Change			949			244
Implied Mitigation Required	5,325	13.6%		2,200	1.3%	
Adjusted HHI Change			99			199
Adjusted Post-Transaction HHI			1,377			996
Proposed Divestiture	2,900			2,900		
Remaining Potential Mitigation	2,425			-		

Note: In calculating HHIs, imports are assumed to be supplied by four equal-sized parties. In calculating implied mitigation, divestiture is assumed to be to two parties whose share of installed capacity in PJM East and Expanded PJM is no more than 5 percent.

Destination Market	PJM_EAST	
Analysis Type	EC	
Transmission Allocation	Pro Rata	
Period	Shoulder Off-Peak	
Destination Market Price	20	20
HHI	1406	2276
Change in HHI		870

Supplier	Pre-Transaction, As-Filed			Post-Transaction, As-Filed			Pre-Transaction, -600 MW for PSEG			Post-Transaction, +600 MW for PSEG		
	Supplied (MW)	Market Share (%)	HHI	Supplied (MW)	Market Share (%)	HHI	Supplied (MW)	Market Share (%)	HHI	Supplied (MW)	Market Share (%)	HHI
EXELON	4338	30%	920	6389	45%	1995	4338	32%	1002	6389	45%	1995
PSEG	2051	14%	206	0	0%	0	1451	11%	112	0	0%	0
BGE	982	7%	47	982	7%	47	982	7%	51	982	7%	47
PPL	966	7%	46	966	7%	46	966	7%	50	966	7%	46
PEPCO	916	6%	41	916	6%	41	916	7%	45	916	6%	41
AEP	889	6%	39	889	6%	39	889	6%	42	889	6%	39
APS	866	6%	37	866	6%	37	866	6%	40	866	6%	37
FENER	823	6%	33	823	6%	33	823	6%	36	823	6%	33
Other	2472	17%	42	2472	17%	42	2472	18%	46	2472	17%	42
TOTAL	14303	100%	1410	14303	100%	2280	13703	100%	1424	14303	100%	2280
HHI Change						870						856

Source: Based on CD1\Workpapers\Vertical and Horizontal Market Power Analysis\Data Outputs\Economic Capacity

**Reconciliation of CESI Capacity with Dr. Hieronymus's Assumptions
(using S_SP1 derated capacity)**

		Hieronymus Workpapers	Fraye Workpapers	Difference (MW)
<u>PJM EAST</u>				
Supplier	Unit			
Atlantic City Electric Co	Deepwater GTA	17	-	(17)
PSEG	Linden	1,097	1,276	179
Delmarva Power & Light Co	Madison Street 1	10	-	(10)
Jersey Central Power & Light	Riegel Paper NUG	25	-	(25)
	Total	1,149	1,276	127
<u>EXPANDED PJM</u>				
Supplier	Unit			
Atlantic City Electric Co	Deepwater GTA	17	-	(17)
PSEG	Linden	1,097	1,276	179
Delmarva Power & Light Co	Madison Street 1	10	-	(10)
Jersey Central Power & Light	Riegel Paper NUG	25	-	(25)
PEI Power Corp	Archibald	20	-	(20)
Midamerican Energy	Cordova Energy Center	463	-	(463)
WISVEST	River Energy Center 1-2	280	-	(280)
Reliant Energy, Inc.	Conemaugh	268	-	(268)
Reliant Energy, Inc.	Keystone	272	-	(272)
Union Camp	Union Camp	13	-	(13)
Westvaco	Westvaco	65	-	(65)
	Total	2,530	1,276	(1,254)

Effect of Forced Outage Rate on Market Share

ICAP						
	East			Expanded		
	MW	Share	Outages	MW	Share	Outages
Exelon	7,180	21.7%	NA	26,465	15.8%	NA
PSEG	10,249	31.0%	NA	14,137	8.5%	NA
Market	33,080			167,150		

UCAP, Frayer's EFOR						
	East			Expanded		
	MW	Share	Outages	MW	Share	Outages
Exelon	6,442	22.6%	10.3%	23,621	16.0%	10.7%
PSEG	8,942	31.4%	12.8%	12,582	8.5%	11.0%
Market	28,459		14.0%	147,460		11.8%

UCAP, Corrected EFORd						
	East			Expanded		
	MW	Share	Outages	MW	Share	Outages
Exelon	6,737	21.7%	6.2%	24,708	15.9%	6.6%
PSEG	9,639	31.0%	6.0%	13,319	8.5%	5.8%
Market	31,056		6.1%	155,840		6.8%

Effect of Forced Outage Rate on HHI (Pre-Mitigation)

	PJM East	Expanded PJM
Hieronymus ICAP		
Pre-Merger HHI	1282	799
Post-Merger HHI	2196	1044
	914	245
Frayer, Scenario 2		
Pre-Merger HHI	1236	832
Post-Merger HHI	2186	1084
	950	252
Corrected Frayer, Scenario 2 EFORd Imports Per Hieronymus Method		
Pre-Merger HHI	1250	794
Post-Merger HHI	2132	1041
	882	247

Source: Based on data in Frayer Exhibit 21 workpapers.

Corrected Exhibit No. GEB-4

Revised to (1) Account for PSEG New York Capacity and (2) Error in Calculation of HHI for "Other"

Company	Texas	Tennessee	Transco	Columbia	Total	Share (%)
	Eastern Capacity	Capacity	Capacity (MDth)	Capacity	Capacity	
PUBLIC SERVICE ELECTRIC AND GAS CO	633	94	511	13	1,250	25.7
PECO ENERGY COMPANY	316		189		505	10.4
NEW JERSEY NATURAL GAS COMPANY	422	11	19	10	461	9.5
UGI UTILITIES INC.	180			176	356	7.3
PHILADELPHIA GAS WORKS	174		167		341	7.0
NUI UTILITIES, INC.	98	5	159	33	295	6.1
SOUTH JERSEY GAS COMPANY			193	98	291	6.0
CED ROCK SPRINGS, LLC				270	270	5.6
CONECTIV ENERGY SUPPLY INC	45			183	228	4.7
SUN COMPANY, INC. (R&M)	21		41	55	117	2.4
DELMARVA POWER & LIGHT COMPANY	10		64	37	111	2.3
VIRGINIA POWER ENERGY MARKETING INC			100		100	2.1
LIBERTY ELECTRIC POWER, LLC	84				84	1.7
PPL GAS UTILITIES CORPORATION	21		42	19	82	1.7
PSE&G - TENNESSEE			72		72	1.5
AMERADA HESS CORP	10		25		35	0.7
CHESAPEAKE UTILITIES CORP			14	16	30	0.6
ATTALA ENERGY COMPANY, LLC	30				30	0.6
CITY OF LANCASTER				25	25	0.5
EL PASO MERCHANT ENERGY GAS, L.P.	22				22	0.4
BOSS ENERGY, LTD.			20		20	0.4
GRAYS FERRY COGENERATION PARTNERSHIP	15				15	0.3
CENTRAL HUDSON GAS & ELECTRIC CORP		14			14	0.3
CONSOLIDATED EDISON CO OF NEW YORK INC		14			14	0.3
ORANGE AND ROCKLAND UTILITIES INC		14			14	0.3
NORTHEAST ENERGY ASSOCIATES	14				14	0.3
SEQUENT ENERGY MANAGEMENT LP			10		10	0.2
THE PREMCOR REFINING GROUP INC.			10		10	0.2
NOBLE ENERGY, INC.			6		6	0.1
NORTH ATLANTIC UTILITIES			6		6	0.1
KCS ENERGY MARKETING INC			6		6	0.1
ENMARK GAS CORPORATION			4		4	0.1
ISG ACQUISITION, INC.				4	4	0.1
EASTERN SHORE NATURAL GAS COMPANY			3		3	0.1
HORSEHEAD RESOURCE DEVELOPMENT CO., INC.			2		2	0.0
EASTON UTILITIES			2		2	0.0
FORTUNA ENERGY INC.				2	2	0.0
FORMOSA PLASTICS CORPORATION USA			1		1	0.0
THE EASTON UTILITIES COMMISSION				1	1	0.0
VIRGINIA NATURAL GAS, INC.				1	1	0.0
DUKE ENERGY TRADING & MARKETING LLC			0		0	0.0
REICHOLD CHEMICALS INC			0		0	0.0
Total	2,094	152	1,668	942	4,855	100
					Pre-Merger	1,116
					Change	535
					Post-Merger	1,651

^{1/} PSEG's Transco Capacity is reduced by 417.4 MDth deliverable into New York zone (432MMcf/d; converted using Transco Conversion Factor of 1.035 Dth/Mcf from Transco Gas Tariff Rate Filing - Third Revised Volume, Number 1 - Fifth Revised Sheet No. 333).

Source: Based on information in Briden Workpapers.

Mitigation Scenarios

Scenario 1: Mitigation Proposed for PJM East

	Summer MW	Winter MW	Outages			Derated Capacity			Dispatch Cost (+5%)		
			Summer	Winter	Shoulder	Summer	Winter	Shoulder	Summer	Winter	Shoulder
Nuclear	2,400	2,496	92%	92%	75%	2,201	2,289	1,800	<\$15	<\$15	<\$15
Coal	550	579	94%	94%	72%	517	544	396	<\$55	<\$30	<\$30
Mid-Merit	1,550	1,550	91%	91%	77%	1,411	1,411	1,190	<\$80	<\$80	<\$80
Peaking	1,000	1,155	93%	93%	75%	931	1,072	750	>\$80	>\$80	>\$80
Total	5,500										

Adjusted for Nuclear Virtual Divestiture based on Exelon 3-yr average Capacity Factor = 93.2%

Nuclear	2,237
Coal	550
Mid-Merit	1,550
Peaking	1,000
Total	5,337

Note: The coal and mid-merit mitigation amounts are partially interchangeable, so long as the total remains the same. Of the Mid-Merit, 900 MW must be economic at the \$55/MWh price.

Mitigation Scenarios

Scenario 2: Total Mitigation (Additional Mitigation Outside of PJM East)

	Summer MW	Winter MW	Outages			Derated Capacity			Dispatch Cost (+5%)		
			Summer	Winter	Shoulder	Summer	Winter	Shoulder	Summer	Winter	Shoulder
Nuclear	2,600	2,704	92%	92%	75%	2,385	2,480	1,950	<\$15	<\$15	<\$15
Coal	700	736	94%	94%	72%	658	692	504	<\$55	<\$30	<\$30
Mid-Merit	2,100	2,100	91%	91%	77%	1,911	1,911	1,612	<\$80	<\$80	<\$80
Peaking	1,200	1,386	93%	93%	75%	1,117	1,287	900	>\$80	>\$80	>\$80
	6,600										

Adjusted for Nuclear Virtual Divestiture based on Exelon 3-yr average Capacity Factor = 93.2%

Nuclear	2,423
Coal	700
Mid-Merit	2,100
Peaking	1,200
Total	6,423

Note: The coal and mid-merit mitigation amounts are partially interchangeable, so long as the total remains the same. Of the Mid-Merit, 1,200 MW must be economic at the \$55/MWh price.

Economic Capacity (Post-Mitigation Results) (Original Purchaser Assumptions)

Period	Price	Pre-Merger						Post-Merger				Mitigation and Post-Mitigation Results					
		Exelon		PSEG		Mkt Size	HHI	EEG		HHI	Chg	Mitigation MW	Nuclear	Mkt Share	HHI	Chg	MW Summer Equivalent
		MW	Mkt Share	MW	Mkt Share			MW	Mkt Share								
Scenario 1: Mitigation Required for PJM East Revised																	
PJM East																	
S_SP1	\$250	6,948	18.5%	9,653	25.7%	37,610	1,282	16,600	44.1%	2,230	948	5,059	2,201	30.7%	1,287	5	5,500
S_SP2	\$80	6,016	18.6%	7,750	23.9%	32,384	1,207	13,766	42.5%	2,096	889	4,129	2,201	29.8%	1,233	26	4,500
S_P	\$55	5,105	21.9%	5,948	25.5%	23,362	1,347	11,052	47.3%	2,460	1,113	4,129	2,201	29.6%	1,209	(138)	4,500
S_OP	\$25	4,887	31.0%	2,631	16.7%	15,779	1,486	7,518	47.6%	2,519	1,033	2,201	2,201	33.7%	1,482	(4)	2,400
W_SP	\$80	6,404	19.5%	7,790	23.7%	32,900	1,220	14,194	43.1%	2,142	922	4,243	2,289	30.2%	1,254	34	4,500
W_P	\$55	5,435	22.5%	5,762	23.8%	24,186	1,314	11,197	46.3%	2,385	1,071	4,243	2,289	28.8%	1,175	(139)	4,500
W_OP	\$30	5,167	26.8%	3,594	18.7%	19,258	1,326	8,761	45.5%	2,327	1,001	2,833	2,289	30.8%	1,299	(27)	2,950
SH_SP	\$65	4,877	20.4%	5,087	21.3%	23,872	1,189	9,964	41.7%	2,060	871	3,386	1,800	27.6%	1,150	(39)	4,500
SH_P	\$45	4,675	26.2%	2,935	16.4%	17,863	1,257	7,610	42.6%	2,117	860	2,196	1,800	30.3%	1,288	31	2,950
SH_OP	\$20	4,338	30.6%	2,051	14.5%	14,180	1,413	6,389	45.1%	2,298	885	1,800	1,800	32.4%	1,396	(17)	2,400

Economic Capacity (Post-Mitigation Results) (Original Purchaser Assumptions)

Period	Price	Pre-Merger						Post-Merger				Mitigation and Post-Mitigation Results						
		Exelon		PSEG		Mkt Size	HHI	EEG		HHI	Chg	Mitigation MW	Nuclear	Mkt Share	HHI	Chg	MW Summer Equivalent	
		MW	Mkt Share	MW	Mkt Share			MW	Mkt Share									
Scenario 2: Total Mitigation (Additional Mitigation Outside of PJM East) Revised																		
PJM Pre-2004																		
S_SP1	\$250	10,508	13.5%	11,210	14.4%	77,815	877	21,718	27.9%	1,266	389	6,070	2,385	20.1%	931	54	6,600	
S_SP2	\$80	9,545	13.7%	9,288	13.3%	69,950	865	18,834	26.9%	1,227	362	4,953	2,385	19.8%	929	64	5,400	
S_P	\$55	7,976	14.5%	7,455	13.6%	54,840	934	15,431	28.1%	1,329	395	4,953	2,385	19.1%	945	11	5,400	
S_OP	\$25	6,416	26.1%	3,189	13.0%	24,609	1,220	9,605	39.0%	1,896	676	2,385	2,385	29.3%	1,280	60	2,600	
W_SP	\$80	9,899	14.0%	9,334	13.2%	70,720	864	19,233	27.2%	1,233	369	5,083	2,480	20.0%	928	64	5,400	
W_P	\$55	8,299	14.9%	7,273	13.1%	55,722	937	15,571	27.9%	1,325	388	5,083	2,480	18.8%	942	5	5,400	
W_OP	\$30	7,701	17.7%	4,946	11.4%	43,416	986	12,648	29.1%	1,390	404	3,172	2,480	21.8%	1,047	61	3,300	
SH_SP	\$65	7,866	15.4%	6,263	12.2%	51,221	923	14,129	27.6%	1,299	376	4,066	1,950	19.6%	956	33	5,400	
SH_P	\$45	6,936	17.3%	4,070	10.1%	40,127	1,005	11,006	27.4%	1,355	350	2,454	1,950	21.3%	1,078	73	3,300	
SH_OP	\$20	5,472	26.6%	2,440	11.9%	20,590	1,209	7,912	38.4%	1,839	630	1,950	1,950	29.0%	1,245	36	2,600	
PJM Expanded																		
S_SP1	\$250	24,354	14.8%	12,929	7.9%	164,249	768	37,283	22.7%	1,002	234	6,070	2,385	19.0%	857	89	6,600	
S_SP2	\$80	23,384	15.1%	11,006	7.1%	154,731	789	34,390	22.2%	1,004	215	4,953	2,385	19.0%	879	90	5,400	
S_P	\$55	18,813	15.3%	9,153	7.4%	123,042	893	27,966	22.7%	1,120	227	4,953	2,385	18.7%	962	69	5,400	
S_OP	\$25	16,950	22.3%	3,189	4.2%	75,898	1,452	20,139	26.5%	1,639	187	2,385	2,385	23.4%	1,488	36	2,600	
W_SP	\$80	24,013	15.3%	11,053	7.1%	156,732	798	35,067	22.4%	1,014	216	5,083	2,480	19.1%	887	89	5,400	
W_P	\$55	19,150	15.2%	8,973	7.1%	125,619	898	28,123	22.4%	1,116	218	5,083	2,480	18.3%	959	61	5,400	
W_OP	\$30	18,373	17.9%	4,946	4.8%	102,839	1,104	23,319	22.7%	1,276	172	3,172	2,480	19.6%	1,151	47	3,300	
SH_SP	\$65	19,460	16.3%	7,672	6.4%	119,305	841	27,133	22.7%	1,051	210	4,066	1,950	19.3%	914	73	5,400	
SH_P	\$45	15,842	16.6%	5,462	5.7%	95,744	933	21,304	22.3%	1,122	189	2,454	1,950	19.7%	1,018	85	3,300	
SH_OP	\$20	12,975	21.9%	2,440	4.1%	59,286	1,433	15,415	26.0%	1,613	180	1,950	1,950	22.7%	1,458	25	2,600	

Economic Capacity (Post-Mitigation Results) (New Purchaser Assumptions)

Period	Price	Pre-Merger						Post-Merger				Mitigation and Post-Mitigation Results						
		Exelon		PSEG		Mkt Size	HHI	EEG		HHI	Chg	Mitigation MW	Nuclear	Mkt Share	HHI	Chg	MW Summer Equivalent	
		MW	Mkt Share	MW	Mkt Share			MW	Mkt Share									
Scenario 1: Mitigation Required for PJM East Revised																		
PJM East																		
S_SP1	\$250	6,948	18.5%	9,653	25.7%	37,610	1,282	16,600	44.1%	2,230	948	5,059	2,201	30.7%	1,377	95	5,500	
S_SP2	\$80	6,016	18.6%	7,750	23.9%	32,384	1,207	13,766	42.5%	2,096	889	4,129	2,201	29.8%	1,298	91	4,500	
S_P	\$55	5,105	21.9%	5,948	25.5%	23,362	1,347	11,052	47.3%	2,460	1,113	4,129	2,201	29.6%	1,259	(88)	4,500	
S_OP	\$25	4,887	31.0%	2,631	16.7%	15,779	1,486	7,518	47.6%	2,519	1,033	2,201	2,201	33.7%	1,465	(21)	2,400	
W_SP	\$80	6,404	19.5%	7,790	23.7%	32,900	1,220	14,194	43.1%	2,142	922	4,243	2,289	30.2%	1,318	98	4,500	
W_P	\$55	5,435	22.5%	5,762	23.8%	24,186	1,314	11,197	46.3%	2,385	1,071	4,243	2,289	28.8%	1,231	(83)	4,500	
W_OP	\$30	5,167	26.8%	3,594	18.7%	19,258	1,326	8,761	45.5%	2,327	1,001	2,833	2,289	30.8%	1,316	(10)	2,950	
SH_SP	\$65	4,877	20.4%	5,087	21.3%	23,872	1,189	9,964	41.7%	2,060	871	3,386	1,800	27.6%	1,218	29	4,500	
SH_P	\$45	4,675	26.2%	2,935	16.4%	17,863	1,257	7,610	42.6%	2,117	860	2,196	1,800	30.3%	1,310	53	2,950	
SH_OP	\$20	4,338	30.6%	2,051	14.5%	14,180	1,413	6,389	45.1%	2,298	885	1,800	1,800	32.4%	1,389	(24)	2,400	

Economic Capacity (Post-Mitigation Results) (New Purchaser Assumptions)

Period	Price	Pre-Merger						Post-Merger				Mitigation and Post-Mitigation Results						
		Exelon		PSEG		Mkt Size	HHI	EEG		HHI	Chg	Mitigation MW	Nuclear	Mkt Share	HHI	Chg	MW Summer Equivalent	
		MW	Mkt Share	MW	Mkt Share			MW	Mkt Share									
Scenario 2: Total Mitigation (Additional Mitigation Outside of PJM East) Revised																		
PJM Pre-2004																		
S_SP1	\$250	10,508	13.5%	11,210	14.4%	77,815	877	21,718	27.9%	1,266	389	6,070	2,385	20.1%	982	105	6,600	
S_SP2	\$80	9,545	13.7%	9,288	13.3%	69,950	865	18,834	26.9%	1,227	362	4,953	2,385	19.8%	968	103	5,400	
S_P	\$55	7,976	14.5%	7,455	13.6%	54,840	934	15,431	28.1%	1,329	395	4,953	2,385	19.1%	996	62	5,400	
S_OP	\$25	6,416	26.1%	3,189	13.0%	24,609	1,220	9,605	39.0%	1,896	676	2,385	2,385	29.3%	1,292	72	2,600	
W_SP	\$80	9,899	14.0%	9,334	13.2%	70,720	864	19,233	27.2%	1,233	369	5,083	2,480	20.0%	967	103	5,400	
W_P	\$55	8,299	14.9%	7,273	13.1%	55,722	937	15,571	27.9%	1,325	388	5,083	2,480	18.8%	995	58	5,400	
W_OP	\$30	7,701	17.7%	4,946	11.4%	43,416	986	12,648	29.1%	1,390	404	3,172	2,480	21.8%	1,079	93	3,300	
SH_SP	\$65	7,866	15.4%	6,263	12.2%	51,221	923	14,129	27.6%	1,299	376	4,066	1,950	19.6%	1,007	84	5,400	
SH_P	\$45	6,936	17.3%	4,070	10.1%	40,127	1,005	11,006	27.4%	1,355	350	2,454	1,950	21.3%	1,105	100	3,300	
SH_OP	\$20	5,472	26.6%	2,440	11.9%	20,590	1,209	7,912	38.4%	1,839	630	1,950	1,950	29.0%	1,257	48	2,600	
PJM Expanded																		
S_SP1	\$250	24,354	14.8%	12,929	7.9%	164,249	768	37,283	22.7%	1,002	234	6,070	2,385	19.0%	872	104	6,600	
S_SP2	\$80	23,384	15.1%	11,006	7.1%	154,731	789	34,390	22.2%	1,004	215	4,953	2,385	19.0%	890	101	5,400	
S_P	\$55	18,813	15.3%	9,153	7.4%	123,042	893	27,966	22.7%	1,120	227	4,953	2,385	18.7%	976	83	5,400	
S_OP	\$25	16,950	22.3%	3,189	4.2%	75,898	1,452	20,139	26.5%	1,639	187	2,385	2,385	23.4%	1,489	37	2,600	
W_SP	\$80	24,013	15.3%	11,053	7.1%	156,732	798	35,067	22.4%	1,014	216	5,083	2,480	19.1%	898	100	5,400	
W_P	\$55	19,150	15.2%	8,973	7.1%	125,619	898	28,123	22.4%	1,116	218	5,083	2,480	18.3%	974	76	5,400	
W_OP	\$30	18,373	17.9%	4,946	4.8%	102,839	1,104	23,319	22.7%	1,276	172	3,172	2,480	19.6%	1,158	54	3,300	
SH_SP	\$65	19,460	16.3%	7,672	6.4%	119,305	841	27,133	22.7%	1,051	210	4,066	1,950	19.3%	926	85	5,400	
SH_P	\$45	15,842	16.6%	5,462	5.7%	95,744	933	21,304	22.3%	1,122	189	2,454	1,950	19.7%	1,024	91	3,300	
SH_OP	\$20	12,975	21.9%	2,440	4.1%	59,286	1,433	15,415	26.0%	1,613	180	1,950	1,950	22.7%	1,460	27	2,600	

Economic Capacity (Post-Mitigation Results) (100% of Non-Nuclear to New Market Participant)

Period	Price	Pre-Merger						Post-Merger				Mitigation and Post-Mitigation Results						
		Exelon		PSEG		Mkt Size	HHI	EEG		HHI	Chg	Mitigation MW	Nuclear	Mkt Share	HHI	Chg	MW Summer Equivalent	
		MW	Mkt Share	MW	Mkt Share			MW	Mkt Share									
Scenario 1: Mitigation Required for PJM East Revised																		
PJM East																		
S_SP1	\$250	6,948	18.5%	9,653	25.7%	37,610	1,282	16,600	44.1%	2,230	948	5,059	2,201	30.7%	1,296	14	5,500	
S_SP2	\$80	6,016	18.6%	7,750	23.9%	32,384	1,207	13,766	42.5%	2,096	889	4,129	2,201	29.8%	1,229	22	4,500	
S_P	\$55	5,105	21.9%	5,948	25.5%	23,362	1,347	11,052	47.3%	2,460	1,113	4,129	2,201	29.6%	1,201	(146)	4,500	
S_OP	\$25	4,887	31.0%	2,631	16.7%	15,779	1,486	7,518	47.6%	2,519	1,033	2,201	2,201	33.7%	1,450	(36)	2,950	
W_SP	\$80	6,404	19.5%	7,790	23.7%	32,900	1,220	14,194	43.1%	2,142	922	4,243	2,289	30.2%	1,250	30	4,500	
W_P	\$55	5,435	22.5%	5,762	23.8%	24,186	1,314	11,197	46.3%	2,385	1,071	4,243	2,289	28.8%	1,167	(147)	4,500	
W_OP	\$30	5,167	26.8%	3,594	18.7%	19,258	1,326	8,761	45.5%	2,327	1,001	2,833	2,289	30.8%	1,270	(56)	2,950	
SH_SP	\$65	4,877	20.4%	5,087	21.3%	23,872	1,189	9,964	41.7%	2,060	871	3,386	1,800	27.6%	1,145	(44)	4,500	
SH_P	\$45	4,675	26.2%	2,935	16.4%	17,863	1,257	7,610	42.6%	2,117	860	2,196	1,800	30.3%	1,268	11	2,950	
SH_OP	\$20	4,338	30.6%	2,051	14.5%	14,180	1,413	6,389	45.1%	2,298	885	1,800	1,800	32.4%	1,375	(38)	2,400	

Economic Capacity (Post-Mitigation Results) (100% of Non-Nuclear to New Market Participant)

Period	Price	Pre-Merger						Post-Merger				Mitigation and Post-Mitigation Results					
		Exelon		PSEG		Mkt Size	HHI	EEG			HHI Chg	Mitigation MW	Nuclear	Mkt Share	HHI	HHI Chg	MW Summer Equivalent
MW	Mkt Share	MW	Mkt Share	MW	Mkt Share			HHI									
Scenario 2: Total Mitigation (Additional Mitigation Outside of PJM East) Revised																	
PJM Pre-2004																	
S_SP1	\$250	10,508	13.5%	11,210	14.4%	77,815	877	21,718	27.9%	1,266	389	6,070	2,385	20.1%	927	50	6,600
S_SP2	\$80	9,545	13.7%	9,288	13.3%	69,950	865	18,834	26.9%	1,227	362	4,953	2,385	19.8%	924	59	5,400
S_P	\$55	7,976	14.5%	7,455	13.6%	54,840	934	15,431	28.1%	1,329	395	4,953	2,385	19.1%	945	11	5,400
S_OP	\$25	6,416	26.1%	3,189	13.0%	24,609	1,220	9,605	39.0%	1,896	676	2,385	2,385	29.3%	1,282	62	2,600
W_SP	\$80	9,899	14.0%	9,334	13.2%	70,720	864	19,233	27.2%	1,233	369	5,083	2,480	20.0%	923	59	5,400
W_P	\$55	8,299	14.9%	7,273	13.1%	55,722	937	15,571	27.9%	1,325	388	5,083	2,480	18.8%	941	4	5,400
W_OP	\$30	7,701	17.7%	4,946	11.4%	43,416	986	12,648	29.1%	1,390	404	3,172	2,480	21.8%	1,052	66	3,300
SH_SP	\$65	7,866	15.4%	6,263	12.2%	51,221	923	14,129	27.6%	1,299	376	4,066	1,950	19.6%	956	33	5,400
SH_P	\$45	6,936	17.3%	4,070	10.1%	40,127	1,005	11,006	27.4%	1,355	350	2,454	1,950	21.3%	1,083	78	3,300
SH_OP	\$20	5,472	26.6%	2,440	11.9%	20,590	1,209	7,912	38.4%	1,839	630	1,950	1,950	29.0%	1,247	38	2,600
PJM Expanded																	
S_SP1	\$250	24,354	14.8%	12,929	7.9%	164,249	768	37,283	22.7%	1,002	234	6,070	2,385	19.0%	856	88	6,600
S_SP2	\$80	23,384	15.1%	11,006	7.1%	154,731	789	34,390	22.2%	1,004	215	4,953	2,385	19.0%	878	89	5,400
S_P	\$55	18,813	15.3%	9,153	7.4%	123,042	893	27,966	22.7%	1,120	227	4,953	2,385	18.7%	962	69	5,400
S_OP	\$25	16,950	22.3%	3,189	4.2%	75,898	1,452	20,139	26.5%	1,639	187	2,385	2,385	23.4%	1,488	36	2,600
W_SP	\$80	24,013	15.3%	11,053	7.1%	156,732	798	35,067	22.4%	1,014	216	5,083	2,480	19.1%	886	88	5,400
W_P	\$55	19,150	15.2%	8,973	7.1%	125,619	898	28,123	22.4%	1,116	218	5,083	2,480	18.3%	960	62	5,400
W_OP	\$30	18,373	17.9%	4,946	4.8%	102,839	1,104	23,319	22.7%	1,276	172	3,172	2,480	19.6%	1,152	48	3,300
SH_SP	\$65	19,460	16.3%	7,672	6.4%	119,305	841	27,133	22.7%	1,051	210	4,066	1,950	19.3%	914	73	5,400
SH_P	\$45	15,842	16.6%	5,462	5.7%	95,744	933	21,304	22.3%	1,122	189	2,454	1,950	19.7%	1,019	86	3,300
SH_OP	\$20	12,975	21.9%	2,440	4.1%	59,286	1,433	15,415	26.0%	1,613	180	1,950	1,950	22.7%	1,459	26	2,600

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**JOINT APPLICATION OF PECO
ENERGY COMPANY AND PUBLIC
SERVICE ELECTRIC AND GAS
COMPANY FOR APPROVAL OF THE
MERGER OF PUBLIC SERVICE
ENTERPRISE GROUP INCORPORATED
WITH AND INTO EXELON
CORPORATION**

Docket No. A-110550F0160

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing filing upon the persons and in the manner indicated below in accordance with the requirements of 52 Pa. Code §1.54.

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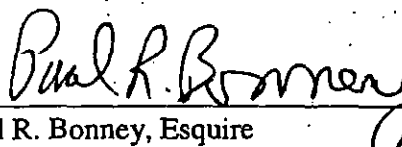
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Q. I've been inartful. Let me ask the question a different way.

If you're looking at the natural gas market, defining the geographic natural scope of the gas market, would you want to look to see if there are locations within PJM where natural gas prices separate?

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A. That's a generic statement. I think the answer to that would be "yes." It's not apparent to me that within PJM East, that prices do separate the way your question implies.

Q. Well, let me ask you that. Would you agree -- are you aware, first, of the TransCo pricing zones? There's a Zone 6 New York pricing zone and a Zone 6 non-New York pricing zone?

A. Yes.

Q. And is it true that the prices in those two zones separate on occasion?

A. Yes, more than on occasion. I would say those are in two separate markets.

Q. And to the extent that any of the zone 6 New York market is in PJM East, might it be appropriate to consider that to be a separate geographic market?

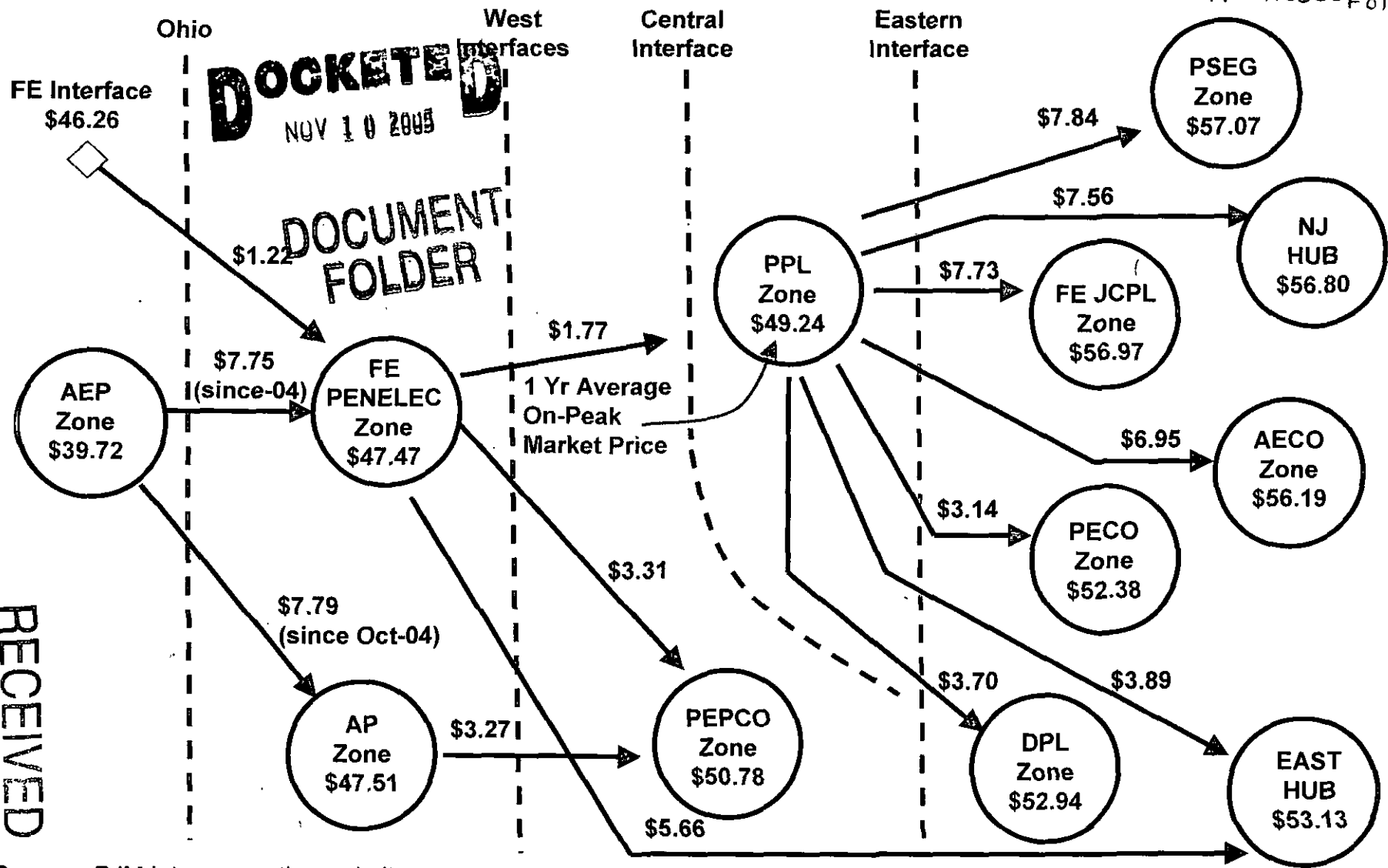
A. I'm not aware of any delivery points that would be called "TransCo Zone 6 New York" that are within PJM East.

Q. But you would agree that would be a separate market for purposes of doing your analysis?

A. Yes.

Q. Let's turn to Page 17 of your testimony.

PJM 1-YEAR AVERAGE ON-PEAK ZONAL PRICES AND PRICE DIFFERENCES (\$/MWh)
January 1, 2004 – December 31, 2004



Source: PJM Interconnection website.

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PRICE DIFFERENCES INFLUENCED BY BEDDINGTON-BLACK OAK

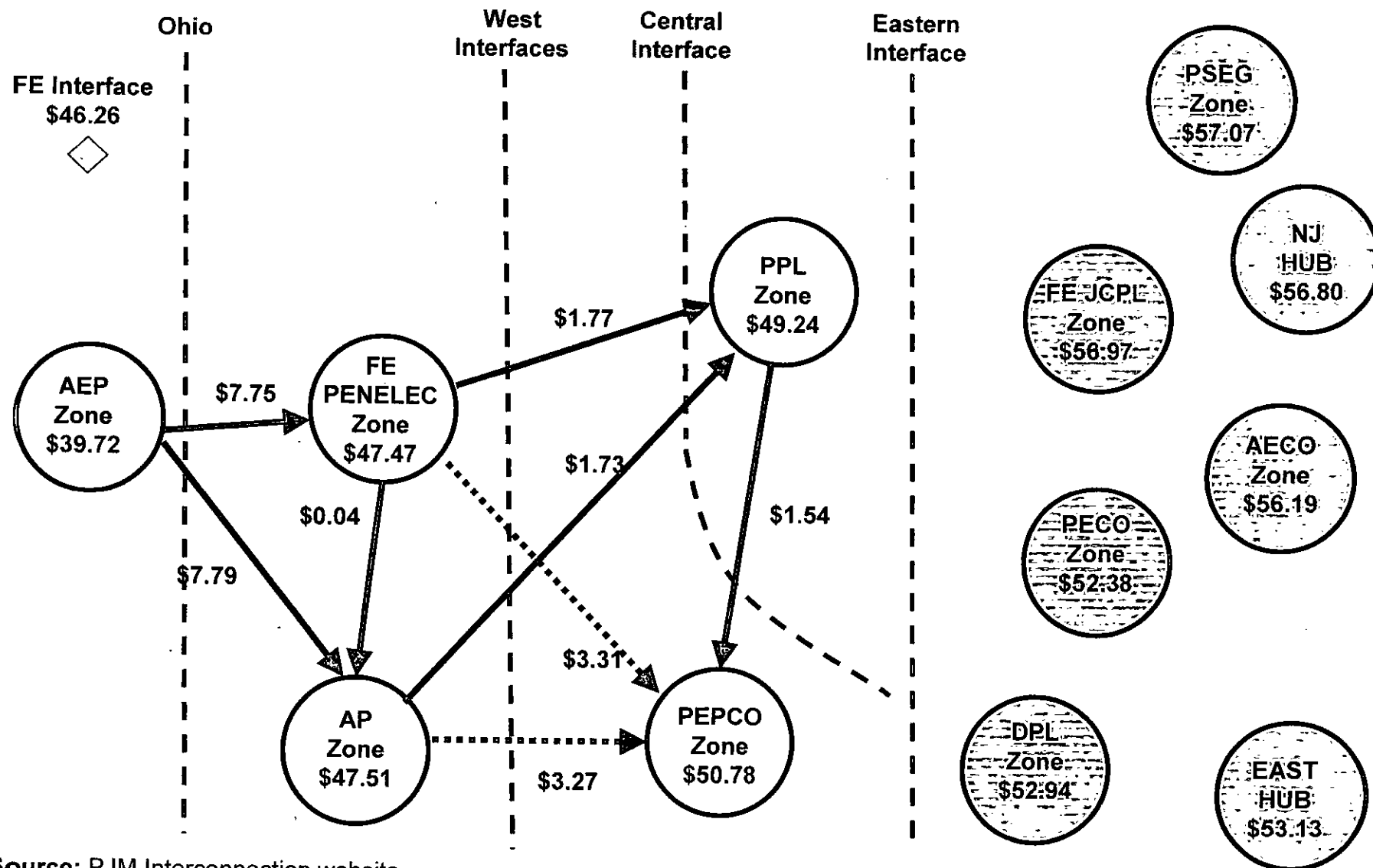
PJM 1-YEAR AVERAGE ON-PEAK ZONAL PRICES AND PRICE DIFFERENCES (\$/MWh)

January 1, 2004 – December 31, 2004

PECO
Exhibit WHH-3

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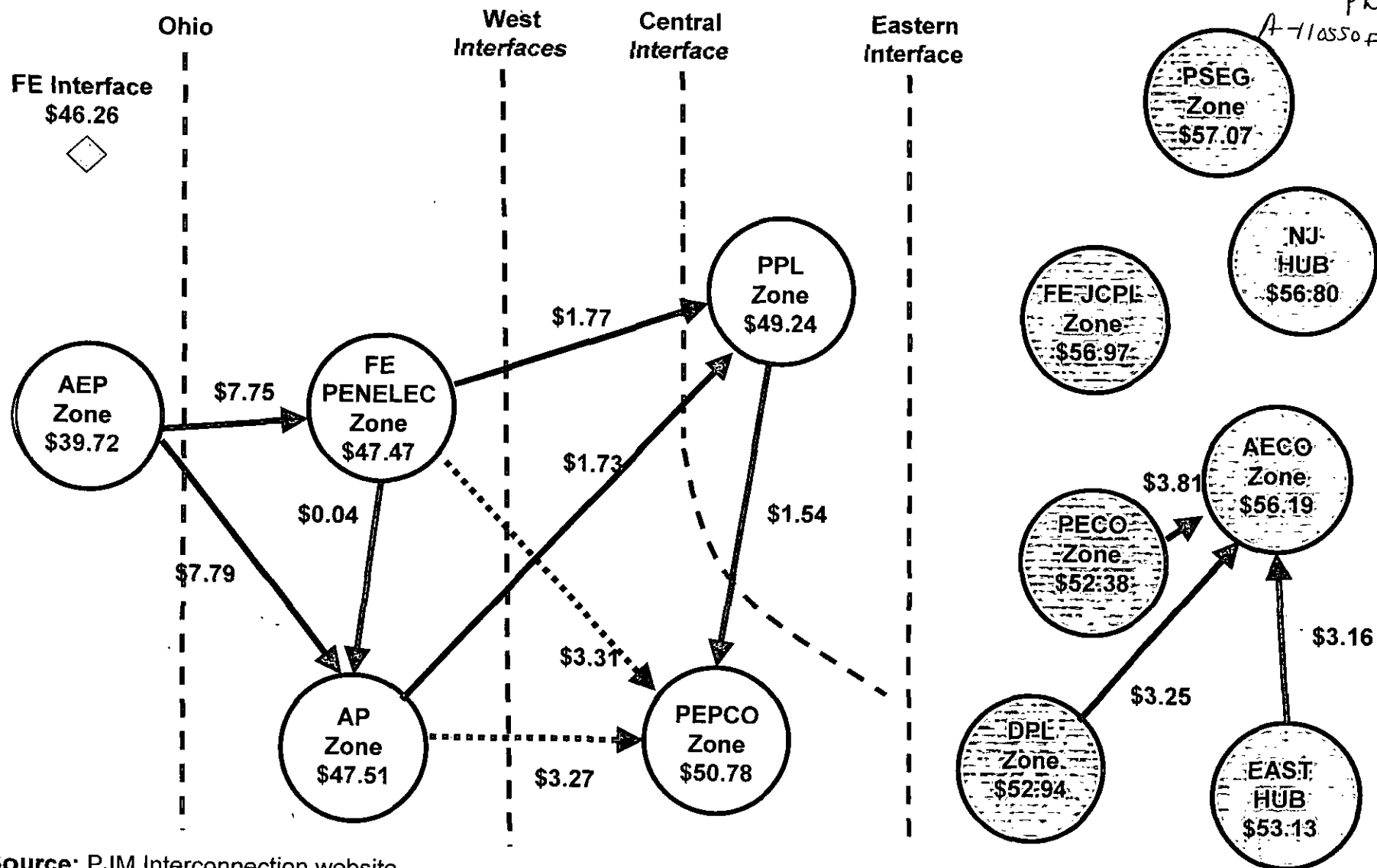
Source: PJM Interconnection website.

PRICE DIFFERENCES WITHIN PJM EAST

PJM 1-YEAR AVERAGE ON-PEAK ZONAL PRICES AND PRICE DIFFERENCES (\$/MWh)
January 1, 2004 – December 31, 2004

PECO
Exhibit WHH-3

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Source: PJM Interconnection website.