
**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, DC 20549**

FORM 8-K

CURRENT REPORT

Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

June 22, 2006

Date of Report (Date of earliest event reported)

<u>Commission File Number</u>	<u>Exact Name of Registrant as Specified in Its Charter; State of Incorporation; Address of Principal Executive Offices; and Telephone Number</u>	<u>IRS Employer Identification Number</u>
1-16169	EXELON CORPORATION (a Pennsylvania corporation) 10 South Dearborn Street – 37th Floor P.O. Box 805379 Chicago, Illinois 60680-5379 (312) 394-7398	23-2990190
1-1839	COMMONWEALTH EDISON COMPANY (an Illinois corporation) 440 South LaSalle Street Chicago, Illinois 60605-1028 (312) 394-4321	36-0938600
000-16844	PECO ENERGY COMPANY (a Pennsylvania corporation) P.O. Box 8699 2301 Market Street Philadelphia, Pennsylvania 19101-8699 (215) 841-4000	23-0970240
333-85496	EXELON GENERATION COMPANY, LLC (a Pennsylvania limited liability company) 300 Exelon Way Kennett Square, Pennsylvania 19348 (610) 765-6900	23-3064219

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
 - Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
 - Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
 - Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
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Section 8 – Other Events

Item 8.01. Other Events

As previously disclosed, on June 22, 2006, Exelon Corporation (Exelon) and Public Service Enterprise Group Incorporated (PSEG) issued a joint press release concerning a settlement with the Antitrust Division of the U.S. Department of Justice with respect to the proposed merger of Exelon and PSEG. Attached as Exhibits to this Current Report on Form 8-K are the settlement documents, including the Hold Separate Stipulation and Order (Exhibit 99.1), the Proposed Final Judgment (Exhibit 99.2), and the related Complaint (Exhibit 99.3).

* * * * *

This combined Form 8-K is being furnished separately by Exelon, Commonwealth Edison Company (ComEd), PECO Energy Company (PECO) and Exelon Generation Company, LLC (Generation) (Registrants). Information contained herein relating to any individual registrant has been furnished by such registrant on its own behalf. No registrant makes any representation as to information relating to any other registrant.

Except for the historical information contained herein, certain of the matters discussed in this Report are forward-looking statements, within the meaning of the Private Securities Litigation Reform Act of 1995, that are subject to risks and uncertainties. The factors that could cause actual results to differ materially from the forward-looking statements made by a registrant include those factors discussed herein, as well as the items discussed in (a) the Registrants' 2005 Annual Report on Form 10-K—ITEM 1A. Risk Factors, (b) the Registrants' 2005 Annual Report on Form 10-K—ITEM 8. Financial Statements and Supplementary Data: Exelon—Note 20, ComEd—Note 17, PECO—Note 15 and Generation—Note 17, and (c) other factors discussed in filings with the SEC by the Registrants. Readers are cautioned not to place undue reliance on these forward-looking statements, which apply only as of the date of this Report. None of the Registrants undertakes any obligation to publicly release any revision to its forward-looking statements to reflect events or circumstances after the date of this Report.

Section 9—Financial Statements and Exhibits
Item 9.01 Financial Statements and Exhibits.

(d) *Exhibits.*

<u>Exhibit No.</u>	<u>Description</u>
99.1	Hold Separate Stipulation and Order
99.2	Proposed Final Judgment
99.3	Complaint

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

EXELON CORPORATION
PECO ENERGY COMPANY
EXELON GENERATION COMPANY, LLC

/s/ John F. Young

John F. Young
Executive Vice President, Finance and Markets, and
Chief Financial Officer
Exelon Corporation

COMMONWEALTH EDISON COMPANY

/s/ Robert K. McDonald

Robert K. McDonald
Senior Vice President, Chief Financial Officer, Treasurer
and Chief Risk Officer
Commonwealth Edison Company

June 22, 2006

EXHIBIT INDEX

Exhibit No.	Description
99.1	Hold Separate Stipulation and Order
99.2	Proposed Final Judgment
99.3	Complaint

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

<hr/>)	
UNITED STATES OF AMERICA)	
)	
Plaintiff,)	
)	Case No.:
v.)	
)	Judge:
EXELON CORPORATION)	
)	Deck Type:
and)	
)	Filed:
PUBLIC SERVICE ENTERPRISE)	
GROUP INCORPORATED)	
)	
Defendants.)	
<hr/>)	

HOLD SEPARATE STIPULATION AND ORDER

It is hereby stipulated by and between the undersigned parties, subject to approval and entry by the Court, that:

I. DEFINITIONS

As used in this Hold Separate Stipulation and Order:

- A. "Acquire" means obtain any interest in any electricity generating facility, including real property, deeded development rights to real property, capital equipment, buildings, or fixtures.

- B. “Acquirer” or “Acquirers” means the entity or entities to whom Defendants divest any of the Divestiture Assets or with whom Defendants have entered into definitive contracts to sell any of the Divestiture Assets.
- C. “Control” means have the ability, directly or indirectly, to set the level of, dispatch, or Offer the output of one or more units of an electricity generating facility or to operate one or more units of an electricity generating facility.
- D. “Cost-based Offer” means the maximum offer to sell energy allowed under the version of the PJM “Amended and Restated Operating Agreement of PJM Interconnection, LLC,” Section 6.4, available at <www.pjm.com>, in effect at the time the offer is made.
- E. “Counter-Party” means any person other than Defendants who enters into a Tolling Contract.
- F. “Designated Utility Zones” means the service territories in which the following companies on June 1, 2006, owned the wires through which electricity is distributed:
 - 1. Atlantic City Electric Company,
 - 2. Baltimore Gas and Electric Company,
 - 3. Delmarva Power and Light Company,
 - 4. Jersey Central Power and Light Company,
 - 5. Metropolitan Edison Company,
 - 6. Rockland Electric Company,
 - 7. PECO Energy Company,
 - 8. Potomac Electric Power Company,

9. PPL Electric Utilities Corporation, and

10. Public Service Electric and Gas Company.

G. "Divestiture Assets" means the following facilities: (1) Cromby Generating Station, 100 Cromby Rd. at Phoenixville, PA, 19460; (2) Eddystone Generating Station, Number 1 Industrial Hwy. at Eddystone, PA, 19022; (3) Hudson Generating Station, Duffield & Van Keuren Aves. at Jersey City, NJ, 07306; (4) Linden Generating Station, 4001 South Wood Ave. at Linden, NJ, 07036; (5) Mercer Generating Station, 2512 Lambertson Rd. at Hamilton, NJ, 08611; and (6) Sewaren Generating Station, 751 Cliff Rd. at Sewaren, NJ, 07077; and

a. For each of those facilities, all of Defendants' rights, titles, and interests in any tangible and intangible assets relating to the generation, dispatch, and offering of electricity at the facility; including the land; buildings; fixtures; equipment; fixed assets; supplies; personal property; non-consumable inventory on site as of June 1, 2006; furniture; licenses, permits, and authorizations issued by any governmental organization relating to the facility (including environmental permits and all permits from federal or state agencies and all work in progress on permits or studies undertaken in order to obtain permits); plans for design or redesign of the facility or any assets at the facility; agreements, leases, commitments, and understandings pertaining to the facility and its operation; records relating to the facility or its operation, wherever kept and in whatever form (excluding records of past offers to the PJM Market); all equipment

associated with connecting the facility to PJM (including automatic generation control equipment); all remote start capability or equipment located on site; and all other interests, assets, or improvements at the facility customarily used in the generation, dispatch, or offer of electricity from the facility; provided however, that "Divestiture Assets" shall not include (i) electric and gas distribution or transmission assets located in, or appurtenant to, the boundaries of the facility, or (ii) any communications links between the facility and Defendants, which will be disconnected.

- b. At the option of the Acquirer of the Linden Generating Station, the natural gas pipeline facilities connecting any assets at the Linden Generating Station (including the assets listed in Section I.G.a. for the Linden Generating Station), to an interconnection with the Texas Eastern Gas Transmission LP, and all of Defendants' rights, titles, and interests in any tangible and intangible assets relating to the delivery of natural gas from the Texas Eastern Gas Transmission LP interconnection with the Linden Generating Station, including the land; buildings; fixtures; equipment; fixed assets; supplies; personal property; non-consumable inventory on site as of June 1, 2006; furniture; licenses, permits, and authorizations issued by any governmental organization relating to the facility (including environmental permits and all permits from federal or state agencies and all work in progress on permits or studies undertaken in order to obtain permits); plans for design or redesign of the facility or any assets at the facility;

agreements, leases, commitments, and understandings pertaining to the facility and its operation; records relating to the facility or its operation, wherever kept and in whatever form; and all other interests, assets, or improvements customarily used in the delivery of natural gas from the interconnection of the Texas Eastern Gas Transmission LP to the Linden Generating Station.

To the extent that any licenses, permits, or authorizations described in Section I.G.a. or Section I.G.b. are nontransferable, Defendants will use their best efforts to obtain the necessary consent for assignment to the Acquirer or Acquirers of the license, permit, or authorization.

- H. "Exelon" means Exelon Corporation, a Pennsylvania corporation headquartered in Chicago, Illinois, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, joint ventures (not including Exelon's participation in the ownership, operation, dispatch, or offering of output of the Keystone Generating Station or the Conemaugh Generating Station), and their directors, officers, managers, agents, and employees.
- I. "Exelon/PSEG Transaction" means the merger of Exelon and PSEG that is the subject of HSR Transaction Identification No. 2005-0696, which was filed pursuant to the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, 15 U.S.C.A. § 18a (West 1997), including any changes in the terms of that merger that do not necessitate a new Hart-Scott-Rodino filing.

- J. “Good Utility Practice” means any of the practices, methods, and acts engaged in or approved by a significant portion of the electric utility industry during the relevant time period, or any of the practices, methods, and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision is made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety, and expedition. “Good Utility Practice” is not intended to be limited to the optimum practice, method, or act to the exclusion of all others, but rather is intended to include acceptable practices, methods, or acts generally accepted in the region.
- K. “Including” means including but not limited to.
- L. “Offer” or “Offers” means an offer to sell energy submitted into the PJM Market pursuant to the version of PJM “Amended and Restated Operating Agreement of PJM Interconnection, LLC,” Section 6.4, available at <www.pjm.com>, in effect at the time the offer is made.
- M. “Outage” means any outage as defined in the version of PJM Manual 35, “Definitions and Acronyms,” available at <www.pjm.com>, in effect at the time the outage occurs, including “forced outage,” “generator forced/unplanned outage,” “generator maintenance outage,” “generator planned outage,” “maintenance outage,” and “planned outage.”
- N. “Person” means any natural person, corporation, association, firm, partnership, or other business or legal entity.
- O. “PJM” means PJM Interconnection, LLC.

- P. "PJM Market" means any market for energy operated or administered by PJM, including the "Day-ahead Energy Market" or the "Real-time Energy Market."
- Q. "PSEG" means Public Service Enterprise Group Incorporated, a New Jersey corporation headquartered in Newark, New Jersey, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, joint ventures (not including PSEG's participation in the ownership, operation, dispatch, or offering of output of the Keystone Generating Station, the Conemaugh Generating Station, or the Yards Creek Generating Station), and their directors, officers, managers, agents, and employees.
- R. "Self Scheduling" means scheduling for dispatch by the owner or operator of the unit and not by PJM.
- S. "Tolling Contract" means a contract giving a Counter-Party Control over the level and offer price of the output for any unit listed in Attachment A or Attachment B.

II. OBJECTIVES

The Final Judgment filed in this case is meant to ensure Defendants' prompt divestiture of the Divestiture Assets in order to remedy the effects that the United States alleges would otherwise result from the Exelon/PSEG Transaction. This Hold Separate Stipulation and Order ensures that, prior to such divestiture, (1) the Divestiture Assets will be offered into the PJM Market as specified herein; (2) the Divestiture Assets will be preserved, maintained, and operated at least in the same physical condition as of the date of consummation of the

Exelon/PSEG Transaction, ordinary wear and tear excepted and consistent with Good Utility Practice; and (3) competition is maintained during the pendency of the ordered divestiture.

III. JURISDICTION AND VENUE

The Court has jurisdiction over the subject matter of this action and, for purposes of this action only, over each of the parties hereto, and venue of this action is proper in the United States District Court for the District of Columbia.

IV. COMPLIANCE WITH AND ENTRY OF FINAL JUDGMENT

- A. The parties stipulate that a Final Judgment in the form attached hereto as Exhibit A, may be filed with and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16, and without further notice to any party or other proceedings, provided that the United States has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on Defendants and by filing that notice with the Court.
- B. Defendants shall abide by and comply with the provisions of the proposed Final Judgment pending the entry of the Final Judgment by the Court, or until expiration of the time for all appeals of any Court ruling declining entry of the proposed Final Judgment and shall, from the date of the signing of this Hold Separate Stipulation and Order by the

parties, comply with all the terms and provisions of the proposed Final Judgment as though the same were in full force and effect as an order of the Court.

- C. Defendants shall not consummate the transaction sought to be enjoined by the Complaint herein before the Court has signed this Hold Separate Stipulation and Order.
- D. This Hold Separate Stipulation and Order shall apply with equal force and effect to any amended proposed Final Judgment agreed upon in writing by the parties and submitted to the Court.
- E. In the event that (1) the United States has withdrawn its consent, as provided in Section IV.A. above, or (2) the proposed Final Judgment is not entered pursuant to this Hold Separate Stipulation and Order, the time has expired for all appeals of any Court ruling declining entry of the proposed Final Judgment, and the Court has not otherwise ordered continued compliance with the terms and provisions of the proposed Final Judgment, then the parties are released from all further obligations under this Hold Separate Stipulation and Order, and the making of this Hold Separate Stipulation and Order shall be without prejudice to any party in this or any other proceeding.
- F. Defendants represent that the divestitures required by the proposed Final Judgment can and will be made, subject to receipt of necessary regulatory approvals, and that Defendants will later raise no claims of mistake, hardship, or difficulty of compliance as grounds for asking the Court to modify any provisions contained therein.

V. HOLD SEPARATE PROVISIONS

From consummation of the Exelon/PSEG Transaction until the divestitures required by Section IV and Section V of the Final Judgment have been accomplished:

- A. Defendants shall take all steps necessary to assure that the Divestiture Assets are maintained as separate, distinct, and saleable assets, apart from other assets of Defendants. Defendants shall preserve the documents, books, and records relating to the Divestiture Assets until the date of divestiture.
- B. Defendants shall provide sufficient working capital to continue to maintain the Divestiture Assets as economically viable and competitive facilities, consistent with the requirements of Section V.A.
- C. Defendants shall take no action that would jeopardize, delay, or impede the sale of the Divestiture Assets.
- D. Defendants shall take all steps necessary to ensure that the Divestiture Assets are fully maintained in operable condition at no less than their capacity at the time of the consummation of the Exelon/PSEG Transaction and shall maintain and adhere to normal repair and maintenance schedules for the Divestiture Assets, consistent with Good Utility Practice.
- E. Defendants shall not, except as part of a divestiture in accordance with Sections IV or V of the proposed Final Judgment or a Tolling Contract in accordance with Section VI.C., remove, sell, lease, assign, transfer, pledge, or otherwise dispose of any of the Divestiture Assets.

- F. Defendants' employees stationed at the Divestiture Assets shall not be transferred or reassigned to other areas within the company except for transfers initiated by employees pursuant to Defendants' regular, established job posting policy and existing collective bargaining agreements. Defendants shall provide the United States with ten (10) calendar days notice of any such transfer.
- G. Within twenty (20) calendar days after the entry of this Hold Separate Stipulation and Order, Defendants will inform the United States of the steps such Defendants have taken to comply with this Hold Separate Stipulation and Order.

VI. CONDITIONS FOR OFFERS, PENDING DIVESTITURE

From consummation of the Exelon/PSEG Transaction until the divestitures required by Section IV and Section V of the Final Judgment have been accomplished:

- A. Defendants shall offer the units listed in Attachment A at offers no more than the Cost-Based Offer. The Defendants shall make offers as follows:
 - 1. Defendants must submit offers into the PJM Market in accordance with the terms of Section VI.A. for each facility listed in Attachment A, unless unable to do so due to an Outage. In the event of an Outage, Defendants will offer all energy that is unaffected by the Outage in accordance with the terms of Section VI.A.
 - 2. Defendants are prohibited from Self Scheduling any of the units in Attachment A.
- B. Defendants shall offer the units listed in Attachment B at offers no more than the higher of (a) the Cost-Based Offer or (b) the offer for the facility submitted into the PJM Market

on May 15, 2006, to provide energy on May 16, 2006. The Defendants shall make offers as follows:

1. Defendants must submit offers into the PJM Market in accordance with the terms of Section VI.B. for each facility listed in Attachment B, unless unable to do so due to an Outage. In the event of an Outage, Defendants will offer all energy that is unaffected by the Outage in accordance with the terms of Section VI.B.
2. Defendants are prohibited from Self Scheduling any of the units in Attachment B.

C. Defendants may enter into Tolling Contracts, provided that:

1. Defendants shall submit any proposed Tolling Contract to the United States for review by submitting the name of the proposed Counter-Party and a copy of the proposed contract, the term sheet, and any related agreements to the United States;
2. The United States may, in its sole discretion, disapprove any proposed Tolling Contract; and
3. The United States will inform Defendants within ten (10) days of Defendants' submission of the required information about any such proposed Tolling Contract whether the United States disapproves the proposed Tolling Contract. The United States, in its sole discretion, may extend the time period set forth in Section VI.C.3. for an additional period or periods of time not to exceed five (5) calendar days.

- D. Notwithstanding Sections VI.A., VI.B., and VI.C., Defendants will be relieved from their obligation to offer the units listed in Attachment A and Attachment B in accordance with the limits defined in Sections VI.A. and VI.B.:
1. After the sales of all the Divestiture Assets have been completed; or
 2. At such time as Defendants enter into Tolling Contracts:
 - a. for the complete output of each Divestiture Asset,
 - b. for a period of time ending no sooner than the date of transfer of the Divestiture Asset associated with the Tolling Contract to the Acquirer of that Divestiture Asset, and
 - c. such that Defendants offer no share of the energy of the Divestiture Assets into the PJM Market.
- E. The United States shall retain an auditor to monitor Defendants' compliance with the requirements of Section VI. The auditor shall have or shall contract with professionals or agents who have competence or experience in the operation of electric generation facilities and understanding of the requirements of Cost-Based Offers.
1. Within five (5) business days of the consummation of the Exelon/PSEG Transaction, Defendants shall execute an agreement that, subject to the prior approval of the United States, confers on the auditor all the power and authority necessary to permit the auditor to monitor Defendants' compliance with Section VI, in a manner consistent with the purposes of this Hold Separate Stipulation and Order.

2. The auditor shall have the rights, duties, and responsibilities necessary to monitor Defendants' compliance with Section VI, and shall exercise such power and authority and carry out the duties and responsibilities of the auditor in a manner consistent with the purposes of this Hold Separate Stipulation and Order, including determining (a) whether an Outage taken by Defendants is consistent with the requirements of Section VI or (b) whether an offer made for any unit is contrary to the requirements of Section VI.
3. On demand the auditor shall receive all information relevant to the necessity and duration of an Outage of any asset covered by Section VI, including Generating Availability Data System (GADS) data, Dispatcher Application and Reporting Tool (eData) data, and engineering or any other logs or contemporaneous records. All information relevant to the offering of generation units in the PJM Market, including all information necessary to evaluate compliance with Section VI.A. and Section VI.B. must be maintained by Defendants for one year after the sale of the Divestiture Assets.
4. The auditor shall have full and complete access to all personnel, books, records, documents, and facilities of Defendants related to Defendants' compliance with Section VI, or to any other relevant information, as the auditor may request, including but not limited to, all documents and records kept in the normal course of business that relate to Defendants' obligations under Section VI. Defendants shall provide such financial or other information as auditor may request and shall

cooperate with the auditor. Defendants shall take no action to interfere with or impede the auditor's ability to perform his responsibilities or to monitor Defendants' compliance with Section VI.

5. At any time during the period that Defendants are bound by Section VI,
 - a. if Defendants contact PJM orally or in writing to discuss offers made by Defendants for units subject to the requirements of Section VI, Defendants must also communicate the same information to the auditor in writing within six (6) hours, unless another form of communication is authorized by the auditor;
 - b. if Defendants are contacted by PJM orally or in writing to discuss offers made by Defendants for units subject to the requirements of Section VI, Defendants must communicate any information they provide to PJM to the auditor in writing within six (6) hours, unless another form of communication is authorized by the auditor, and
 - c. as to units listed in Attachment B,
 1. within five (5) days of the execution of the agreement referenced in Section VI.E.1., Defendants must inform the auditor in writing of what provision of the PJM "Amended and Restated Operating Agreement of PJM Interconnection, LLC," Section 6.4, applies at that time to the Cost-Based Offers for those units, and
 2. if PJM informs Defendants that any of those units become subject to a different provision of the PJM "Amended and Restated

Operating Agreement of PJM Interconnection, LLC,” Section 6.4, Defendants must communicate that information to the auditor in writing within six (6) hours.

6. Defendants may require the auditor to sign a confidentiality agreement prohibiting the disclosure of any information gained as a result of his role as auditor to anyone other than the United States or the Court.
7. The auditor shall serve, without bond or other security, at the cost and expense of Defendants, on terms commensurate with the auditor’s experience and responsibilities. Defendants shall indemnify the auditor and hold the auditor harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the auditor’s duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of any claim, whether or not resulting in any liability, except to the extent that such liabilities, losses, damages, claims, or expenses result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the auditor.
8. The auditor shall have no responsibility or obligation for the operation of, or the right to operate, Defendants’ businesses.
9. The term of the auditor shall end sixty (60) days after the sale of the Divestiture Assets is completed. The United States may extend the time period set forth in Section VI.E.9. for an additional period or periods of time not to exceed thirty (30) calendar days.

10. The auditor shall report in writing to the United States concerning Defendants' compliance with Section VI thirty (30) days after execution of the agreement referenced in Section VI.E.1. and every thirty (30) days thereafter until the auditor's term expires. The auditor shall provide a final report to the United States sixty (60) days after the sale of the Divestiture Assets. The United States may extend the time period set forth in Section VI.E.10. for an additional period or periods of time not to exceed thirty (30) calendar days.

VII. TERM

- A. This Hold Separate Stipulation and Order shall remain in effect until consummation of the divestitures required by the proposed Final Judgment or until further order of the Court.

Dated: June 22, 2006

Respectfully submitted,

FOR PLAINTIFF
UNITED STATES OF AMERICA:

FOR DEFENDANT
EXELON CORPORATION:

/s/

Mark N. Niefer (DC Bar # 470370)
Jade Alice Eaton (DC Bar # 939629)
Tracy Lynn Fisher (MN Bar # 315837)
Trial Attorneys
United States Department of Justice
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/s/

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Tel: (202) 371-7500
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FOR DEFENDANT
PUBLIC SERVICE ENTERPRISE
GROUP INCORPORATED:

/s/

Douglas G. Green (DC Bar # 183343)
Stephoe & Johnson LLP
1330 Connecticut Avenue, NW
Washington, D.C. 20036
Tel: (202) 429-3000
Fax: (202) 429-3902

ORDER

It is SO ORDERED, this _____ day of ____, 2006.

United States District Court Judge

ATTACHMENT A

Electric Generating Facility	Location/Address	Unit Number(s)
Bergen Generating Station	10 Victoria Terr. Ridgefield, NJ, 07657	CC, CC1
Cromby Generating Station	100 Cromby Rd. Phoenixville, PA, 19460	1, 2
Eddystone Generating Station	Number 1 Industrial Hwy. Eddystone, PA, 19022	1, 2, 3, 4
Hudson Generating Station,	Duffield & Van Keuren Aves. Jersey City, NJ, 07306	1, 2
Linden Generating Station	4001 South Wood Ave. Linden, NJ, 07036	CC1, CC2
Mercer Generating Station	2512 Lambertson Rd. Hamilton, NJ, 08611	1, 2
Sewaren Generating Station	751 Cliff Rd. Sewaren, NJ, 07077	1, 2, 3, 4
Schuylkill Generating Station	2800 Christian St. Philadelphia, PA, 19146	1

ATTACHMENT B

Electric Generating Facility	Location/Address	Unit Number(s)
Burlington Generating Station	W. Broad St. And Devlin Ave. Bordentown, NJ, 08505	9, 11, 12
Chester Generating Station	Front and Ward Sts. Chester, PA 19013	7, 8, 9
Croydon Generating Station	955 River Rd. Croydon, PA, 19020	11, 12, 21, 22, 31, 32, 41, 42
Delaware Generating Station	1325 N. Beach St. Philadelphia, PA, 19125	9, 10, 11, 12
Eddystone Generating Station	Number 1 Industrial Hwy. Eddystone, PA, 19022	10, 20, 30, 40
Edison Generating Station	164 Silver Lake Rd. Edison, NJ, 08817	1, 2, 3
Essex Generating Station	155 Raymond Blvd. Newark, NJ, 07105	9, 10, 11, 12
Falls Generating Station	Bristol and Tyburn Rds. Fallsington, PA, 19067	1, 2, 3
Kearny Generating Station	Foot of Hackensack Ave. Kearny, NJ, 07032	12
Linden Generating Station	Grasselli Ave. Linden, NJ, 07036	5, 6, 7, 8
Moser Generating Station	1595 Industrial Hwy. Pottstown, PA 19464	1, 2, 3
Richmond Generating Station	3901 N. Delaware Ave. Philadelphia, PA, 19137	91, 92
Schuylkill Generating Station	2800 Christian St. Philadelphia, PA, 19146	10, 11
Southwark Generating Station	2501 S. Delaware Ave. Philadelphia, PA, 19148	3, 4, 5, 6

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA)	
)	
Plaintiff,)	
)	
v.)	Case No.:
)	
EXELON CORPORATION)	Judge:
)	
and)	Deck Type:
)	
PUBLIC SERVICE ENTERPRISE)	Filed:
GROUP INCORPORATED)	
)	
Defendants.)	
)	

PROPOSED FINAL JUDGMENT

WHEREAS, Plaintiff, United States of America, filed its Complaint on June 22, 2006, relating to the proposed merger of Defendants Exelon Corporation (“Exelon”) and Public Service Enterprise Group Incorporated (“PSEG”);

AND WHEREAS, Defendants, by their respective attorneys, have consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law, and without this Final Judgment constituting any evidence against or admission by any party regarding any issue of fact or law;

AND WHEREAS, Defendants agree to be bound by the provisions of this Final Judgment pending its approval by the Court;



AND WHEREAS, the essence of this Final Judgment is the prompt divestiture of certain assets by Defendants to assure that competition is not substantially lessened;

AND WHEREAS, the United States requires Defendants to make certain divestitures for the purpose of remedying the loss of competition alleged in the Complaint;

AND WHEREAS, Defendants have represented to the United States that the divestitures required below can and will be made, subject to receipt of necessary regulatory approvals, and that Defendants will later raise no claim of mistake, hardship, or difficulty of compliance as grounds for asking the Court to modify any of the provisions contained below;

NOW THEREFORE, before any testimony is taken, without trial or adjudication of any issue of fact or law, and upon consent of the parties, it is ORDERED, ADJUDGED, AND DECREED:

I. JURISDICTION

The Court has jurisdiction over the subject matter of and each of the parties to this action. The Complaint states a claim upon which relief may be granted against Defendants under Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18.

II. DEFINITIONS

As used in this Final Judgment:

- A. "Acquire" means obtain any interest in any electricity generating facility, including real property, deeded development rights to real property, capital equipment, buildings, or fixtures.
- B. "Acquirer" or "Acquirers" means the entity or entities to whom Defendants divest any of the Divestiture Assets or with whom Defendants have entered into definitive contracts to sell any of the Divestiture Assets.
- C. "Control" means have the ability, directly or indirectly, to set the level of, dispatch, or offer the output of one or more units of an electricity generating facility or to operate one or more units of an electricity generating facility.
- D. "Designated Utility Zones" means the service territories in which the following companies on June 1, 2006, owned the wires through which electricity is distributed:
 - 1. Atlantic City Electric Company,
 - 2. Baltimore Gas and Electric Company,
 - 3. Delmarva Power and Light Company,
 - 4. Jersey Central Power and Light Company,
 - 5. Metropolitan Edison Company,
 - 6. Rockland Electric Company,
 - 7. PECO Energy Company,
 - 8. Potomac Electric Power Company,
 - 9. PPL Electric Utilities Corporation, and
 - 10. Public Service Electric and Gas Company.

- E. “Divestiture Assets” means the following facilities: (1) Cromby Generating Station, 100 Cromby Rd. at Phoenixville, PA, 19460; (2) Eddystone Generating Station, Number 1 Industrial Hwy. at Eddystone, PA, 19022; (3) Hudson Generating Station, Duffield & Van Keuren Aves. at Jersey City, NJ, 07306; (4) Linden Generating Station, 4001 South Wood Ave. at Linden, NJ, 07036; (5) Mercer Generating Station, 2512 Lambertson Rd. at Hamilton, NJ, 08611; and (6) Sewaren Generating Station, 751 Cliff Rd. at Sewaren, NJ, 07077; and
- a. For each of those facilities, all of Defendants’ rights, titles, and interests in any tangible and intangible assets relating to the generation, dispatch, and offering of electricity at the facility; including the land; buildings; fixtures; equipment; fixed assets; supplies; personal property; non-consumable inventory on site as of June 1, 2006; furniture; licenses, permits, and authorizations issued by any governmental organization relating to the facility (including environmental permits and all permits from federal or state agencies and all work in progress on permits or studies undertaken in order to obtain permits); plans for design or redesign of the facility or any assets at the facility; agreements, leases, commitments, and understandings pertaining to the facility and its operation; records relating to the facility or its operation, wherever kept and in whatever form (excluding records of past offers submitted to PJM); all equipment associated with connecting the facility to PJM (including automatic generation control equipment); all remote start capability or equipment located on site; and

all other interests, assets, or improvements at the facility customarily used in the generation, dispatch, or offer of electricity from the facility; provided, however, that "Divestiture Assets" shall not include (i) electric and gas distribution or transmission assets located in, or appurtenant to, the boundaries of the facility, or (ii) any communications links between the facility and Defendants, which will be disconnected.

- b. At the option of the Acquirer of the Linden Generating Station, the natural gas pipeline facilities connecting any assets at the Linden Generating Station (including the assets listed in Section II.E.a. for the Linden Generating Station), to an interconnection with the Texas Eastern Gas Transmission LP, and all of Defendants' rights, titles, and interests in any tangible and intangible assets relating to the delivery of natural gas from the Texas Eastern Gas Transmission LP interconnection with the Linden Generating Station, including the land; buildings; fixtures; equipment; fixed assets; supplies; personal property; non-consumable inventory on site as of June 1, 2006; furniture; licenses, permits, and authorizations issued by any governmental organization relating to the facility (including environmental permits and all permits from federal or state agencies and all work in progress on permits or studies undertaken in order to obtain permits); plans for design or redesign of the facility or any assets at the facility; agreements, leases, commitments, and understandings pertaining to the facility and its operation; records relating to the facility or its operation, wherever kept

and in whatever form, and all other interests, assets, or improvements customarily used in the delivery of natural gas from the interconnection of the Texas Eastern Gas Transmission LP to the Linden Generating Station.

To the extent that any licenses, permits, or authorizations described in Section II.E.a. or Section II.E.b. are nontransferable, Defendants will use their best efforts to obtain the necessary consent for assignment to the Acquirer or Acquirers of the license, permit, or authorization.

- F. “Exelon” means Exelon Corporation, a Pennsylvania corporation headquartered in Chicago, Illinois, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, joint ventures (not including Exelon’s participation in the ownership, operation, dispatch, or offering of output of the Keystone Generating Station or the Conemaugh Generating Station), and their directors, officers, managers, agents, and employees.
- G. “Exelon/PSEG Transaction” means the merger of Exelon and PSEG that is the subject of HSR Transaction Identification No. 2005-0696, which was filed pursuant to the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, 15 U.S.C.A. § 18a (West 1997) (“HSR Act”), including any changes in the terms of that merger that do not necessitate a new Hart-Scott-Rodino filing.
- H. “Good Utility Practice” means any of the practices, methods, and acts engaged in or approved by a significant portion of the electric utility industry during the relevant time period, or any of the practices, methods, and acts which, in the exercise of reasonable

judgment in light of the facts known at the time the decision is made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety, and expedition. "Good Utility Practice" is not intended to be limited to the optimum practice, method, or act to the exclusion of all others, but rather is intended to include acceptable practices, methods, or acts generally accepted in the region.

- I. "Including" means including but not limited to.
- J. "Person" means any natural person, corporation, association, firm, partnership, or other business or legal entity.
- K. "PJM" means PJM Interconnection, LLC.
- L. "PSEG" means Public Service Enterprise Group Incorporated, a New Jersey corporation headquartered in Newark, New Jersey, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, joint ventures (not including PSEG's participation in the ownership, operation, dispatch, or offering of output of the Keystone Generating Station, the Conemaugh Generating Station, or the Yards Creek Generating Station), and their directors, officers, managers, agents, and employees.

III. APPLICABILITY

- A. This Final Judgment applies to Defendants Exelon and PSEG, as defined above, and all other persons in active concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise.

- B. Defendants shall require, as a condition of the sale or other disposition of all or substantially all of their electricity generating facilities in the Designated Utility Zones or of lesser business units that include the Divestiture Assets, that the purchaser agrees to be bound by the provisions of this Final Judgment, provided, however, that Defendants need not obtain such an agreement from the Acquirers of the Divestiture Assets.

IV. DIVESTITURES

- A. Defendants are hereby ordered and directed, in accordance with the terms of this Final Judgment, to sell the Divestiture Assets to Acquirers acceptable to the United States in its sole discretion. Defendants shall enter into definitive contracts for sale of the Divestiture Assets within 150 days after consummation of the Exelon/PSEG Transaction. The United States, in its sole discretion, may extend the time period set forth in Section IV.A. for entering into definitive contracts for sale for an additional period not to exceed thirty (30) calendar days and shall notify the Court in such circumstances. Defendants shall use their best efforts as expeditiously and timely as possible (1) to enter into these contracts, and (2) after obtaining the United States' approval of the Acquirers, to seek the necessary approvals of the sale of Divestiture Assets from regulatory agencies with jurisdiction over the Exelon/PSEG Transaction. Defendants shall consummate the contracts for sale no later than twenty-one (21) calendar days after receiving, for each Divestiture Asset, the last necessary regulatory approval required for that Divestiture Asset.

- B. In accomplishing the requirements imposed by Section IV.A., Defendants promptly shall make known, by usual and customary means, the availability for sale of the Divestiture Assets. Defendants shall inform any person making an inquiry regarding a possible purchase of the Divestiture Assets that the sales are being made pursuant to this Final Judgment and provide such person with a copy of this Final Judgment. Defendants shall also offer to furnish to prospective Acquirers who have been invited to submit binding bids, subject to reasonable protection for confidential commercial information, all information and documents relating to the Divestiture Assets customarily provided in a due diligence process, except such information subject to attorney-client privilege or the attorney work-product doctrine. Defendants shall make available such information to the United States at the same time that such information is made available to any other person.
- C. Subject to reasonable protection for confidential commercial information, Defendants shall permit prospective Acquirers who have been invited to submit binding bids for the Divestiture Assets to have reasonable access to their personnel and to make such inspection of the Divestiture Assets and any and all of their financial, operational, or other documents and information customarily provided as part of a due diligence process, as well as access to any and all environmental and other permit documents and information.
- D. Defendants shall provide to each Acquirer of any of the Divestiture Assets, and to the United States, the name and most recent contact information (if known) for each

individual who is currently, or who, to the best of Defendants' knowledge, has, at any time since January 1, 2006, been stationed at a specific Divestiture Asset and involved in the operation, dispatch, or offering of the output, of that Divestiture Asset to be purchased by the Acquirer. Defendants shall not impede or interfere with any negotiations by the Acquirer or Acquirers to employ such persons.

- E. Defendants also agree to preserve the Divestiture Assets in a condition and state of repair at least equal to their condition and state of repair as of the date the Complaint was filed, ordinary wear and tear excepted, and consistent with Good Utility Practice.
- F. Defendants shall warrant to the Acquirers of the Divestiture Assets that each asset (other than assets retired in place as of June 1, 2006) will be operational, consistent with Good Utility Practice, on the date of sale, subject to legal or regulatory restrictions on any of the Divestiture Assets in existence on the date of sale.
- G. Defendants shall warrant to the Acquirers of the Divestiture Assets that there are no undisclosed material defects in the environmental, zoning, or other permits pertaining to the operation of each asset, and that following the sale of the Divestiture Assets, Defendants will not undertake, directly or indirectly, any challenges to any permits or certifications relating to the operation of the Divestiture Assets, or otherwise take any action to impede the divestiture or operation of the Divestiture Assets.
- H. The divestitures, whether accomplished by Defendants pursuant to Section IV, or by the trustee appointed pursuant to Section V of this Final Judgment, shall be accomplished in such a way as to satisfy the United States, in its sole discretion, that the Divestiture

Assets can and will be used by the Acquirers as part of viable, ongoing businesses engaged in the provision of electric generation services. The divestitures, whether pursuant to Sections IV or V of this Final Judgment, (1) shall be made to Acquirers that, in the United States' sole judgment, have the intent and capability (including the necessary managerial, operational, technical, and financial capability) of competing effectively in the business of the provision of electric generation services; and (2) shall be accomplished so as to satisfy the United States, in its sole discretion, that none of the terms of any agreement between the Acquirers and Defendants give Defendants the ability unreasonably to raise the Acquirers' costs, to lower the Acquirers' efficiency, or otherwise to interfere in the ability of the Acquirers to compete effectively.

V. APPOINTMENT OF TRUSTEE

- A. If Defendants have not entered into definitive contracts for sale of the Divestiture Assets within the time specified in Section IV.A. of this Final Judgment, Defendants shall notify the United States of that fact in writing. Upon application of the United States, the Court shall appoint a trustee selected by the United States and approved by the Court to effect the divestiture of the Divestiture Assets, including the application for necessary regulatory approvals. Until such time as a trustee is appointed, Defendants shall continue their efforts to effect the sale of the Divestiture Assets as specified in Section IV.
- B. After the appointment of a trustee becomes effective, only the trustee shall have the right to sell the Divestiture Assets. The trustee shall have the power and authority to

accomplish the divestitures at the earliest possible time to Acquirers acceptable to the United States, in its sole discretion, at such price and on such terms as are then obtainable upon reasonable effort by the trustee, subject to the provisions of Sections IV, V, and VI of this Final Judgment, and shall have such other powers as the Court deems appropriate. Subject to Section V.D. of this Final Judgment, the trustee shall have the power and authority to hire at the cost and expense of Defendants any investment bankers, attorneys, or other agents, who shall be solely accountable to the trustee, reasonably necessary in the judgment of the trustee to assist in the divestitures.

- C. Defendants shall not object to a sale by the trustee on any ground other than the trustee's malfeasance. Any such objections by Defendants must be conveyed in writing to the United States and the trustee within ten (10) calendar days after the trustee has provided the notice required under Section VI of this Final Judgment.
- D. The trustee shall serve at the cost and expense of Defendants, on such terms and conditions as the United States approves, and shall account for all monies derived from the sale of the assets sold by the trustee and all costs and expenses so incurred. After approval by the Court of the trustee's accounting, including fees for its services and those of any professionals and agents retained by the trustee, all remaining money shall be paid to Defendants, and the trust shall then be terminated. The compensation of the trustee and of any professionals and agents retained by the trustee shall be reasonable in light of the value of the Divestiture Assets and based on a fee arrangement providing the trustee

with an incentive based on the price and terms of the divestitures and the speed with which they are accomplished, but timeliness is paramount.

- E. Defendants shall use their best efforts to assist the trustee in accomplishing the required divestiture, including their best efforts to effect all necessary regulatory approvals. The trustee and any consultants, accountants, attorneys, and other persons retained by the trustee shall have full and complete access to the personnel, books, records, and assets at the facilities to be divested, and Defendants shall develop financial or other information relevant to the assets to be divested customarily provided in a due diligence process as the trustee may reasonably request, subject to reasonable protection for confidential commercial information. Defendants shall permit prospective Acquirers who have been invited to submit binding bids for any of the Divestiture Assets to have reasonable access to their personnel and to make such inspection of the Divestiture Assets and any and all financial, operational, or other documents and other information as may be relevant to the divestitures required by this Final Judgment, subject to reasonable protection for confidential commercial information. Defendants shall take no action to interfere with or to impede the trustee's accomplishment of the divestitures.
- F. After its appointment, the trustee shall file monthly reports with the United States and the Court setting forth the trustee's efforts to accomplish the divestitures ordered under this Final Judgment; provided however, that to the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. Such reports shall include the name, address, and telephone number of each

person who, during the preceding month, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Divestiture Assets, and shall describe in detail each contact with any such person during that period. The trustee shall maintain full records of all efforts made to divest the Divestiture Assets.

- G. If the trustee has not accomplished such divestitures within sixty (60) calendar days after its appointment, the trustee shall file promptly with the Court a report setting forth (1) the trustee's efforts to accomplish the required divestitures; (2) the reasons, in the trustee's judgment, why the required divestitures have not been accomplished; and (3) the trustee's recommendations. To the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. The trustee shall at the same time furnish such report to the United States, who shall have the right to make additional recommendations consistent with the purpose of the trust. The Court shall enter thereafter such orders as it shall deem appropriate to carry out the purpose of this Final Judgment which may, if necessary, include extending this Final Judgment and the term of the trustee's appointment by a period requested by the United States.

VI. NOTICE OF PROPOSED DIVESTITURES

- A. Within two (2) business days after signing a definitive contract for sale of any of the Divestiture Assets, Defendants or the trustee, whichever is then responsible for effecting

the divestiture required herein, shall notify the United States of any proposed divestiture required by Sections IV or V of this Final Judgment, and submit to the United States a copy of the proposed contract for sale and any other agreements with the Acquirer relating to the Divestiture Assets. If the trustee is responsible, it shall similarly notify Defendants. The notice shall set forth the details of the proposed divestiture (including the name, address, and telephone number of the proposed Acquirer), and list the name, address, and telephone number of each person not previously identified who offered or expressed an interest in or desire to acquire the Divestiture Assets, together with full details of the same.

- B. Within fifteen (15) calendar days of receipt by the United States of such notice, the United States may request from Defendants, the proposed Acquirers, any other third party, or the trustee if applicable, additional information concerning the proposed divestiture, the proposed Acquirers, and any other potential Acquirers. Defendants and the trustee shall furnish any additional information requested within fifteen (15) calendar days of the receipt of the request, unless the parties shall otherwise agree.
- C. Within thirty (30) calendar days after receipt of the notice or within twenty (20) calendar days after the United States has been provided the additional information requested from Defendants, the proposed Acquirers, any third party, and the trustee, whichever is later, the United States shall provide written notice to Defendants and the trustee, if there is one, stating whether or not it objects to the proposed divestiture, provided, however, that the United States may extend the period for its review up to an additional thirty (30)

calendar days. If the United States provides written notice that it does not object, the divestiture may be consummated, subject only to Defendants' limited right to object to the sale under Section V.C. of this Final Judgment. Absent written notice that the United States does not object to the proposed Acquirer, or upon objection by the United States, a divestiture proposed under Section IV or Section V shall not be consummated. Upon objection by Defendants under Section V.C., a divestiture proposed under Section V shall not be consummated unless approved by the Court.

VII. AFFIDAVITS

- A. Within twenty (20) calendar days of the filing of the Complaint in this matter and every thirty (30) calendar days thereafter until the Divestiture Assets have been sold, whether pursuant to Sections IV or V of this Final Judgment, Defendants shall deliver to the United States an affidavit as to the fact and manner of compliance with Sections IV or V of this Final Judgment. Each such affidavit shall include the name, address, and telephone number of each person who, during the preceding thirty days, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Divestiture Assets, and shall describe in detail each contact with any such person during that period. Each such affidavit shall also include a description of the efforts that Defendants have taken to solicit purchasers for the Divestiture Assets and to provide required information to prospective purchasers including the limitations, if any, on such information. Assuming

the information set forth in the affidavit is true and complete, any objection by the United States to information provided by Defendants, including limitation on information, shall be made within fourteen (14) calendar days of receipt of such affidavit.

- B. Within twenty (20) calendar days of the filing of the Complaint in this matter, Defendants shall deliver to the United States an affidavit that describes in detail all actions Defendants have taken and all steps Defendants have implemented on an ongoing basis to comply with Section IX of this Final Judgment. The affidavit also shall include a description of Defendants' efforts to maintain the Divestiture Assets in operable condition at no less than current capacity configurations with current levels of staffing and management and to otherwise comply with the Hold Separate Stipulation and Order. Defendants shall deliver to the United States an affidavit describing any changes to the efforts and actions outlined in Defendants' earlier affidavit(s) filed pursuant to this Section within fifteen (15) calendar days after the change is implemented.
- C. Defendants shall keep all records of all efforts made to preserve and divest the Divestiture Assets until one year after such divestitures have been completed.

VIII. FINANCING

Defendants shall not finance all or any part of any purchase made pursuant to Sections IV or V of this Final Judgment.

IX. HOLD SEPARATE

Until the divestitures required by this Final Judgment have been accomplished, Defendants shall take all steps necessary to comply with the Hold Separate Stipulation and Order entered by the Court. Defendants shall take no action that would jeopardize, delay, or impede the divestiture order by the Court.

X. NO REACQUISITION

Defendants may not acquire or control any of the Divestiture Assets during the term of this Final Judgment.

XI. PRIOR APPROVAL

- A. Without the prior approval of the United States, Defendants shall not acquire any electricity generating facility, or enter into any contract to obtain control of, an electricity generating facility or of one or more units of an electricity generating facility in the Designated Utility Zones, which facility or units are in existence as of June 1, 2006, or are listed in Attachment A. Such prior approval shall be within the sole discretion of the United States.

This prior approval requirement shall not apply to:

1. Upgrades, expansions, or uprates of existing units up to the amount of such upgrades, expansions, or uprates;

2. Units that are rebuilt, repowered, or activated out of inactive status after June 1, 2006, as long as such rebuild, repowering, or activation, if done by Defendants, begins within one year of purchase of the facility that includes the unit; and
3. Acquisitions of a facility of 25 megawatts or less of summer net capability, as defined by PJM, or contracts to control 25 megawatts or less of summer net capability, as defined by PJM, provided, however, that Defendants do not acquire, or enter into contracts to obtain control of, more than 100 megawatts of summer net capability from units at a single facility during a single calendar year. For the purpose of Section XI.A.3., the summer net capability of a unit that is an intermittent capacity resource, as defined by PJM, will be measured as of the date of acquisition of the unit, or of entry into the contract to control the unit, in accordance with the methodology used by PJM for calculating capacity values for intermittent capacity resources.

B. Unless a transaction subject to Section XI.A. is otherwise subject to the reporting and waiting period requirements of the HSR Act:

1. Defendants shall provide notification to the United States within five (5) calendar days of acceptance of any contract subject to Section XI.A. and shall submit copies of the contracts and any management or strategic plans discussing the proposed transaction, and the names of the principal representatives of the parties to the agreement who negotiated the agreement. Defendants shall send the required materials to Chief, Transportation, Energy, and Agriculture Section,

Antitrust Division, United States Department of Justice, 325 Seventh Street, NW, Suite 500, Washington, DC 20530. Should oversight of this Final Judgment be the responsibility of another section of the Antitrust Division, the required materials shall be sent to the chief of the section responsible for oversight of this Final Judgment;

2. Within thirty (30) calendar days of the receipt of the required materials, if the transaction is not reportable under the HSR Act, the United States will determine whether it requires additional information from the parties to the contract. If the United States makes such a request for additional information, the parties will provide the information requested.
- C. Once the parties have provided all of the information requested under Section XI.B. or under the HSR Act, the United States must notify Defendants within thirty (30) calendar days if the United States disapproves the proposed transaction.
 - D. Section XI.A. shall be broadly construed and any ambiguity or uncertainty shall be resolved in favor of requiring prior approval.
 - E. Nothing in this Section limits Defendants' responsibility to comply with the requirements of the HSR Act with respect to any acquisition.

XII. COMPLIANCE INSPECTION

- A. For purposes of determining or securing compliance with this Final Judgment, or of determining whether this Final Judgment should be modified or vacated, and subject to

any legally recognized privilege, from time to time duly authorized representatives of the United States Department of Justice, including consultants and other persons retained by the United States, shall, upon written request of a duly authorized representative of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to Defendants, be permitted:

1. Access during Defendants' office hours to inspect and copy, or at the United States' option, to require Defendants to provide copies of, all books, ledgers, accounts, records, and documents in the possession, custody, or control of Defendants, relating to any matters contained in this Final Judgment; and
 2. To interview, either informally or on the record, Defendants' officers, employees, or agents, who may have their individual counsel present, regarding such matters. The interviews shall be subject to the reasonable convenience of the interviewee and without restraint or interference by Defendants.
- B. Upon the written request of a duly authorized representative of the Assistant Attorney General in charge of the Antitrust Division, Defendants shall submit written reports, or responses to written interrogatories, under oath if requested, relating to any of the matters contained in this Final Judgment as may be requested.
- C. No information or documents obtained by the means provided in this section shall be divulged by the United States to any person other than an authorized representative of the executive branch of the United States, except in the course of legal proceedings to which

the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

- D. If at the time information or documents are furnished by Defendants to the United States, Defendants represent and identify in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and Defendants mark each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then the United States shall give Defendants ten (10) calendar days notice prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

XIII. RETENTION OF JURISDICTION

The Court retains jurisdiction to enable any party to this Final Judgment to apply to the Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify any of its provisions, to enforce compliance, and to punish violations of its provisions.

XIV. EXPIRATION OF FINAL JUDGMENT

Unless the Court grants an extension, this Final Judgment shall expire ten (10) years from the date of its entry.

XV. PUBLIC INTEREST DETERMINATION

Based on the record in this case, entry of this Final Judgment is in the public interest, and the parties have complied with the procedures of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16.

Dated:

United States District Judge

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ATTACHMENT A

State	Identification Number (PJM Queue, www.pjm.com)	PJM Substation
DE	Q42	Indian River
NJ	P23	Bayonne 138 kV
NJ	Q08	Red Oak 230 kV
NJ	Q11	Red Oak 230 kV
NJ	Q26	Churchtown 230 kV
NJ	Q41	Mt. Hope Mine 34.5 kV
PA	C02	South Lebanon 230 kV
PA	G06	Martins Creek #4
PA	M11	Susquehanna #1
PA	M12	Susquehanna #2
PA	P04	Peach Bottom 500 kV
PA	Q20	Holtwood
PA	Q28	Eldred-Frackville 230 kV

UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

_____)
 UNITED STATES OF AMERICA)
 U.S. Department of Justice)
 Antitrust Division)
 325 7th Street, NW)
 Suite 500)
 Washington, DC 20530)

 Plaintiff,)

 v.)

 EXELON CORPORATION)
 10 South Dearborn Street)
 Chicago, IL 60603)

 and)

 PUBLIC SERVICE ENTERPRISE)
 GROUP INCORPORATED)
 880 Park Plaza)
 P.O. Box 1171)
 Newark, NJ 07101-1171)

 Defendants.)
 _____)

Case No.:

Judge:

Deck Type:

Filed:

COMPLAINT

The United States of America, acting under the direction of the Attorney General of the United States, brings this civil action to enjoin the merger of Exelon Corporation (“Exelon”) and Public Service Enterprise Group Incorporated (“PSEG”) and alleges as follows:



1. On December 20, 2004, Exelon entered into an agreement to merge with PSEG. The transaction would create one of the largest electricity companies in the United States with total assets of \$79 billion and annual revenues of \$27 billion.
2. Exelon and PSEG compete to sell wholesale electricity throughout the Mid-Atlantic and in Illinois, North Carolina, West Virginia, and Ohio.
3. Exelon and PSEG are the two largest electricity firms in the area encompassing central and eastern Pennsylvania, New Jersey, Delaware, the District of Columbia, and parts of Maryland and Virginia. Together, they would account for more than 35 percent of the electric generating capacity in this area and would have wholesale electricity revenues of approximately \$4 billion.
4. In the eastern portion of this area, which includes the densely populated northern New Jersey and Philadelphia areas, Exelon and PSEG together would account for more than 45 percent of the electric generating capacity in this area and would have wholesale electricity revenues of approximately \$3 billion.
5. Exelon's merger with PSEG would eliminate competition between them and give the merged firm the incentive and the ability to raise wholesale electricity prices, resulting in increased retail electricity prices for millions of residential, commercial, and industrial customers in these areas.
6. Accordingly, the merger would substantially lessen competition in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18.

I. JURISDICTION AND VENUE

7. This action is filed by the United States under Section 15 of the Clayton Act, as amended, 15 U.S.C. § 25, to prevent and restrain Defendants from violating Section 7 of the Clayton Act, 15 U.S.C. § 18.

8. Exelon and PSEG are engaged in interstate commerce and in activities substantially affecting interstate commerce. The Court has jurisdiction over this action and the parties pursuant to Sections 15 and 16 of the Clayton Act, 15 U.S.C. §§ 25, 26; and 28 U.S.C. §§ 1331, 1337.

9. Exelon and PSEG transact business and are found in the District of Columbia. Venue is proper under Section 12 of the Clayton Act, 15 U.S.C. § 22; and 28 U.S.C. § 1391(c).

II. THE DEFENDANTS AND THE TRANSACTION

10. Defendant Exelon is a Pennsylvania corporation, with its headquarters in Chicago, Illinois. Exelon owns Exelon Generation Company, LLC, which owns electric generating plants located primarily in the Mid-Atlantic and the Midwest with a total generating capacity of more than 25,000 megawatts ("MW"). Exelon also owns two electricity retailers that buy wholesale electricity and resell it to consumers: PECO Energy Company, a gas and electric utility that serves customers in the Philadelphia area; and Commonwealth Edison Company, an electric utility that serves customers in northern Illinois.

11. Defendant PSEG is a New Jersey corporation, with its headquarters in Newark, New Jersey. PSEG owns PSEG Power LLC, which owns electric generating plants located primarily in New Jersey with a total generating capacity of more than 15,000 MW. PSEG also owns a gas and electric utility, Public Service Electric and Gas Company, that serves customers in New Jersey.

12. Following Exelon's merger with PSEG, the combined company would be known as Exelon Electric & Gas, with corporate headquarters in Chicago.

III. TRADE AND COMMERCE

A. Background

13. Electricity supplied to retail customers is generated at electric generating plants, which consist of one or more generating units. An individual generating unit uses any one of several types of generating technologies (including hydroelectric turbine, steam turbine, combustion turbine, or combined cycle) to transform the energy in fuels or the force of flowing water into electricity. The fuels used by a generating unit include uranium, coal, oil, or natural gas.

14. Generating units vary considerably in their operating costs, which are determined primarily by the cost of fuel and the efficiency of the technology in transforming the energy in fuel into electricity. "Baseload" units — which typically include nuclear and some coal-fired steam turbine units — have relatively low operating costs. "Peaking" units — which typically

include oil- and gas-fired combustion turbine units — have relatively high operating costs. “Mid-merit” units — which typically include combined-cycle and some coal-fired steam turbine units — have costs lower than those of peaking units but higher than those of baseload units.

15. Once electricity is generated at a plant, an extensive set of interconnected high-voltage lines and equipment, known as the transmission grid, transports the electricity to lower voltage distribution lines that relay the power to homes and businesses. Transmission grid operators must closely monitor the grid to prevent too little or too much electricity from flowing over the grid, either of which might damage lines or generating units connected to the grid. To prevent such damage and to prevent widespread blackouts from disrupting electricity service, a grid operator will manage the grid to prevent any more electricity from flowing over a transmission line as that line approaches its operating limit (a “transmission constraint”).

16. In the Mid-Atlantic, the transmission grid is overseen by PJM Interconnection, LLC (“PJM”), a private, non-profit organization whose members include transmission line owners, generation owners, distribution companies, retail customers, and wholesale and retail electricity suppliers. The transmission grid administered by PJM is the largest in the United States, providing electricity to approximately 51 million people in an area encompassing New Jersey, Pennsylvania, Delaware, Maryland, Virginia, West Virginia, the District of Columbia, and parts of North Carolina, Kentucky, Ohio, Indiana, Michigan, Tennessee, and Illinois (the “PJM control area”).

17. PJM oversees two auctions for the sale and purchase of wholesale electricity: a day-ahead auction that clears the day before the electricity is required, and a real-time auction that clears the day the electricity is required. Generation owners located in the PJM control area sell through these auctions to electricity retailers that provide retail electric service in the PJM control area. Buyers and sellers of wholesale electricity may also enter into contracts for the sale and purchase of electricity with each other, or third parties, outside of the PJM auction process; prices for these bilateral contracts generally reflect expected auction prices.

18. In the day-ahead auction, each buyer typically submits to PJM the amount of electricity the buyer expects to need each hour of the next day. Then PJM adds up the amount of electricity buyers will need to determine how much electricity will be demanded each hour. Each seller submits to PJM an offer to sell electricity indicating the amount of electricity it is willing to sell the next day and the price at which it is willing to sell. Then PJM sorts the offers to sell from lowest to highest offer price to determine how much electricity will be supplied at any given price.

19. Subject to the physical and engineering limitations of the transmission grid, PJM seeks to have generating units operated in “merit” order, from lowest to highest offer. In the day-ahead auction, as long as transmission constraints are not expected, PJM takes the least expensive offer first and then continues to accept offers to sell at progressively higher prices until the needs for each hour the next day are covered. In this way, PJM minimizes the total cost of generating electricity required for the next day. The clearing price for any given hour essentially

is determined by the generating unit with the highest offer price that is needed for that hour, and all sellers for that hour receive that price regardless of their offer price or their units' costs. In the real-time auction, which accounts for differences between anticipated and actual supply and demand, PJM accepts sellers' offers in merit order, subject to the physical and engineering limitations of the transmission grid, until there is a sufficient quantity of electricity to meet actual demand.

20. At times, transmission constraints prevent the generating units with the lowest offers from meeting demand in a particular area within the PJM control area. When that happens, PJM often calls on more expensive units located within the smaller area bounded by the transmission constraints (a "constrained area"), and the clearing price for the buyers in that area adjusts accordingly. Because more expensive units are required to meet demand, the clearing price in a constrained area will be higher than it would be absent the transmission constraints.

21. **PJM East.** One historically constrained area within the PJM control area includes the densely populated northern New Jersey and Philadelphia areas. This area ("PJM East") is defined by the "Eastern Interface," a set of five major transmission lines that divides New Jersey and the Philadelphia area from the rest of the PJM control area. When the Eastern Interface is constrained, PJM is limited in its ability to supply demand located east of the constraint with electricity from generating units located west of the constraint. PJM often responds to constraints on the Eastern Interface by calling on additional generating units east of the constraint

to run, generally resulting in higher prices in PJM East because the cost of additional generation east of the constraint is higher than the cost of additional generation west of the constraint.

22. In PJM East during 2005, more than \$10 billion of wholesale electricity was sold for resale to nearly 6 million retail customers.

23. **PJM Central/East.** A second constrained area in PJM includes PJM East and central Pennsylvania. This area is defined by two major transmission lines known as “5004” and “5005” that run from western to central Pennsylvania and divide the area east of the lines (“PJM Central/East”) from the rest of PJM. When the 5004 and 5005 transmission lines are constrained, PJM is limited in its ability to supply demand located east of the constraint with electricity from generating units located west of the constraint. PJM often responds to constraints on the 5004 and 5005 lines by calling on additional generating units east of the constraint to run, generally resulting in higher prices in PJM Central/East because the cost of additional generation east of the constraint is higher than the cost of additional generation west of the constraint.

24. In PJM Central/East during 2005, more than \$19 billion of wholesale electricity was sold for resale to nearly 9 million retail customers.

B. Relevant Product Market

25. Wholesale electricity is a relevant product market and a line of commerce within the meaning of Section 7 of the Clayton Act. In the event of a small but significant increase in

the price of wholesale electricity, insufficient purchasers would switch away to make that increase unprofitable.

C. Relevant Geographic Markets

26. When the Eastern Interface is constrained, purchasers of wholesale electricity for use in PJM East have limited ability to turn to generation outside of PJM East. At such times, the amount of electricity that could be purchased outside PJM East is insufficient to make it unprofitable for generators located inside PJM East to seek a small but significant price increase.

27. PJM East is a relevant geographic market and a section of the country within the meaning of Section 7 of the Clayton Act.

28. When the 5004 and 5005 transmission lines are constrained, purchasers of wholesale electricity in PJM Central/East have limited ability to turn to generation outside of PJM Central/East. At such times, the amount of electricity that could be purchased outside PJM Central/East is insufficient to make it unprofitable for generators located inside PJM Central/East to seek a small but significant price increase.

29. PJM Central/East is a relevant geographic market and a section of the country within the meaning of Section 7 of the Clayton Act.

IV. ANTICOMPETITIVE EFFECTS

A. Market Shares and Concentration

30. Exelon owns approximately 20 percent of the generating capacity in PJM East. PSEG owns approximately 29 percent of the generating capacity in PJM East. After the merger, Exelon would own approximately 49 percent of the total generating capacity in PJM East.

31. Using a measure of market concentration called the Herfindahl-Hirschman Index (“HHI”), explained in Appendix A, Exelon’s merger with PSEG would yield a post-merger HHI in PJM East of more than 2,700, representing an increase of more than 1,100.

32. Exelon owns approximately 19 percent of the generating capacity in PJM Central/East. PSEG owns approximately 21 percent of the generating capacity in PJM Central/East. After the merger, Exelon would own approximately 40 percent of the total generating capacity in PJM Central/East.

33. Exelon’s merger with PSEG would yield a post-merger HHI in PJM Central/East of approximately 2,100, representing an increase of approximately 800.

B. Effect of Transaction

34. In addition to owning a significant share of overall generating capacity in PJM East and PJM Central/East, the merged firm will own generating units with a wide range of operating costs, including low-cost baseload units that provide the incentive to exercise market power, mid-merit units that provide the ability and incentive to exercise market power, and certain peaking units that provide additional ability to exercise market power in times of high

demand. The combination of Exelon's and PSEG's generating units would significantly enhance Exelon's ability and incentive to reduce output and raise prices in PJM East and PJM Central/East.

35. The merger would enhance Exelon's ability to reduce output and raise price in PJM East and PJM Central/East by increasing its share of mid-merit and peaking capacity in those markets. With a greater share of mid-merit and peaking capacity, Exelon would more often be able to reduce output and raise clearing prices at relatively low cost to it by withholding capacity. Exelon could withhold capacity in several ways. For example, it could submit high offers in the PJM auctions for some of the capacity from its mid-merit units such that they are not all called on to produce electricity. By reducing its output, Exelon could force PJM to turn to more expensive units to meet demand, resulting in higher clearing prices in PJM East and PJM Central/East.

36. The merger would enhance Exelon's incentive to reduce output and raise price in PJM East and PJM Central/East by increasing the amount of baseload and mid-merit capacity it owns in these markets. With a greater amount of baseload and mid-merit capacity, Exelon would more often find it profitable to reduce output and raise market-clearing prices by withholding capacity. For example, as clearing prices increase due to its withholding certain of its mid-merit capacity, Exelon would earn those higher prices on its expanded post-merger baseload capacity, which almost always runs, making it more likely that the benefit of increased revenues on its baseload capacity would outweigh the cost of withholding mid-merit capacity.

37. Increasing Exelon's incentive and ability to profitably withhold output makes it likely that Exelon will exercise market power after its merger with PSEG, resulting in significant harm to competition and increased prices. Thus, the effect of the merger may be substantially to lessen competition in violation of Section 7 of the Clayton Act.

V. ENTRY

38. Entry into the wholesale electricity market through the addition of new generating capacity in PJM East or PJM Central/East or the addition of new transmission capacity that would relieve the constraints that limit the flow of electricity into PJM East or PJM Central/East would take many years, especially considering the necessary environmental, safety, and zoning approvals.

39. Entry into the PJM East or PJM Central/East wholesale electricity market would not be timely, likely, and sufficient in its magnitude, character, and scope to deter or counteract an anticompetitive price increase.

VI. VIOLATION ALLEGED

40. The effect of Exelon's proposed merger with PSEG, if it were consummated, may be substantially to lessen competition for wholesale electricity in PJM East and PJM Central/East in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18. Unless restrained, the transaction would likely have the following effects, among others:

- a. competition in the market for wholesale electricity in PJM East would be substantially lessened;
- b. prices for wholesale electricity in PJM East would increase;
- c. competition in the market for wholesale electricity in PJM Central/East would be substantially lessened; and
- d. prices for wholesale electricity in PJM Central/East would increase.

VII. REQUEST FOR RELIEF

The United States requests:

- 41. that Exelon's proposed merger with PSEG be adjudged a violation of Section 7 of the Clayton Act, 15 U.S.C. § 18;
- 42. that Defendants be permanently enjoined and restrained from carrying out the Agreement and Plan of Merger dated December 20, 2004, or from entering into or carrying out any agreement, understanding, or plan by which Exelon would merge with or acquire PSEG, its capital stock or any of its assets;
- 43. that the United States be awarded the costs of this action; and

44. that the United States have such other relief as the Court may deem just and proper.

DATED: June _____, 2006

Respectfully submitted,

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APPENDIX A
DEFINITION OF HHI

The term “HHI” means the Herfindahl-Hirschman Index, a commonly accepted measure of market concentration. The HHI is calculated by squaring the market share of each firm competing in the market and then summing the resulting numbers. For example, for a market consisting of four firms with shares of 30, 30, 20, and 20 percent, the HHI is 2,600 ($30^2 + 30^2 + 20^2 + 20^2 = 2,600$). The HHI takes into account the relative size and distribution of the firms in a market. It approaches zero when a market is occupied by a large number of firms of relatively equal size and reaches its maximum of 10,000 when a market is controlled by a single firm. The HHI increases both as the number of firms in the market decreases and as the disparity in size between those firms increases.

Markets in which the HHI is between 1,000 and 1,800 are considered to be moderately concentrated, and markets in which the HHI is in excess of 1,800 points are considered to be highly concentrated. See *Horizontal Merger Guidelines* ¶ 1.51 (revised Apr. 8, 1997). Transactions that increase the HHI by more than 100 points in highly concentrated markets presumptively raise significant antitrust concerns under the Department of Justice and Federal Trade Commission. See *id.*

CERTIFICATE OF SERVICE

I hereby certify that on June 22, 2006, I caused a copy of the foregoing Complaint, proposed Final Judgment, Hold Separate Stipulation and Order, and Plaintiff United States' Explanation of Procedures for Entry of the Final Judgment to be served on counsel for defendants in this matter in the manner set forth below:

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