



OFFICE OF CONSUMER ADVOCATE

555 Walnut Street 5th Floor, Forum Place
Harrisburg, Pennsylvania 17101-1923
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ORIGINAL

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E-Mail: paoca@ptd.net

IRWIN A. POPOWSKY
Consumer Advocate

February 21, 2003

James J. McNulty, Secretary
PA Public Utility Commission
Commonwealth Keystone Bldg.
400 North Street
P.O. Box 3265
Harrisburg, PA 17120

DOCUMENT

RECORDED
03 FEB 21 PM 3:54
PA P.U.C.
SECRETARY'S BUREAU

Re: Pa. Public Utility Commission
v.
PECO Energy Company
Docket No. R-00038102 C0001

Dear Secretary McNulty:

Enclosed for filing please find an original and three copies of the Formal Complaint and Public Statement of the Office of Consumer Advocate in the above-referenced proceeding.

Sincerely yours,

James A. Mullins
James A. Mullins
Assistant Consumer Advocate

Enclosure

- cc: Cheryl Walker-Davis, Office of Special Assistance
- Robert Bennett, Bureau of Fixed Utility Services
- Office of Trial Staff
- Office of Small Business Advocate

ORIGINAL

FORMAL COMPLAINT
BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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SECRETARY'S BUREAU

For Commission Use Only:

R-000 38102 C0001

COMPLAINT DOCKET NO. _____ REF. # _____ UTILITY CODE _____

PLEASE PRINT: _____ VS. _____

DOCKETED

MAR 06 2003

1. YOUR NAME, ADDRESS AND TELEPHONE NUMBER.

Name Irwin A. Popowsky, Consumer Advocate
Street 555 Walnut Street 5th Floor, Forum Place
City Harrisburg State Pennsylvania Zip 17101-1923
County Dauphin Work Telephone-Area Code (717) 783-5048

2. COMPANY YOU ARE COMPLAINING ABOUT.

Name PECO Energy Company

DOCUMENT

3. WHAT IS YOUR COMPLAINT? (DESCRIBE PROBLEM).

A. On December 31, 2002, PECO Energy Company ("PECO" or "Company") filed Supplement No. 44 to its Tariff Electric Pa. P.U.C. No. 3. This filing was made pursuant to page 33 of Tariff Electric Pa. P.U.C. No. 3, which provides for the recovery of nuclear decommissioning costs related to PECO's interest in nuclear generation as of December 31, 1999. Recovery of nuclear decommissioning costs is provided through the Nuclear Decommissioning Cost Adjustment ("NDCA") clause, which is charged to all PECO customers in a cents/Kwh charge calculated to the nearest one hundredth of one cent. The first calculation of the NDCA is considered to have taken place on

For Commission Use Only:

DATE FILED / / MONITOR _____ BUREAU _____

January 1, 1998 and, since the annual expense is to be recalculated every five years, Supplement No. 44 was filed in accordance with this requirement. According to the Company's filing, implementation of Supplement No. 44 on January 1, 2004 will result in an increase to the NDCA from \$0.0000/Kwh to \$0.0006/Kwh, or an annual increase of \$19.8 million. This represents an increase of 0.56% in total operating revenue for the 12 months ended September 30, 2002 and an increase of 1.10% in revenues adjusted to exclude energy sales revenues for the same time period. The increase in the NDCA will result in an increase of \$0.30 per month or \$3.60 per year to a residential customer using 500kWh per month.

- B. In 1998, the Commission's Order in Application of PECO Energy Company for Approval of its Restructuring Plan Under Section 2806 of the Public Utility Code, et al adopted the Joint Petition for Full Settlement entered into by the active parties to the proceeding. The Joint Petition addressed a number of issues raised in the Company's restructuring filing, including a rate cap on PECO's transmission and distribution rates until June 30, 2005 and the Company's decommissioning costs. As to decommissioning costs, paragraph 20 of the Joint Petition states that: "PECO may, if necessary, request recovery of additional nuclear decommissioning expense after January 1, 2004, and such expense recovery will not be subject to any rate cap." See Joint Petition at ¶ 21.
- C. PECO is an electric distribution company which serves roughly 1.53 million customers in the following Pennsylvania counties: Bucks, Chester, Delaware, Montgomery, Philadelphia and York. Exelon Corporation is the parent company of

PECO.

- D. The Consumer Advocate is empowered to represent the interests of consumers before the Pennsylvania Public Utility Commission, pursuant to Act 161 of the General Assembly, as amended. 71 P.S. §§ 309-1, et seq.
- E. Upon preliminary review of PECO's filing, the Consumer Advocate believes that the Company's proposal and proposed changes in rates are or may be unjust and unreasonable. Specifically, the OCA submits that PECO's proposed decommissioning costs of \$19.8 million per year must be carefully examined prior to any implementation to ensure that, among other things, the increase to the NDCA is properly calculated and in conformance with the regulations of the Nuclear Regulatory Commission and with all applicable settlements, including the PECO/Unicom merger settlement. Although, the Joint Petition did not preclude recovery of decommissioning costs solely based on the existence of the applicable transmission and distribution rate caps, any increase in decommissioning costs must still be shown to be reasonable, properly determined and must result in rates that meet the PUC's requirements for justness and reasonableness.
- F. The Consumer Advocate files this Complaint to ensure that the issues identified above are thoroughly examined prior to implementation of the Company's proposed filing.

4. WHAT DO YOU WANT US TO DO?

The Consumer Advocate respectfully requests that the Public Utility Commission:

- A. Suspend and investigate the operation of the proposed tariff supplement, pursuant to Section 1308(d) of the Public Utility Code, 66 Pa. C.S. § 1308(d);

- B. Conduct an investigation of PECO's Supplement No. 44 to its Tariff Electric Pa. P.U.C. No. 3;
- C. Hold full evidentiary hearings examining the reasonableness of PECO's proposal;
- D. Deny any change in PECO's rates which is unjust, unreasonable, unduly discriminatory or inconsistent with the Public Utility Code, including Chapters 13 and 28;
- E. Grant such other relief which the Commission may deem to be necessary and proper.

YOU MUST SIGN AND DATE YOUR COMPLAINT.

The information I have placed on this form is true and correct to the best of my knowledge. I understand that I could be punished under Pennsylvania State Law if I purposely give false information.


 Signature of complainant

2/21/03
 February 21, 2003

YOU DO NOT NEED A LAWYER If you DO have a lawyer PLEASE PRINT the lawyer's name, address and telephone number below.

Lawyer's Name Tanya J. McCloskey and James A. Mullins

Office of Consumer Advocate

Street 555 Walnut Street, 5th Floor, Forum Place

City Harrisburg State PA Zip 17101-1923

Telephone Number-Area Code (717) 783-5048

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PUBLIC STATEMENT OF THE CONSUMER ADVOCATE ISSUED IN ACCORDANCE WITH SECTION 904-(e) OF ACT OF APRIL 9, 1929 (P.L. 177, NO. 175), KNOWN AS "THE ADMINISTRATIVE CODE OF 1929", AS AMENDED BY ACT 161 OF 1976 (APPROVED JULY 9, 1976)

Act 161 of the Pennsylvania General Assembly, 71 P.S. § 309-2, as enacted July 9, 1976, authorizes the Consumer Advocate to represent the interests of consumers before the Pennsylvania Public Utility Commission ("PUC" or "Commission"). In accordance with Act 161, and for the following reasons, the Consumer Advocate determined to file a Formal Complaint and participate in proceedings before the Commission involving the proposed Supplement No. 44 to Tariff Electric Pa. P.U.C. No. 3, filed by PECO Energy Company ("PECO" or "Company").

PECO's filing was made pursuant to page 33 of Tariff Electric Pa. P.U.C. No. 3, which provides for the recovery of nuclear decommissioning costs related to PECO's interest in nuclear generation as of December 31, 1999. Recovery of nuclear decommissioning costs is provided through the Nuclear Decommissioning Cost Adjustment ("NDCA") clause, which is charged to all PECO customers in a cents/Kwh charge calculated to the nearest one hundredth of one cent. The first calculation of the NDCA is considered to have taken place on January 1, 1998 and, since the annual expense is to be recalculated every five years, Supplement No. 44 was filed in accordance with this requirement. According to the Company's filing, implementation of Supplement No. 44 on January 1, 2004 will result in an increase to the NDCA from \$0.0000/Kwh to \$0.0006/Kwh, or an annual increase of \$19.8 million.

PECO is an electric distribution company which serves roughly 1.53 million customers in the following Pennsylvania counties: Bucks, Chester, Delaware, Montgomery, Philadelphia and York. Exelon Corporation is the parent company of PECO.

The objective of the Consumer Advocate in filing a Formal Complaint in this matter is to protect the interests of the Company's customers. The Consumer Advocate will seek to ensure that the Company is only permitted to implement rates which are consistent with the restructuring Settlement and only those rates which are just and reasonable. The Consumer Advocate will strive to prevent the Company from collecting any costs from ratepayers that are not fully justified, or are otherwise unreasonable or contrary to law.

Specifically, the Consumer Advocate seeks to ensure that, among other things, the increase to the NDCA is properly calculated and in conformance with the Public Utility Code and all applicable settlements, including the PECO/Unicom merger settlement.

CERTIFICATE OF SERVICE

Re: Pennsylvania Public utility Commission
v.
PECO Energy Company
Docket No. R-00038102

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I hereby certify that I have this day served a true copy of the foregoing documents, Office of Consumer Advocate's Formal Complaint and Public Statement, upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant), in the manner and upon the persons listed below:

Dated this 21st day of February, 2003.

SERVICE BY U.S. MAIL, POSTAGE PREPAID

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Senate Democratic Appropriations Com.
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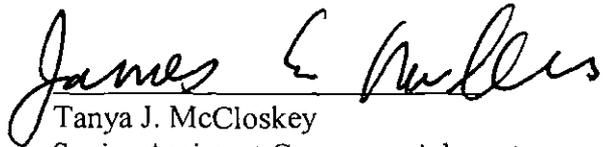
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Philadelphia, PA 19141

Brian D. Crowe, Esq.
PECO Energy Company
2301 Market Street, S15-2
Philadelphia, PA 19101-8699



Tanya J. McCloskey
Senior Assistant Consumer Advocate
James A. Mullins
Assistant Consumer Advocate

Counsel for
Office of Consumer Advocate
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Harrisburg, PA 17101-1923
(717) 783-5048

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SECRETARY'S BUREAU

COMMONWEALTH OF PENNSYLVANIA

DATE: February 25, 2003

DOCKETED
MAR 06 2003

SUBJECT: R-00038102C0001

TO: Office of Administrative Law Judge

DOCUMENT

FROM:  James J. McNulty, Secretary

OFFICE OF CONSUMER ADVOCATE

v.

PECO ENERGY COMPANY - ELECTRIC DIVISION

Attached is copy of a formal complaint filed in connection with the above docketed proceeding.

This matter is assigned to your office for necessary action.

Attachment - copy of complaint

cc: Bureau of Fixed Utility Services - w/copy of complaint
Office of Trial Staff - w/copy of complaint
Office of Special Assistants - w/copy of complaint

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

February 25, 2003

DOCKETED
MAR 06 2003

BRIAN D. CROWE, DIRECTOR
2301 MARKET STREET, S15-2
PO BOX 8699
PHILADELPHIA PA 19101-8699

RE: PA PUC vs PECO ENERGY COMPANY – ELECTRIC DIVISION
Docket Number R-00038102C0001

DOCUMENT

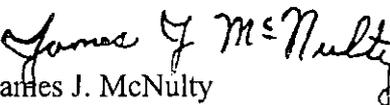
Dear Sir/Madam:

A Complaint has been filed against you in the above-captioned matter before the Pennsylvania Public Utility Commission by OFFICE OF CONSUMER ADVOCATE.

This complaint, of which the attached is a true and correct copy, has been presented and filed of record with the Pennsylvania Public Utility Commission. The Pennsylvania Public Utility Code, 66 Pa. C.S., requires the Commission to serve on each party named in a complaint a copy of the complaint.

Within twenty (20) days from the date on which this complaint is served, you may either satisfy this complaint or comply with the provisions of 52 Pa. Code, Section 5.61 et seq., as amended.

Very truly yours,


James J. McNulty
Secretary

(SEAL)

Certified Mail
Return Receipt Requested

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**BEFORE THE
PENNSYLVANIA
PUBLIC UTILITY COMMISSION**

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SECRETARY'S OFFICE
BUREAU

PA Public Utility Commission : Docket No.
v. PECO Energy Company : R-0038102

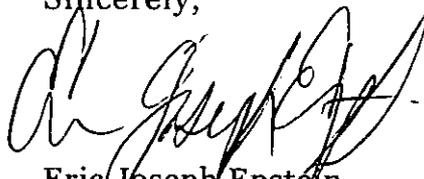
**Complaint of
Eric Joseph Epstein, Pro se**

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
Commonwealth Avenue and North Street
Harrisburg, PA 17120

Dear Secretary McNulty:

Enclosed please find and Original and Three (3) Copies of af Eric Joseph Epstein's Formal Complaint in the Above-Captioned Proceeding.

Sincerely,



Eric Joseph Epstein
4100 Hillsdale Road
Harrisburg, PA 17112
O: (717)-238-7318
F: (717)-541-5487
eepstein@igc.apc.org

UCC
MAR 11 2003

DOCUMENT

February 28, 2003

Enclosure

21

CERTIFICATION OF SERVICE

I hereby certify that I have this day served a true and correct copy of the foregoing document upon the active participants named below by US mail or hand delivery in accordance with the requirements of 52 Pa. Code § Section 1.54.

Thomas P. Gadsen
Anthony C. DeCusatis
Morgan, Lewis & Bockius, LLP
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Philadelphia, PA 19103-2921

Charis M. Burak
David M. Kleppinger
McNees, Wallace & Nurick
100 Pine Street, PO Box 1166
Harrisburg, PA 17108-1166

Paul R. Bonney
Kent D. Murphy
PECO Energy Company
2301 Market Street
Philadelphia, PA 19101-8699

Tanya J. McCloskey, Senior Assistant
James A. Mullins, Assistant
Office of Consumer Advocate
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Harrisburg, PA 17120

Kenneth Mickens
Senior Prosecutor, Office of Trial Staff
Pennsylvania PUC
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
Commonwealth Avenue and North Street
Harrisburg, PA 17120

Office of Small Business Advocate
Carol Pennington
Suite 1102, Commerce Building
300 North Second Street
Harrisburg, PA 17101

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Cheryl Walker-Davis, Office of Special Assistance
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
Commonwealth Avenue and North Street
Harrisburg, PA 17120

Robert Bennett, Bureau of Fixed Utility Services
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
Commonwealth Avenue and North Street
Harrisburg, PA 17120

Respectfully submitted,



Eric Joseph Epstein, *Pro se*
4100 Hillsdale Road
Harrisburg, PA 17112

DATE: February 28, 2003

cc: Act

Formal Complaint Form
Pennsylvania Public Utility Commission

SECRETARY'S BUREAU

2003 MAR -9 AM 8:50

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Please Print: (you may also type your answers directly onto the form as it appears on your screen)

1. Your name, mailing address and telephone number:

Name Eric Joseph Epstein, Pro se

Street/P.O.Box 4100 Hillsdale Road Apt # _____

City Harrisburg State PA Zip 17112

County Dauphin Area Code/Home Phone 717-540-5773
Area Code/Work Phone 717-541-1101

2. Name of company your complaint concerns: PECO Energy Company

3. What is your complaint? (Use additional paper if need more space).

1- PECO Energy Company filed Tariff Supplement No 44 required under 52 Pa. Code 53.52 (a) on December 31, 2002;
2- The proposed Tariff will increase the annual Nuclear Decommissioning Cost Adjustment by \$19.8 million;
3- Mr. Epstein is a Signatory to the Joint Petition for Negotiated Settlement approved by the Public Utility Commission;
(Continued in Enclosure I)

4. What do you want the Public Utility Commission to do about your complaint? (Use additional paper if need more space).

1 - Suspend and investigate the proposed supplemental tariff;
2 - Order an investigation of PECO Energy's Tariff Supplement No. 44;
3 - Convene full evidentiary hearings;
4- Deny any rate increase inconsistent with the spirit and substance of the Public Utility Code; and,
5 - Grant appropriate, necessary and expedient relief.

5. You must sign and date your complaint below.

The information I have placed on this form is true and correct to the best of my knowledge. I understand that I could be punished under Pennsylvania State Law if I purposely give false information.

Signature

Date

Continued on next page

DOCUMENT DOCKETED
MAR 11 2003

Enclosure I

3. What is your complaint? (Continued)

4 - Eric Joseph Epstein and PECO Energy entered into an Agreement known as Appendix B: Nuclear Decommissioning and Waste Monitoring Agreement BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION Application of PECO Energy Company, Pursuant to Chapters 11, 19, 21, 22, & 28 of the Public Utility Code, for Approval of (1) A Plan of Corporate Restructuring, Including the Creation of A Holding Company and (2) The Merger of the Newly Formed Holding Company and Unicom Corporation Application Docket No. A-110550F0147;

5 - The Agreement explicitly deals with issues relating to nuclear decommissioning and is in force until 2005;

6 - Mr. Epstein's initial review of PECO Energy Company's Supplement No. 44 to its Tariff indicates that The Company's request is unreasonable and unjust, and numerous outstanding issues need to be addressed, including, but not limited to:

(1) - **First and foremost is the absence of site-specific studies for Peach Bottom 1, 2 & 3, Limerick 1 & 2 and Salem 1 & 2.** PECO simply adjusted the NDCA based on January 1, 1998 calculations which were grossly inadequate five years ago. Furthermore, **Attachments 2 & 4 do not qualify as "studies"**.

Please note that Thomas LaGuardia, the principal behind the most "recent" decommissioning studies, i.e., 1995, sold the company last year, and it is unclear if that sale has affected basic assumptions embedded in previous studies. However, Mr. LaGuardia remains employed by TLG.

- **Historically, PECO Energy has submitted inaccurate decommissioning assessments.** For example, the data from the Negotiated Settlement revealed the following discrepancies about the plants currently in play:

<i>Generating Station(s)</i>	<i>1985 Study/1995 Study (1)</i>	<i>\$ Increase (2)</i>
Limerick 1 & 2	\$272m/\$986m	\$714m
Peach Bottom 2 & 3	\$273m/\$947m	\$674m
Salem 1 & 2	\$271m/\$701m	\$430m

(These figures were omitted from (a) (11).)

The Company added that, "The original [1985] and current [1995] mode of decommissioning funding is geared toward a DECON method of decommissioning " (PECO's Response to EE-I-4, d.) However, since there is no permanent nuclear waste isolation site for spent fuel, SAFSTOR is the most likely decommissioning mode available when PECO's nuclear plants come off-line.

PECO has recently demonstrated difficulty accurately predicting decommissioning costs. "Exelon Corp. said it overstated third-quarter profits by \$27 million because of an inaccurate estimate of how one of the company's trust fund investments performed. The parent company of Commonwealth Edison said Friday that a third-party custodian of its nuclear power plant decommissioning fund had provided an inaccurate estimate for the fund's earnings during the quarter ending Sept. 30. [2001] (*Chicago Daily Herald Reports*).

1 All of the above referenced studies were conducted by TLG Industries (TLG). ComEd's net nuclear decommissioning costs **have almost doubled** from \$3,089 million in 1990 to \$5,426 million in 1999. (PECO Energy's Response to EE-I-4.)

In 1995, ComEd estimated that its decommissioning costs had risen from \$2.9 billion to \$4.2 billion.

2 "A search of ComEd's records reveals that ComEd does not have records of the initial estimates of the indicated decommissioning costs" (PECO's Response to EE-*Informal-I-4*.)

(2) - **PECO Energy erroneously advocated for an increase** based on “recovery of increased nuclear decommissioning costs related to the Company's ownership interest in Nuclear Generation 12/31/99.” (a) (1)

Mr. Epstein believes that this interpretation is factually incorrect, and in legal variance with the spirit and substance of the PECO Merger Settlement:

3. Recovery of Nuclear Costs.

“PECO will not seek to recover through Pennsylvania retail distribution, the costs associated with the ownership and operation of any nuclear generating plants which PECO did not hold on December 31, 1999”;

(3) - Based on the Restructuring Settlement, the Commission needs to address how PECO Energy will “voluntarily forego recovery of (1) \$50 million of its total decommissioning cost obligations plus (2) 5% of any additional increase in the annual accrued level above the base \$29.162 million annual accrual level”

(III. Terms and Conditions, Paragraph 13.)

It is Mr. Epstein's contention that the \$50 million clause wipes out the \$19.8 million rate increase, and that this proceeding is essentially Revenue Neutral until PECO Energy shareholders have expended an additional \$30.2 million. Simply put, the Company is not eligible to recover any additional revenues through rate relief, i.e. Tariff(s);

(4) - The rate recovery formula failed to **incorporate up-rates/ increased capacity factors at Peach Bottom 2 & 3, Limerick 1 & 2 and Salem 1 & 2**. For example, at Peach Bottom 2 and 3, the capacity factor for both units is now 1,159 MW. At the time of the last TLG study, the capacity factor was 1,035 MW. Similarly, the last TLG study at Limerick, gross MW capacity increased from 1,055 MW to 1,163 MW at each unit. Moreover, the Company issued numerous press releases in December, 2002, publicizing its 2002 capacity factors, i.e., Limerick 1 (94.24%), Limerick 2 (101.56%), Peach Bottom 2 (89.46%), Peach Bottom 3 (97.47%), Salem 1 (88.26%) and Salem 2 (85.76%).

(5) - The rate recovery formula failed to account for the **impact of Peach Bottom 2 & 3's relicensing and proposed license extensions for Limerick 1 & 2 and Salem 1 & 2.**

The Nuclear Regulatory Commission (NRC) has established the following milestones towards anticipated approval of license extensions for Peach Bottom 2 & 3. Final Inspection Report (December, 2002); Final Safety Evaluation Report (December, 2002); Final Environmental Impact Statement (February, 2003); Safety Analysis Report (March, 2003); Staff Review (April, 2003); **Nuclear Reactor Regulation, Director's Decision** (April, 2003).

To date, the NRC has approved each and every licensee application for license extension. This eventual certainty increases the ability of PECO Energy to recover decommissioning costs by at least 20 years. The licensing process typically averages \$18 million over a 24 month period. Extension requests are expected for Limerick 1 & 2 and Salem 1 & 2.

Two additional issues have to be fully addressed: 1) Peach Bottoms' extended 20-year operating period; and, 2) The possibility that Limerick and Salem will likely apply and receive approval to extend their license **prior** to the next five-year nuclear decommissioning study;

(6) - The rate recovery formula failed to account for the **advent and implementation of new nuclear decommissioning regulations** promulgated by the Nuclear Regulatory Commission, i.e. the Final Report to the Generic Environmental Impact Statement on the Decommissioning of Nuclear Facilities: Dealing with Decommissioning of Nuclear Power Reactors, U.S. N.R.C. Office of Nuclear Reactor Regulation (December 13, 2002).

In addition, Congress is considering amending Internal Revenue Code section 468A which denies tax deductions for decommission funds;

(These documents were omitted from (a) (11).

(7) - The Exelon/AmerGen fleet of ten nuclear generation stations and seventeen nuclear units is now organized under an **Amended and Restated Nuclear Decommissioning Master Trust Agreement** approved by the NRC on October 16, 2001. The rate recovery formula failed to account for this economic consolidation.

(This document was omitted from (a) (11).)

This arrangement provides for increased earnings potential, but also affects the sanctity of the externally segregated funding Agreements utilized in the Commonwealth of Pennsylvania. And as stated above, this arrangement has implications for the implementation of accelerated recovery under IRS 468A. Further complicating this situation is AmerGen's (50% Exelon/50% British Energy) proposed sale of Clinton, Oyster Creek, and Three Mile Island Unit -1.

The Commission and all interested parties need to fully investigate the potential impacts of this development.

(This document was omitted from (a) (7), (b) 91) & (b(2)).

(8) - High Level Radioactive Waste (HLRW) & Low Level Radioactive Waste (LLRW) challenges.

(a) HLRW: Currently, decommissioning estimates tied to the removal of HLRW have been subject to uncertainty on two fronts: 1) *Nevada v. U.S. DOE (02-1116)* was filed January, 2003, with the U.C. Court of Appeals by Nevada's Attorney General Brian Sandoval; and, 2) FY-04 Budget for civilian nuclear waste is currently underfunded by \$131 million. The Bush Administration is seeking a "discretionary spending cap adjustment" for the Yucca Project

(These documents were omitted from (b) (1).

(b) LLRW: Waste shipment issues to be dealt with Spring, 2002:
Postponement of Diablo Canyon's decommissioning shipment, i.e. reactor vessel, to Barnwell, and the resolution of Envirocare and the State of Utah in regard to isolation of Class "A", "B" and "C" waste byproducts in a private waste facility.

(These documents were omitted from (b) (1)).

(9) - Resolution of a nuclear industry challenge to the PECO Energy/DOE Settlement. The deal with the Department of Energy would "allow PECO Energy Co. to defer up to \$80 million in nuclear waste fee payments for its Peach Bottom plant in Pennsylvania, to compensate for the Energy Department's failure to store its waste...The deal allows PECO to reduce the projected charges passed into the Nuclear Waste Fund to reflect costs reasonably incurred by the company due to the department's delay" (Press Release, U.S. Department of Energy. July 20, 2000.)

(These documents were omitted from (a) (7); (a) (11) (b) (1)).

Enclosure I

3. What is your complaint? (Continued)

4 - Eric Joseph Epstein and PECO Energy entered into an Agreement known as Appendix B: Nuclear Decommissioning and Waste Monitoring Agreement BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION Application of PECO Energy Company, Pursuant to Chapters 11, 19, 21, 22, & 28 of the Public Utility Code, for Approval of (1) A Plan of Corporate Restructuring, Including the Creation of A Holding Company and (2) The Merger of the Newly Formed Holding Company and Unicom Corporation Application Docket No. A-110550F0147;

5 - The Agreement explicitly deals with issues relating to nuclear decommissioning and is in force until 2005;

6 - Mr. Epstein's initial review of PECO Energy Company's Supplement No. 44 to its Tariff indicates that The Company's request is unreasonable and unjust, and numerous outstanding issues need to be addressed, including, but not limited to:

(1) - **First and foremost is the absence of site-specific studies for Peach Bottom 1, 2 & 3, Limerick 1 & 2 and Salem 1 & 2.** PECO simply adjusted the NDCA based on January 1, 1998 calculations which were grossly inadequate five years ago. Furthermore, **Attachments 2 & 4 do not qualify as "studies"**.

Please note that Thomas LaGuardia, the principal behind the most "recent" decommissioning studies, i.e., 1995, sold the company last year, and it is unclear if that sale has affected basic assumptions embedded in previous studies. However, Mr. LaGuardia remains employed by TLG.

- **Historically, PECO Energy has submitted inaccurate decommissioning assessments.** For example, the data from the Negotiated Settlement revealed the following discrepancies about the plants currently in play:

<i>Generating Station(s)</i>	<i>1985 Study/1995 Study (1)</i>	<i>\$ Increase (2)</i>
Limerick 1 & 2	\$272m/\$986m	\$714m
Peach Bottom 2 & 3	\$273m/\$947m	\$674m
Salem 1 & 2	\$271m/\$701m	\$430m

(These figures were omitted from (a) (11).)

The Company added that, "The original [1985] and current [1995] mode of decommissioning funding is geared toward a DECON method of decommissioning " (PECO's Response to EE-I-4, d.) However, since there is no permanent nuclear waste isolation site for spent fuel, SAFSTOR is the most likely decommissioning mode available when PECO's nuclear plants come off-line.

PECO has recently demonstrated difficulty accurately predicting decommissioning costs. "Exelon Corp. said it overstated third-quarter profits by \$27 million because of an inaccurate estimate of how one of the company's trust fund investments performed. The parent company of Commonwealth Edison said Friday that a third-party custodian of its nuclear power plant decommissioning fund had provided an inaccurate estimate for the fund's earnings during the quarter ending Sept. 30. [2001] (*Chicago Daily Herald Reports*).

1 All of the above referenced studies were conducted by TLG Industries (TLG). ComEd's net nuclear decommissioning costs **have almost doubled** from \$3,089 million in 1990 to \$5,426 million in 1999. (PECO Energy's Response to EE-I-4.)

In 1995, ComEd estimated that its decommissioning costs had risen from \$2.9 billion to \$4.2 billion.

2 "A search of ComEd's records reveals that ComEd does not have records of the initial estimates of the indicated decommissioning costs" (PECO's Response to EE-*Informal-I-4*.)

(2) - **PECO Energy erroneously advocated for an increase** based on “recovery of increased nuclear decommissioning costs related to the Company's ownership interest in Nuclear Generation 12/31/99.” (a) (1)

Mr. Epstein believes that this interpretation is factually incorrect, and in legal variance with the spirit and substance of the PECO Merger Settlement:

3. Recovery of Nuclear Costs.

“PECO will not seek to recover through Pennsylvania retail distribution, the costs associated with the ownership and operation of any nuclear generating plants which PECO did not hold on December 31, 1999”;

(3) - Based on the Restructuring Settlement, the Commission needs to address how PECO Energy will “voluntarily forego recovery of (1) \$50 million of its total decommissioning cost obligations plus (2) 5% of any additional increase in the annual accrued level above the base \$29.162 million annual accrual level”

(III. Terms and Conditions, Paragraph 13.)

It is Mr. Epstein's contention that the \$50 million clause wipes out the \$19.8 million rate increase, and that this proceeding is essentially Revenue Neutral until PECO Energy shareholders have expended an additional \$30.2 million. Simply put, the Company is not eligible to recover any additional revenues through rate relief, i.e. Tariff(s);

(4) - The rate recovery formula failed to **incorporate up-rates/ increased capacity factors at Peach Bottom 2 & 3, Limerick 1 & 2 and Salem 1 & 2**. For example, at Peach Bottom 2 and 3, the capacity factor for both units is now 1,159 MW. At the time of the last TLG study, the capacity factor was 1,035 MW. Similarly, the last TLG study at Limerick, gross MW capacity increased from 1,055 MW to 1,163 MW at each unit. Moreover, the Company issued numerous press releases in December, 2002, publicizing its 2002 capacity factors, i.e., Limerick 1 (94.24%), Limerick 2 (101.56%), Peach Bottom 2 (89.46%), Peach Bottom 3 (97.47%), Salem 1 (88.26%) and Salem 2 (85.76%).

(5) - The rate recovery formula failed to account for the **impact of Peach Bottom 2 & 3's relicensing and proposed license extensions for Limerick 1 & 2 and Salem 1 & 2.**

The Nuclear Regulatory Commission (NRC) has established the following milestones towards anticipated approval of license extensions for Peach Bottom 2 & 3. Final Inspection Report (December, 2002); Final Safety Evaluation Report (December, 2002); Final Environmental Impact Statement (February, 2003); Safety Analysis Report (March, 2003); Staff Review (April, 2003); **Nuclear Reactor Regulation, Director's Decision** (April, 2003).

To date, the NRC has approved each and every licensee application for license extension. This eventual certainty increases the ability of PECO Energy to recover decommissioning costs by at least 20 years. The licensing process typically averages \$18 million over a 24 month period. Extension requests are expected for Limerick 1 & 2 and Salem 1 & 2.

Two additional issues have to be fully addressed: 1) Peach Bottoms' extended 20-year operating period; and, 2) The possibility that Limerick and Salem will likely apply and receive approval to extend their license **prior** to the next five-year nuclear decommissioning study;

(6) - The rate recovery formula failed to account for the **advent and implementation of new nuclear decommissioning regulations** promulgated by the Nuclear Regulatory Commission, i.e. the Final Report to the Generic Environmental Impact Statement on the Decommissioning of Nuclear Facilities: Dealing with Decommissioning of Nuclear Power Reactors, U.S. N.R.C. Office of Nuclear Reactor Regulation (December 13, 2002).

In addition, Congress is considering amending Internal Revenue Code section 468A which denies tax deductions for decommission funds;

(These documents were omitted from (a) (11).

(7) - The Exelon/AmerGen fleet of ten nuclear generation stations and seventeen nuclear units is now organized under an **Amended and Restated Nuclear Decommissioning Master Trust Agreement** approved by the NRC on October 16, 2001. The rate recovery formula failed to account for this economic consolidation.

(This document was omitted from (a) (11).)

This arrangement provides for increased earnings potential, but also affects the sanctity of the externally segregated funding Agreements utilized in the Commonwealth of Pennsylvania. And as stated above, this arrangement has implications for the implementation of accelerated recovery under IRS 468A. Further complicating this situation is AmerGen's (50% Exelon/50% British Energy) proposed sale of Clinton, Oyster Creek, and Three Mile Island Unit -1.

The Commission and all interested parties need to fully investigate the potential impacts of this development.

(This document was omitted from (a) (7), (b) 91) & (b)(2)).

(8) - High Level Radioactive Waste (HLRW) & Low Level Radioactive Waste (LLRW) challenges.

(a) HLRW: Currently, decommissioning estimates tied to the removal of HLRW have been subject to uncertainty on two fronts: 1) *Nevada v. U.S. DOE (02-1116)* was filed January, 2003, with the U.C. Court of Appeals by Nevada's Attorney General Brian Sandoval; and, 2) FY-04 Budget for civilian nuclear waste is currently underfunded by \$131 million. The Bush Administration is seeking a "discretionary spending cap adjustment" for the Yucca Project

(These documents were omitted from (b) (1).)

(b) LLRW: Waste shipment issues to be dealt with Spring, 2002:
Postponement of Diablo Canyon's decommissioning shipment, i.e. reactor vessel, to Barnwell, and the resolution of Envirocare and the State of Utah in regard to isolation of Class "A", "B" and "C" waste byproducts in a private waste facility.

(These documents were omitted from (b) (1)).

(9) - Resolution of a nuclear industry challenge to the PECO Energy/DOE Settlement. The deal with the Department of Energy would "allow PECO Energy Co. to defer up to \$80 million in nuclear waste fee payments for its Peach Bottom plant in Pennsylvania, to compensate for the Energy Department's failure to store its waste...The deal allows PECO to reduce the projected charges passed into the Nuclear Waste Fund to reflect costs reasonably incurred by the company due to the department's delay" (Press Release, U.S. Department of Energy. July 20, 2000.)

(These documents were omitted from (a) (7); (a) (11) (b) (1)).

CERTIFICATION OF SERVICE

I hereby certify that I have this day served a true and correct copy of the foregoing document upon the active participants named below by US mail or hand delivery in accordance with the requirements of 52 Pa. Code § Section 1.54.

Thomas P. Gadsen
Anthony C. DeCusatis
Morgan, Lewis & Bockius, LLP
1701 Market Street
Philadelphia, PA 19103-2921

Charis M. Burak
David M. Kleppinger
McNees, Wallace & Nurick
100 Pine Street, PO Box 1166
Harrisburg, PA 17108-1166

Paul R. Bonney
Kent D. Murphy
PECO Energy Company
2301 Market Street
Philadelphia, PA 19101-8699

Tanya J. McCloskey, Senior Assistant
James A. Mullins, Assistant
Office of Consumer Advocate
Forum Place - 5th Floor
555 Walnut Street
Harrisburg, PA 17120

Kenneth Mickens
Senior Prosecutor, Office of Trial Staff
Pennsylvania PUC
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
Commonwealth Avenue and North Street
Harrisburg, PA 17120

Office of Small Business Advocate
Carol Pennington
Suite 1102, Commerce Building
300 North Second Street
Harrisburg, PA 17101

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2003 MAR -5 AM 8:49
PA PUC
SECRETARY BUREAU

Cheryl Walker-Davis, Office of Special Assistance
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
Commonwealth Avenue and North Street
Harrisburg, PA 17120

Robert Bennett, Bureau of Fixed Utility Services
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
Commonwealth Avenue and North Street
Harrisburg, PA 17120

Respectfully submitted,



Eric Joseph Epstein, *Pro se*
4100 Hillsdale Road
Harrisburg, PA 17112

DATE: February 28, 2003

cc: Act

COMMONWEALTH OF PENNSYLVANIA

DATE: March 10, 2003

SUBJECT: R-00038102C0002

TO: Office of Administrative Law Judge

FROM:  James J. McNulty, Secretary

ERIC JOSEPH EPSTEIN, PRO SE
v.
PECO ENERGY CO. - ELECTRIC DIVISION

Attached is copy of a formal complaint filed in connection with the above docketed proceeding.

This matter is assigned to your office for necessary action.

Attachment - copy of complaint

cc: Bureau of Fixed Utility Services - w/copy of complaint
Office of Trial Staff - w/copy of complaint
Office of Special Assistants - w/copy of complaint

DOCUMENT
FILED
DOCKETED
MAR 11 2003

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

March 10, 2003

BRIAN D. CROWE, DIRECTOR
2301 MARKET STREET, S15-2
PO BOX 8699
PHILADELPHIA PA 19101-8699

RE: PA PUC vs PECO ENERGY CO. – ELECTRIC DIVISION
Docket Number R-00038102C0002

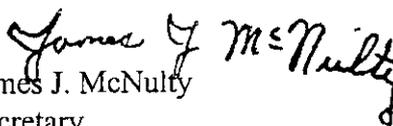
Dear Sir/Madam:

A Complaint has been filed against you in the above-captioned matter before the Pennsylvania Public Utility Commission by ERIC JOSEPH EPSTEIN, PRO SE.

This complaint, of which the attached is a true and correct copy, has been presented and filed of record with the Pennsylvania Public Utility Commission. The Pennsylvania Public Utility Code, 66 Pa. C.S., requires the Commission to serve on each party named in a complaint a copy of the complaint.

Within twenty (20) days from the date on which this complaint is served, you may either satisfy this complaint or comply with the provisions of 52 Pa. Code, Section 5.61 et seq., as amended.

Very truly yours,


James J. McNulty
Secretary

(SEAL)

Certified Mail
Return Receipt Requested

jih

DOCKETED
MAR 11 2003

DOCUMENT

ORIGINAL

Business Services
Company

Legal Department

Exelon Business Services Company
2301 Market Street/ S23-1
P.O.Box 8699
Philadelphia, PA 19101-8699

Telephone (215) 841-5544
Fax (215) 568-3389
www.exeloncorp.com

Direct Dial: 215 841 4941

March 18, 2003

James McNulty, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, Second Floor
Harrisburg, PA 17120

RECEIVED

MAR 18 2003

RE: **Office of Consumer Advocate v. PECO Energy Company**
Docket No.: R-00038102C0001

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Dear Mr. McNulty:

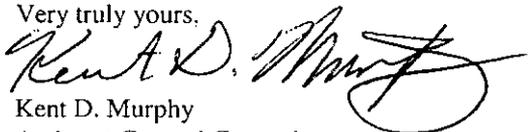
Enclosed for filing with the Commission are the following documents and copies in the matter referenced above.

- X Answer (original and 3 copies)
- Answer and Motion to Dismiss (original and 3 copies)
- Petition (original and 3 copies)
- Answer and New Matter (original and 3 copies)
- Motion to Dismiss (original and 3 copies)
- Exceptions (original and 9 copies)
- Reply Exceptions (original and 9 copies)
- Brief (original and 9 copies)
- Reply Brief (original and 9 copies)

DOCUMENT
FOLDER

Also enclosed is an extra copy of this letter which I request that you date stamp and return to me in the envelope provided as proof of filing. I have enclosed a Certificate of Service showing that a copy of the above documents were served on the interested parties.

Very truly yours,



Kent D. Murphy
Assistant General Counsel

KDM:zr

Enclosures

cc: Eric Joseph Epstein
Tanya J. McCloskey/James A. Mullins, OCA
David M. Kleppinger/Charis Burak, McNees Wallace & Nurick

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MAR 18 2003

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Office of Consumer Advocate

:

v.

:

Docket No. R-00038102C0001

:

PECO Energy Company

:

ANSWER OF RESPONDENT PECO ENERGY COMPANY

PECO Energy Company ("PECO" or "the Company"), pursuant to 52 Pa. Code §5.61, hereby responds to the "Formal Complaint of Office of Consumer Advocate", dated February 21, 2003, and states:

- 1. Neither admitted nor denied.
- 2. Admitted.
- 3.A. Admitted.
- 3.B. Admitted.
- 3.C. Admitted.
- 3.D. Admitted

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MAR 20 2003

3.E. Denied. The Company's proposed NDCA rate results in a just and reasonable rate.

3.F. Neither admitted nor denied.

4. Paragraph 4 to the Complaint constitutes a prayer for relief for which no response is required. To the extent a response is necessary, the Company responds to the sub-paragraph of paragraph 4 ad seriatim, as follows:

4.A. OCA's request for suspension and investigation of the proposed tariff supplement appears to be predicated on the legal conclusion that the proposed rate constitutes a rate increase

under Section 1308(d) of the Public Utility Code, which it is not. Moreover, as the proposed effective date for the tariff already presumes a more than one-year suspension period (the filing was made on December 31, 2002 and the proposed effective date is January 1, 2004), there is no need or basis for suspend the proposed rate in accordance with Section 1308(d).

4.B. PECO is willing to acquiesce to OCA's request to conduct an investigation of PECO's Supplement No. 44, within the structure of the Commission's rules and regulations.

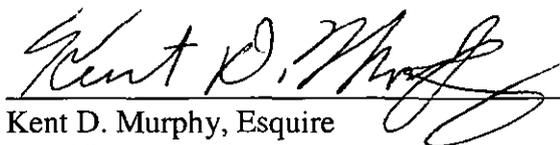
4.C. To the extent necessary, PECO is willing to acquiesce to formal evidentiary hearings, within the structure of the Commission's rules and regulations, to the extent that there are material issues of disputed fact that need to be explored through hearings.

4.D. As no aspect of Supplement No. 44 is unjust, unreasonable, unduly discriminatory, or inconsistent with the Public Utility Code, including Chapters 13 and 28, Supplement No. 44 should be approved.

4.E. Neither admitted nor denied.

WHEREFORE, PECO Energy Company respectfully requests that the Honorable Commission issue an order dismissing the subject Complaint, denying the specific relief requested therein, and approving the Company's proposed Supplement No. 44.

Respectfully submitted,



Kent D. Murphy, Esquire
Ward L. Smith, Esquire

Exelon Business Services Company
2301 Market Street, S23-1
P.O. Box 8699
Philadelphia, PA 19101-8699
215/841-4941

Counsel for: PECO Energy Company

DATED: March 18, 2003

Legal Department

Exelon Business Services Company
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Telephone (215) 841-5544
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Business Services
Company

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Direct Dial: 215 841 4941

March 18, 2003

RECEIVED

MAR 18 2003

James McNulty, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, Second Floor
Harrisburg, PA 17120

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

RE: **Eric Joseph Epstein, Pro Se v. PECO Energy Company**
Docket No.: R-00038102C0002

Dear Mr. McNulty:

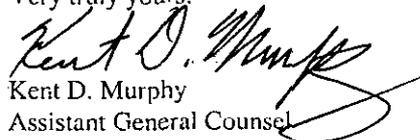
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<u> </u>	Reply Exceptions (original and 9 copies)
<u> </u>	Brief (original and 9 copies)
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Also enclosed is an extra copy of this letter which I request that you date stamp and return to me in the envelope provided as proof of filing. I have enclosed a Certificate of Service showing that a copy of the above documents were served on the interested parties.

Very truly yours,


Kent D. Murphy
Assistant General Counsel

KDM:zr

Enclosures

cc: Eric Joseph Epstein
Tanya J. McCloskey/James A. Mullins, OCA
David M. Kleppinger/Charis Burak, McNeese Wallace & Nurick

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MAR 18 2003

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

PENNSYLVANIA PUBLIC UTILITY COMMISSION SECRETARY'S BUREAU

Eric Joseph Epstein, *Pro Se*

v.

PECO Energy Company

:
:
:
:
:

DOCKET NO. R-00038102C0002

DOCUMENT FOLDER

ANSWER OF RESPONDENT PECO ENERGY COMPANY

PECO Energy Company ("PECO" or "the Company"), pursuant to 52 Pa. Code §5.61, hereby responds to the "Complaint of Eric Joseph Epstein", dated February 28, 2003, and states:

- 1. Admitted to the best of PECO Energy's knowledge, information and belief.
- 2. Admitted.

3.1. Admitted in part, denied in part. PECO Energy filed Supplement No. 44 to its Tariff Electric Pa. P.U.C. No. 3, on December 31, 2002. The nuclear decommissioning cost analysis submitted along with the filing was required pursuant to presently effective Page No. 33 of the tariff, paragraphs 12-15 of the Joint Petition for Settlement, dated March 23, 2000, in the PECO Energy/Unicom Corporation merger and corporate restructuring proceeding at Docket No. A-110550F0147 ("PECO Merger Settlement"), and paragraph 21 of the Joint Petition for Full Settlement of PECO Energy Company's Restructuring Plan and Related Appeals and Application of A Qualified Rate Order and Application for Transfer of Generation Assets," dated April 29, 1998, in the Company electric restructuring proceeding at Docket No. R-00973953 et al ("Electric Restructuring Settlement"). PECO admits that the Supplement No. 44 filing contains the information required to perfect its filing pursuant to Section 53.52(a) of the

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MAR 20 2003

Commission's regulations but denies that the filing itself was required under that regulation.

3.2. Admitted. The proposed NDCA charge will increase the Company's recovery of costs associated with nuclear decommissioning by \$19.8 million.

3.3 Admitted to the extent that the "Joint Petition for Negotiated Settlement referenced in the Complaint was intended a reference to the "PECO Merger Settlement".

RESPONSE TO ENCLOSURE I TO COMPLAINT

3.4. Admitted in part, denied in part. Admitted that PECO Energy and Complainant entered into the agreement set forth in Appendix B to the PECO Merger Settlement that is described in the Complaint as the "Appendix B: Nuclear Decommissioning and Waste Monitoring Agreement" ("Appendix B Agreement"). Denied that the Appendix B Agreement is relevant to PECO Energy's Supplement No. 44 filing specifically or how the Company otherwise recovers its nuclear decommissioning costs from its customers.

3.5. Denied. The Appendix B Agreement does addresses how PECO Energy recovers its nuclear decommissioning costs from its customers. The Appendix B Agreement deals exclusively with issues related to nuclear monitoring and waste storage at the Peach Bottom Atomic Power Station.

3.6. Subparagraph 3.6 constitutes a conclusion of law and therefore need not be admitted or denied. To the extent a response is deemed necessary, PECO Energy submits that Supplement No. 44 is just and reasonable and should be permitted to

become effective. In further response, PECO Energy responds to the factual allegations set forth in the subparagraphs to subparagraph 3.6 *ad seriatim*, as follows:

3.6(1). Denied that PECO Energy's Supplement No. 44 filing is somehow deficient as suggested by Complainant's allegations in this subparagraph. The filing satisfies the requirements of applicable Commission regulations, the PECO Merger Settlement, the Electric Restructuring Settlement, and the NDCA tariff language set forth at Page 33 of the PECO Energy Electric Service Tariff.

As required by Page 33 of the Electric Service Tariff, PECO submitted, as part of its Supplement No. 44 filing, a new cost study 1) that indicates that an adjustment in the NDCA is necessary in order to recover the calculated increase in estimated annual nuclear decommissioning costs, 2) that such calculation increase is predicated appropriately on the sinking fund methodology, and 3) that the assumptions used in the study are consistent with NRC policy and requirements. As such, PECO Energy has made a prima facie demonstration of the justness and reasonableness of its claim.

Denied that any sales activity by Mr. LaGuardia or his continued employment at "TLG" has any affect on the costs estimates used for the purposes of calculating the proposed NDCA or the Supplement No. 44 filing.

Denied that "[h]istorically, PECO Energy has submitted inaccurate decommissioning assessments." PECO Energy's prior estimates have been conservatively based on the best information available at the time they were prepared.

Admitted that the Company's prior estimates used the DECON method of decommissioning.

Admitted that there is no permanent nuclear waste isolation site presently available for the isolation of spent fuel. However, Congress recently approved characterization of the Yucca Mountain site in Nevada. The next step will be to license the site for the isolation of spent fuel. Moreover, use of the SAFSTOR methodology would result in a higher cost estimate for nuclear decommissioning that would be borne by ratepayers for the purposes of the NDCA calculation.

Denied that *“PECO has recently demonstrated difficulty accurately predicting decommissioning costs.”* The news report referenced in the Complaint relates to the performance of nuclear decommissioning trust funds established for investing revenues recovered from ratepayers for the purpose of discharging Exelon Generation’s obligations to decommission nuclear power stations in accordance with the requirements of the U.S. Nuclear Regulatory Commission. The trust fund balances reflect not only the revenues invested in the fund but also how those funds have performed over time. Those balances do not impact the level of the Company’s estimated decommissioning costs. Thus, the inaccuracy referenced in the article was not used for the purpose of the calculating the Company’s Supplement No. 44 claim.

3.6(2). Admitted in part, denied in part. Admitted that the Company’s proposed NDCA charge is based on increased nuclear decommissioning costs related to the Company’s ownership interest in nuclear plants as of December 31, 1999. Denied that this basis of the Company’s claim in this matter results from erroneous advocacy, or that the Company’s claim is in *“legal variance with the spirit and substance of the “PECO Merger Settlement.”*

3.6(3). Denied that a reasonable application of Paragraph 13 of the PECO Merger Settlement would render the Company ineligible to “recover any additional revenues through rate relief” in this proceeding. Pursuant to Paragraphs 12-15 of the PECO Merger Settlement, the NDCA tariff page, and Paragraph 21 to the Electric Restructuring Settlement, PECO is entitled to recover from ratepayers its full estimated nuclear decommissioning costs, less “(1) \$50 million of its total decommissioning cost obligations, plus (2) 5% of any additional increase in the annual accrual level above the base \$29.162 annual accrual level.” Complainant’s interpretation of the relevant provisions of the PECO Merger Settlement conflicts with the plain and unambiguous language of applicable settlement provisions and tariff language.

The NDCA formula is found at Page 33 of the Electric Service Tariff. As reflected at Page 33 of the Electric Service Tariff, the “total decommissioning obligations” from which the Company agreed to forego \$50 million is defined as the “Gross Decommissioning Obligation.” As defined there, “Gross Decommissioning Obligation” is “the total decommissioning cost obligation as approved by the Commission as expressed in escalated future dollars.” Once that figure is obtained, the \$50 million is subtracted, with the result being the “Adjusted Obligation”. The “Adjusted Obligation” is then subject to a discounted present value calculation, the result of which is the “Adjusted Annual Accrual”. The NDCA then represents 95 percent of the difference between the Adjusted Annual Accrual and the Base Annual Accrual. Under this formula, the Company is entitled to recover an additional \$19.8 million annually through its NDCA.

Complainant's view, however, would apply the \$50 million to the Adjusted Annual Accrual and, contrary to the tariff and PECO Merger Settlement, not to the Gross Decommissioning Obligation. This view would render PECO ineligible to recover decommissioning costs through the NDCA unless the annual accrual increased from \$29.2 million to almost \$80 million. Complainants view conflicts directly with the plain language of the NDCA tariff language as well as the PECO Merger Settlement.

3.6(4). Admitted in part, denied in part. Admitted to the extent that the formula used to calculate the Company's claim did not "incorporate up-rates/increased capacity factors at Peach Bottom 2 and 3, Limerick 1 and 2, and Salem 1 and 2." Denied that those factors are relevant for the purpose of calculating the NDCA.

3.6(5). Admitted in part, denied in part. Admitted that the Company's proposals did not account for the impact of an operating license extension for Peach Bottom 2 and 2, Limerick 1 and 2, and Salem 1 and 2.

Admitted that Exelon Generation, L.L.C. has filed an application to extend the operating license for Peach Bottom 2 and 3 for an additional 20-year period and that the NRC has established milestones for its review of the application. Denied that the Nuclear Regulatory Commission has granted such license extension requests.

Denied, based on information and belief, that operating license extensions will be received for Salem 1 and 2 and Limerick 1 and 2 prior to the effective date of for Supplement No. 44, January 1, 2004.

3.6(6). Denied in part, admitted in part. Denied that the Company's proposal failed to account for applicable NRC regulations that will become effective prior to the proposed effective date for Supplement No. 44.

Denied that amendments to the Internal Revenue Code are relevant for purposes of a calculation under the NDCA until those amendments are enacted and effective as a matter of law.

Admitted that the Company did not include in its filing reference to regulations and statutory amendments that are not currently effective.

Denied that the omission of certain documents presents a deficiency in the Company's filing.

3.6(7). Denied in part, admitted in part. Denied that, on October 16, 2001, the NRC approved "an Amended and Restated Nuclear Decommissioning Master Trust Agreement" that organizes "[t]he Exelon/AmerGen fleet of ten nuclear generation stations and seventeen nuclear units".

Denied that that "arrangement" "provides for increased earnings potential" related to trust funds involving the former PECO units used for calculating the NDCA.

Denied that that arrangement "has implications for the implementation of accelerated recovery under IRS 468A."

Denied that that arrangement "affects the sanctity or the externally segregated funding Agreements utilized in the Commonwealth of Pennsylvania."

Denied that any proposed sale by AmerGen has any bearing on issues relevant to this proceeding.

Denied that the omission of certain documents presents a deficiency in the Company's filing.

3.6(8)(a). Denied that the omission of certain documents presents a deficiency in the Company's filing.

3.6(8)(b). Denied that the omission of certain documents presents a deficiency in the Company's filing.

3.6(9). Denied that the omission of certain documents presents a deficiency in the Company's filing. Denied that the "PECO Energy/DOE Settlement" referenced in this paragraph has any relevance to the Company's claim in this proceeding.

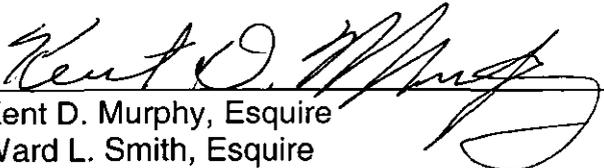
COMPLAINANT'S PRAYER FOR RELIEF

4. This paragraph is a prayer for relief and therefore no specific response is required. Nonetheless, by further response, PECO Energy states that the proposed Nuclear Decommissioning Cost Adjustment Charge ("NDCA") value of \$19.8 million is just and reasonable and should be permitted to become effective on the proposed effective date of January 1, 2004, without further suspension. Should the Commission determine that full evidentiary hearings are necessary in this matter, PECO believes that sufficient time exists to establish a procedural schedule that would allow the parties to fully develop the record and the Commission to issue a final order prior to the January 1, 2004 proposed effective date.

5. Neither neither admitted nor denied.

WHEREFORE, PECO Energy Company respectfully requests that the Honorable Commission issue an order dismissing the subject Complaint, denying the specific relief requested therein, and approving the Company's proposed Supplement No. 44.

Respectfully submitted,


Kent D. Murphy, Esquire
Ward L. Smith, Esquire

Exelon Business Services Company
2301 Market Street, S23-1
P.O. Box 8699
Philadelphia, PA 19101-8699
215/841-4941

Counsel for: PECO Energy Company

DATED: March 18, 2003

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Eric Joseph Epstein, *Pro Se*

v.

PECO Energy Company

:
:
:
:
:

DOCKET NO. R-00038102C0002

CERTIFICATE OF SERVICE

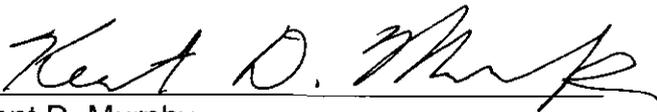
I hereby certify that I have this day served a copy of PECO Energy Company's Answer in the above matter upon all interested parties by mailing a copy thereof Certified mail, properly addressed and postage prepaid to:

Eric Joseph Epstein
4100 Hillsdale Road
Harrisburg, PA 17112

Tanya J. McCloskey
James A. Mullins
Office of Consumer Advocate
Forum Place - 5th Floor
555 Walnut Street
Harrisburg, PA 17120

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

Dated at Philadelphia, Pennsylvania, March 18, 2003.



Kent D. Murphy

Exelon Business Services Company
2301 Market Street, S23-1
P.O. Box 8699
Philadelphia, PA 19101-8699
215/841-4941

COMMONWEALTH OF PENNSYLVANIA

DATE: March 21, 2003
SUBJECT: R-00038102; R-00038102C0001
TO: Director, Bureau/Office of ALJ
FROM: Janet E. Patrick, Chief
Document Control and Record Maintenance

*Pennsylvania Public Utility Commission
Office of Consumer Advocate
V
PECO Energy Company*

The Commission at Public Meeting held March 21, 2003 adopted an order in the above-entitled proceeding.

Please direct your attention to the "Ordering Paragraph(s)" for your Bureau's/Office's ongoing responsibility as identified therein.

Kindly acknowledge receipt of this memo by signing below and return this memo to:

Secretary's Office
Attn: Janet E. Patrick
2nd Floor Keystone Building

Thank you for your cooperation in this matter!

Receipt acknowledged:

(signature)

Susan Soffer

(date)

3-24-03

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

03 APR -7 AM 9:37

Legal Department

Exelon Business Services Company
2301 Market Street/ 523-1
PO.Box 8699
Philadelphia, PA 19101-8699

Telephone (215) 841-5544
Fax (215) 568-3389
www.exeloncorp.com

Business Services
Company

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ORIGINAL

MAR 26 2003

Direct Dial: 215 841 4941

March 26, 2003

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

James McNulty, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, Second Floor
Harrisburg, PA 17120

RE: Pennsylvania Public Utility Commission, Office of Consumer Advocate v. PECO Energy Company
Docket Nos. R-00038102, R-00038102C0001 and
Eric Joseph Epstein v. PECO Energy Company, Docket No. R-00038102C0002

Dear Mr. McNulty:

Enclosed for filing with the Commission are the following documents and copies in the matter referenced above.

- _____ Answer (original and 3 copies)
- _____ Answer and Motion to Dismiss (original and 3 copies)
- _____ Petition (original and 3 copies)
- _____ Answer and New Matter (original and 3 copies)
- X _____ Unopposed Motion to Consolidate of PECO Energy Company (original and 3 copies)
- _____ Exceptions (original and 9 copies)
- _____ Reply Exceptions (original and 9 copies)
- _____ Brief (original and 9 copies)
- _____ Reply Brief (original and 9 copies)

Also enclosed is an extra copy of this letter which I request that you date stamp and return to me in the envelope provided as proof of filing. I have enclosed a Certificate of Service showing that a copy of the above documents were served on the interested parties.

Very truly yours,

Kent D. Murphy
Kent D. Murphy
Assistant General Counsel
Exelon Business Services Company

DOCUMENT
FOLDER

KDM:zr

Enc.

cc: Parties of Record

101

ORIGINAL

RECEIVED

MAR 26 2003

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

PENNSYLVANIA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Pennsylvania Public Utility Commission	:	
Office of Consumer Advocate	:	
	:	
v.	:	Docket Nos. R-00038102,
	:	R-00038102C0001
	:	
PECO Energy Company	:	(consolidated)
	:	
Eric Joseph Epstein	:	
v.	:	Docket No. R-00038102C0002
PECO Energy Company	:	(not consolidated)

**UNOPPOSED MOTION TO
CONSOLIDATE OF
PECO ENERGY COMPANY**

PECO Energy Company ("PECO" or "the Company"), pursuant to 52 Pa. Code § 5.81, hereby requests Presiding Administrative Law Judge Marlane R. Chestnut to issue an order that consolidates the proceedings indicated above ("The Indicated Proceedings") for all purposes, including but not limited to, the holding of any necessary evidentiary hearings and the issuance of recommended and final decisions. In support, PECO submits as follows:

1. On December 31, 2002, PECO Energy filed Supplement No. 44 to Tariff Electric PA P.U.C. No. 3, with a proposed effective date of January 1, 2004. Supplement No. 44 proposed a \$19.8 million increase to the Nuclear Decommissioning Cost Adjustment charge found at page 33 of PECO's electric tariff, and according to the Company, was filed in accordance with the requirements of the PECO Electric Restructuring Settlement at Docket No. R-00973953 and the PECO Merger Settlement at

Docket No. A-110550F0147. Supplement No. 44 is the subject of Docket No. R-00038102.

2. On February 21, 2003, the Office of Consumer Advocate ("OCA") filed a formal complaint in which the OCA challenged, *inter alia*, the lawfulness, justness and reasonableness of Supplement No. 44, requested that the matter be suspended in accordance with Section 12308(d) of the Public Utility Code, and requested that the matter proceed to formal evidentiary hearings. The OCA complaint is the subject of Docket No. R-00038102C0001.

3. On February 21, 2003, Eric Joseph Epstein ("Mr. Epstein") filed a formal complaint in which Mr. Epstein challenged, *inter alia*, the lawfulness, justness and reasonableness of Supplement No. 44, requested that the matter be suspended in accordance with Section 12308(d) of the Public Utility Code, and requested the matter to proceed to formal evidentiary hearings. Mr. Epstein's complaint is the subject of Docket No. R-00038102C0002.

4. On March 5, 2003, the Philadelphia Area Industrial Energy Users Group ("PAIEUG") filed a motion to intervene in the proceeding at Docket No. R-00038102.

5. On March 18, 2003, filed an Answer to each of OCA's and Mr. Epstein's complaints. Therein, the Company denied that there is a need to suspend Supplement No. 44 beyond the January 1, 2004 proposed effective date because the Company's suspension of the proposed effective date for 12 months after the filing date of January 1, 2003, already provided more than adequate time to hold any necessary evidentiary hearings and issue a final order. In its Answers, the Company also requested that the Commission issue an order dismissing OCA and Mr. Epstein's complaints.

6. On March 21, 2003, at Docket No. R-00038102 and R-00038102C0001, the Commission issued an order that consolidated the proceedings, suspended the proposed effective date of Supplement No. 44 by an additional 6-month period until July 1, 2004, ordered an investigation into the justness and reasonableness of the proposed rate increase, and assigned the matter to the Office of Administrative Law Judge for the purposes of hearing and the issuance of a recommended decision.

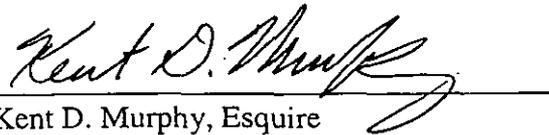
7. The Indicated Proceedings involve common issues of law and fact, including but not limited to factual issues relevant to the legal question of whether or not the rate change associated with the Company's increase in nuclear decommissioning cost recovery proposed in Supplement No. 44 is lawful, just and reasonable.

8. Consolidating The Indicated Proceedings would avoid unnecessary costs and delay that would be incurred if Mr. Epstein's Complaint remained separate for the purposes of hearing and decision.

9. All parties to The Indicated Proceedings (Office of Trial Staff, OCA, Mr. Epstein, PAIEUG) have indicated to the undersigned that they support or do not oppose the instant motion to consolidate.

WHEREFORE, for the foregoing reasons, PECO Energy Company respectfully requests this Honorable Commission issue an appropriate order granting this motion to consolidate the proceedings at Docket Nos. R-00038102, R-00038102C001, and R-00038102C002.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Kent D. Murphy", is written over a horizontal line.

Kent D. Murphy, Esquire
Ward L. Smith, Esquire

Exelon Business Services Company
2301 Market Street, S23-1
P.O. Box 8699
Philadelphia, PA 19101-8699
(215) 841-4941

Counsel for: PECO Energy Company

DATED: March 26, 2003

Dated at Philadelphia, Pennsylvania, March 26, 2003.


Kent D. Murphy

Exelon Business Services Company
2301 Market Street, S23-1
P.O. Box 8699
Philadelphia, PA 19101-8699
215/841-4941

Legal Department

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www.exeloncorp.com

Business Services
Company

Direct Dial: 215 841 4941

March 26, 2003

Administrative Law Judge Marlane R. Chestnut
PA Public Utility Commission
1302 Philadelphia State Office Bldg.
1400 West Spring Garden Street
Philadelphia, PA 19130

Re: **Pennsylvania Public Utility Commission et al v. PECO Energy Company, Docket
Nos. R-00038102, R-00038102C0001, and R-00038102C0002**

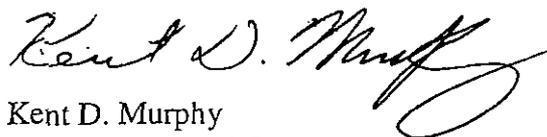
Dear Judge Chestnut

On this date, PECO Energy Company submitted a pleading styled "Unopposed Motion to Consolidate of PECO Energy Company" in which PECO Energy requested Your Honor to issue an order that consolidated R-00038102C0002 with the two other above-referenced proceedings.

Subsequently, Your Honor has informed counsel for PECO Energy through electronic mail that this motion was unnecessary because the referenced proceedings, including Docket No. R-00038102C0002, already had been consolidated through the Commission's March 21, 2003, suspension order at Docket No. R-00038102 because the three proceedings shared the common stem rate proceeding docket number.

As the Company's motion to consolidate now appears unnecessary, that motion is hereby withdrawn.

Respectfully submitted,



Kent D. Murphy
Assistant General Counsel

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MAR 31 2003

cc: All parties
Secretary McNulty

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

DOCUMENT
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DATE: August 25, 2003

SUBJECT: R-00038102
R-00038102C0001
R-00038102C0002

TO: Office of Administrative Law Judge
Susan Hoffner

FROM: James J. McNulty
Secretary
nvl

PENNSYLVANIA PUBLIC UTILITY COMMISSION
OFFICE OF CONSUMER ADVOCATE
ERIC JOSEPH EPSTEIN
V.
PECO ENERGY COMPANY

Copies of the Recommended Decision have been served upon all parties.

No exceptions have been received by the Commission. This matter is referred to your office for whatever action you deem necessary.

cc: Office of Special Assistants

P.S. Please note that exceptions or reply exceptions may come in timely with certificate of mailings. A second memo will not be released for these exceptions.

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DOCKETED

AUG 27 2003