

PENNSYLVANIA PUBLIC UTILITY COMMISSION
Uniform Cover and Calendar Sheet

<p>1. <u>REPORT DATE:</u> June 15, 2004</p>	<p>2. <u>BUREAU AGENDA NO.:</u> JUNE-2004-FUS-1339*</p>
<p>3. <u>BUREAU:</u> Fixed Utility Services</p>	
<p>4. <u>SECTION(S):</u> Tariff/Finance</p>	<p>5. <u>PUBLIC MEETING DATE:</u></p>
<p>6. <u>Director:</u> Rosenthal 3-5242 <u>Manager:</u> Wilson 3-6162 <u>Legal Review by:</u></p>	<p>June 24, 2004</p>
<p>7. <u>PERSONS IN CHARGE:</u> Glunz 5-4364 Beebe 7-7237</p>	<p>DOCKETED JUL 06 2004</p> <p>0159 A-110550 F 37</p>
<p>8. <u>DOCKET NO.:</u> A-310378 F0006, et al., S-00040994, 995, 996 & 997</p>	

9.

- (a) Joint application of TelCove, Inc. (TelCove), PECO TelCove, TelCove of Pennsylvania, Inc. (TelCove PA), and PECO Energy Co. (PECO) for approval of the transfer of the interest in PECO TelCove held by PECO and an affiliate to a subsidiary of TelCove PA.
Securities certificates of PECO TelCove, TelCove PA, TelCove Investment, LLC, and TelCove Operations, Inc. for their entry into a \$45 million revolving credit facility.
- (b) Through a subsidiary, TelCove PA will purchase the 50% partnership interest in PECO TelCove currently owned by PECO and an affiliate, and PECO TelCove will purchase from Exelon Communications certain fiber assets that PECO TelCove is currently leasing. PECO TelCove and three sister TelCove utilities propose to enter a \$45 million credit facility which initially will provide partial funding for the above acquisitions, but which also will provide working capital for the four utilities and nine other operational but non-jurisdictional subsidiaries of TelCove.
- (c) The Bureau of Fixed Utility Services recommends adoption of the proposed order by which the Commission approves the application and registers the four security certificates.

10. MOTION BY: Commissioner Chm. Fitzpatrick

Commissioner Thomas - Yes
Commissioner Pizzigrilli - Yes
Commissioner Holland - Yes

SECONDED: Commissioner Bloom

CONTENTS OF MOTION: Staff recommendation adopted.

Statement of Commissioner Wendell F. Holland attached.

**DOCUMENT
FOLDER**

**PENNSYLVANIA PUBLIC UTILITY COMMISSION
HARRISBURG, PENNSYLVANIA 17105-3265**

**Joint Application of TelCove, Inc.,
PECO TelCove, TelCove of
Pennsylvania, Inc., and PECO Energy
Co. for approval of the transfer of the
interest in PECO TelCove held by PECO
Energy Co. and an affiliate to TelCove Holdings
of Pennsylvania, Inc. together with approval of
The transfer of certain fiber assets to PECO
TelCove and approval of an amended fiber lease**

**Public Meeting June 24, 2004
JUN-2004-FUS-1339
Docket No. A-310470F0009
Docket No. A-310378F0006
Docket No. A-110550F0347**

**Securities certificate of each of PECO
TelCove, TelCove of Pennsylvania, Inc.,
TelCove Investment, LLC and TelCove
Operations, Inc. for their entry into a
revolving credit facility not to exceed in
in aggregate principal amount \$45 million**

**Docket No. S-00040994
Docket No. S-00040995
Docket No. S-00040996
Docket No. S-0004997**

STATEMENT OF COMMISSIONER WENDELL F. HOLLAND

Today, the Commission considers the two filings of TelCove, Inc., and a number of its subsidiaries¹. In a Joint Application filed April 9, 2004 pursuant to Chapter 11 of the Public Utility Code, 66 Pa. C.S. §§ 1101 et seq., TelCove, TelCove of Pennsylvania, Inc., (TelCove PA), PECO TelCove and PECO Energy Co. (PECO) seek Commission approval of the sale transfer of the 50% partnership interest in PECO TelCove owned by PECO and its affiliate, PHT Holdings, LLC (PHT) to TelCove Holdings of Pennsylvania (TelCove Holdings). Secondly, PECO TelCove, TelCove PA, TelCove Investment, LLC (TelCove Invest) and TelCove Operations (TelCove Opns) filed individual securities certificates of \$45 million to facilitate TelCove Holdings of Pennsylvania's purchase of PECO and PHT combined 50% interest in PECO TelCove. Specifically, \$25 million will be utilized to purchase PECO and PHT's combined 50% interest in PECO TelCove as well as a portion of certain fiber optic assets from PECO.

I concur with Staff's recommendation to approve the filings; however, I believe the specific circumstances of these filings warrant further comment. Initially, I note that these transactions evolve from TelCove's recent Chapter 11 Reorganization

¹ These entities had been formerly known as Adelpia Business Solutions, Inc. (parent), Adelpia Business Solutions Operations, Inc., Adelpia Business Solutions Investment, LLC, Adelpia Business Solutions of Pennsylvania, Inc. Formal notice of the name changes have been filed with the Commission.

Plan². Perhaps more telling is that Pennsylvania TelCove utilities as well as other operating facilities and subsidiaries will act either as co-borrowers or guarantors for this revolving credit facility. While there does not appear to be insulation or ring-fencing of the regulated Pennsylvania entities for this revolving credit facility, the record indicates that the entities intend to maintain the debt ratio at a conservative level which will allow TelCove to maintain sufficient liquidity.

In my view, any financial transaction of a parent entity which purports to pledge a regulated Pennsylvania subsidiary or affiliate as a security for borrowing should be examined carefully. Securities filings and transactions, such as these, are frequently integral components of reorganization plans and financial offerings submitted for Commission approval. Going forward, it is my hope that the Commission and Staff will continue to examine financial filings with the level of scrutiny necessary to ensure that regulated entities are afforded optimum protection and insulation, as provided under the law, in financial transactions conducted at the corporate parent level.

6.24.04

DATE

Wendell F. Holland

WENDELL F. HOLLAND, COMMISSIONER

² At an April 29, 2004 Public Meeting, the Commission approved certain transactions related to TelCove's Reorganization Plan.



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

IN REPLY PLEASE
REFER TO OUR FILE

JUNE 24, 2004

A-310378F0006 etal.

MICHAEL D KLEIN ESQUIRE
LEBOEUF LAMB
GREENE & MACRAE
200 NORTH THIRD STREET 300
PO BOX 12105
HARRISBURG PA 17108-2105

DOCUMENT

Joint Application of TelCove, Inc., PECO TelCove, TelCove of Pennsylvania, Inc., and PECO Energy Co., for approval of the transfer of the interest in PECO TelCove held by PECO Energy Co., and an affiliate to TelCove Holdings of Pennsylvania, Inc., together with approval of the transfer of certain fiber assets to PECO TelCove and approval of an amended fiber lease.

A-310378F0006
A-310470F0009
A-110550F0347
D159

Securities certificates of each PECO TelCove, TelCove of Pennsylvania Inc., TelCove Investment, LLC and TelCove Operations, Inc., for their entry into a revolving credit facility not to exceed in aggregate principal amount \$45 million.

S-00040994
S-00040995
S-00040996
S-00040997

DOCKETED

JUL 16 2004

To Whom It May Concern:

This is to advise you that the Commission in Public Meeting on June 24, 2004 has adopted an Order in the above entitled proceeding.

An Order has been enclosed for your records.

Very truly yours,

James J. McNulty
Secretary

fg
encls
cert. mail
BRIAN T FITZGERALD ESQUIRE
LEBOEUF LAMB
GREENE & MACRAE
90 WASHINGTON AVENUE
SUITE 2020
ALBANY NY 12210-2920

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

Public Meeting held June 24, 2004

Commissioners Present:

Terrance J. Fitzpatrick, Chairman
Robert K. Bloom, Vice Chairman
Glen R. Thomas
Kim Pizzingrilli
Wendell F. Holland, Statement attached

DOCKETED

JUL 16 2004

Joint application of TelCove, Inc., PECO TelCove, TelCove of Pennsylvania, Inc., and PECO Energy Co. for approval of the transfer of the interest in PECO TelCove held by PECO Energy Co. and an affiliate to TelCove Holdings of Pennsylvania, Inc., together with approval of the transfer of certain fiber assets to PECO TelCove and approval of an amended fiber lease.

Docket Nos.:
A-310378 F0006
A-310470 F0009
A-110550 F0347

Securities certificates of each of PECO TelCove, TelCove of Pennsylvania, Inc., TelCove Investment, LLC and TelCove Operations, Inc. for their entry into a revolving credit facility not to exceed in aggregate principal amount \$45 million.

S-00040994
S-00040995
S-00040996
S-00040997

ORDER

DOCUMENT

BY THE COMMISSION:

On April 9, 2004, TelCove, Inc. (TelCove), TelCove of Pennsylvania, Inc. (TelCove PA), PECO TelCove and PECO Energy Co. (PECO) filed the above-captioned joint application pursuant to Chapter 11 of the Public Utility Code, 66 Pa. C.S. §§1101, *et seq.*, seeking approval of the transfer, by sale, of the 50% partnership interest in PECO TelCove owned by PECO and its affiliate, PHT Holdings, LLC (PHT), to TelCove Holdings of Pennsylvania (TelCove Holdings).

On May 7, 2004, PECO TelCove, TelCove PA, TelCove Investment, LLC (TelCove Invest) and TelCove Operations, Inc. (TelCove Opns) each filed a separate securities certificate for a single revolving credit facility for up to \$45 million, much of which will be used to provide partial funding of the purchase of PECO's interest in PECO TelCove and the related purchase of fiber assets by PECO TelCove from a PECO affiliate. On May 28, 2004, the filers of the securities certificates volunteered an extension of the statutory consideration period to June 25, 2004.

TelCove, Inc. is the publicly-owned direct or indirect parent of all four of the utilities that together filed the instant application and the securities certificates.¹ Each of the TelCove utilities holds authority as a CLEC, CAP, IXC and IXC reseller. PECO TelCove is a partnership with TelCove PA holding a 50% partnership interest and with PECO and PHT holding a 1% and 49% interest respectively. PECO is an integrated electric and gas utility and is a direct subsidiary of Exelon Corp., a registered public utility holding company.

The Joint Application

By the instant joint application, the parties now seek approval of the exit by PECO and PHT from participation in PECO TelCove. Specifically, their combined 50% interest will be bought by a non-jurisdictional subsidiary of

¹ On May 20, 2004, TelCove Opns, TelCove Invest and TelCove PA filed formal notice that their name changes incorporating the TelCove name for themselves and for their ultimate parent had become effective. Formerly they had been known as Adelpia Business Solutions Operations, Inc., Adelpia Business Solutions Investment, LLC, Adelpia Business Solutions of Pennsylvania, Inc., respectively, and the parent as Adelpia Business Solutions, Inc.

TelCove PA called TelCove Holdings of Pennsylvania, Inc. (TelCove Holdings). Thus TelCove PA will become, directly and indirectly, the holder of all the partnership interests in PECO TelCove. At the close of that transaction, the partnership will be renamed TelCove of Eastern Pennsylvania.

Related to the transfer of partnership interests is a proposed transfer by sale of certain fiber assets currently leased by PECO TelCove from a non-jurisdictional PECO affiliate, Exelon Communications Company, LLC (Exelon Communications). That fiber is being purchased by PECO TelCove, and that necessitates a revision of the fiber lease agreement between those two parties.² The amended lease has been filed with the instant application and the parties seek approval of the amended lease, since that is the vehicle for the transfer of the remaining leased fiber “by any means or device whatsoever, ... including sale or lease ...” and therefore requires our prior approval. 66 Pa. C.S. §1102(a)(3).

In their application, the parties have pointed to certain advantages to the proposed ownership of PECO TelCove. They believe that further integration of the assets and finances of PECO TelCove with those of the other TelCove operating companies will afford better access to capital. Further, over the applicants, consolidation of PECO TelCove’s customer base and assets with those of the other TelCove entities will result in purchasing economies. Such improvements allow the proposed transaction to meet the standard set by *City of York v. Penna. Public Utility Comm.*, 446 Pa. 136, 295 A.2d 825 (1972), that the change in control provide an affirmative public benefit. Moreover, management of PECO TelCove will continue in place and all services will continue to be provided

² The lease was originally between PECO TelCove and PECO and was approved by the Commission in 1996 at A-110550 F0121. As part of PECO’s restructuring in 2000, most of the fiber was transferred to Exelon Communications.

to customers pursuant to PECO TelCove's currently effective tariffs, making the transaction transparent to those customers.

The Four Securities Certificates

The securities certificates that have been filed by PECO TelCove and its three sister utilities are substantially identical and concern a revolving credit facility that initially will be used to finance a portion of the \$17 million cost of the fiber purchase and the \$25 million cost of the purchase of the combined 50% partnership interest. In addition to the four Pennsylvania TelCove utilities, nine other TelCove operating subsidiaries will be coborrowers and a further nine subsidiaries, including TelCove Holdings, will act as guarantors for loans made under the credit facility.

TelCove and several of its subsidiaries recently emerged from bankruptcy as a reorganized and recapitalized organization. On a consolidated basis, TelCove emerged from bankruptcy with no debt, \$22 million of other long-term liabilities and over \$300 million of shareholder equity. The company has provided, on a proprietary basis, projections of its financial condition for the end of June 2004 showing that it plans to add only a small additional amount of long-term debt later in the year. Consequently, the consolidated debt ratio will be well under 30%, a very conservative level, even if the credit facility were fully drawn down. The projections included appropriate schedules that allow us to be satisfied that TelCove will have sufficient cash flow to service the debt.

Interest on borrowings under the facility is to be variable and will be based on the borrowers' choice of the prime rate of Wachovia Bank, N.A. or an adjusted Eurodollar rate and will incorporate spreads over those basis rates to be determined

at closing. Final maturity will be three years from the issue date, but the term may be extended for two one-year periods by mutual consent of the parties.

Conclusion

We have reviewed the application concerning the transfer of PECO's present partnership interest in PECO TelCove, the transfer of certain fiber assets to PECO TelCove and the amended lease for the remaining leased fiber, and we find that the transfers are necessary or proper for the service, accommodation, convenience, or safety of the public. We have also reviewed the securities certificates of the four TelCove utilities and find that the \$45 million revolving credit facility is necessary and proper for the present and probable future capital needs of the utilities, and that the securities certificates should be registered;
THEREFORE;

IT IS ORDERED:

1. That the joint application of TelCove, Inc., PECO TelCove, TelCove of Pennsylvania, Inc., and PECO Energy Co. for approval of the transfer of the interest in PECO TelCove held by PECO Energy Co. and an affiliate to TelCove Holdings of Pennsylvania, Inc., together with the transfers of fiber assets by sale and by lease to PECO TelCove, is hereby approved.

2. That certificates of public convenience be issued evidencing our approval, and that the application be marked closed for all three utility applicants.

3. That notice of the date of the consummation of the transaction approved in Ordering Paragraph No. 1, above, be filed within 60 days of such

consummation, together with a prospectus or other summary of the final terms of the credit facility.

4. That the notice of consummation required by Ordering Paragraph No. 3, above, be accompanied, if appropriate, by notice of the change in the name of PECO TelCove, Inc. together with proper tariff supplements.

5. That if the parties determine that one or more of the transfers will not be consummated, PECO TelCove, Inc. promptly file with this Commission notice of such determination.

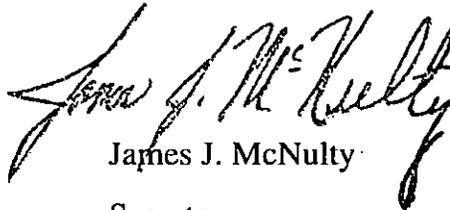
6. That the securities certificate of PECO TelCove, Inc. at S-00040994 for its entry into a revolving credit facility is hereby registered.

7. That the securities certificate of TelCove of Pennsylvania, Inc. S-00040995 for its entry into a revolving credit facility is hereby registered.

8. That the securities certificate of TelCove Investment, Inc. at S-00040996 for its entry into a revolving credit facility is hereby registered.

9. That the securities certificate of TelCove Operations, Inc. at S-00040997 for its entry into a revolving credit facility is hereby registered.

BY THE COMMISSION

A handwritten signature in black ink, appearing to read "James J. McNulty". The signature is written in a cursive style with a large, sweeping initial "J".

James J. McNulty

Secretary

(SEAL)

ORDER ADOPTED: June 24, 2004

ORDER ENTERED: JUN 24 2004

**PENNSYLVANIA PUBLIC UTILITY COMMISSION
HARRISBURG, PENNSYLVANIA 17105-3265**

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Wendell F. Holland

WENDELL F. HOLLAND, COMMISSIONER

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