

**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

February 4, 2005

Date of Report (Date of earliest event reported)

Commission File Number	Exact Name of Registrant as Specified in Its Charter; State of Incorporation; Address of Principal Executive Offices; and Telephone Number	IRS Employer Identification Number
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) 10 South Dearborn Street — 37th Floor P.O. Box 805379 Chicago, Illinois 60680-5379 (312) 394-4321	36-0938600
1-1401	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))

TABLE OF CONTENTS

[Section 8 – Other Events.](#)

[Item 8.01. Other Events.](#)

[Item 9.01. Financial Statements and Exhibits.](#)

[SIGNATURES](#)

[EXHIBIT INDEX](#)

[Exhibit 99.1](#)

[Exhibit 99.2](#)

[Exhibit 99.3](#)

[Exhibit 99.4](#)

[Exhibit 99.5](#)

[Table of Contents](#)

Section 8 — Other Events.

Item 8.01. Other Events.

On December 20, 2004, Exelon Corporation (“Exelon”) and Public Service Enterprise Group Incorporated (“PSEG”) entered into an Agreement and Plan of Merger (the “Merger Agreement”), pursuant to which PSEG will merge with and into Exelon with Exelon continuing as the surviving corporation (the “Merger”). Completion of the Merger is subject to a number of conditions, including the approval of a number of governmental authorities.

On February 4, 2005, Exelon and PSEG issued a press release announcing that they had filed petitions or applications for approval with the Federal Energy Regulatory Commission (“FERC”) under the Federal Power Act, the Pennsylvania Public Utility Commission (the “PPUC”) and the New Jersey Board of Public Utilities (the “NJBPU”). Commonwealth Edison Company, a subsidiary of Exelon, also filed a notice of the Merger with the Illinois Commerce Commission (“ICC”), whose formal approval of the Merger is not required. A copy of the press release is attached as Exhibit 99.1 to this Current Report on Form 8-K and is incorporated into this Current Report on Form 8-K by reference.

Copies of the FERC, PPUC, NJBPU and ICC applications and notices (without exhibits and submitted testimony) are attached to this Current Report on Form 8-K as Exhibits 99.2, 99.3, 99.4 and 99.5, respectively, and are incorporated into this Current Report on Form 8-K by reference. Exelon expects that copies of the full filings will be available through each applicable governmental authority’s offices or its website.

Other state and federal agencies will have a role in reviewing various aspects of the transaction. Exelon and PSEG expect to make these remaining filings later to allow any required review to be completed in a timely manner.

* * * * *

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

Except for the historical information contained herein, certain of the matters discussed in this report constitute “forward-looking statements” within the meaning of the Securities Act of 1933 and the Securities Exchange Act of 1934, both as amended by the Private Securities Litigation Reform Act of 1995. These forward-looking statements include statements regarding benefits of the proposed merger, integration plans, and expected synergies, anticipated future financial and operating performance and results, including estimates for growth. These statements are based on the current expectations of management of the Exelon Registrants, and the current expectations of management of PSEG, Public Service Electric and Gas Company (“PSE&G”), PSEG Power LLC (“PSEG Power”), and PSEG Energy Holdings LLC (“PSEG Holdings” and together with PSEG, PSE&G and PSEG Power, the “PSEG Registrants”). There are a number of risks and uncertainties that could cause actual results to differ materially from the forward-looking statements included in this report. For example, (1) the companies may be unable to obtain shareholder approvals required for the merger; (2) the companies may be unable to obtain regulatory approvals required for the merger, or required regulatory approvals may delay the merger or result in the imposition of conditions that could have a material adverse effect on the combined company or cause the companies to abandon the merger; (3) conditions to the closing of the merger may not be satisfied; (4) an unsolicited offer of another company to acquire assets or capital stock of Exelon or PSEG could interfere with the merger; (5) problems may arise in successfully integrating the businesses of the companies, which may result in the combined company not operating as effectively and efficiently as expected; (6) the combined company may be unable to achieve cost-cutting synergies or it may take longer than expected to

Table of Contents

achieve those synergies; (7) the merger may involve unexpected costs or unexpected liabilities, or the effects of purchase accounting may be different from the companies' expectations; (8) the credit ratings of the combined company or its subsidiaries may be different from what the companies expect; (9) the businesses of the companies may suffer as a result of uncertainty surrounding the merger; (10) the companies may experience more difficulties than expected in achieving operating improvements at jointly owned nuclear generating facilities; (11) the companies may not realize the values expected to be obtained for properties expected or required to be divested; (12) the industry may be subject to future regulatory or legislative actions that could adversely affect the companies; and (13) the companies may be adversely affected by other economic, business, and/or competitive factors. Other unknown or unpredictable factors could also have material adverse effects on future results, performance or achievements of the combined company. A discussion of some of these other important factors and assumptions is contained in the Exelon Registrants' and PSEG Registrants' respective filings with the SEC, including: (1) the Exelon Registrants' 2003 Annual Report on Form 10-K – Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations – Business Outlook and the Challenges in Managing Our Business for Each of Exelon, ComEd, PECO and Generation; (2) the Exelon Registrants' 2003 Annual Report on Form 10-K – Item 8. Financial Statements and Supplementary Data: Exelon – Note 19, ComEd – Note 15, PECO – Note 14 and Generation – Note 13; and (3) the PSEG Registrants' Quarterly Report on Form 10-Q for the quarterly period ended September 30, 2004 – Forward Looking Statements. These risks, as well as other risks associated with the merger, will be more fully discussed in the joint proxy statement/prospectus that will be included in the Registration Statement on Form S-4 that Exelon will file with the SEC in connection with the proposed merger. In light of these risks, uncertainties, assumptions and factors, the forward-looking events discussed in this report may not occur. Readers are cautioned not to place undue reliance on these forward-looking statements, which speak only as of the date of this report. None of the Exelon Registrants or PSEG 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.

This communication is not a solicitation of a proxy from any security holder of Exelon Corporation (Exelon) or Public Service Enterprise Group Incorporated (PSEG). Exelon intends to file with the Securities and Exchange Commission a registration statement that will include a joint proxy statement/prospectus and other relevant documents to be mailed by Exelon and PSEG to their respective security holders in connection with the proposed merger of Exelon and PSEG. **WE URGE INVESTORS AND SECURITY HOLDERS TO READ THE JOINT PROXY STATEMENT/PROSPECTUS AND ANY OTHER RELEVANT DOCUMENTS WHEN THEY BECOME AVAILABLE, BECAUSE THEY WILL CONTAIN IMPORTANT INFORMATION** about Exelon, PSEG and the proposed merger. Investors and security holders will be able to obtain these materials (when they are available) and other documents filed with the SEC free of charge at the SEC's website, www.sec.gov. In addition, a copy of the joint proxy statement/prospectus (when it becomes available) may be obtained free of charge from Exelon Corporation, Investor Relations, 10 South Dearborn Street, P.O. Box 805398, Chicago, Illinois 60680-5398, or from Public Service Enterprise Group Incorporated, Investor Relations, 80 Park Plaza, P.O. Box 1171, Newark, New Jersey 07101-1171.

The respective directors and executive officers of Exelon and PSEG and other persons may be deemed to be participants in the solicitation of proxies in respect of the proposed transaction. Information regarding Exelon's directors and executive officers is available in its proxy statement filed with the SEC by Exelon on March 12, 2004, and information regarding PSEG's directors and executive officers is available in its proxy statement filed with the SEC by PSEG on March 10, 2004. Other information regarding the participants in the proxy solicitation and a description of their direct and indirect interests, by security holdings or otherwise, will be contained in the joint proxy statement/prospectus and other relevant materials to be filed with the SEC when they become available.

[Table of Contents](#)

Item 9.01. Financial Statements and Exhibits.

(c) *Exhibits.*

Exhibit No.	Description
99.1	Press Release of Exelon Corporation and Public Service Enterprise Group Incorporated.
99.2	Application for Authorization of Disposition of Jurisdictional Assets Under Section 203 of the Federal Power Act, dated February 4, 2005.
99.3	Joint Application of PECO Energy Company and Public Service Electric and Gas Company to the Pennsylvania Public Utility Commission, dated February 4, 2005.
99.4	Joint Petition of Public Service Electric and Gas Company and Exelon Corporation to the Commissioners of the New Jersey Board of Public Utilities, dated February 4, 2005.
99.5	Commonwealth Edison Company's Notice of Holding Company Merger Transaction to the Illinois Commerce Commission, dated February 4, 2005.

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
COMMONWEALTH EDISON COMPANY
PECO ENERGY COMPANY
EXELON GENERATION COMPANY, LLC

/s/ Robert S. Shapard

Robert S. Shapard
Executive Vice President and Chief Financial Officer
Exelon Corporation

February 4, 2005

EXHIBIT INDEX

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News Release

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EXELON AND PSEG SUBMIT PRINCIPAL MERGER REGULATORY FILINGS

*Applications designed to enhance competition, assure local reliability,
and continue strong local presence in New Jersey, Pennsylvania and Illinois*

CHICAGO and NEWARK (Feb. 4, 2005)—Exelon Corporation (NYSE: EXC) and Public Service Enterprise Group Incorporated (NYSE: PEG) announced today that they have made four major regulatory filings relating to their planned merger. The filings include applications to the Federal Energy Regulatory Commission (FERC), the New Jersey Board of Public Utilities (NJBPU), and the Pennsylvania Public Utility Commission (PAPUC). Exelon also filed a notice detailing the companies' plans with the Illinois Commerce Commission (ICC).

"These filings are the first important step in securing approval for the merger in the timeframe we described when we announced our plans in December," said John W. Rowe, chairman, president, and CEO of Exelon.

FERC Application

The principal focus of the FERC application is the effect of the merger on competition and how the companies propose to mitigate any anti-competitive effects the merger might otherwise have. As stated when the transaction was announced in December 2004, the companies have proposed a comprehensive mitigation plan designed to fully address FERC's requirements for competitive markets.

(more)

To mitigate effects on competition in this area, the companies have proposed to divest a number of fossil fuel-fired generating facilities and to transfer control of the output of a portion of their nuclear baseload generating capacity.

With respect to fossil fuel facilities, the companies propose to divest a total of 2,900 MW, including approximately 1,000 MW of peaking capacity and 1,900 MW of mid-merit capacity, of which at least 550 MW must be coal-fired. The companies have proposed that the sale of this generating capacity will occur as soon as possible within 18 months following close of the merger.

In addition, the companies propose to transfer control of the energy from 2,600 MW of baseload nuclear capacity (including 2,400 MW in PJM East) in what they term a “virtual divestiture.” The virtual divestiture will take one of two forms: (1) long-term firm baseload energy sales contracts (for at least 15 years, or the life of the unit); or (2) an annual auction, in 25 MW blocks, of 3-year firm entitlements to baseload energy. The long-term contracts could take one of two forms: either a “swap,” whereby the companies swap rights to energy in PJM for rights to energy outside of PJM, or an outright sale of energy from a particular unit. The “virtual divestiture” is designed to transfer control over a portion of the output of the companies’ combined nuclear fleet, as required by FERC regulations in order to qualify as mitigation, without sacrificing the benefits to the marketplace of enhancing the operation of the nuclear fleet by applying Exelon’s world-class nuclear operating expertise. The companies have not offered to divest (i.e., sell outright) any nuclear plants and do not anticipate doing so. The companies also proposed interim mitigation measures that will be in place immediately upon closing of the merger and will stay in effect until the long-term mitigation package is implemented.

State Filings

All three state filings stress the benefits of the merger in enhancing the combined companies’ operations and ability to provide cost-effective, safe and reliable service. The filings do not seek any rate increases, and indicate that efficiencies from the merger will help control operating costs of the utilities. The merger will not have adverse effects on local utility operations and will promote the public interest by:

- Increasing scale, scope and best practice sharing, which is expected to result in improved service and reliability;
 - Improving nuclear operations;
 - Maintaining a financially strong and stable company with strong cash flows and earnings predictability;
 - Creating synergies and generating economies, some of which will accrue to the regulated utilities and temper future energy rate increases;
 - Enhancing competitive retail and wholesale markets within the three states and throughout PJM;
 - Providing more opportunities for employees in a larger, more competitive company;
 - Maintaining a continuing strong corporate presence in the three utilities’ states by keeping PSE&G, PECO, and ComEd as separate corporations with headquarters in Newark, Philadelphia, and Chicago respectively;
-

- Maintaining significant local charitable contributions and continued support of economic development in all three states.

The New Jersey application includes testimony by Rowe in which he:

- Commits to keep PSE&G as a separate company, headquartered in Newark with Ralph Izzo continuing as the president and COO;
- Commits to support diversity at the Board level, the officer level, and the employee level;
- Commits to sustain PSE&G's record of charitable and civic contributions, as well as economic development and environmental commitments, at a level that is at least as substantial as PSE&G's current level, consistent with Exelon's record following the Unicom-PECO merger four years ago, which has preserved the local presence of ComEd in Chicago and PECO in Philadelphia.

The state filings indicate that the combination will result in the reduction of 1,400 – 1,500 positions, or about 5 percent of the combined work force of approximately 28,000 employees. The companies do not plan reductions in field level positions. In developing employment plans, the companies have stated they will use a fair, geographically neutral process to fill new or consolidated positions. All union contracts will be honored. To the extent practical, reductions will be accomplished through attrition. Severance programs may also be utilized.

Remaining Filings

In addition to the above filings, the following agencies will also have a role in reviewing aspects of the transaction: U.S. Department of Justice, Nuclear Regulatory Commission, Internal Revenue Service, Federal Communications Commission, Securities and Exchange Commission; New Jersey Department of Environmental Protection; New York Public Service Commission; Connecticut Siting Council; and the Connecticut Department of Environmental Protection. The scope of the required reviews varies widely, but the reviews are expected to be completed in a timely manner.

Corporate Profiles

Exelon is one of the nation's largest electric utilities with approximately 5.1 million customers and more than \$15 billion in annual revenues. The company has one of the industry's largest portfolios of electricity generation capacity, with a nationwide reach and strong positions in the Midwest and Mid-Atlantic. Exelon distributes electricity to approximately 5.1 million customers in Illinois and Pennsylvania and gas to more than 460,000 customers in the Philadelphia area. Exelon is headquartered in Chicago and trades on the NYSE under the ticker EXC. For more information, visit the company's website at www.exeloncorp.com.

PSEG is a major integrated energy and generation company with more than \$10 billion in annual revenues. It serves about 2 million electric and 1.6 million gas customers in New Jersey. The company operates a large fleet of generating stations with diverse fuel and dispatch characteristics, largely in the PJM interchange. PSEG is headquartered in Newark, New Jersey and trades on the NYSE under the ticker PEG. For more information, visit the company's website at www.pseg.com

Additional Information

This communication is not a solicitation of a proxy from any security holder of Exelon or Public Service Enterprise Group Incorporated. Exelon intends to file with the Securities and Exchange Commission a registration statement that will include a joint proxy statement/prospectus and other relevant documents to be mailed to security holders in connection with the proposed merger of Exelon and PSEG. WE URGE INVESTORS AND SECURITY HOLDERS TO READ THE JOINT PROXY STATEMENT/PROSPECTUS AND ANY OTHER RELEVANT DOCUMENTS WHEN THEY BECOME AVAILABLE, BECAUSE THEY WILL CONTAIN IMPORTANT INFORMATION ABOUT EXELON, PSEG AND THE PROPOSED MERGER. Investors and security holders will be able to obtain these materials (when they are available) and other documents filed with the SEC free of charge at the SEC's website, www.sec.gov. In addition, a copy of the joint proxy statement/prospectus (when it becomes available) may be obtained free of charge from Exelon, Investor Relations, 10 South Dearborn Street, P.O. Box 805398, Chicago, Illinois 60680-5398, or from PSEG, Investor Relations, 80 Park Plaza, P.O. Box 1171, Newark, New Jersey 07101-1171.

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This document includes "forward-looking statements" within the meaning of the Private Securities Litigation Reform Act of 1995. These forward-looking statements include, for example, statements regarding benefits of the proposed merger, integration plans and expected synergies, anticipated future financial and operating performance and results, including estimates for growth. There are a number of risks and uncertainties that could cause actual results to differ materially from the forward-looking statements made herein. A discussion of some of these risks and uncertainties is contained or referred to in the Current Report on Form 8-K filed with the SEC on December 20, 2004 by Exelon. These risks, as well as other risks associated with the merger, will be more fully discussed in the joint proxy statement/prospectus that will be included in the Registration Statement on Form S-4 that Exelon will file with the SEC in connection with the proposed merger. Readers are cautioned not to place undue reliance on these forward-looking statements, which speak only as of the date of this document. Neither Exelon nor PSEG undertakes any obligation to publicly release any revision to its forward-looking statements to reflect events or circumstances after the date of this document.

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UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Exelon Corporation)
Public Service Enterprise Group Incorporated)

Docket No. EC05-____

**APPLICATION FOR AUTHORIZATION OF
DISPOSITION OF JURISDICTIONAL ASSETS
UNDER SECTION 203 OF THE FEDERAL POWER ACT**

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February 4, 2005

TABLE OF CONTENTS

	<u>Page</u>
TABLE OF CONTENTS	i
I. INTRODUCTION	2
II. DESCRIPTION OF THE APPLICANTS	4
A. Exelon	4
1. Energy Delivery	5
2. Generation	7
B. PSEG	8
1. PSE&G	9
2. PSEG Power	10
III. DESCRIPTION OF THE TRANSACTION	12
A. The Transaction and Post-Transaction Structure	12
B. The Transaction Provides Important Public Interest Benefits	13
IV. THE TRANSACTION IS CONSISTENT WITH THE PUBLIC INTEREST	15
A. Horizontal Competition Issues	16
1. Results of the Applicants' Appendix A Analysis	16
2. The Applicants Will Mitigate All Screen Failures	19
a. Mitigation During Peak and Superpeak Load Conditions	20
b. Mitigation During Off-Peak Load Conditions	22
3. Analysis of Northern PSEG Market	29
4. The Proposed Virtual Divestiture Satisfies the Commission's Mitigation Standards	30
5. Interim Mitigation	34
a. Interim Mitigation for Peaking, Mid-Merit and Coal Units	34
b. Interim Mitigation for Baseload Nuclear Capacity	35
6. Market Power in Capacity Markets and Ancillary Services	36
a. Mitigation of Capacity Market Screen Failures	36
b. Other Ancillary Services	40
7. Horizontal Market Power in Other Geographic Markets	42
a. ISO New England ("ISO-NE")	42
b. ERCOT	43

	Virtual Market Power Issues	44
	1. No Potential for Abuse of Electric Transmission Market Power	44
	2. No Potential for Abuse of Natural Gas Transportation Market Power	46
C.	No Adverse Impact On Rates	48
	1. Transmission Rates	48
	2. Wholesale Requirements Rates	48
D.	No Adverse Impact On Regulation	50
	1. No Adverse Impact on Federal Regulation	50
	2. No Adverse Impact on State Regulation	50
E.	The Internal Restructuring is Consistent with the Public Interest	51
V.	INFORMATION REQUIRED BY PART 33 OF THE COMMISSION’S REGULATIONS	53
A.	Section 33.2(a): Names and addresses of the principal business offices of the applicants.	53
B.	Section 33.2(b): Names and addresses of persons authorized to receive notices and communications in respect to the Application.	53
C.	Section 33.2(c): Description of Applicants.	53
D.	Section 33.2(d): Description of the jurisdictional facilities owned and operated or controlled by Applicants, their parents or affiliates.	53
E.	Section 33.2(e): Narrative description of the Transaction.	54
F.	Section 33.2(f): Contracts with respect to the Transaction.	54
G.	Section 33.2(g): Facts relied upon to show that the Transaction is in the public interest.	54
H.	Section 33.2(h): Physical property.	54
I.	Section 33.2(i): Status of actions before other regulatory bodies.	54
J.	Section 33.5: Accounting Entries	54
VI.	CONCLUSION	55

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

Exelon Corporation)
Public Service Enterprise Group Incorporated)

Docket No. EC05-____

**APPLICATION FOR AUTHORIZATION OF
DISPOSITION OF JURISDICTIONAL ASSETS
UNDER SECTION 203 OF THE FEDERAL POWER ACT**

Pursuant to Section 203 of the Federal Power Act (“FPA”) and Part 33 of the Commission’s Regulations, Exelon Corporation and its subsidiaries that are public utilities subject to the Commission’s jurisdiction (collectively, “Exelon”)¹ and Public Service Enterprise Group Incorporated and its subsidiaries that are public utilities subject to the Commission’s jurisdiction² (collectively, “PSEG”) (collectively, Exelon and PSEG are referred to as “Applicants”) hereby request that the Commission approve a transaction (the “Transaction”) that includes: (1) Exelon’s acquisition of PSEG and the resulting indirect merger of Exelon’s and PSEG’s jurisdictional public utilities; and (2) the subsequent internal restructuring and consolidation of Exelon’s and PSEG’s subsidiaries to establish a more efficient corporate structure for the combined company. As described in more detail below, the proposed Transaction meets the Commission’s standards for determining when a transaction is consistent with the public interest and as a result can be approved without a hearing. The Applicants request that the Commission grant its approval no later than August 1, 2005.

-
- 1 The Exelon entities subject to the Commission’s jurisdiction are identified below in Exhibit B of this Application.
- 2 The PSEG entities subject to the Commission’s jurisdiction are identified below in Exhibit B in this Application.
-

I. INTRODUCTION

The combination of Exelon and PSEG to form Exelon Electric & Gas Corporation (“EEG”) will create a new, vital player in Midwest and Mid-Atlantic electricity markets. Exelon and PSEG support — and, in fact, have been strong advocates for — the further development of competitive electricity markets in both the wholesale and retail markets, consistent with the initiatives of the Federal Energy Regulatory Commission (“the Commission”), the Illinois Commerce Commission (“ICC”), the Pennsylvania Public Utility Commission (“PAPUC”), and the New Jersey Board of Public Utilities (“NJBP”). The combination will lead to numerous efficiency and operating improvements in the combined generation fleet and also will further the development of competitive markets in these respective jurisdictions. A particularly important focus for EEG will be achieving enhanced operational and reliability efficiencies from the integration of their respective nuclear fleets, with associated regional reliability benefits and market price reductions. Indeed, the opportunity to achieve enhanced nuclear operating performance by applying Exelon’s world class nuclear operating expertise to PSEG’s nuclear generating assets is a primary motivating force driving the Transaction.

Exelon’s and PSEG’s core markets are located in the PJM region and, given the size of the two companies, it is not surprising that an Appendix A analysis indicates that horizontal market power issues are raised by combining their generation assets into a single company. The Applicants propose extensive mitigation, however, that completely mitigates any potential market power issues. In total, the Applicants propose to divest control over the output of 5,500 MW of generation.

Because the combination creates screen violations under all load conditions analyzed, the Applicants have proposed divestiture of all types of generation. With

respect to peaking, coal and mid-merit capacity, the Applicants propose to divest 2,900 MW of capacity. In combination with Applicants' other mitigation proposals, this divestiture mitigates all Appendix A screen failures for peak and superpeak load conditions.

The Applicants' Appendix A analysis also indicates screen failures during off-peak load conditions. The Commission has found that market power concerns are less of an issue during off-peak conditions due to the availability of considerable amounts of unused capacity and operational limitations on baseload capacity that make it difficult to withhold such capacity from the market. Nevertheless, the Applicants propose to completely mitigate all screen failures in off-peak load conditions. This will be accomplished by a "virtual divestiture," which involves auctioning off long-term entitlements to baseload nuclear energy.

In total, the Applicants propose to divest control over 2,600 MW of baseload capacity through this energy sales process. These sales remove any merger-related ability or incentive for the Applicants to withhold capacity from the market, while at the same time permitting Exelon to apply its unique nuclear operating expertise to PSEG's nuclear units in order to increase their output, as well as their reliability. Increased output from those units will, of course, be procompetitive.

Competitive retail markets rely on procurement of power from a competitive wholesale market and, thus, it is important from an ultimate customer perspective that the Transaction not increase market power in wholesale markets. Further, while not directly relevant to the Commission's approval of this transaction, it is notable that the Transaction also will not eliminate any competitor in retail markets. Only Exelon has a retail marketing affiliate, and this affiliate is not active in eastern PJM. PSEG has no

retail marketing affiliates and, thus, no retail supplier is eliminated as a result of the Transaction.

Once the horizontal market power issues are resolved, there are no other significant issues raised by the Transaction. The Transaction will not create transmission market power issues inasmuch as the Applicants already have transferred control over their transmission systems to PJM, and no natural gas-electric vertical market power issues are implicated. Nor will the Transaction have any adverse impacts on rates or regulation. As a result, the Commission should be able to determine that the Transaction is consistent with the public interest and grant its approval without a hearing.

II. DESCRIPTION OF THE APPLICANTS

A. Exelon

Exelon is a registered public utility holding company that, through its subsidiaries, is one of the nation's largest electric utilities. It distributes electricity to approximately 5.1 million customers in Illinois and Pennsylvania, and gas to 460,000 customers in the Philadelphia area. Exelon operates in three primary business segments, Energy Delivery, Generation, and Enterprises. The Enterprises business, which is being wound down, is an infrastructure and electrical contracting business directed primarily towards the communications and energy services industries.³ The Energy Delivery and Generation business segments are described below.

³ Enterprises exited a significant number of its business activities in 2003 and 2004, and plans to divest or otherwise wind down its remaining assets in 2005.

1. Energy Delivery

The Energy Delivery business segment consists of Exelon's regulated energy delivery operations conducted by ComEd and PECO. It engages in three areas of business: (1) Retail Electric Services; (2) Transmission Services; and (3) Gas Services.

ComEd

ComEd is engaged principally in the purchase, transmission, distribution and sale of electricity to a diverse base of residential, commercial, industrial and wholesale customers in northern Illinois. ComEd's retail service territory has an area of approximately 11,300 square miles and an estimated population of eight million. The service territory includes the City of Chicago, an area of about 225 square miles with an estimated population of three million. ComEd has approximately 3.6 million customers. ComEd does not own any generation, but instead purchases its requirements from Exelon Generation.

PECO

PECO is engaged principally in the purchase, transmission, distribution and sale of electricity to residential, commercial and industrial customers in southeastern Pennsylvania and in the purchase, distribution and sale of natural gas to residential, commercial and industrial customers in the Pennsylvania counties surrounding the City of Philadelphia. PECO provides electric delivery service in an area of approximately 2,000 square miles, with a population of approximately 3.9 million, including 1.5 million in the City of Philadelphia. Natural gas service is supplied in an approximate 1,900 square mile area in southeastern Pennsylvania adjacent to Philadelphia, with a population of approximately 2.4 million. PECO delivers electricity to approximately 1.5 million customers and natural gas to approximately 460,000 customers. Like ComEd, PECO

does not own any generation, but instead purchases its requirements from Exelon Generation.

Retail Electric Services

Electric utility restructuring legislation was adopted in Pennsylvania in December 1996 and in Illinois in December 1997. Both Illinois and Pennsylvania permit competition by alternative generation suppliers for retail generation supply while transmission and distribution service remains fully regulated. Both states, through their regulatory agencies, established a phased approach for allowing customers to choose an alternative electric generation supplier; imposed caps on rates during a transition period; and allowed the collection of competitive transition charges from customers to recover costs that might not otherwise be recovered in a competitive market.

Under Illinois and Pennsylvania legislation, ComEd and PECO are required to provide generation services to customers who do not or cannot choose an alternative supplier. ComEd and PECO each have provider of last resort ("POLR") obligations to provide generation services (i.e., power and energy) to those customers who do not take service from an alternative generation supplier or who choose to come back to the utility after taking service from an alternative supplier.

Transmission Services

ComEd and PECO have both placed their transmission systems under the operational control of PJM Interconnection, L.L.C. ("PJM"), which is the independent system operator and the Commission-approved RTO for the Mid-Atlantic and Midwest region in which it operates. PJM is the transmission provider under, and the administrator of, the PJM Open Access Transmission Tariff ("PJM Tariff"), operates the PJM Interchange Energy Market and Capacity Credit Markets, and conducts the day-to-

day operations of the bulk power system of the PJM region. Under the PJM tariff, transmission service is provided on a region-wide, open-access basis using the transmission facilities of the PJM members at rates based on the costs of transmission service.

Gas Services

Energy Delivery's gas services business is conducted solely by PECO, and not by ComEd or any other Exelon company. PECO's gas sales and gas transportation revenues are derived pursuant to rates regulated by the PAPUC. PECO's gas facilities are limited to local distribution facilities. Neither PECO nor any other Exelon company owns any interstate natural gas facilities that are subject to the Commission's jurisdiction under the Natural Gas Act.

PECO's customers have the right to choose their gas suppliers or else purchase their gas supply from PECO at cost. Approximately 30% of PECO's current total yearly throughput is supplied by third parties. Gas transportation service is provided on an open-access basis and remains subject to regulation by the PAPUC. PECO's gas service area includes several independent gas-fired generators, all but one of which have bypassed the distribution system. One independent generator, a 28 MW plant, has a readily available bypass option and has negotiated a discounted distribution rate with PECO. PECO also provides gas transportation services to two affiliated generators at a negotiated discounted transportation rate.

2. Generation

Exelon's generation business is conducted by Exelon Generation Company, LLC ("Exelon Generation"). Exelon Generation was created in 2001, when Exelon restructured its business operations following the Unicom-PECO merger. Exelon

Generation combines its large generation fleet with an experienced wholesale power marketing operation. Exelon Generation owns or controls, through long-term contracts, generation assets in the Northeast, Mid-Atlantic, Midwest, Southeast, South Central and Texas regions with a net capacity of approximately 33,000 MWs. Included in this capacity is Exelon Generation's ownership interests in 11 nuclear generating stations, consisting of 19 units. All of the nuclear generating stations are operated by Exelon Generation, with the exception of Salem Generating Station ("Salem"), which is co-owned with, and operated by, PSEG Nuclear, LLC. A listing of Exelon Generation's generation assets is attached as Exhibit J-3 to Dr. Hieronymus' testimony.

Exelon Generation's wholesale marketing unit, Power Team, a major wholesale marketer of energy, uses Exelon Generation's energy generation portfolio, transmission rights and expertise to ensure delivery of energy to Exelon Generation's wholesale customers under long-term and short-term contracts, including contracts for the load requirements of ComEd and PECO. Power Team markets any remaining energy in the wholesale bilateral and spot markets.

B. PSEG

PSEG is an exempt public utility holding company with four major subsidiaries: (1) Public Service Electric and Gas Company ("PSE&G"), a regulated electric transmission and electric and gas distribution business; (2) PSEG Power LLC ("PSEG Power"), the parent of most of PSEG's US power production businesses; (3) PSEG Services Corporation ("PSEG Services"); and (4) PSEG Energy Holdings LLC ("PSEG Holdings"), the parent of PSEG's other businesses including: (i) PSEG Global LLC ("PSEG Global"), is engaged in power production and distribution in selected domestic and international markets, and (ii) PSEG Resources LLC, which invests in energy-related

financial transactions. A more detailed description of PSE&G, PSEG Power and PSEG Global, which are the entities most relevant to the Commission's Section 203 analysis, is provided below.

1. PSE&G

PSE&G is an operating public utility company engaged principally in the transmission and distribution of electric energy and gas service in New Jersey. PSE&G provides service to approximately 2.0 million electric customers and approximately 1.6 million gas customers. PSE&G's electric and gas service area is a corridor of approximately 2,600 square miles running diagonally across New Jersey from Bergen County in the northeast to an area below the city of Camden in the southwest.

PSE&G also owns electric transmission facilities subject to the Commission's jurisdiction under the FPA. PSE&G has transferred operational control over these facilities to PJM.

PSE&G, pursuant to an order of the NJBPU issued under the provisions of the New Jersey Electric Discount and Energy Competition Act ("EDECA"), transferred all of its electric generation facilities, plant, equipment and wholesale power trading contracts to PSEG Power and its subsidiaries in August 2000. Also, pursuant to an NJBPU order, PSE&G transferred its gas supply business, including its inventories and supply contracts, to PSEG Power in May 2002. PSE&G continues to own its transmission system and owns and operates its electric and gas distribution businesses.

PSE&G distributes electric energy and gas to end-use customers within its designated service territory. All electric and gas customers in New Jersey have the ability to choose an electric energy and/or gas supplier. Pursuant to NJBPU

requirements, PSE&G serves as the supplier of last resort for electric and gas customers within its service territory.

New Jersey's Electric Distribution Companies ("EDCs"), including PSE&G, provide basic generation service ("BGS") to retail customers located in New Jersey. The EDCs obtain the power they need to supply BGS through the use of two concurrent competitive wholesale auctions currently conducted each February.

PSE&G's natural gas facilities consist entirely of local gas distribution facilities and neither PSE&G nor any other PSEG company owns any interstate natural gas facilities subject to the Commission's jurisdiction under the Natural Gas Act. PSE&G provides open-access gas transportation over its facilities under terms and conditions established by the NJBPU. PSE&G serves eight current or former qualifying facilities ("QFs") under contract with the utility, as well as two merchant generators: the Tosco plant (172 MW) and the Williams Red Oak plant (765 MW). These generating facilities served by PSE&G are under long-term gas distribution contracts or discounted tariffs. PSE&G also provides gas transportation services to affiliated generators in its service area.

2. PSEG Power

PSEG Power is a wholesale energy supply company that integrates its generating asset operations with its wholesale energy, fuel supply, energy trading and marketing and risk management function through three principal direct wholly-owned subsidiaries: PSEG Nuclear LLC ("PSEG Nuclear"), which owns and operates nuclear generating stations, PSEG Fossil LLC ("PSEG Fossil"), which develops, owns and operates domestic fossil and other non-nuclear generating stations and PSEG Energy Resources & Trade LLC ("PSEG ER&T"), which markets the capacity and production of PSEG

Fossil's and PSEG Nuclear's stations, manages the commodity price risks and market risks related to generation, and provides gas supply services.

Through its operating subsidiaries, PSEG Power competes as a wholesale electric generating company, primarily in the Northeast. Most of PSEG Power's generating assets in the Northeast are located within PJM, although PSEG Power also owns generation assets in New York, Connecticut and the western part of PJM.

PSEG Power's generation portfolio, along with that of PSEG Global, consists of approximately 18,000 MW of installed capacity in North America. PSEG Power's generation capacity is sourced from a diverse mix of fuels comprised of natural gas, nuclear, coal, oil and pumped storage. A complete listing of PSEG Power's generation assets is attached as Exhibit J-3 to the testimony of Dr. Hieronymus.

PSEG Power has an ownership interest, through PSEG Nuclear, in five nuclear generating units and operates three of them: the Salem Nuclear Generating Station, Units 1 and 2 (Salem 1 and 2), each owned 57.41% by PSEG Nuclear and 42.59% by Exelon Generation and the Hope Creek Nuclear Generating Station ("Hope Creek"), which is 100% owned by PSEG Nuclear. Exelon Generation operates the Peach Bottom Atomic Power Station Units 2 and 3 ("Peach Bottom 2 and 3"), each of which is 50% owned by PSEG Nuclear.

3. PSEG Global

In addition to its assets owned in other countries, PSEG Global jointly owns GWF Energy LLC, which in turn owns three generating facilities located in California. PSEG Global also owns generation assets in ERCOT. PSEG Global's U.S. generation assets also are listed in Exhibit J-3 of Dr. Hieronymus' testimony.

III. DESCRIPTION OF THE TRANSACTION

A. The Transaction and Post-Transaction Structure

Pursuant to the terms of the Agreement and Plan of Merger (the “Merger Agreement”) attached as Exhibit I, PSEG will merge into Exelon, thereby ending the separate corporate existence of PSEG. Each PSEG shareholder will be entitled to receive 1.225 shares of Exelon common stock for each PSEG share held and cash in lieu of any fraction of an Exelon share that a PSEG shareholder would have otherwise been entitled to receive. Exelon, which will be renamed Exelon Electric & Gas Corporation (“EEG”), will be the surviving company, remain the ultimate corporate parent of PECO and ComEd and the other Exelon subsidiaries and become the ultimate corporate parent of PSE&G and the other PSEG subsidiaries. Exelon common stock will be unaffected by the proposed Transaction, with each issued and outstanding share remaining outstanding following the Transaction as a share in the surviving company.

Diagrams depicting EEG’s post-Transaction corporate structure (as well as Exelon’s and PSEG’s pre-Transaction structures) are attached hereto as Exhibit C. EEG will continue to be a registered public utility holding company under PUHCA, and ComEd, PECO and PSE&G will continue to be operating franchised public utility companies. EEG will remain headquartered in Chicago but will also have energy trading and nuclear headquarters in southeastern Pennsylvania and generation headquarters in Newark, New Jersey. PSE&G will remain headquartered in Newark. PECO will remain headquartered in Philadelphia and ComEd will remain headquartered in Chicago.

In addition, EEG, as the surviving company of the Transaction, will assume all of PSEG’s outstanding indebtedness. The indebtedness of subsidiaries of PSEG will not be

assumed or guaranteed by EEG and will remain the obligation of such subsidiary and any of the guarantors of such indebtedness.

In addition to the changes resulting from the Merger Agreement, the Applicants intend to revise their corporate structure. Although not yet completely finalized, the Applicants currently propose to implement the following changes. These changes also are reflected on the post-Transaction organizational chart included as part of Exhibit C.

1. PSE&G will become a direct subsidiary of Exelon Energy Delivery Company LLC. The current subsidiaries of PSE&G will remain intact.
2. PSEG Energy Holdings LLC (“PSEG Holdings”) will become a direct subsidiary of EEG, as the successor to PSEG. The current subsidiaries of PSEG Holdings will remain intact.
3. PSEG Services Corporation (“PSEG Services”) will sell all of its assets to Exelon Business Services Company (“Exelon BSC”), change its name, and remain as a non-energy subsidiary. Exelon BSC will be the sole “service company” of EEG.
4. After obtaining any appropriate consents from the PSEG Power debt holders and restructuring, PSEG Power and its direct subsidiaries PSEG Nuclear, PSEG Fossil and PSEG ER&T will all cease to exist as separate entities and will become part of Exelon Generation. The business functions of these former PSEG entities will become a part of their respective Exelon Generation business unit. The subsidiaries owned by these PSEG entities will either be merged into Exelon Generation or retained as direct subsidiaries of Exelon Generation.

B. The Transaction Provides Important Public Interest Benefits

The combined company will serve over seven million electric customers and two million gas customers in three states. By sharing resources and best practices, the Transaction will enhance operations and strengthen the combined company’s ability to provide cost-effective, safe and reliable service and will affirmatively promote the public interest in a number of substantial ways.

(a) Increased Scale and Scope; Diversification. The combined company will have increased scale and scope in both energy delivery and generation. In addition,

the combined company is expected to have greater diversification and balance in its energy delivery business and generation portfolio. This increased scale, scope and diversification is expected to result in improved service and reliability. With respect to the energy delivery business, the combined company will have three urban utility franchises with service areas encompassing more than 18 million people. The combined company also will have a large gas distribution portfolio to complement its electric distribution business. The combined generation portfolio will be more balanced in terms of geography, fuel mix, dispatch and load-servicing capacity.

(b) Commitment to Competition. Exelon and PSEG have been staunch advocates for competitive retail and wholesale markets in electricity and gas. This shared vision will allow the new company to be even more active in the promotion of competitive markets and the development of energy-related services. In addition, New Jersey, Pennsylvania and Illinois all have passed legislation bringing competition to the electric industry, and are in varying phases of the transition to full competition. The regulatory knowledge and experience of each company will enhance the merged company's ability to manage the transition to competition for the benefit of both customers and shareholders.

(c) Improved Nuclear Operations. Given Exelon's strong, successful performance in running the nation's largest nuclear fleet, the Applicants expect to realize improved stability, higher capacity utilization rates and lower costs from combining nuclear operations under one management. See Testimony of Mr. Crane. Higher capacity utilization rates means that the Applicants would be producing more energy from their nuclear fleet that can be sold in the wholesale markets, which should have a procompetitive effect in the wholesale energy markets located in the PJM region where

the Applicants are located. This in turn should be beneficial to the Applicants' retail customers as well as to retail customers throughout the PJM region.

Increasing nuclear output will have a small but significant tendency to lower wholesale prices. This is because increasing the amount of energy at "the bottom of the stack" will in at least some hours lower the PJM marginal cost. All else being equal, therefore, this should lower LMP prices, particularly in PJM East.

(d) Anticipated Financial Strength and Flexibility. The diversification of the energy delivery and generation portfolios of the combined company should result in a more stable cash flow, with approximately half of the combined company's earnings and cash flow coming from the three regulated utilities and approximately half coming from the unregulated generation business.

(e) Sharing of Best Practices. The Transaction will combine companies with complementary areas of expertise; Exelon's expertise in the generation operations and PSEG's expertise in the transmission and distribution operations.

(f) Synergies. The Transaction will create the opportunity to achieve meaningful cost savings not only through the sharing of best practices, but also through the elimination of duplicative functions, improved operating efficiencies in transmission and distribution, nuclear and other generation operations, and supply chain benefits from improved sourcing.

IV. THE TRANSACTION IS CONSISTENT WITH THE PUBLIC INTEREST

In determining whether a proposed disposition of jurisdictional facilities is consistent with the public interest under Section 203 of the FPA, the Commission

evaluates the impacts of the proposed disposition on competition, rates and regulation.⁴ Furthermore, when considering impacts on competition, the Commission reviews both horizontal competition issues resulting from increases in concentration in electric energy and capacity markets, and vertical competition issues resulting from increases in the ability or incentive to leverage control over electric transmission and natural gas transportation facilities to enhance revenues in generation markets.⁵ As discussed below, with the comprehensive mitigation plan volunteered by the Applicants, the Transaction will have no adverse effects in any of these areas.

A. Horizontal Competition Issues

1. Results of the Applicants' Appendix A Analysis

PJM operates the largest centrally dispatched, competitive wholesale electricity market in the United States. The market is well-functioning, and has in place comprehensive and Commission-approved market monitoring and mitigation procedures to address attempts by market participants to exercise generation or transmission market power. The PJM market monitor has the authority to identify and deter, and has been effective in deterring, withholding or other attempts at market manipulation. Notably, the operation of PJM mitigation is essentially automatic whenever sub-areas within PJM are constrained.

⁴ Merger Policy Statement, III FERC Stats. & Regs, ¶ 31,044 at 30,111 (1996) (“Merger Policy Statement”); Revised Filing Requirements under Part 33 of the Commission’s Regulations, 1996-2000 FERC Stats. & Regs., ¶ 31,111 at 31,872 (2000) (“Revised Filing Requirements”).

⁵ Id. at 31,111 at 31,872.

Both Exelon and PSEG are active participants in PJM wholesale markets. Collectively, they control approximately 40,000 MW of generation capacity in those markets, of which approximately 17,000 MW of generation is located in the western part of PJM that only recently was integrated into PJM, and approximately 23,000 MW of generation is located in the Mid-Atlantic part of PJM that consists of the original PJM members plus Allegheny Power.

In order to determine the impact of the Transaction on competition in the PJM market and elsewhere, the Applicants engaged Dr. Hieronymus to perform an "Appendix A" analysis⁶ of the Transaction as required by the Commission's Merger Regulations. The results of this analysis are described in detail in the attached testimony of Dr. Hieronymus, and summarized below.

As Dr. Hieronymus explains, the initial task was to determine the geographic markets that should be used for his analysis. The Commission has held that when, as is the case here, merger applicants are members of an RTO, it is appropriate to consider the RTO as a single market.⁷ However, due to known transmission constraints within PJM that periodically limit west to east power flows, Dr. Hieronymus also analyzed three geographic sub-markets within PJM.

⁶ The Appendix A analysis was first described in the Merger Policy Statement, III FERC Stats. & Regs. ¶ 31,044 at 30,130-135. The requirements of the Appendix A analysis since have been incorporated into the Commission's regulations (the "Merger Regulations") at 18 CFR § 33.3 (2004).

⁷ Revised Filing Requirements, ¶ 31,111 at 31, 884-5 (citing Atlantic City Electric Company and Delmarva Power & Light Company, 80 FERC ¶ 61,126 (1997); Consolidated Edison Co., Inc. and Northeast Utilities, 91 FERC ¶ 61,225 (2000)).

For the Commission's convenience, attached as Appendix 1 is a map showing these market boundaries. The markets analyzed by Dr. Hieronymus are as follows:

- "Expanded PJM" consists of all of the geographic markets that constitute the PJM RTO. In addition to "PJM Pre-2004" described below, Expanded PJM includes PJM West⁸ and PJM South.⁹ Arguably, under the Commission's policy, Expanded PJM is the only geographic market that needs to be analyzed, since it constitutes the RTO in which the Applicants are located. Indeed, the Commission has accepted the Expanded PJM market as the appropriate market for conducting market power analyses for market-based rate applicants located in PJM.¹⁰ Nevertheless, Dr. Hieronymus analyzed a number of smaller markets as well.
- "PJM Pre-2004" is the original PJM Mid-Atlantic market before PJM was expanded, plus Allegheny Energy. PJM Pre-2004 includes nine utility systems whose service territory covers all or part of Pennsylvania, New Jersey, Maryland, Delaware, Virginia, West Virginia, Ohio and the District of Columbia. This market can be separated from the Expanded PJM market during hours when there are constraints limiting deliveries from certain of the newer PJM companies (AEP, ComEd, Dayton) into PJM Pre-2004.
- "PJM East" is the eastern portion of PJM Pre-2004, on the eastern side of transmission constraints that limit the amount of energy that can be transferred from lower cost generation in the western part of PJM Pre-2004. Although it could be argued that the Commission should not view PJM East as a separate market, there periodically are transmission constraints that separate this market, and the Commission previously has examined smaller submarkets within PJM in examining market power issues.¹¹ PJM data shows that transmission into PJM East was constrained approximately 200 hours in 2003 and 275 hours in 2004. As a result, Dr. Hieronymus analyzed the smaller PJM East market as well.
- "Northern PSEG" is the constrained portion of PSE&G's control area. Dr. Hieronymus also considered whether to analyze Northern PSEG as a relevant geographic market. However, only PSEG owns generation in the Northern PSEG area, and not Exelon, so there is no overlap between the Applicants. Given that there is no overlap of generation ownership, Dr. Hieronymus does not believe that it is appropriate to consider Northern PSEG as a relevant geographic market. Nevertheless, to be conservative Dr. Hieronymus considered the Northern PSEG geographic market as well.

⁸ PJM West includes the former control areas of Allegheny Energy, AEP, Commonwealth Edison, Dayton Power & Light, and Duquesne Power.

⁹ PJM South will include the current Dominion Virginia Power control area.

¹⁰ Virginia Electric and Power Company, 108 FERC ¶ 61,242 (2004); Dayton Power and Light Company, 109 FERC ¶ 61,268 (2004).

¹¹ See, e.g. Atlantic City Electric Co., 86 FERC ¶ 61,248 at 61,896-97 (1999).

As Dr. Hieronymus explains in more detail, his analysis shows that the Transaction could result in market concentration screen failures for the Economic Capacity measure of generation ownership during the off-peak, peak and superpeak load conditions that he analyzed in PJM East, PJM Pre-2004 and Expanded PJM during all three seasons studied — Summer, Winter and Shoulder. As expected, the largest screen failures are in PJM East, which is the market where both PECO and PSE&G are located. In PJM East, the post-merger Economic Capacity HHIs are highly concentrated for all 10 load conditions analyzed (above 1,800), and the HHI increase in each time period is from 900 to 1,150. While the Economic Capacity results for Expanded PJM and PJM Pre-2004 are less extreme, they result in moderately concentrated post-merger markets with HHI increases above 100, and in many instances significantly above 100.

Dr. Hieronymus' calculations using the Available Economic Capacity measure suffer from the requirement that a series of assumptions are necessary with respect to how load requirements are met in markets with retail access. However, under the assumptions used by Dr. Hieronymus, there are post-transaction screen violations for Available Economic Capacity in the PJM East and PJM Pre-2004 markets, but not in Expanded PJM.

2. The Applicants Will Mitigate All Screen Failures

From Dr. Hieronymus' analysis, it is clear that, regardless of the geographic market studied, the Transaction will result in Appendix A screen failures that must be mitigated. The exact mitigation required is complicated, however, by the fact that the screen violations take place during all load conditions, including superpeak conditions when peaking units with high fuel costs are running, peak conditions when the most expensive peaking units are not running, and off-peak conditions when the only units

running are baseload units with low fuel costs. This means that mitigation is required for each of the three following categories of generation: (1) peaking units; (2) mid-merit units; and (3) baseload nuclear units.

Different considerations apply to these different types of units. As a result, the Applicants propose different approaches for, on the one hand, mitigating the screen failures that occur during peak and superpeak load conditions and, on the other hand, the screen failures that occur during off-peak load conditions. These approaches are described in more detail below.

a. Mitigation During Peak and Superpeak Load Conditions

The Applicants Propose to Divest Coal, Mid-Merit and Peaking Generation

The Applicants propose to engage in generation divestiture to address the screen failures associated with peak and superpeak load conditions. The Commission stated in the Merger Policy Statement that divestiture is an acceptable method of market power mitigation,¹² and has reaffirmed this statement in a number of subsequent merger cases.¹³

As Dr. Hieronymus explains, his analysis shows that the Applicants would need to divest approximately 1,000 MW of peaking capacity and 1,900 MW of mid-merit capacity, of which at least 550 MW must be coal-fired, in PJM East in order to eliminate peak and superpeak screen failures.¹⁴ These amounts are based on the assumption that

¹² Merger Policy Statement, III FERC Stats. & Regs. ¶ 31,044 at 30,137.

¹³ See, e.g., Allegheny Energy, Inc., 84 FERC ¶ 61,223 (1998); American Electric Power Co., 90 FERC ¶ 61,242 (2000).

¹⁴ In addition to the amount of peaking and mid-merit generation described in this section, the Applicants also will mitigate their market power in nuclear baseload capacity as described below which, in addition to mitigating screen failures in off-peak hours is necessary to mitigate screen failures in peak and super peak hours as well.

the generation is sold in equal amounts to two buyers, and that no purchaser already owns significant amounts of capacity in the relevant markets.

The Applicants therefore propose to divest 1,000 MW of peaking capacity and 1,900 MW of mid-merit capacity, including at least 550 MW of coal-fired capacity which, when combined with the proposed nuclear baseload mitigation, should fully mitigate the screen violations in the peak and superpeak load conditions in all three geographic markets. The divestiture will occur either through a swap of assets with owners of generation located outside of Expanded PJM or through an outright sale of the generating facility.

No more than half of this capacity, i.e. 1,450 MW will be sold to a single purchaser. In addition, no capacity will be sold to a market participant with a greater than 5% share of installed capacity in either PJM East or Expanded PJM, as identified in Exhibit J-9 to Dr. Hieronymus' testimony. Furthermore, no more than 25% of this amount of capacity, i.e. 725 MW, will be sold in the aggregate to market participants with 3% - 5% of the total installed capacity in either the PJM East or the Expanded PJM markets. Dr. Hieronymus' analysis shows that these restrictions will ensure that the proposed mitigation eliminates the screen failures that he identified.

The Applicants have not yet identified the specific plants that they intend to divest. However, they recognize that the Commission needs to be assured that the divested generation will be located in PJM East to ensure that the Applicants' screen violations will be adequately mitigated. As a result, attached as Exhibit J-12 to Dr. Hieronymus' testimony is a list of peaking, mid-merit and coal-fired generation facilities that will be considered for divestiture, along with the location of that generation, in order to accomplish the required divestiture of at least 2,900 MW of peaking, mid-merit and

coal-fired generation. As this list shows, the generation facilities to be considered for divestiture are all located in PJM East and thus also will mitigate market power in the broader PJM markets.

Divestiture Will Be Completed Within 18 Months After the Merger

The Commission has recognized that divestiture can take some time, and that merger applicants should not be rushed into a divestiture process that would cause them to sell at below-market prices. For example, in AEP, the Commission allowed a two-year time period for divestiture to take place.¹⁵ The Applicants propose that they be given 18 months to complete the proposed divestiture of peaking, mid-merit and coal-fired generation. The Applicants intend to complete the divestiture more quickly, but 18 months may be necessary to conduct an auction, negotiate all necessary agreements, and obtain all necessary regulatory approvals. The Applicants recognize that the Commission will require interim mitigation to be put in place until the divestiture is completed.¹⁶ The Applicants' proposed interim mitigation proposal is discussed in more detail below.

b. Mitigation During Off-Peak Load Conditions

The Applicants propose a different mitigation approach to resolving the Appendix A screen failures that occur in off-peak load conditions. Rather than divesting their nuclear baseload units, the Applicants propose to implement a "virtual divestiture" whereby they will divest themselves, through sales of long-term firm energy rights, of any incremental merger-related ability to withhold baseload energy. The proposed virtual

¹⁵ AEP, 90 FERC ¶ 61,242 at 61,792 (2000).

¹⁶ Merger Policy Statement, III FERC Stats. & Regs. ¶ 31,044 at 30,136. See also AEP, 90 FERC at 61,792-94; Ameren Services Co., 101 FERC ¶ 61,202 (2002); Ameren Corp., 108 FERC ¶ 61,094 (2004).

divestiture also will eliminate any merger-related ability of EEG to profit on its baseload facilities from a withholding of mid-merit or peaking facilities.

The mitigation alternative of auctioning baseload energy rather than selling nuclear units is appropriate for several reasons. First, as discussed below, sales of baseload energy under firm long-term contracts would be as effective as a divestiture of nuclear unit(s) in mitigating any adverse effects that the merger might have on wholesale and retail competition.

Second, an outright sale of nuclear units would not be in the public interest because it would eviscerate the very operating, efficiency and reliability benefits that motivate the proposed Transaction. As explained in the testimony of Mr. Crane, the Applicants intend to apply the world class operating expertise of Exelon to increase the reliability, availability and safety of PSEG's nuclear capacity. Indeed, because a prime motivation for the Transaction relates to achieving these benefits for the Applicants' nuclear generation, it is unlikely that the Transaction would be consummated if the Applicants are not permitted to retain ownership and control of PSEG's nuclear units. In turn, the increase in nuclear availability factors that the Applicants hope to achieve should result in more energy being produced, which should have a procompetitive effect on the market.

Dr. Hieronymus' analysis shows that there needs to be a transfer of control over 2,400 MWs of baseload capacity in PJM East, if transferred to two entities. However, the Applicants do not propose to auction off the sale of entitlements to 2,400 MWs of baseload energy on a 100% load factor basis. That is because their nuclear generating capacity does not operate on a 100% load factor basis. Given Exelon's historic average nuclear capacity factor of approximately 93% described in the testimony of Mr. Crane,

the sale of approximately 2,250 MW of energy on a 100% load factor basis is the equivalent of the sale of approximately 2,400 MW of capacity operating at a 93% capacity factor.

Use of historic capacity factors to establish the amount of required virtual divestiture provides an additional public benefit. EEG will have an incentive to increase the capacity factors of its nuclear units in order to increase the benefit it receives from those units. An increase in capacity factors means, of course, an increase in output from the units, which provides an additional procompetitive benefit.

Dr. Hieronymus' analysis shows that the divestiture of an additional 200 MW of baseload capacity will be needed to mitigate screen failures in the larger PJM Pre-2004 market. Divestiture of this additional amount can occur anywhere in Pre-2004 PJM. The amount of virtual divestiture required thus is the energy equivalent of 2,400 MW of capacity in PJM East plus 200 MW of capacity in Pre-2004 PJM for a total of 2,600 MW of capacity. This total is referred to as the "Baseload Mitigation Amount."

This virtual divestiture will take one of two forms: (1) a firm sales contract ("Long-Term Contract") for a term that expires no earlier than 15 years following the close of the transaction (the "Long-Term Contract Option"), or (2) an annual auction, in 25 MW blocks, of 3-year firm entitlements to baseload energy (the "Baseload Auction Option"). Each of these two options is described in more detail below. As was the case with the divestiture of peaking, mid-merit and coal-fired generation, no single purchaser will be allowed to purchase more than 50% of the whole Baseload Mitigation Amount.

The sum of the baseload energy entitlements divested under the two options will always equal or exceed the Baseload Mitigation Amount. Thus, when the Baseload Mitigation Amount is 2,600 MW and the Applicants sell 400 MW to one purchaser under

a 15-year contract and 600 MW to a second purchaser under a second 15-year contract, the minimum amount of baseload energy that will be divested under the Baseload Auction Option will be 1,600 MW.

(i) Details of Baseload Auction Option

Under the Baseload Auction Option, the merged company will conduct annual auctions of 3-year firm entitlement to 25 MW blocks of baseload energy. After an initial phase-in, approximately one-third of the Baseload Mitigation Amount, reduced by the amount of any sales under the Long-term Contract Option, will be auctioned each year (the "Auction Amount"). The process for conducting the Baseload Auction Option is described in more detail in the testimony of Mr. Cassidy.

As Mr. Cassidy explains, the auctions will be held annually to coincide with the New Jersey BGS auctions (currently held in February). The term of the firm energy product to be auctioned will coincide with the term of the load obligations that are subject to the BGS Auction (i.e., running from the June 1 following the auction date until May 31, three years later).

The product to be auctioned will be a 3-year firm obligation to take 25 MW of baseload energy on a 24 x 7 basis. The price per MW will be established through a simultaneous multi-round ascending clock auction process, to be administered by an independent party. The Applicants will make sales regardless of the price determined under the auction.

The delivery point for the firm energy product associated with the PJM East mitigation will be based on an aggregate of the Applicant's nuclear generating buses located primarily in the PJM East region (which aggregate could change as a result of

decommissioning, derates, or sales under the Long-Term Sales Option from a single PJM East nuclear facility). The remaining 200 MW associated with the mitigation required for the broader markets can be delivered at the PJM West Hub, unless EEG agrees to a different delivery point.

The testimony of Mr. Sabatino, who is experienced in the marketing of power in the Northeast, including PJM, demonstrates that market participants would view this as an attractive product. Mr. Sabatino explains that the availability of a substantial amount of baseload energy in small blocks, with delivery in PJM East and pursuant to a transparent auction process, will coincide with the needs of market participants throughout PJM East. Although the timing of the auction is intended to coincide with the needs of BGS auction participants, the product is valuable to all PJM East market participants, firms competing for retail sales, and participants in bilateral wholesale transactions.

The first auction to be conducted under the Baseload Auction Option will be used to phase into the subsequent annual auctions of one-third of the Auction Amount. In the initial auction, one-third of the Auction Amount will be sold for a one-year term, one-third will be sold for a two-year term, and one-third will be sold for a three-year term. In each of the subsequent annual auctions, one-third will be sold for three years.

(ii) Long-Term Contract Option

Under this option, the Applicants will sell, on a bilateral basis, entitlements to PJM East baseload nuclear energy with terms of at least 15 years. As consideration for transferring long-term rights to their PJM East nuclear energy, Applicants will receive either cash or similar rights to energy in regions outside of PJM (i.e., an energy swap).

Applicants will offer two alternative long-term products. The first will be identical to the product offered under the Baseload Auction Option, except that the term of the agreement will be for a minimum of 15 years following the close of the Transaction (i.e., a firm 24 x 7 must-take product to be delivered at the aggregate of the Applicant's PJM East nuclear buses).

The alternate product will be similar, but based on the performance characteristics of a designated PJM East nuclear facility. Thus the delivery point and energy availability will be based on the actual unit. The Applicants will, however, guarantee the delivery of an annual amount of energy from the facility based on its historic capacity factor. For this product, the term of the contract will be the lesser of 15 years or the date on which the unit is retired. If the unit is permanently derated, the contract amount will be correspondingly reduced. This product will be more practical if Applicants are to enter into energy swap agreements because it is unlikely that swap partners will be able to offer a product similar to the aggregate nuclear bus product.

The Applicants commit that they will impose the same restrictions under their Baseload Energy Mitigation that they apply to divestiture with respect to who can purchase the capacity. The Applicants will not at any time make sales under the Long-Term Contract Option to any purchaser that currently owns greater than 5% of the installed generating capacity in either PJM East or in Expanded PJM as identified on Exhibit J-9 of Mr. Hieronymus' testimony. Furthermore, the Applicants will not sell under the Long-Term Contract Option to market participants that own 3% - 5% of the installed generation capacity in Expanded PJM or PJM East for more, in the aggregate, than 25% of the Baseload Mitigation Amount. When a contract entered into under the Long-Term Contract Option terminates, the Applicants will determine whether their

remaining Baseload Mitigation Amount, taking into account any reductions provided for below, requires that some or all of the energy represented by that contract continue to be subject to virtual divestiture. If the Baseload Mitigation Amount has been reduced below the level that is being mitigated by other effective virtual divestiture contracts, then the capacity represented by that contract need not be mitigated further. To the extent that some or all of the capacity released by an expired contract still must be subject to virtual divestiture in order to meet the remaining Baseload Mitigation Amount, the Applicants may either resell that capacity under a new Long-Term Contract that satisfies the requirements described above, or the required amount of capacity will be added to the next Baseload Energy Auction.

(iii) Reductions in Baseload Mitigation Amount

The Baseload Mitigation Amount will be reduced, megawatt by megawatt, in the event of any of the following with respect to baseload nuclear capacity located in PJM East: (a) the sale of a nuclear generating unit to a non-affiliated entity; (b) the retirement or permanent derating of a nuclear generating unit; and (c) the construction of additional transmission transfer capacity into PJM East, excluding any increases in transfer capacity that might result from the construction of projects included in the PJM Regional Transmission Expansion Plan that is effective as of June 2005, which will give the Applicants an additional incentive to pursue and encourage the construction of new transmission projects. Moreover, before retiring any unit located in PJM East during the first 15 years following the closing of the Transaction, the Applicants will attempt to sell that unit by auction. They will sell the unit if the sale can be concluded on terms that yield a positive price and recover the fair value of the property to EEG, taking into account alternative uses of the property, as determined by an independent appraiser.

3. Analysis of Northern PSEG Market

As explained above, Dr. Hieronymus does not believe that the Northern PSEG market is a relevant geographic market, because Exelon owns no generating capacity within that zone. Nevertheless, Dr. Hieronymus conducted an Appendix A analysis limited to this area, and it showed screen failures. This is because other generation in PJM East is “squeezed down” by the transmission limit into northern PJM. Thus, while Exelon’s share of this market is less than in PJM East, PSEG’s is larger.

That does not mean that any additional mitigation should be required for the Northern PSEG market. In fact, Dr. Hieronymus explains that no mitigation is required because EEG will have no more generation in the market than did PSEG before the Transaction. Thus, the incentive to raise prices in that market will be no greater after the Transaction, and will be reduced to the extent the Applicants, pursuant to their mitigation plan, divest coal, mid-merit or peaking generation in northern New Jersey, because in either case the Applicants will have the same amount of, or less, generation that benefits from higher northern New Jersey prices.

The ability to raise prices in Northern PSEG also will not be increased after the merger. The amount of the Applicants’ generation inside Northern PSEG will be the same or less after the Transaction, so there will be no additional ability to withhold generation from the market. The only change caused by the Transaction will be that EEG will have more generation outside the market than PSEG had before the merger, but any generation that EEG might withhold outside the constrained market will not affect prices inside the constrained market.

If the Commission determines, however, that additional mitigation is necessary, the Applicants would agree to mitigate the northern New Jersey screen failures. The

screen failures would be eliminated by the divestiture of no more than 100 MW of coal-fired generation and no more than 100 MW of mid-merit generation. This is a subset of the 5,500 MW of overall mitigation. The Applicants would agree to meet this requirement either by divesting such generation in northern New Jersey as part of their overall divestiture commitment or by delivering baseload energy into northern New Jersey (or selling it at the Applicants' PJM East buses plus a basis differential into northern New Jersey). As with other divestitures, selling or delivering generation with a lower variable cost also mitigates the screen failure.

4. The Proposed Virtual Divestiture Satisfies the Commission's Mitigation Standards

The combined effect of the Applicants' mitigation proposals for baseload, coal, mid-merit and peaking energy markets will be the outright divestiture of 2,900 MW of generating facilities, and the transfer of the energy equivalent of 2,600 MW of baseload capacity to unaffiliated parties under long-term firm contracts, for a total divestiture of control over 5,500 MWs of generating capacity. Although the Commission never has addressed the use of long-term firm contracts for permanent market power mitigation, a commitment to the sale of long-term firm rights to energy from nuclear baseload units will cure the merger's Appendix A failures during off-peak periods.

Under the Commission's regulations, generation capacity is attributed for competition analysis purposes "to the party that has authority to decide when generating resources are available for operation," and also may be assigned based on other "operational control criteria."¹⁷ The reason for this requirement is that the Commission is

¹⁷ 18 CFR § 33.3(c)(4)(i)(A) (2004).

concerned about the ability to profitably withhold generation from the market, which is the way that an entity with horizontal market power exercises that market power. If baseload energy is sold by the Applicants into the market with a firm delivery obligation, that energy cannot be withheld by the Applicants from the market to raise prices. As a result, that capacity is not attributed to the merger applicants for competition analysis purposes.¹⁸

The proposed virtual divestiture clearly meets this standard. As described more fully below, the Commission has found that firm energy sales transfer control and constitute adequate mitigation on an interim basis.¹⁹ There is no reason why firm sales of energy on a long-term basis cannot mitigate market power on a long-term basis as well.

Moreover, the Commission frequently has observed that the need to protect against physical or economic withholding of baseload capacity is questionable.²⁰ When load levels and prices are at their lowest point, supply curves are nearly horizontal. There is scant incentive to withhold baseload generation from the market because any withheld generation can be replaced by other available supplies with operating costs similar to the marginal unit that would set prices absent withholding.

Furthermore, during off-peak load conditions most if not all of the generation in PJM is supplied either by coal units that are operating at minimum or partial load set

¹⁸ Ameren Corp., 108 FERC ¶ 61,094 at P44 (2004).

¹⁹ See American Electric Power Corp., 91 FERC ¶ 61,208 (2000); Ameren Services Co., 101 FERC ¶ 61,202 (2002); Ameren Corp., 108 FERC ¶ 61,094 (2004).

²⁰ See Merger Policy Statement, III FERC Stats. & Regs. ¶ 31,044 at 30,134-35; Atlantic City Electric Company, 86 FERC ¶ 61,248 at 61,902 (1999).

points, or by nuclear units that cannot readily be cycled down and then cycled back up hours later to meet intermediate and peak load requirements. As explained in the testimony of Mr. Crane, such cycling is operationally impractical because it can result in a temporary build up of “poisons” (neutron-absorbing isotopes) in fuel rods that inhibit the reaction process. For this reason, the Commission has recognized on a number of occasions, including the merger of PECO and Unicom that formed Exelon, that it is difficult to engage in a withholding strategy through the use of nuclear units.²¹ EEG’s baseload fleet will be predominately nuclear, particularly in PJM-East. Thus when loads are low, EEG will have little or no physical ability to withhold baseload supply to influence prices.

Not only does the Applicants’ proposal eliminate any merger-related incentive for EEG to withhold baseload energy from the market, but it also reduces any merger-related incentive for EEG to withhold its remaining mid-merit, coal or peaking capacity from the market. Because a minimum of the energy-equivalent of 2,600 MW of EEG’s baseload capacity always will be committed to unaffiliated parties at fixed prices, EEG will not be able to profit on that capacity from any price increases that might result from a withholding of its other units. Thus with the proposed mitigation in place, the Transaction will not increase the ability or incentive of EEG to withhold capacity from the market.

In addition to the fact that the Applicants’ mitigation proposal will eliminate the ability and economic incentive for EEG to withhold energy or artificially increase prices,

²¹ See U.S. Gen. New England, 109 FERC ¶ 61,361 at P 23 (2004); Ohio Edison Co., 94 FERC ¶ 61,291 at 62,044 (2001); Commonwealth Edison Co., 91 FERC ¶ 61,036 at 61,134 n. 42 (2000).

the PJM Market Monitoring Unit will exercise substantial, ongoing oversight over the market participants in order to ensure that the market continues to function in a competitive manner. Indeed, the existence of a full-time market monitor in PJM should enhance the Commission's willingness to accept the proposed mitigation programs.²² In addition, market participants surely will monitor and enforce the Applicants' commitments to make forward sales.

It also is noteworthy that the PJM tariff incorporates several provisions that provide financial incentives for the Applicants and other market participants to increase generation output. For example, PJM requires all units that are Capacity Resources to bid into the day-ahead market to their maximum capacity. If a bid is accepted and the unit becomes unavailable in real time, the unit owner must pay the market the difference between the real-time market closing price and the day-ahead closing price.

Thus, the proposed mitigation eliminates any merger related screen failures, while preserving the significant benefits of improving the reliability and output of the Applicants' combined nuclear fleet. By expanding nuclear capacity factors, and in particular the capacity factors for the Salem and Hope Creek nuclear units operated by PSEG, the Transaction should result in greater supplies of baseload energy and lower PJM market prices.

²² See, e.g. Atlantic City Electric, 86 FERC ¶ 61,248 at 61,902 (1999) (noting that PJM market monitor proposal "will . . . serve to minimize opportunities for the sustained exercise of market power.")

5. Interim Mitigation

a. Interim Mitigation for Peaking, Mid-Merit and Coal Units

As noted above, the Commission in the past has recognized that divestiture can take time to accomplish, and the Commission has not necessarily required that divestiture be completed before a merger closes. However, when there are significant competition concerns, as is the case with a merger between the Applicants, the Commission does require that interim mitigation be put in place pending divestiture or other permanent mitigation (such as transmission expansion or joining an ISO or RTO).²³

The most common interim mitigation measure for addressing horizontal market power is the sale of long-term firm rights to capacity and energy until the permanent mitigation is in place. The Commission has approved such sales as interim mitigation measures on a number of occasions.²⁴

Therefore, the Applicants propose that, within 30 days following the end of the month in which the Transaction closes, the Applicants will sell the rights to 2,900 MW of energy and capacity from designated coal, mid-merit and peaking facilities in PJM East. The restrictions described above that apply to the divestiture regarding who can purchase capacity and how much capacity can be purchased apply to these interim sales as well. These sales are described in more detail in the testimony of Mr. Cassidy.

The interim contracts will have a minimum term of one month and will be in effect for no longer than a period of 18 months from the close of the Transaction. If a

²³ See Revised Filing Requirements, ¶ 31,111 at 31,900; See also, AEP, 90 FERC ¶ 61,242 at 61,792 (2000).

²⁴ See American Electric Power Corp., 91 FERC ¶ 61,208 (2000); Ameren Services Co., 101 FERC ¶ 61,202 (2002); Ameren Corp., 108 FERC ¶ 61,094 (2004).

designated unit subsequently is divested, the contract associated with that unit will be assignable without consent to the party who acquires the designated unit. The product will be a “virtual unit transfer” type of product, tied to specific units, and with the counterpart acquiring full dispatch and unit offering rights (*i.e.*, the buyer will be responsible for offering the unit into the PJM energy, capacity and ancillary services markets). The dispatch parameters for the product will match the dispatch parameters on file with PJM for the subject units; for example, unit start-up time, minimum run time, ramp rates, and high and low operating limits. The product also will include all of the Unforced Capacity associated with the subject unit. Until such time as the entire 2,900 MW of this capacity is committed under interim mitigation contracts, Applicants will bid 2,900 into the PJM day-ahead (and, if not dispatched, into the PJM real-time) market at a price not to exceed the equivalent of PJM cost-capped rates (*i.e.*, variable cost defined in PJM’s Cost Development Task Force rules plus 10 percent).

b. Interim Mitigation for Baseload Nuclear Capacity

Prior to the initial February auction under the long-term baseload mitigation plan, Applicants will conduct an auction of interim firm entitlements to firm 25 MW blocks of energy. The interim product to be offered for sale will be identical to the product offered pursuant to the Baseload Auction Option, with two exceptions. The first exception is the product will be sold for a shorter term than the three-year product sold in the Baseload Auction Option. To the extent possible, the term(s) of the interim energy contracts will coincide with the terms of products most commonly purchased in the PJM markets. For example, if there is a 13 month period between the commencement of sales under interim contracts and the commencement of sales under the Baseload Auction Option, rather than auctioning an equivalent of 2,600 MW of capacity for 13

months (which would not be a standard market product), the Applicants would separately auction 2,600 MW of capacity for one-month, and 2,600 MW of capacity for 12 months. One-month and 12-month products are more commonly traded in PJM markets.

The second difference between the interim product and the long-term product is that the Applicants will deliver the product either at the PJM East nuclear generation aggregate bus, or alternatively at the PJM West Hub combined with a basis differential between the PJM West Hub and the PJM East nuclear generation aggregate bus. This alternative delivery arrangement is proposed because the market at the PJM West Hub is much more liquid than PJM East, and Applicants will be better able to quickly divest rights to the energy equivalent of 2,600 MW of capacity at that location. As explained by Mr. Cassidy, the two products are equivalent.

The interim baseload auctions will be completed within 90 days following the month in which the Transaction closes. Until that time, Applicants will bid all of their PJM East nuclear generation into the PJM day-ahead market at a price of zero.

6. Market Power in Capacity Markets and Ancillary Services

In addition to studying energy markets, Dr. Hieronymus also analyzed whether there are any competition issues raised in the PJM capacity and ancillary services markets. The results of his analysis are summarized below.

a. Mitigation of Capacity Market Screen Failures

Current PJM Capacity Market

Beginning in June 2003, PJM implemented a single PJM capacity market that included the Mid-Atlantic region and what was then called PJM West (i.e., Allegheny Energy). This market included both Daily and Monthly Unforced Capacity (“UCAP”) Credit markets. In 2004, with the integration of ComEd, a Monthly (and multi-monthly)

Installed Capacity Credit market was introduced. Effective June 1, 2005, there will be a single capacity market that includes all current PJM members. UCAP remains the measure of relevance for the capacity market. Under UCAP, each unit's capacity is adjusted to account for its average forced outage rate. Although the capacity credit markets are based on UCAP, Dr. Hieronymus does not have data on unit-specific forced outages. As a result, he analyzed the market based on installed capacity ("ICAP"). As Dr. Hieronymus explains, the use of ICAP instead of UCAP should not materially impact the results of the analysis.

Dr. Hieronymus analyzed two definitions of capacity markets: Expanded PJM and PJM East. Because PJM currently operates a single capacity market, Expanded PJM is the currently relevant market. However, to be conservative given that PJM is considering moving to smaller capacity markets, as described below, Dr. Hieronymus also analyzed PJM East as if it were a separate capacity market.

Dr. Hieronymus found that the ICAP in PJM East is highly concentrated, and the HHI change resulting from the merger is about 900 points, assuming none of the Applicants' capacity is committed to the market. The ICAP market for Expanded PJM is unconcentrated pre-merger, and barely moderately concentrated post-merger with an HHI change of 243 points, again assuming none of the Applicants' capacity is committed to the market. The assumption that the Applicants' capacity is not committed is a conservative one, since in fact the Applicants are obligated to obtain capacity for their own loads and other long-term capacity commitments, and only have the excess available for sale in the market.

Nevertheless, the Applicants are proposing to mitigate their market power as if PJM were a separate capacity market, and based on their total capacity rather than on

uncommitted capacity. Dr. Hieronymus determined that divestiture of 5,300 MW will eliminate screen failures in PJM East. As described above, Applicants are committing to divest 2,900 MW of generation, which is more than enough to mitigate screen violations in Expanded PJM. This leaves an additional 2,400 MW of ICAP to be mitigated in PJM East.

With respect to the 2,900 MW of peaking, mid-merit and coal-fired capacity to be divested as part of the mitigation plan described above, within 30 days following the month in which the Transaction closes, Applicants will enter into interim firm contracts for the sale of 2,900 MW of both energy and capacity from designated units, thereby reducing the mitigation amount in the interim (pre-divestiture) period by the same 2,900 MW.

This leaves 2,400 MW of capacity to be mitigated, an amount that could be reduced if more than 2,900 MW of peaking, mid-merit and coal capacity is divested. The 2,400 MW of capacity less any capacity divested in excess of 2,900 MW is referred to as the "Capacity Mitigation Amount." The Capacity Mitigation Amount also will be reduced, similar to the Baseload Mitigation Amount, megawatt by megawatt by the amount of any divestiture, derating or retirement of the Applicants' generation capacity in PJM East and for any increase in transfer capability into PJM East resulting from transmission upgrades in addition to those provided in the PJM Regional Transmission Expansion Plan that is effective as of June 2005. As was the case with reductions in the Baseload Mitigation Amount, before retiring a unit located in PJM East during the first 15 years following the closing of the Transaction, the Applicants will offer that unit for sale in an auction. The Applicants will be obligated to sell the unit if they are able to

negotiate terms that result in a positive price and recover the fair value of the property to EEG, taking into account its alternative uses, as determined by an independent appraiser.

In order to mitigate any residual market power concerns regarding the Applicants' ability to influence prices in the PJM capacity markets, Applicants commit to bid into the PJM monthly and annual Planning Year capacity auctions at a zero price the lesser of (1) The Capacity Mitigation Amount or (2) their entire net Unforced Capacity Position in PJM, less 100 MW.²⁵ Prior to the first annual PJM Planning Year capacity auction in which the merged company can bid, Applicants will bid their net PJM Unforced Capacity Position in PJM less 100 MW into each PJM monthly auction. Once they are able to participate in the annual Planning Year auction, the Applicants' commitment will be to bid into each Planning Year annual auction at a zero price. After that, to the extent that Applicants have any net capacity available in a month, Applicants will bid the additional net capacity into the monthly auction, up to the total Capacity Mitigation Amount less the amount bid into the last annual auction.

Future PJM Capacity Markets

The PJM capacity market is expected to be significantly restructured, as part of an ongoing effort to improve system reliability and price signals. As Dr. Hieronymus describes, in addition to altering the price mechanism (for example, basing capacity payments on a "demand curve" that specifies the price of capacity given different levels of supply and ensuring prices that support entry at the point when capacity is needed), PJM is considering the introduction of a new series of auctions and a more formalized

²⁵ The Applicants need to retain a small amount of uncommitted UCAP due to the fact that their UCAP obligations can fluctuate for various reasons, including an increase in the POLR load obligation, so they need to keep a small amount of uncommitted capacity to hedge this risk.

bilateral market for capacity. The proposal is to eventually have four-year forward base auctions. Incremental Auctions would supplement Base Auctions three times during the four year period. In addition, local capacity requirements may be imposed to ensure local reliability in transmission constrained areas.

The zones to be created for the initial auction are under discussion, but it appears that locational zones will not be applicable until the 2007-08 planning year at the earliest. The zonal structure of markets will be reanalyzed in the future and appropriate changes made. The Applicants commit to making a filing 30 days after the closing of the Transaction, by which time the details of the new PJM capacity markets should be known, in which they will make any necessary adjustments to their mitigation proposal and also will demonstrate their proposal's effectiveness under the new markets. Upon approval by the Commission, that proposal will replace the mitigation proposed herein.

b. Other Ancillary Services

Dr. Hieronymus also analyzed whether any market power issues were raised by the Transaction with respect to other ancillary services. Under the Merger Policy Statement, the Commission requires that Applicants consider the impact of a transaction on markets for ancillary services, specifically spinning reserves, non-spinning reserves and imbalance energy.²⁶ PJM does not have an imbalance energy market distinct from its spot energy markets since there is no requirement to submit balanced schedules. PJM's spinning reserve market includes quick start units, essentially peaking units. There is no separate non-spin reserve market. PJM does, however, operate a market-based regulation

²⁶ Revised Filing Requirements, ¶ 31,111 at 31,884.

market. As a result, Dr. Hieronymus analyzed the PJM regulation and spinning reserve markets.

(i) Regulation Service

The PJM regulation market in 2003 was moderately concentrated, but available regulation supply relative to demand for the service was high. According to the Market Monitor, in the PJM Mid-Atlantic in 2003 there were 113 units qualified to produce about 2,011 MW of regulation capability, but requirements ranged from approximately 750 MW for the peak period to approximately 220 MW for the off-peak period.²⁷ Applicants have about 500 MW of regulation capability, about one-quarter of the capability identified by the Market Monitor.

The primary factor used by PJM to select the units used for regulation is opportunity costs, which means that detailed cost information is necessary to determine market shares at different load levels. Dr. Hieronymus did not have the information necessary to do this analysis. However, he explains in his testimony that, even without the Applicants' 500 MW of regulation capability, there still is over 1,500 MW of unaffiliated capability left, which is twice as much unaffiliated capability in the market as the 750 MW of regulation required during peak hours. As a result, Dr. Hieronymus concludes that the Applicants are far from being pivotal suppliers of regulation service and cannot exercise market power.

(ii) Spinning Reserves

Dr. Hieronymus also found screen violations in the PJM Mid-Atlantic market for spinning reserves, with HHI increases of approximately 500. However, as Dr.

²⁷ 2003 State of the Market, PJM Market Monitoring Unit, March 4, 2004, pages 27 and 136.

Hieronymus explains, these increases will be completely mitigated by the proposed divestiture of certain of the Applicants' peaking and mid-merit generation. The nuclear units owned by the Applicants do not provide spinning reserves.

7. Horizontal Market Power in Other Geographic Markets

The Applicants own smaller amounts of generation capacity in geographic markets other than PJM, including New England, New York, the Southeast, Texas and the California ISO. The only markets in which the Applicants each own generation before the Transaction, however, are in New England and Texas (ERCOT). Dr. Hieronymus therefore performed an analysis of these two markets to determine whether any competitive concerns are raised.

a. ISO New England ("ISO-NE")

Exelon owns 630 MW of generation in ISO-NE. This consists of generation located at New Boston and West Medway, which is within the Northeastern Massachusetts ("NEMA") load pocket and a few megawatts of generation located in Maine. PSEG owns 967 MW of generation in ISO-NE including Bridgeport Harbor and New Haven Harbor located within the Southwest Connecticut load pocket and a few megawatts of generation located in New Hampshire. Thus, the smallest relevant market identified by Dr. Hieronymus in which the Applicants' generation competes is ISO-NE as a whole. Dr. Hieronymus calculated that, relative to the total amount of generation located in ISO-NE (in excess of 30,000 MW), Exelon's generation is only 2% and PSEG's generation is only 3% of total ISO-NE capacity. As Dr. Hieronymus testifies, New England is generally an unconcentrated market, and under any relevant condition studied, the Applicants' post-Transaction market shares would not cause HHI screen failures.

In this regard, the Applicants note that the Commission recently approved a transaction that involved the purchase of approximately 2,800 MW of capacity in New England by a generator that already owned about 2,000 MW of capacity in New England.²⁸ Since the Transaction involves combining 601 MW of generation owned by Exelon with 957 MW of generation owned by PSEG, the results of a Competitive Screen Analysis is by definition less than that of the transaction which the Commission recently approved. No further analysis of the ISO-NE market is necessary.

b. ERCOT

Exelon owns or controls via long-term contract 3,651 MW of generation in ERCOT,²⁹ mostly located in the North zone of ERCOT, with a small amount located in the Houston zone. PSEG owns 2,026 MW of affiliated generation in ERCOT, located in either the South or West zones. Because the Commission has no jurisdiction over ERCOT, arguably the Commission has no authority to consider horizontal market power issues in ERCOT. Nevertheless, the Applicants asked Dr. Hieronymus to analyze any potential market power issues in the ERCOT market.

Dr. Hieronymus testifies that, because Applicants' generation is located in different zones within ERCOT, the only potentially relevant market is ERCOT as a whole. Dr. Hieronymus calculates that, relative to ERCOT's total generation in excess of 80,000 MW, Exelon's generation is less than 5% and PSEG's generation is only 2.5% of ERCOT capacity. These shares are small and the combination of Applicants' shares

²⁸ USGen New England, Inc., 109 FERC ¶ 61,361 at P 17 (2004). The Order describes applicant's (i.e., Dominion's) analysis as follows: "For Economic Capacity, the post-acquisition New England market is unconcentrated (Herfindahl-Hirschman Index (HHI) < 1000)..."

presents no competitive concerns in ERCOT. Specifically, Dr. Hieronymus calculated that the change in HHI is only about 20 points in peak periods and will be well under screen thresholds in other periods. A full Competitive Screen Analysis is not necessary to conclude that the effect of the Transaction in the ERCOT market does not raise any competitive issues.

B. Vertical Market Power Issues

1. No Potential for Abuse of Electric Transmission Market Power

Although not addressed in the Merger Policy Statement or in the Commission's Part 33 merger regulations, the Commission in recent years has started to consider the extent to which merger applicants can abuse the market power that they enjoy through the ownership of transmission facilities to give themselves an advantage in energy markets. The Transaction does not raise this concern, however. ComEd, PECO and PSE&G, the only transmission-owning entities involved, all have transferred operational control over their transmission facilities to PJM. The Commission has held on a number of occasions that such a transfer adequately addresses the abuse of transmission market power issue.³⁰

Nor should the Commission be concerned that the Transaction will allow the Applicants to obtain any measure of control over PJM. First, PJM has an independent Board of Directors, and the Transaction will have no impact whatsoever on the makeup of that Board. With respect to the Members, Reliability and Electricity Market Committees, PECO³¹ and PSE&G³² each are in the Transmission Owner sector which,

²⁹ This includes an 830 MW purchase (tolling agreement) from a plant that is capable of being dispatched into ERCOT or Entergy.

³⁰ See, e.g., Ameren Corp., 108 FERC ¶ 61,094 at P 61.

³¹ PECO is the voting member for Exelon.

collectively, has a 20% voting interest on these Committees. The Applicants expect that, after the Transaction, the Exelon and PSE&G votes will be combined into a single vote, just as the ComEd and PECO votes were combined into a single vote after ComEd joined PJM.

Thus the combination of PECO and PSE&G would reduce the current number of members in the Transmission Owners sector from 10 to 9, which would mean that EEG would have an 11% voting interest in the Transmission Owner sector, whereas PECO and PSE&G each have a 10% voting interest before the Transaction. This increase of 1% voting interest in a sector that in turn has only 20% voting interest is de minimis, and even this increase would be completely negated if Dominion Virginia Power elects to join the Transmission Owner sector, which would move EEG back to the 10% that PECO and PSE&G each currently have.

Voting rights under the PJM East Transmission Owner's Agreement ("East TOA") are counted both based on individual members and on a weighted basis, and a two-thirds vote in each category is required to approve all major changes. Moreover, for items requiring a two-thirds majority, there must be at least three votes opposing a proposed action in order for the proposal to be defeated. EEG's increased share of individual members votes will be equally de minimis, going from 1 in 9 to 1 in 8 under the East TOA agreement, and from 1 in 14 to 1 in 13 if the East TOA, West TOA and South TOA agreements are consolidated into a single agreement, which currently is under consideration. EEG's weighted share will go up more significantly, but the other transmission owners are protected by the fact that: (1) a two-thirds vote is required for

32 PSE&G is the voting member for PSEG.

major issues both on a weighted and individual basis; (2) no transmission owner in the East TOA will be deemed to have more than a 25% vote on a weighted basis regardless of its actual weighted ownership, so EEG's weighted vote will be capped at 25%; and (3) EEG will need to get at least two other transmission owners to vote with it in order to block any change proposed by the other unaffiliated transmission owners, which means that EEG will not have the ability to veto any proposed changes.

2. No Potential for Abuse of Natural Gas Transportation Market Power

The Commission's Merger Policy and Merger Regulations do address the issue of the potential abuse of market power in the transportation of natural gas to gain a competitive advantage in energy markets. The concern is that when the ownership of natural gas assets serving electric generation facilities is combined with the ownership of electric generation facilities, the potential is created for the resulting merged company to use its control over the natural gas facilities to disadvantage the competing owners of the electric generation facilities.³³

PECO provides gas distribution service to only one electric generator, a 28 MW facility owned by Merck. There are two other independent generators located in PECO's service area, but these generators take service directly from an interstate natural gas pipeline instead of from PECO. Furthermore, newly built generation facilities could readily avoid PECO's small service area or connect directly to an interstate pipeline. PSE&G's gas distribution system in New Jersey serves eight current or former qualifying facilities ("QFs") under contract with the utility, as well as two merchant generators:

³³ Revised Filing Requirements, 1996-2000 FERC Stats. & Regs. ¶ 31,111 at 31,904. The regulations governing vertical market power appear at Section 33.4 of the Merger Regulations.

the Tosco plant (172 MW) and the Williams Red Oak plant (765 MW). These generating facilities served by PSE&G are under long-term gas transportation contracts or discounted tariffs. Both companies also provide natural gas distribution services to affiliated generation facilities.

Notwithstanding the fact that PECO and PSE&G both serve electric generation facilities, no vertical market power concerns are raised with respect to the Transaction, as Dr. Hieronymus explains. As an initial matter, it is unlikely that either PECO or PSE&G could take any actions that would disadvantage competitors served on their distribution systems. Their distribution tariffs are regulated by the respective state public utility commissions, who have imposed an open access distribution requirement on PECO and PSE&G. The ability to earn even the ceiling rates under these tariffs is constrained by bypass alternatives or existing long-term (sometimes discounted) contracts. Moreover, both Pennsylvania and New Jersey have in place codes of conduct between gas and electric affiliates that limit information sharing and, in any event, the amount of generation served is so small that any information shared would be of little use to the Applicants' generation business. In short, none of the vertical concerns that the Commission focused upon in prior vertical mergers exists in this merger and the Transaction does not create or enhance vertical market power.

Nevertheless, Dr. Hieronymus conducted the required analysis under Section 33.4 of the Commission's regulations. He analyzed the downstream market for PJM East, PJM Pre-2004 and Expanded PJM. After taking into account Applicants' mitigation commitments, neither the PJM Pre-2004 or the Expanded PJM downstream market is highly concentrated post-Transaction. Since these downstream markets are not highly

concentrated, consistent with the Commission's regulations, the competitive conditions for a successful vertical foreclosure strategy are not present in those markets.³⁴

Dr. Hieronymus determined that, for PJM East, the post-Transaction downstream market is highly concentrated. However, his analysis of the upstream market showed that it is not highly concentrated, which again means that no market power issues are raised.³⁵

C. No Adverse Impact On Rates

In considering the impacts of a merger on rates, the Commission looks primarily at impacts on transmission rates and on rates for long-term wholesale requirements customers. The Transaction will not have an adverse impact on either of these categories of rates.

1. Transmission Rates

With respect to transmission rates, the Applicants propose a "hold harmless" commitment, *i.e.* they will not seek to include merger-related costs in their filed transmission revenue requirements unless they can demonstrate merger-related savings equal to or in excess of the merger-related costs so included. The Commission has approved this type of commitment in its Merger Policy Statement and in a number of subsequent cases.³⁶

2. Wholesale Requirements Rates

Of the three traditional franchised utilities involved in the Transaction, only ComEd has any wholesale requirements customers. These customers' rates should not be

³⁴ Revised Filing Requirements, FERC Stats. & Regs. ¶ 31,111 at 31,904. See also Energy East Corp., 96 FERC ¶ 61,322 at 62,229 (2001).

³⁵ Id.

³⁶ Merger Policy Statement, ¶ 31,044 at 30,124. See also Ameren Corp., 108 FERC ¶ 61,094 at P 6-8 (2004).

adversely impacted because, the Applicants expect that the Transaction will result in net synergy savings for ComEd. Nevertheless, the Applicants propose the same hold harmless commitment for their wholesale customers that they have proposed for their transmission customers.

D. No Adverse Impact On Regulation

1. No Adverse Impact on Federal Regulation

The Commission's primary focus in considering the impact of a transaction on federal regulation is whether the Transaction will create a registered holding company under PUHCA and cause the Commission to lose jurisdiction over intra-holding company transfers under Ohio Power.³⁷ Here, although the Transaction does bring PSEG into a registered public utility holding company system, the Commission's authority over the Applicants will not be impaired as a result of the proposed restructuring and transfer of ownership interests. Consistent with the Commission's Merger Rule, the Applicants commit to waive any claim of Ohio Power preemption of the Commission's ability to regulate intra-company transactions within a registered public utility holding company system. Such a commitment fully addresses the Commission's concerns.³⁸

2. No Adverse Impact on State Regulation

The Commission does not consider the impact of a transaction on state regulation when the affected state commission has the ability to review and approve the Transaction.³⁹ Here, the Applicants are filing applications for approval of the Transaction at two of the three affected state commissions, the PAPUC and the NJBPU. These commissions therefore will have the ability to protect their own jurisdiction. As a result, the Commission need not consider the impact of the Transaction on state regulation in Pennsylvania and New Jersey.

³⁷ Ohio Power Co. v. FERC, 954 F.2d 779 (D.C. Cir. 1992).

³⁸ Merger Policy Statement, ¶ 31,044 at 30,124-25.

³⁹ Id., ¶ 31,044 at 30,125.

That leaves Illinois. Although the ICC has no jurisdiction over the Transaction, the Applicants nevertheless are giving notice of the Transaction to the ICC and providing the same information as would be called for under Section 16-111(g) of the Illinois Public Utilities Act.

In any event, the Transaction has no impact on regulation in Illinois. The regulatory status of ComEd, the only one of the Applicants subject to the jurisdiction of the ICC, will not change as a result of the Transaction. ComEd's ownership does not change, and there are no changes either in the assets owned by ComEd or its contracts or conduct of its business. Furthermore, ComEd's status as an operating electric utility owned by a registered holding company will not change.

Because the Transaction does not change ComEd, its business, its assets, or its regulatory status in any fashion, the Transaction will not have any impact on ComEd's regulation under Illinois law in any fashion. The ICC will have the same jurisdiction to regulate ComEd after the Transaction that it currently has today, before the Transaction. Thus, the Transaction will have no adverse impact on state regulation in Illinois.

E. The Internal Restructuring is Consistent with the Public Interest

As noted in Section II.A above, the Applicants intend to engage in some internal restructuring of EEG's corporate structure in addition to what is required by the Merger Agreement. This restructuring, which is described in more detail in Section III, involves consolidating the various companies owned by Exelon and PSEG into a structure that makes more sense for the combined company.

This consolidation raises no issues under the Commission's Merger Policy and can be readily approved. As the Commission has recognized, ordinarily internal

corporate restructurings do not raise public interest concerns.⁴⁰ However, the Applicants recognize that the Commission strictly reviews transfers of generation from unregulated merchant companies to traditional franchised utilities that will use the generation to serve their load.⁴¹ That concern is not raised here. No generation of any sort will be placed under the control of ComEd, PECO or PSE&G, the three franchised utilities involved. As a result, the restructuring does not implicate the Commission's concerns that competition will be impacted by having a traditional franchised utility acquire affiliated generation.

As noted in Section II.A above, the Applicants have not yet completely finalized their corporate restructuring plans. The Applicants request that the Commission approve further changes not described herein that may be decided upon prior to the closing of the Transaction, provided that none of these changes involves transferring unregulated generation facilities so that they are under the control of ComEd, PECO or PSE&G, the Applicants' traditional franchised utilities.

Finally, as described in Section II.A., the Applicants expect that PSEG Fossil will cease to exist as a separate entity and that it will be survived by Exelon Generation. Presently, PSEG Fossil, together with Jersey Central Power and Light Company, is a co-licensee of the Yards Creek Pumped Storage Project, which has a Part I hydroelectric license (Project 2309). The Applicants will make a separate application under Part I of the FDA for the approval of the partial transfer of this license from PSEG Fossil to Exelon Generation.

⁴⁰ Revised Filing Requirements, ¶ 31,111 at 31,902-03.

⁴¹ See, e.g., Cinergy Services, Inc., 102 FERC ¶ 61,128 (2003); Ameren Energy Generating Co., 103 FERC ¶ 61,128 (2003).

V. INFORMATION REQUIRED BY PART 33 OF THE COMMISSION'S REGULATIONS

Applicants submit the following information pursuant to Part 33 of the Commission's Regulations.

A. Section 33.2(a): Names and addresses of the principal business offices of the applicants.

Exelon's principal executive offices are located at 10 South Dearborn Street, Chicago, Illinois 60603.

PSEG's principal executive offices are located at 80 Park Plaza, Newark, New Jersey 07102.

B. Section 33.2(b): Names and addresses of persons authorized to receive notices and communications in respect to the Application.

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C. Section 33.2(c): Description of Applicants.

See Section II, and Exhibits A through F, attached.

D. Section 33.2(d): Description of the jurisdictional facilities owned and operated or controlled by Applicants, their parents or affiliates.

See Section II and the testimony of Dr. Hieronymus.

E. Section 33.2(e): Narrative description of the Transaction.

A narrative description of the Transaction is provided in Part III of this Application.

F. Section 33.2(f): Contracts with respect to the Transaction.

See Exhibit I.

G. Section 33.2(g): Facts relied upon to show that the Transaction is in the public interest.

The facts relied upon to show that the Transaction is consistent with the public interest are set forth in Part IV of this Application.

H. Section 33.2(h): Physical property.

See Exhibit K.

I. Section 33.2(i): Status of actions before other regulatory bodies.

See Exhibit L.

J. Section 33.5: Accounting Entries

Attached as Appendix 2 are pro forma accounting entries showing the proposed accounting for the Transaction on the books of PSE&G, the only entity subject to the Commission's jurisdiction that is required to use the Commission's Uniform System of Accounts whose books will be affected by the Transaction. In addition, certain other PSEG companies that use the Uniform System of Accounts are expected to be consolidated into Exelon Generation. These entities are PSEG Fossil, PSEG Nuclear and PSEG ER&T. Because Exelon Generation is not required to keep its books in accordance with the Uniform System of Accounts, no accounting entries are shown for these companies.

VI. CONCLUSION

As demonstrated above, as well as in the attached testimony and exhibits, the Transaction is consistent with the public interest as defined by the Commission in its Merger Policy Statement, Part 33 regulations, and merger cases. The Applicants request that the Commission approve the Transaction, without a hearing, no later than August 1, 2005.

Respectfully submitted,

/s/ J.A. Bouknight, Jr.

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

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DOCKET NO. A-

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

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TABLE OF CONTENTS

	Page
A. INTRODUCTION	1
B. DESCRIPTION OF THE JOINT APPLICANTS AND THE OTHER COMPANIES INVOLVED IN THE PROPOSED TRANSACTION	2
C. OVERVIEW OF THE PROPOSED TRANSACTION	7
D. APPROVALS AND LEGAL STANDARDS	10
E. IMPACT OF THE PROPOSED TRANSACTION ON SERVICE, RATES, JOBS AND LOCAL COMMUNITIES	14
F. BENEFITS OF THE MERGER	16
G. WRITTEN TESTIMONY	20
H. ADDITIONAL SUPPORTING DATA	21
I. OTHER REGULATORY AND SHAREHOLDER APPROVALS	22
J. PROPOSED LITIGATION SCHEDULE	23
K. NOTICE	24

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

A. INTRODUCTION

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

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

PECO Energy Company
2301 Market Street
P.O. Box 8699
Philadelphia, PA 19101-8699

Public Service Electric and Gas
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80 Park Plaza
Newark, NJ 07101

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

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4. The names and addresses of PSE&G's attorney are as follows:

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

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

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

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

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

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

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

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

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

7. **PSE&G** is a corporation organized and existing under the laws of the State of New Jersey and is engaged in the business of supplying, transmitting and distributing electricity and natural gas. PSE&G is headquartered in Newark and, like PECO and ComEd, has turned over operational control of its electric transmission system to the PJM. PSE&G's service territory comprises a corridor running diagonally across New Jersey from the southwest to the northeast and encompasses most of New Jersey's largest municipalities, including its six largest cities.

As a consequence of its fractional ownership interest in an electric transmission line that runs from the Conemaugh Generating Station to the Maryland border, PSE&G also holds a certificate of public convenience issued by this Commission. However, PSE&G is not a "public utility" in Pennsylvania in the traditional sense in that it is not authorized to serve any customers in Pennsylvania. Indeed, PSE&G's certificate, which was issued on April 24, 1968 at Docket No. 94234, specifically provides that it "shall confine and restrict its operations to the construction, maintenance, repair, replacement, and removal of the proposed electric transmission line."

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

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

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

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

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

C. OVERVIEW OF THE PROPOSED TRANSACTION

9. Pursuant to the terms of an Agreement and Plan of Merger, a copy of which is provided as the separately bound Exhibit C, PSEG will merge with and into Exelon (Merger), thereby ending the separate corporate existence of PSEG. Each PSEG shareholder will be entitled to receive 1.225 shares of Exelon common stock for each PSEG share held and will be paid cash in lieu of any fractional share of Exelon stock the PSEG shareholder would otherwise be entitled to receive. Following the Merger, the existing shareholders of Exelon will represent approximately 68%, and the former shareholders of PSEG will represent approximately 32%, of the shareholders of the post-Merger Exelon.

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

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

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

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

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

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

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

D. APPROVALS AND LEGAL STANDARDS

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

For any public utility . . . to acquire from, or transfer to, any person or corporation . . . by any method or device whatsoever, including the sale or transfer of stock and including a consolidation, merger, sale or lease, the title to, or the possession or use of, any tangible or intangible property used or useful in the public service.

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

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

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

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

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

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

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

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

20. Under Pennsylvania law, a statement of policy, unlike a regulation, does not have the force and effect of law but, instead, is merely an announcement to the public of the policy which the agency hopes to implement in future rulemakings or adjudications. *Pennsylvania Human Relations Commission v. Norristown Area School District*, 473 Pa. 334, 350, 374 A.2d 671 (1977); *Statement Of Policy On Expanded Interconnection For Intrastate Special Access*, Docket No. M-00920376 (February 11, 1993), 1993 Pa. PUC LEXIS 5 (pp. 56-57). Because a statement of policy, unlike a regulation, does not bind the agency that adopted it, the Joint Applicants are unwilling to rely upon the Statement of Policy as an assurance that the Commission will find the Merger to be outside its jurisdiction. Consequently, this Joint Application is being filed to obtain a definitive determination by the Commission that its approval of the Merger under Section 1102(a)(3) is not required or, if it is, that such approval should be granted.

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

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

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

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

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

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

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

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

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

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

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

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

F. BENEFITS OF THE MERGER

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

G. WRITTEN TESTIMONY

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

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

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

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

H. ADDITIONAL SUPPORTING DATA

additional competition.

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

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

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

Exhibit C: Agreement and Plan of Merger.

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

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

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

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

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

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

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

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

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

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

Exhibit M: Customer Notice.

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

I. OTHER REGULATORY AND SHAREHOLDER APPROVALS

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

Public Service Commission under Section 70 of the New York Public Service Law in connection with the “indirect transfer” of certain generation assets of PSEG Power located in New York; and (g) approval by the Federal Communications Commission (FCC) of the transfer of control by PSEG of certain telecommunications permits or licenses. Under Illinois law, ComEd is not required to obtain the approval of the Merger by the ICC but, instead, under Section 16-111(G) of the Illinois Public Utilities Act, is only required to file a notice of the Merger accompanied by certain information about the Merger.⁷

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

J. PROPOSED LITIGATION SCHEDULE

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

⁷ A copy of the applications being filed with the FERC and the NJBPU for approval of the Merger will be served on the Commission under separate cover. Copies of the SEC, (continued).

K. NOTICE

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

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

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

Respectfully submitted,

/s/ Daniel Clearfield

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Dated: February 4, 2005

/s/ Paul R. Bonney

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Counsel for PECO Energy Company

VERIFICATION

I, Francis E. Delany, Jr., hereby declare that I am Vice President and Corporate Rate Counsel of Public Service Electric and Gas Company; that as such I am authorized to make this verification on its behalf; that the facts set forth in the foregoing Application are true to the best of my knowledge, information and belief, and that I make this verification subject to the penalties of 18 Pa. C.S. §4904 pertaining to false statements to authorities.

/s/ Francis E. Delany, Jr.
Francis E. Delany, Jr.

Subscribed and sworn before me
This 3rd day of February 2005

/s/ Constance E. Lembo
(Notary Public)

CONSTANCE E. LEMBO
Notary Public of New Jersey
My Commission Expires Oct. 18, 2006

VERIFICATION

I, Lisa Crutchfield, hereby declare that I am Vice President Regulatory and External Affairs of PECO Energy Company; that as such I am authorized to make this verification on its behalf; that the facts set forth in the foregoing Application are true to the best of my knowledge, information and belief, and that I make this verification subject to the penalties of 18 Pa. C.S. §4904 pertaining to false statements to authorities.

/s/ Lisa Crutchfield
Lisa Crutchfield

Subscribed and sworn before me
This 4th day of February 2005

/s/ Margaret T. Gregory
(Notary Public)

My Commission Expires 6/10/2007

COMMONWEALTH OF PENNSYLVANIA
NOTARIAL SEAL
MARGARET T. GREGORY, Notary Public
City of Philadelphia, Phila. County
My Commission Expires June 10, 2007

STATE OF NEW JERSEY
BOARD OF PUBLIC UTILITIES

_____	X	
IN THE MATTER OF THE JOINT PETITION OF	:	DOCKET NO.: _____
PUBLIC SERVICE ELECTRIC AND GAS	:	
COMPANY AND EXELON CORPORATION	:	
FOR APPROVAL OF A CHANGE IN CONTROL	:	VERIFIED JOINT
OF PUBLIC SERVICE ELECTRIC AND	:	PETITION
GAS COMPANY, AND RELATED	:	
AUTHORIZATIONS	:	
_____	X	

TO THE HONORABLE COMMISSIONERS OF THE
NEW JERSEY BOARD OF PUBLIC UTILITIES:

INTRODUCTION

Petitioner Public Service Electric and Gas Company (“Public Service” or “PSE&G”) and Petitioner Exelon Corporation (“Exelon”), on behalf of its wholly-owned subsidiary Exelon Energy Delivery Company, LLC (together, the “Joint Petitioners”) by way of this Joint Petition filed pursuant to N.J.S.A. 48:2-51.1 and N.J.S.A. 48:3-10, respectfully request that the New Jersey Board of Public Utilities (“Board”) approve the change in control of PSE&G and provide the related authorizations described herein.

THE PARTIES

1. PSE&G is a corporation organized and existing under the laws of the State of New Jersey and is engaged principally in the transmission and distribution of



electric energy and gas service in New Jersey. PSE&G is a wholly-owned subsidiary of Public Service Enterprise Group Incorporated (“PSEG”). PSE&G has turned over the operational control of its electric transmission system to the PJM Interconnection, LLC (“PJM”), which is the Regional Transmission Organization (“RTO”) approved by the Federal Energy Regulatory Commission (“FERC”) for a centrally dispatched control area comprising all or parts of several states and the District of Columbia. PSE&G is an “electric public utility” and a “gas public utility” as those terms are defined in N.J.S.A. 48:2-13 and N.J.S.A. 48:3-51, and, therefore, is subject to regulation by the Board. PSE&G’s electric and gas service area is a corridor of approximately 2,600 square miles running diagonally across New Jersey from Bergen County in the northeast to an area below the city of Camden in the southwest. The greater portion of this area is served with both electricity and gas, but some parts are served with electricity only and other parts with gas only.

2. PSEG, the parent company of PSE&G, is a corporation organized and existing under the laws of the State of New Jersey and is an exempt public utility holding company under the Public Utility Holding Company Act of 1935 (“PUHCA”). The common stock of PSEG is publicly traded and is listed on the New York Stock Exchange. PSEG has four principal direct wholly-owned subsidiaries: PSE&G, described above; PSEG Power LLC (“PSEG Power”), a multi-regional, wholesale energy supply company that includes generating asset operations as well as wholesale energy,

fuel supply, energy trading and marketing and risk management functions; PSEG Energy Holdings LLC (“PSEG Energy Holdings”), which has pursued investment opportunities in the global energy markets; and PSEG Services Corporation (“PSEG Services”), which provides a broad array of corporate support, managerial and administrative services to PSEG and its subsidiaries.¹

3. Exelon is a corporation organized and existing under the laws of the Commonwealth of Pennsylvania and is a registered holding company under PUHCA. The common stock of Exelon is publicly traded and is listed on the New York Stock Exchange. Currently, Exelon, through its subsidiaries, operates in three business segments, which have been denominated Energy Delivery, Generation and Enterprises, and, through a subsidiary service company, provides business services to the consolidated group, as explained below.²

4. Exelon’s energy delivery business is conducted through its second-tier subsidiaries PECO Energy Company (“PECO”) and Commonwealth Edison Company (“ComEd”).³ PECO is engaged in the business of supplying, transmitting and distributing electricity and natural gas and furnishes retail electric and natural gas service in several counties in Pennsylvania. ComEd is engaged in the business of supplying, transmitting and distributing electricity in Northern Illinois and, through a wholly owned

1 A diagram depicting PSEG’s existing corporate structure is attached hereto as Exhibit JP-1A.

2 A diagram depicting Exelon’s existing corporate structure is attached hereto as Exhibit JP-1B.

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

subsidiary, provides electric transmission service in portions of Indiana. Both PECO and ComEd, like PSE&G, have turned over operational control of their electric transmission systems to PJM.

5. Exelon's generation business consists of (1) electric generating facilities that Exelon Generation Company LLC ("Exelon Generation") owns or has under contract; (2) the wholesale energy marketing operations of Exelon Generation; and (3) the competitive retail sales business of Exelon Energy Company.

6. In addition to Exelon's three business segments, Exelon Business Services Company ("Exelon BSC"), a first-tier subsidiary of Exelon, provides Exelon and its subsidiaries with advisory, professional, technical and other services as described in greater detail in the supporting testimony of Pamela B. Strobel, submitted as Exhibit JP-7.

OVERVIEW OF THE PROPOSED TRANSACTION

7. Pursuant to the terms of the Agreement and Plan of Merger (the "Merger Agreement") attached as Exhibit JP-1C, PSEG will merge into Exelon (the "Merger"), thereby ending the separate corporate existence of PSEG. Each PSEG shareholder will be entitled to receive 1.225 shares of Exelon common stock for each PSEG share held and will be paid cash in lieu of any fractional share of Exelon stock the PSEG shareholder would otherwise be entitled to receive. Exelon, which will be

renamed Exelon Electric & Gas Corporation (“EEG”), will be the surviving company, remain the ultimate corporate parent of PECO and ComEd and the other Exelon subsidiaries and become the ultimate corporate parent of PSE&G and the other surviving PSEG subsidiaries.

8. Diagrams depicting Exelon’s post-Merger corporate structure are attached hereto as Exhibit JP-1D. Exelon will continue to be a registered public utility holding company under PUHCA, and ComEd, PECO and PSE&G will continue to be operating franchised public utility companies. Exelon will remain headquartered in Chicago but will also have electric generation headquarters in Newark, New Jersey, and energy trading and nuclear divisions headquartered in southeastern Pennsylvania. PSE&G will remain headquartered in Newark. PECO will remain headquartered in Philadelphia, and ComEd will remain headquartered in Chicago.

9. In addition, Exelon, as the surviving company in the Merger, will assume all of PSEG’s outstanding indebtedness. The indebtedness of PSE&G will not be assumed or guaranteed by Exelon and will remain the obligation of PSE&G and any of the guarantors of such indebtedness.

10. The proposed Merger will not change the terms or character of PSE&G’s, PECO’s or any other Exelon subsidiary’s outstanding preferred stock or other indebtedness, which will continue to be outstanding. The common stock of Exelon will

be unaffected by the proposed Merger, with each issued and outstanding share remaining outstanding following the Merger as a share in the surviving company.

11. After the proposed Merger, Exelon will increase the number of Directors on its Board of Directors to eighteen and appoint six former PSEG Directors designated by the former PSEG Chief Executive Officer to fill six Directors' seats. With respect to the first two elections of Directors during the three-year transition period following completion of the Merger, the Exelon Board of Directors is required to (1) nominate for election the legacy PSEG Directors (or their successors) and the legacy Exelon Directors (or their successors), and (2) take any action necessary to ensure that any Board of Directors vacancy previously held by a legacy PSEG Director will be filled by a person nominated by the Exelon Board of Directors and approved by a majority of the legacy PSEG Directors remaining on the Exelon Board of Directors, and that any Director vacancy left by a legacy Exelon Director will be filled by a person nominated by the Exelon Board of Directors and approved by a majority of the legacy Exelon Directors remaining on the Exelon Board of Directors.

12. Mr. John W. Rowe, the current Chairman, Chief Executive Officer and President of Exelon, will serve as Chief Executive Officer and President of Exelon following the Merger. Mr. E. James Ferland, the current Chairman, Chief Executive Officer and President of PSEG, will become the non-executive Chairman of the Exelon Board of Directors after the Merger. Upon Mr. Ferland's departure from the Board of

Directors, Mr. Rowe will assume the Chairmanship of the Company. Mr. Ralph Izzo, the current President and Chief Operating Officer of PSE&G, will remain in that position and will continue to be responsible for PSE&G's day-to-day operations.

13. In addition to the changes resulting from the Merger Agreement, the Joint Petitioners will revise their corporate structure. The Joint Petitioners propose to implement the following changes which will impact PSE&G:

1. PSE&G will become a direct subsidiary of Exelon Energy Delivery, which in turn is a direct subsidiary of Exelon and the parent of ComEd and PECO. The current subsidiaries of PSE&G will remain intact.
2. PSEG Services will sell all of its assets to Exelon BSC, and remain as a non-energy entity. Post-Merger, Exelon BSC will be the sole "service company" of EEG.

BENEFITS OF THE MERGER

14. By combining three outstanding utilities in a single holding company structure, the proposed Merger will create a company with substantial resources and capabilities that will serve over seven million retail electric customers and two million retail gas customers in three states. By sharing resources and best practices, the proposed Merger is expected to enhance operations and strengthen the combined ability of Exelon's utility subsidiaries to provide cost-effective, safe and reliable service and will affirmatively promote the public interest in a number of substantial ways.

(a) Increased Scale and Scope. The combined company will have increased scale and scope in energy delivery, which will result in improved service

and reliability. The combined company will have three urban-based utility franchises with service areas encompassing more than 18 million people. PSE&G, PECO and ComEd are all within PJM's control area and have turned over operational control of their respective transmission systems to PJM as the FERC-approved RTO. The combined company will also have a large gas distribution portfolio to complement its electric distribution business. PSE&G provides natural gas distribution service to approximately 1,600,000 customers in the State of New Jersey. PECO provides natural gas distribution service to approximately 460,000 customers located in southeastern Pennsylvania outside of the City of Philadelphia. The affiliation of PECO and PSE&G will create opportunities to increase efficiencies, improve service and capture economies of scale and scope in natural gas operations.

(b) Anticipated Financial Strength and Flexibility. The combined holding company will be financially strong. The diversification of the energy delivery and generation portfolios of the combined holding company should result in a more stable cash flow, with approximately half of the combined holding company's earnings and cash flow coming from the three regulated utilities and approximately half coming from the unregulated generation business. The combined entity's financial strength and flexibility will help ensure that PSE&G has continued access to capital at favorable rates.

(c) Sharing of Best Practices. The Merger will combine companies with complementary areas of expertise. Improved customer service and service reliability are expected from both this sharing of best practices and from coordination among operating utilities.

(d) Synergies. The Merger will create the opportunity to achieve meaningful cost savings not only through the sharing of best practices, but also through the elimination of duplicative functions, improved operating efficiencies and supply chain benefits from improved sourcing. Going forward, and after costs-to-achieve are incurred, the Merger will generate economies, some of which will accrue to the New Jersey jurisdictional regulated businesses of PSE&G. Those economies will help offset the rise in the cost of providing reliable regulated electric and gas distribution service and thus will give rise, over time, to lower rates than would otherwise be the case.

(e) Commitment to Competition. The Joint Petitioners have been advocates for competitive retail and wholesale markets for both electricity and natural gas. This shared vision will allow the new company to be even more active in promoting competitive retail and wholesale markets within New Jersey and throughout PJM. In addition, New Jersey, Pennsylvania and Illinois have all passed legislation bringing retail competition to the electric industry, and are in varying phases of the transition to full competition. The regulatory knowledge and experience of each company will enhance the merged company's ability to operate in competitive retail and wholesale

markets which in turn will continue to provide benefits for both customers and shareholders.

(f) Impact of the Merger on Customers, Employees, Suppliers. The Merger is expected to benefit customers by reducing costs and maintaining or enhancing operations and reliability, provide more opportunities for employees in a larger, more competitive company, and streamline and increase the efficiency of the procurement process.

(g) Impact of the Merger on Communities Served. The Merger is expected to benefit the communities served by the combined company by creating a strong combined company with operating headquarters and a substantial corporate presence in Newark, New Jersey, Chicago, Illinois, and Philadelphia, Pennsylvania. The companies expect to maintain their substantial presence in the cities and communities they serve, including continuing their significant charitable contributions. After the Merger, PSE&G will also continue its support of economic development in New Jersey.

JURISDICTION AND REGULATORY APPROVALS

15. The proposed Merger and related restructuring transaction would result in the indirect acquisition of control by Exelon, and the direct acquisition of control by Exelon's subsidiary Exelon Energy Delivery, of PSEG's wholly-owned subsidiary,

PSE&G. Accordingly, consummation of the proposed transaction requires that Exelon obtain the Board's written approval pursuant to N.J.S.A. 48:2-51.1.

16. Consummation of the proposed Merger will, by operation of law, result in the transfer upon the books of PSE&G of the ownership of 100% of the outstanding shares of the PSE&G common capital stock from PSEG to Exelon, and the related restructuring transaction will result in the transfer of 100% of the outstanding shares of PSE&G common capital stock from Exelon to Exelon Energy Delivery. Such transfer of ownership will vest 100% of the voting control of PSE&G in Exelon through Exelon Energy Delivery. PSE&G may not make or permit such a stock transfer unless authorized to do so by the Board pursuant to N.J.S.A. 48:3-10 and N.J.A.C. 14:1-5.10. As part of this Joint Petition, PSE&G hereby requests such Board authorization.

17. The Merger will be accounted for using the purchase method of accounting, which means that the assets and liabilities of PSEG will be adjusted at the Merger date to reflect their fair value as of that date. This will result in an increase in the balance sheet liabilities for PSE&G's pension plans and other post retirement benefits ("OPEB") plans, as well as certain other items. Because these adjustments do not affect the cash flow obligation of PSE&G, they should not impact the rate recovery mechanisms currently in place that have historically been utilized to recover pension and post-retirement obligations. To preserve the current, and appropriate, rate treatment, the Joint Petitioners are hereby requesting that a regulatory asset be recorded to offset the purchase

accounting adjustments associated with its pension and OPEB plans. This issue is addressed in the testimony of J. Barry Mitchell, Senior Vice President, Treasurer and Business Unit Chief Financial Officer of Exelon, submitted as Exhibit JP-4.

18. As noted above, in connection with the Merger transaction, PSEG Services will sell its assets and rights to Exelon's first-tier subsidiary Exelon BSC, a company organized for the purpose of providing advisory, professional, technical and other services to the Exelon system companies. The organization, conduct of business and method of cost allocation at Exelon BSC are designed to meet the requirements of Section 13 of PUHCA and the rules and regulations promulgated thereunder. The activities of PSEG Services and Exelon BSC will be combined in Exelon BSC, which will continue to provide the types of services that it currently offers, and will render those services to the expanded Exelon system of companies, including PSE&G, pursuant to a General Services Agreement ("GSA") (Exhibit PJ-1E). Costs of the services provided by the combined service company will be fairly allocated to all Exelon subsidiaries, including PSE&G. In addition, like its post-Merger affiliates PECO and ComEd, PSE&G, in order to maximize efficiencies, plans to enter into a second service agreement (the "Mutual Services Agreement" or "MSA") (Exhibit JP-1F) to govern affiliated interest transactions between PSE&G and the affiliated operating companies within the Exelon system of companies other than Exelon BSC. Board approval of the GSA and the MSA are hereby being sought in accordance with N.J.S.A. 48:3-7.1. The testimony of

Pamela B. Strobel, Executive Vice President and Chief Administrative Officer of Exelon and President of Exelon BSC, in support of this request is being provided as Exhibit JP-7. In addition, the relevant agreements are being provided as Exhibits JP-1E and JP-1F.

19. The Joint Petitioners are also hereby requesting Board approval of PSE&G's execution of and action in accordance with the Exelon Utility Money Pool Agreement ("Money Pool Agreement"), attached hereto as Exhibit JP-1G, pursuant to N.J.S.A. 48:3-7.2. The purpose of the Money Pool Agreement is to provide an additional borrowing option to the transmission and distribution utility subsidiaries of Exelon, including PSE&G, that will generally be more favorable to the borrowing participants than the cost of external borrowing. The terms of that Agreement are discussed in the testimony of Mr. Mitchell (Exhibit JP-4).

SUPPORTING TESTIMONY

20. Attached hereto as Exhibits JP-2 through JP-7 are testimonies of the following witnesses on behalf of the Joint Petitioners in support of this request for approval which, subject to possible supplementation in response to positions, inquiries and issues set forth in the filings by other parties or in interim orders of the Board, will comprise the Joint Petitioners' case-in-chief:

(a) Exhibit JP-2: John W. Rowe, Chairman, President and Chief Executive Officer of Exelon, who has been designated as President and Chief Executive

Officer responsible for all operations of the combined company, has prepared testimony being submitted herewith. Mr. Rowe's testimony (1) provides an overview of the proposed Merger, (2) describes the benefits the Merger is expected to create for customers, employees and shareholders, (3) describes the effects the Merger will have both on PSE&G and on the State of New Jersey, and (4) describes the policies that the corporation formed by the Merger, Exelon Electric & Gas Corporation, will employ to assure that PSE&G continues to provide safe, adequate and proper service at reasonable rates in New Jersey.

(b) Exhibit JP-3: Ralph Izzo, President and Chief Operating Officer of PSE&G, has also provided testimony on the proposed Merger. Mr. Izzo's testimony explains that following consummation of the proposed Merger, PSE&G will continue to provide safe, adequate and reliable electric and gas service at reasonable rates, and will continue to support the State's objectives in the areas of energy efficiency, Smart Growth, low-income customer assistance and community involvement.

(c) Exhibit JP-4: J. Barry Mitchell, Senior Vice President, Treasurer and Business Unit Chief Financial Officer of Exelon, has provided testimony on certain financial aspects of the Merger. Mr. Mitchell's testimony provides information regarding: (1) the financial impact of the Merger on PSE&G and Exelon's policies with regard to the credit of its regulated subsidiaries; (2) the purchase accounting required as a result of the Merger and the need to create a regulatory asset for PSE&G's

pension/OPEB obligations; (3) the pro forma financial documents attached to the Joint Petition; and (4) the request for approval to add PSE&G as a party to the Money Pool Agreement. Mr. Mitchell also discusses the impact of the purchase accounting noted above on PSE&G's third-party debt and Basic Generation Service and Basic Gas Supply Service contracts.

(d) Exhibit JP-5: William Arndt, Exelon's Senior Vice President, Business Operations, has prepared testimony discussing the results of a study that was conducted to assist Exelon and PSEG in identifying and quantifying potential cost savings in regulated operations that will likely arise from the Merger.

(e) Exhibit JP-6: William H. Hieronymus, a Vice President with Charles River Associates, has prepared testimony that is being filed in a proceeding before the FERC analyzing the Merger for its possible impact on competition. The Joint Petitioners recognize that combining the generation assets of the two companies raises certain market concentration concerns. To address those concerns, as part of the application to the FERC for approval of the Merger, the parties are proposing a mitigation plan that entails divesting certain generating assets and selling entitlements to base load generation. While this issue will be a focus of the FERC proceeding, Dr. Hieronymus is providing herewith for the Board's information a summary of his FERC testimony on the competitive effects of the Merger, focusing on the effects of the Merger on retail competition, along with a copy of his FERC testimony.

(f) Exhibit JP-7: Pamela B. Strobel, Executive Vice President and Chief Administrative Officer of Exelon and President of Exelon BSC, has prepared testimony to support the Board's approval of the GSA and MSA that will facilitate the sharing of certain functions, systems and services among the merged companies.

REGULATORY STANDARDS FOR APPROVAL

21. The Board has long established that the governing standard under N.J.S.A. 48:2-51.1 and N.J.S.A. 48:3-10 for its approval of the acquisition of control of a New Jersey public utility is that the proposed transaction "will not adversely impact upon" the financial integrity of the New Jersey utility (In re Tele-communications, Inc., Dkt. No. CM90121496 (February 7, 1991)), and will result in "no harm" or "no adverse impact" on the four areas specified in N.J.S.A. 48:2-51.1. Specifically, the Board considers whether the proposed transaction will adversely impact competition, the rates of customers affected by the acquisition of control, the employees of the affected public utility, and the provision of safe and adequate utility service at just and reasonable rates. See, e.g., I/M/O Petition of Atlantic City Electric and Conectiv, Inc. for Approval of a Change in Ownership and Control, Docket No. EM97020103 (N.J. B.P.U. January 7, 1998). This "no harm" standard has been repeatedly applied by the Board in recent proceedings in which the Board has reviewed the proposed acquisition of control of New

Jersey public utilities.⁴ PSE&G's rates, rules and regulations, and the terms and conditions of service in effect prior to the Merger will not change as a result of the Merger. In addition, the proposed change in control satisfies the "no harm" standard for the reasons set forth in paragraphs 22 through 37 below.

Impact on Competition

22. The proposed transaction involving a change in ownership and control of PSE&G will have no adverse impact on competition in the retail supply or distribution of electric energy and natural gas in New Jersey. Following the transaction, PSE&G will continue to operate and provide safe and adequate electric and gas utility service in its New Jersey service territories subject to the same ongoing regulatory jurisdiction of the Board that it operates under today.

23. Exelon and PSE&G have supported – and in fact, have been advocates for – the development of competitive wholesale and retail electricity and natural gas markets, consistent with the initiatives of this Board, of the FERC, and of

⁴ See, e.g., I/M/O Joint Petition of New Jersey-American Water Co., Inc. and Thames Water Aqua Holdings GmbH for Approval of a Change in Control of New Jersey-American Water Co., Inc., BPU Docket No. WM01120833 (N.J. B.P.U. Nov. 26, 2002); I/M/O Petition of Atlantic City Electric Co., Conectiv Communications, Inc. and New RC, Inc. for Approval Under N.J.S.A. 48:2-51.1 and N.J.S.A. 48:3-10 of a Change in Ownership and Control, BPU Docket No. EM01050308 (N.J. B.P.U. July 3, 2002); I/M/O Joint Petition of FirstEnergy Corp. and Jersey Central Power & Light Co., For Approval of a Change in Ownership and Acquisition of Control of a New Jersey Public Utility and Other Relief, BPU Docket No. EM00110870, (N.J. B.P.U. Oct. 9, 2001); I/M/O Joint Petition of E'Town Corp. and Certain Subsidiaries of E'Town and Thames Water Holdings Inc. for Approval of a Change in Control of New Jersey Public Utilities Controlled and Owned by E'Town Corp., BPU Docket No. WM99120923 (N.J. B.P.U. Oct. 10, 2000); I/M/O Consideration of the Joint Petition of Orange and Rockland Utilities Inc. for Approval of the Agreement and Plan of Merger and Transfer of Control, BPU Docket No. EM98070433 (N.J. B.P.U. April 1, 1999).

other relevant regulatory bodies. Both companies will continue to adhere to all applicable federal and state standards governing affiliate relations and codes of conduct.

24. The bulk of Exelon's and PSEG's generation assets are strategically located within PJM, the nation's largest and best-functioning regional transmission organization and wholesale power market. Both entities are and will continue to be active participants in PJM markets. The entity formed by the combination of Exelon's and PSEG's generation subsidiaries will be headquartered in Newark, New Jersey. The combination of these competitive electric generation subsidiaries will create a well-balanced, flexible and diverse generation portfolio (in terms of geography, fuel mix, dispatch, and load-serving capability) that will enhance reliability and provide an excellent platform from which to serve and further the development of competitive energy markets.

25. The proposed transaction will increase the capacity of generation resources affiliated with each of the combined entity's operating electric utilities, including PSE&G. The Joint Petitioners will ensure that this combination will have no adverse impact on the provision of BGS, or Basic Gas Supply Service ("BGSS"), to PSE&G's customers. As noted above, at or around the time of this filing, Exelon and PSEG will submit a formal proposal to the FERC to mitigate any horizontal market power concerns that might arise through the divestiture of certain of the combined company's owned peaking and mid-market electric capacity, and the auctioning off of

some of its nuclear baseload power. While the mitigation proposal will be the focus of a proceeding before the FERC, the Joint Petitioners are providing herewith for the Board's information the testimony of William Hieronymus (Exhibit JP-6) on the competitive effects of the Merger.

Impact on Rates

26. The transaction will have no adverse impact on existing PSE&G rates. PSE&G will continue to operate under its existing tariffs and rate structures (until such time as such tariffs and rate structures are revised in accordance with New Jersey law), and PSE&G's rates will remain subject to the jurisdiction of the Board. The transaction will cause no deterioration in the balance sheet or financial position of PSE&G. The transaction will not impair PSE&G's ability to raise necessary capital on reasonable terms or to maintain a reasonable capital structure. All of the outstanding debts of PSE&G will continue to be liabilities and obligations of PSE&G.

27. As described in the testimony of Mr. Arndt (Exhibit JP-5), submitted herewith, the Joint Petitioners have identified several categories of savings to be achieved due to the common ownership of Exelon's regulated transmission and distribution utilities, including PSE&G. Going forward, and after costs-to-achieve are incurred, the Merger will generate economies, some of which will accrue to PSE&G's New Jersey-regulated electric and gas distribution services. Those economies will help offset the rise

in the cost of providing reliable regulated electric and gas distribution service and, thus, will give rise, over time, to lower rates than would otherwise be the case. PSE&G will hold its public utility customers harmless from any Merger-related costs to the extent that those costs are not offset by Merger-related savings.

28. The increased scale and scope of the combined company will strengthen the financial profile of PSE&G and its affiliates, improving financial flexibility and better positioning the combined entities' abilities to meet the changing landscape of the energy industry. Exelon and PSE&G will have solid investment grade ratings following the closing. PSE&G will continue to maintain a sound capital structure and will target financial ratios consistent with investment grade ratings.

29. As discussed in detail in the testimony of J. Barry Mitchell, submitted herewith as Exhibit JP-4, the Joint Petitioners are requesting the authority to record a regulatory asset associated with pension and OPEB accounting requirements as of the date of closing. The recognition of this regulatory asset will maintain PSE&G's current rate treatment of pension and OPEB costs. PSE&G will continue to book the amount of pension and OPEB expense currently authorized in its Board-established rates.

Impact on Employees

30. There will be no change in any existing collective bargaining agreement as a result of this transaction. PSE&G will honor all pre-merger commitments

to current or former employees, and all accrued pension and retirement obligations will be honored as well.

31. Exelon is committed to ensuring safe and reliable service through its transmission and distribution utility subsidiaries, including PSE&G, and will maintain sufficient operating line personnel and managers to ensure the continued provision of safe, adequate and proper utility service. There are no plans to reduce field forces in either PSE&G's electric or natural gas delivery functions.

32. Over time, it is anticipated that the merged company will become more efficient and reduce duplicative activities. It is anticipated that these efficiencies will primarily take place in corporate and administrative positions, and that to the extent practical, reductions are to be offset through retirements and normal attrition. Severance programs may also be utilized.

33. The transaction will benefit PSE&G's employees by providing increased opportunities for training and career development. Like PSEG, Exelon firmly believes in equipping its employees with the skills and tools needed to perform at the highest possible level. Exelon has a superior safety record, and the new company will apply the same safety standards to PSE&G employees as currently applied to all Exelon employees. In addition, Exelon is committed to the pursuit of diversity in its workforce.

Impact on the Provision of Safe, Adequate and Proper Service

34. PSE&G will continue to provide safe, adequate and reliable, high-quality service consistent with its corporate history, in fulfillment of its obligations under New Jersey law, and subject to the continued jurisdiction of the Board. Also, by virtue of the greater capital resources of its controlling entities, PSE&G will be better positioned to meet future demands and to ensure that high quality service is maintained.

35. PSE&G will receive funding priorities that are consistent with its needs and that are at a level that is consistent with the safe and adequate operation of its electric and gas systems, including necessary upgrades, capital projects, staffing and maintenance programs.

36. PSE&G will continue to maintain its corporate headquarters and presence in Newark, New Jersey and local control over operations will be maintained. The President and Chief Operating Officer of PSE&G and his gas and electric operations staff will continue to be located in Newark, and will have the authority and the obligation to oversee electric and gas distribution and electric transmission operations, and to ensure the well-being of employees and the communities served.

37. The transaction will promote the public interest in the service territories of all the operating utilities affected, including in New Jersey, through the sharing of resources and expertise that will create opportunities for sharing best operating practices as they are identified by the gas and electric industries.

**ADDITIONAL INFORMATION RELEVANT TO APPROVAL PURSUANT TO
N.J.S.A. 48:3-10, N.J.A.C. 14:1-5.10, AND N.J.A.C. 14:1-5.14**

38. The information required by N.J.A.C. 14:1-5.10(a)(1) to (4) is set forth above and in the Exhibits to this Petition. With respect to N.J.A.C. 14:1-5.10(a)(5), the reason for the proposed stock transfer is also discussed elsewhere; in addition, the reason for the stock transfer is to consummate the transaction contemplated by the Merger Agreement. With respect to N.J.A.C. 14:1-5.10(a)(6)(i), (6)(ii), and (7), the impact of the Merger on the Board of Directors of Exelon, the surviving corporation, is described above; all other officers of the surviving corporation will be designated by the Board of Directors thereof. To the extent that any future changes in the directors, officers, or other principal management and operating personnel of PSE&G may occur in the ordinary course of business following the Merger, the Joint Petitioners are confident that the persons elected or appointed to such positions will possess appropriate qualifications, including business or technical experience, to ensure their ability to carry out PSE&G's obligation to render safe, adequate and proper service.

39. With respect to N.J.A.C. 14:1-5.10(a)(6)(iii), the transaction contemplated by the Merger Agreement will not result in any adverse changes in PSE&G policies with respect to operations, financing, accounting, capitalization, rates, depreciation, maintenance, services or other matters affecting the public interest or utility operations.

40. The transaction will not result in the subsidization of non-utility activities by PSE&G or its customers. To the extent that any affiliates of PSE&G may engage in unregulated activities in the future, PSE&G will continue to maintain its books to identify those costs and facilities that are properly included for ratemaking purposes.

41. Exelon will continue a level of community and charitable involvement in New Jersey after the Merger at least as substantial as that of PSEG currently. Like PSEG, Exelon is committed to actively supporting community and charitable endeavors. The Merger Agreement provides that charitable commitments will continue at the current level for at least four years. It is fully expected that charitable contributions at the same or higher levels will be an integral part of Exelon's New Jersey operations in the years ahead.

42. PSE&G will remain subject to all applicable laws, regulations, rules, decisions and policies governing the regulation of New Jersey public utilities.

43. N.J.A.C. 14:1-5.14(a) applies to petitions for approval of a merger or acquisition of a New Jersey public utility with or by another public utility. As such, it arguably may not be applicable by its terms to this particular transaction. However, much of the information required by that provision may be considered relevant to the Board's review, and in order to assist the Board, the Joint Petitioners have provided that information. A copy of the Merger Agreement (N.J.A.C. 4:1-5.14(a)(1)) is provided in Exhibit JP-1C. The information sought by N.J.A.C. 14:1-5.14(a) (3) and (4) (recent

balance sheets and income statements of the Joint Petitioners and a pro forma balance sheet and income statement of the continuing company) is provided in Exhibit JP-1I. The stockholder resolutions (N.J.A.C. 14:1-5.14(a)(2)) will be provided when they are available. The information sought by N.J.A.C. 14:1-5.14(a)(6) and (7) (regarding the shares of new capital stock to be issued by the surviving corporation and the exchange of shares) is provided in the Form S-4 to be subsequently provided and the Merger Agreement attached as Exhibit JP-1C. No franchise cost of PSE&G is proposed to be capitalized on Exelon's books (N.J.A.C. 14:1-5.14(a)(8)) and no changes in PSE&G's policies with respect to finances, operations, accounting, rates, depreciation, operating schedules, maintenance and management that would be detrimental to the public interest (N.J.A.C. 14:1-5.14(a)(11)) are proposed. Information regarding the new officers and directors and number of shares they will hold in Exelon, to the extent this information is known, is provided in the Form S-4, which also provides a projection of the fees and expenses associated with the proposed Merger and the accounting associated therewith. N.J.A.C. 14:1-5.14(a)(9) and (14). The benefits of the proposed Merger to the public and the surviving corporation (N.J.A.C. 14:1-5.14(a)(10)) are described in paragraphs 22 through 37 above. Proof of compliance with N.J.A.C. 14:1-5.14(a)(12) will be submitted. The various approvals of other state and federal agencies, pursuant to N.J.A.C. 14:1-5.14(a)(13), are described below.

OTHER APPROVALS

44. The Merger is subject to review and/or approval by various Federal and State regulatory agencies. The principal regulatory approvals that must be obtained are: (a) the approval of the SEC under PUHCA; (b) the approval of the FERC under the Federal Power Act; (c) the approval of the Nuclear Regulatory Commission under Section 184 of the Atomic Energy Act of 1954; (d) the expiration or termination of the waiting period under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended; (e) the approval of the Pennsylvania Public Utility Commission under applicable sections of the Pennsylvania Public Utility Code; (f) the written consent of the New York Public Service Commission under Section 70 of the New York Public Service law in connection with the “indirect transfer” of certain generation assets of PSEG Power located in New York; and (g) approval by the Federal Communications Commission of the transfer of control by PSEG of certain telecommunications permits or licenses. Under Illinois law, ComEd is not required to obtain the approval of the Merger by the Illinois Commerce Commission but, instead, under Section 16-111(g) of the Illinois Public Utilities Act, is filing a notice of the Merger accompanied by certain information about the Merger. Copies of these filings will be subsequently provided to the Board.

45. The Merger is subject to approval by the shareholders of PSEG. Approval by the shareholders of Exelon is required for Exelon to issue additional shares of common stock, as needed to consummate the Merger. PSEG and Exelon intend to

seek the approval of their shareholders at meetings expected to be scheduled for mid-2005, and plan to complete the Merger as soon as possible after all regulatory and shareholder approvals have been obtained and the other conditions precedent to closing have been satisfied or waived.

DETERMINATIONS REQUESTED PURSUANT TO PUHCA

46. The Joint Petitioners respectfully request the necessary determinations pursuant to Section 32(k) of PUHCA to ensure continued authority for PSEG Power subsidiary PSEG Energy Resources & Trade LLC ("PSEG ER&T"), its successors and assigns, and other eligible Exelon companies to remain eligible to participate in the Basic Generation Service ("BGS") auction and, where successful, to enter into contracts to sell power pursuant to the BGS auction.

47. The Joint Petitioners are seeking these determinations specifically under PUHCA Section 32(k)(2)(b)(ii). This section effectively allows a state jurisdictional affiliate of an electric utility company, as defined by PUHCA, to purchase electricity sold by an Exempt Wholesale Generator ("EWG") to the electric utility company if every affected state commission makes the determinations set forth in PUHCA Section 32(k)(2)(a). The Joint Petitioners seek these determinations to ensure that PSEG ER&T and other eligible Exelon companies, post-Merger, can participate in the BGS Auction and where successful, can enter into contracts pursuant to such auction.

48. The Joint Petitioners therefore respectfully request a determination by the Board that the Board has sufficient regulatory authority, resources and access to the books and records of PSE&G and any relevant post-Merger associate, affiliate or subsidiary company to exercise its duties; and second, that post-Merger participation by any eligible Exelon company in the BGS auction and subsequent BGS contract will benefit consumers, does not violate any state law (including, where applicable, least cost planning), would not provide such entity any unfair competitive advantage by virtue of its affiliation or association with PSE&G, and is in the public interest.

49. Furthermore, Rule 53 of the regulations of the United States Securities and Exchange Commission ("SEC") pursuant to PUHCA in effect restricts registered holding company investments in EWGs and foreign utility companies ("FUCOs") to 50 percent of consolidated retained earnings, in the absence of specific SEC authorization to exceed that level. While the Joint Petitioners currently do not expect any significant additional investments in EWGs or FUCOs in the near future, as a result of the Merger, Exelon will acquire the existing investment of the PSEG subsidiaries in EWGs and FUCOs. Rule 53 requires input from affected state commissions in considering requests for such increased authorization.

50. For these reasons, the Joint Petitioners are attaching a form of a letter (Exhibit JP-1H) by which the Board may notify the SEC that authorization is appropriate. The Joint Petitioners respectfully request that the Board support their

application to permit investments in EWGs and FUCOs by sending a letter in the form attached to the SEC within ten days after the approval of the Merger.

PROPOSED SCHEDULE

51. The parties to the Merger desire to close the proposed Merger as expeditiously as possible consistent with the legitimate review rights of interested parties. With that in mind, the Joint Petitioners request that the Board appoint a Board Commissioner to preside over the disposition of the case, rather than referring the Merger to the Office of Administrative Law. Retention of the matter for direct case management and hearing by a Board Commissioner, it is respectfully submitted, will help streamline the review process, broaden and deepen the Board's understanding of the issues, and allow the Board to retain a greater degree of control over the substantive and procedural issues that may arise. It is further requested that the presiding Board Commissioner hold an initial Prehearing Conference early in the process to assist the parties in identifying and resolving issues. A detailed litigation schedule can be developed after the active parties have been identified, with the assistance and input of the presiding Board Commissioner. The Joint Petitioners request that a final decision be rendered by the Board by December 2005.

NOTICE AND COMMUNICATIONS

52. A copy of this Joint Petition has been served upon Seema Singh, Director, Division of the Ratepayer Advocate, and a notice of this filing will be published in newspapers circulated within PSE&G's gas and electric service territories, and will be served upon the Clerks of the Municipalities and on County Executives and County Administrators of Counties served by PSE&G.

53. All correspondence and communications in connection with this proceeding are to be addressed to the following:

On behalf of PSE&G:

John A. Hoffman, Esq.
Matthew M. Weissman, Esq.
Wilentz, Goldman & Spitzer, P.A.
90 Woodbridge Center Drive
P.O. Box 10
Woodbridge, New Jersey 07095
(732) 855-6077
jhoffman@wilentz.com
mweissman@wilentz.com

and

Francis E. Delany, Jr., Esq.
Vice President and Corporate Rate Counsel
Public Service Electric and Gas Co.
80 Park Plaza, 8C
PO Box 570
Newark, New Jersey 07101
(973) 430-6155
francis.delany@pseg.com

On behalf of Exelon:

Mark L. Mucci, Esq.
Stephen B. Genzer, Esq.
LeBoeuf, Lamb, Greene & MacRae
One Riverfront Plaza
Newark, New Jersey 07102
(973) 643-8000
mark.mucci@llgm.com
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and

Paul R. Bonney, Esq.
Deputy General Counsel
Exelon Corporation
2301 Market Street
Philadelphia, PA 19103
(215) 841-4252
paul.bonney@exeloncorp.com

WHEREFORE, the Joint Petitioners respectfully request:

A. That the Board issue an Order (i) approving the acquisition of control of PSE&G described herein as contemplated by the Merger Agreement; (ii) authorizing Exelon's subsidiary Exelon Energy Delivery to acquire control of PSE&G, pursuant to N.J.S.A. 48:2-51.1 and N.J.S.A. 48:3-10; (iii) authorizing the recording of a regulatory asset to offset the purchase accounting adjustments resulting in an increase in the balance sheet liabilities for PSE&G's pension and OPEB plans; (iv) approving the GSA and MSA, pursuant to N.J.S.A. 48:3-7.1; and (v) approving the Money Pool Agreement, pursuant to N.J.S.A. 48:3-7.2; and

B. That the Order described in paragraph A above include a determination that the Board has sufficient regulatory authority, resources and access to the books and records of PSE&G and any relevant associate, affiliate or subsidiary company to exercise its duties, and that, post-Merger, participation by any affiliate or associate company of PSE&G that is an EWG in the BGS process will benefit consumers, does not violate any state law (including, where applicable, least cost planning), would not provide the EWG any unfair competitive advantage by virtue of its affiliation or association with PSE&G, and is in the public interest; and

C. That within ten days after the approval of the Merger, the Board execute and forward to the SEC a letter in the form attached hereto as Exhibit JP-1H, notifying the SEC that its authorization of Exelon's total investment in EWGs and FUCOs following consummation of this Merger is appropriate; and

D. That the Board handle this matter on an expeditious basis, retain the matter to itself and, if hearings are to be scheduled, it is respectfully requested that a member of the Board sit for the purposes of taking testimony in the proceeding as authorized by N.J.S.A. 48:2-32; and

E. That the Board issue a prehearing order establishing the dates for propounding and responding to discovery, dates for public hearing and, if deemed appropriate, the date for evidentiary hearing, as well as dates for filing of Comments or Briefs relating to this matter; and

F. Such other and further relief as the Board may deem appropriate or necessary.

Respectfully submitted,

WILENTZ, GOLDMAN & SPITZER
A Professional Corporation
90 Woodbridge Center Drive
P. O. Box 10
Woodbridge, New Jersey 07095
(732) 636-8000
Attorneys for Public Service
Electric and Gas Company

By: /s/ John A. Hoffman
JOHN A. HOFFMAN, ESQ.

Dated: February 4, 2005

LeBOEUF, LAMB, GREENE & MACRAE
One Riverfront Plaza
Newark, New Jersey 07102
(973) 643-8000
Attorneys for Exelon Corporation

By: /s/ Mark L. Mucci
MARK L. MUCCI, Esq.

Dated: February 4, 2005

VERIFICATION

Elizabeth A. Moler, being duly sworn according to law, upon her oath, deposes and says:

1. I am the Executive Vice President of Exelon Corporation and am authorized to make this Verification on behalf of that company.

2. I have read the contents of the foregoing Petition and hereby verify that the statements therein contained are true and accurate to the best of my knowledge and belief.

/s/ Elizabeth A. Moler

Sworn to and subscribed
before me this 4th day
of February 2005.

/s/ Constance E. Lembo
Notary Public

VERIFICATION

R. Edwin Selover, being duly sworn according to law, upon his oath, deposes and says:

1. I am the Senior Vice President and General Counsel of Public Service Electric and Gas Company and am authorized to make this Verification on behalf of that company.

2. I have read the contents of the foregoing Petition and hereby verify that the statements therein contained are true and accurate to the best of my knowledge and belief.

/s/ R. Edwin Selover

Sworn to and subscribed
before me this 4th day
of February 2005.

/s/ Constance E. Lembo

Notary Public

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

COMMONWEALTH EDISON COMPANY : Informational notice of holding
: company merger.
:

**COMMONWEALTH EDISON COMPANY'S
NOTICE OF HOLDING COMPANY MERGER TRANSACTION**

Commonwealth Edison Company ("ComEd") hereby notifies the Illinois Commerce Commission (the "Commission" or the "ICC") of a proposed merger of its ultimate parent, Exelon Corporation ("Exelon"), with Public Service Enterprise Group Incorporated ("PSEG"), and the related reorganization or merger of certain of Exelon's and PSEG's subsidiaries, not including ComEd (collectively, the "Transaction"). The Transaction does not change the corporate form of ComEd or result in its merger with any other entity. Under the Agreement and Plan of Merger for the Transaction (the "Merger Agreement"), Exelon will be the surviving parent company and will remain the ultimate corporate parent of ComEd and all other current Exelon subsidiaries. Exelon will also become the ultimate corporate parent of all PSEG subsidiaries. Following the Transaction, Exelon will change its name to Exelon Electric & Gas Corporation. Exelon will continue to be a registered public utility holding company under the Public Utility Holding Company Act of 1935 ("PUHCA").

Given the nature of the Transaction, formal notice of or Commission approval for the Transaction and its consummation are not required. The Transaction is not a reorganization within the meaning of the Section 7-204 of the Illinois Public Utilities Act (220 ILCS

5/16-111(g)(1); 5/7-204)†, nor is it “a merger of two or more public utilities, as defined in Section 3-105 or their holding companies” (220 ILCS 5/16-111(g); 5/3-105) because, among other things, neither PSEG nor any of its subsidiaries is an Illinois public utility under the Act.

Nevertheless, because of the Commission’s expressed interest and to fully inform the Commission of the Transaction and of the terms and provisions of the Merger Agreement, and without waiving any of its rights or arguments that such notice is not required, ComEd is hereby giving the Commission this Notice and providing the information that would be called for under Section 16-111(g) of the Act. This is an informational notice; no Commission action is required or requested.

I.

Description of the Proposed Transaction

A. Parties Involved

Exelon is a corporation organized and existing under the laws of the Commonwealth of Pennsylvania and is a registered holding company under PUHCA. Exelon is one of the nation’s largest electric utility holding companies with more than \$15 billion in annual revenues. Exelon, through its subsidiaries, operates in three business segments — Energy Delivery, Generation, and Enterprises — and through a service company structure, also provides business services to its operating companies including ComEd, PECO Energy Company (“PECO”), and Exelon Generation Company, LLC (“Exelon Generation”). Exelon is headquartered in Chicago, Illinois. The common stock of Exelon is publicly traded and is listed

† The Transaction is not a reorganization within the meaning of Section 7-204 of the Illinois Public Utilities Act (220 ILCS Act 5) (the “Act”) because, among other things, it will not change the ownership of a majority of the voting capital stock of an Illinois public utility or result in a change in the ownership or control of an entity that owns or controls a majority of voting capital stock of an Illinois public utility (220 ILCS 5/7-204), nor will it terminate the affiliated interest status of any entity specified in Section 7-204(a) (220 ILCS 5/7-204(a)).

on the New York Stock Exchange. Exelon is neither a public utility within the meaning of Section 3-105 of Act (220 ILCS 5/3-105) nor an electric utility within the meaning of Section 16-102 of the Act (220 ILCS 5/16-102).

ComEd is a corporation organized and existing under the laws of the State of Illinois and is engaged in the business of supplying, transmitting, and distributing electricity to approximately 3.5 million customers in the northern part of Illinois. ComEd's principal executive offices are in Chicago, Illinois. ComEd is a public utility within the meaning of Section 3-105 of Act and an electric utility within the meaning of Section 16-102 of the Act.

PECO is a corporation organized and existing under the laws of the Commonwealth of Pennsylvania and is engaged in the business of supplying, transmitting, and distributing electricity and natural gas. PECO serves approximately 1.5 million electric customers and more than 400,000 natural gas customers in the Philadelphia and Southeastern Pennsylvania area. PECO's principal executive offices are in Philadelphia, Pennsylvania. PECO is a "public utility," a "natural gas distribution company," and an "electric distribution company" as those terms are defined, respectively, in Sections 102, 2202, and 2803 of the Pennsylvania Public Utility Code. PECO is neither an Illinois "public utility" within the meaning of Section 3-105 of the Act, nor an "electric utility" within the meaning of Section 16-102 of the Act.

Exelon Generation is a limited liability company that directly, or through subsidiaries: (1) owns or has under contract approximately 33,350 megawatts of generating capacity; (2) operates a wholesale energy marketing business (Power Team); and (3) engages in the competitive retail electric business (Exelon Energy). The generation portfolio of Exelon Generation includes its ownership interests in 11 nuclear generating stations, consisting of 19

units with 16,943 MW of capacity, which is the largest fleet of nuclear units in the United States. All of the nuclear generating stations in which Exelon Generation has an ownership interest are operated by it except Salem Generating Station, which is operated by its co-owner, PSE&G Nuclear, LLC, a subsidiary of PSEG.

PSEG is a corporation organized and existing under the laws of New Jersey and is a major integrated energy and generation company with more than \$10 billion in annual revenues. PSEG is headquartered in Newark, New Jersey and its common stock trades on the New York Stock Exchange. PSEG and its subsidiaries operate generating stations with diverse fuel and dispatch characteristics, largely within the PJM Interconnection. An indirect non-utility subsidiary of PSEG holds a passive equity interest in the Joliet and Powerton generating stations, but does not operate or control these facilities and has no control over the disposition of any electricity that they produce.† PSEG has no ownership interest, passive or otherwise, in any Illinois public utility and does not, directly or indirectly, own or operate any public utility facilities in Illinois. PSEG is neither a public utility within the meaning of Section 3-105 of the Act, nor an electric utility within the meaning of Section 16-102 of the Act.

Public Service Electric and Gas Company (“PSE&G”) is a corporation organized and existing under the laws of New Jersey with its principal executive offices in Newark, New Jersey. PSE&G is an operating public utility company engaged principally in the transmission,

† PSEG Resources (“Resources”), an indirect subsidiary of PSEG, participated as a passive equity investor in sale / leaseback financing transactions with respect to the purchase by Midwest Generation of Powerton Station and Joliet Station Units 7 and 8. Resources does not operate or control the leased generating facilities and has no say whatsoever over the disposition of the power they produce so long as the lease remains effective. As part of Midwest Generation’s purchase of that station, Resources also acquired beneficial ownership of Collins Station subject to a long-term leaseback to Midwest Generation. In late April 2004, the Collins sale and leaseback transaction was terminated, for reasons completely unrelated to the proposed Transaction, and Resources no longer has any interest in the Collins Station. Resources is neither a public utility within the meaning of Section 3-105 of the Act, nor an electric utility within the meaning of Section 16-102 of the Act.

distribution, and sale of both electric energy service and gas service in New Jersey. It serves approximately 2 million electric and 1.6 million gas customers in New Jersey. PSE&G is neither an Illinois public utility within the meaning of Section 3-105 of the Act nor an electric utility within the meaning of Section 16-102 of the Act.

B. Overview of the Transaction

Pursuant to the terms of the Merger Agreement, attached as Appendix A, PSEG will merge into Exelon (the “Merger”), thereby ending the separate corporate existence of PSEG. Exelon, which will be renamed Exelon Electric & Gas Corporation, will be the surviving company. Each PSEG shareholder will be entitled to receive 1.225 shares of Exelon common stock for each PSEG share held and cash in lieu of any fraction of an Exelon share that a PSEG shareholder would have otherwise been entitled to receive. The Merger is expected to be tax-free to PSEG shareholders to the extent they receive common stock in Exelon and, in general, cash received is expected to be taxed as capital gains.

Exelon will remain the ultimate corporate parent of ComEd, Exelon Generation, PECO, and other current Exelon subsidiaries, and will become the ultimate corporate parent of PSE&G and the other PSEG subsidiaries. Diagrams of the existing Exelon holding company system and the new post-Transaction holding company system are attached hereto as Appendix B. Exelon will continue to be a registered public utility holding company under PUHCA, and ComEd, PECO, and PSE&G will continue to be operating franchised public utility companies. Following the merger, Exelon and ComEd will continue to have their corporate headquarters in Chicago, and the Exelon companies’ combined energy trading operations and nuclear operations headquarters will be located in Pennsylvania. The headquarters of the combined subsidiary generation company will be located in Newark, as will the PSE&G

headquarters. This latter arrangement is similar to Exelon's continued significant presence in Philadelphia following the merger of Unicom Corporation (then parent company of ComEd) and PECO in 2000.

As a result of the Transaction, Exelon will increase the size of its board of directors from twelve to eighteen directors and will fill the six new positions by the appointment of former PSEG directors as designated by the former PSEG Chief Executive Officer. During a three-year transition period following the completion of the Merger, the Exelon board of directors will be required to nominate for election: (1) the legacy PSEG directors (or their successors) whose class is standing for election; and (2) the legacy Exelon directors (or their successors) whose class is standing for election. In addition, during the three-year transition period, the Exelon board of directors will take whatever action is necessary to ensure that: (1) any vacancy on the board representing a position previously held by a legacy PSEG director will be filled by a person nominated by the entire Exelon board of directors and approved by a majority of the legacy PSEG directors remaining on the board; and (2) any vacancy on the board representing a position previously held by a legacy Exelon director will be filled by a person nominated by the entire Exelon board and approved by a majority of the legacy Exelon directors remaining on the board.

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

ceases to be the non-executive Chairman of the Exelon board of directors, Exelon's Chief Executive Officer will be appointed its Chairman.

As part of the Transaction, PSE&G will become a direct subsidiary of Exelon Energy Delivery Company LLC, along with the existing Exelon utilities, ComEd and PECO. The current subsidiaries of PSE&G will remain intact. In addition, as a result of the Transaction:

- PSEG Energy Holdings LLC ("Energy Holdings") will become a direct subsidiary of Exelon, as the successor to PSEG. The current subsidiaries of Energy Holdings will remain intact.
- PSEG Services Company will sell all of its assets to Exelon Business Services Company ("Exelon BSC"), change its name, and remain as a non-energy entity. Post merger, Exelon BSC will be the sole "service company" of Exelon.
- After obtaining any appropriate consents from the PSEG Power, LLC ("PSEG Power") debt holders and restructuring, PSEG Power and its direct subsidiaries PSEG Nuclear, LLC, PSEG Fossil, LLC, and PSEG Energy Resources & Trading, LLC will all cease to exist as separate entities and will become part of Exelon Generation. The business functions of these former PSEG entities will become a part of their respective Exelon Generation business unit. The subsidiaries owned by these PSEG entities will either be merged into Exelon Generation or retained as direct subsidiaries of Exelon Generation.

As a consequence of the Merger, all of PSEG's outstanding indebtedness will become the indebtedness of Exelon, as the surviving company. The indebtedness of subsidiaries of PSEG will not be assumed or guaranteed by ComEd or any subsidiary of ComEd; nor will the Transaction change the terms or the character of the existing debt of ComEd. The Transaction will not change the terms or the character of the outstanding common or preferred stock of ComEd, PECO, or any other Exelon subsidiary, because those shares will not be exchanged or redeemed as part of the Merger. The Transaction also will not change the terms or the character of PSE&G's preferred stock because those shares will not be exchanged or redeemed as part of the Merger. Rather, PSE&G's preferred stock will remain outstanding and will continue to

represent a preferred equity interest in PSE&G. Likewise, the common stock of Exelon will be unaffected by the Merger, with each issued and outstanding share thereof remaining outstanding following the Merger as a share in the surviving company.

C. Benefits of the Merger

The proposed Merger will result in an energy holding company with substantial resources and capabilities that will, through its operating utilities, serve over seven million electric customers and two million gas customers in three states. The Transaction will not prejudice ComEd's ability to provide tariffed services in a safe and reliable manner, and there is no likelihood that the Transaction will result in ComEd being entitled to request an increase in its base rates during the mandatory transition period pursuant to Section 16-111(d) of the Act (220 ILCS 5/16-111(d)), because the Transaction will neither increase ComEd's costs of service nor erode its revenues. Rather, by sharing resources and best practices, the Transaction will enhance operations Exelon-wide and strengthen Exelon's ability post-Merger to provide cost-effective, safe, and reliable service and will affirmatively promote the public interest in a number of ways.

1. **Increased Scale, Scope, and Diversification.** The combined company will have increased scale and scope in both energy delivery and generation. In addition, the combined company will have greater diversification and balance in its energy delivery business and generation portfolio. With respect to the energy delivery business, the combined company will have three urban utility based franchises with service areas encompassing more than 18 million people. The combined company will also have a large gas distribution portfolio to complement its electric distribution business.

2. Anticipated Financial Strength and Flexibility. The combined holding company will continue to be financially strong. Moreover, the diversification of the energy delivery and generation portfolios of Exelon post-Merger should result in a more stable cash flow, with approximately half of the combined company's earnings and cash flow coming from the three regulated utilities and approximately half coming from the unregulated generation business.

3. Generation. With respect to the generation business, the combined company will, before planned divestitures, have 52,000 megawatts of domestic capacity in multiple states, including approximately 20,000 megawatts of low-cost nuclear generation. This generation diversification is expected to create a more balanced portfolio in terms of geography, fuel mix, dispatch, and load-serving capacity.

4. Improved Nuclear Operations. Exelon has a proven track record of improving and sustaining safety and both operating and cost performance at its nuclear plants, which is grounded on a nuclear management model that Exelon has successfully implemented at the plants it operates. As a consequence, Exelon has achieved first quartile performance across the entire fleet of its nuclear plants. Exelon intends to apply this same nuclear management model to PSEG's Salem and Hope Creek Generating Stations and thereby improve the operating performance of those nuclear plants while assuring the highest levels of safety. Given Exelon's strong, successful performance in running the nation's largest nuclear fleet, Exelon expects to realize post-Merger improved stability, higher capacity utilization rates, and lower costs from combining nuclear operations under one management.

5. Sharing of Best Practices. The Transaction will combine companies with complementary areas of expertise; Exelon's expertise in generation operations and PSE&G's expertise in transmission and distribution operations. PSE&G has been recognized for its strong record in transmission and distribution operations. Improved customer service and service reliability are expected from both this sharing of best practices and from coordination among operating utilities.

6. Synergies. The Transaction will create the opportunity to achieve cost savings not only through the sharing of best practices, but also through the elimination of duplicative functions, improved operating efficiencies in nuclear and other generation operations, and supply chain benefits from improved sourcing.

7. Commitment to Competition. Exelon and PSEG have each been staunch advocates for competitive retail and wholesale markets in electricity and gas. This shared vision will allow the new company to be even more active in the promotion of competitive markets and the development of energy-related services. In addition, New Jersey, Pennsylvania, and Illinois all have passed legislation bringing retail competition to the electric industry, and are in varying phases of the transition to full competition. The regulatory knowledge and experience of each company will enhance the merged company's ability to manage the transition to competition for the benefit of both customers and shareholders.

8. Impact of the Merger on Customers, Employees, and Suppliers. The Merger is expected to benefit customers by enhancing operations, reducing costs, and strengthening reliability, to provide more opportunities for employees in a larger, more

competitive company, and to streamline and increase the efficiency of the procurement processes of the combined company.

9. Impact of the Merger on Communities. The Merger is expected to benefit the communities served by the combined company by creating a strong combined company with operating headquarters in Chicago, Illinois; Newark, New Jersey; and Philadelphia, Pennsylvania. In addition, the companies expect to maintain their substantial presence in the cities and communities they serve, including significant charitable contributions.

II.

Provision of Information Called for by Section 16-111(g) of the Act

As would be called for by Section 16-111(g), ComEd is providing the Commission the information described in Section 16-111(g)(i)-(iv) and is giving the Commission at least 30 days notice of the Transaction. Regardless of the applicability of Section 16-111 generally, Subsection 16-111(g)(v) does not apply to the Transaction because ComEd does not propose “to sell, assign, lease or otherwise transfer” any generating plant, and Subsection 16-111(g)(vi) does not apply to the Transaction because ComEd does not propose “to sell, assign, or lease” any generating plant or transmission facilities. In addition, Sections 16-128 and 16-111(k) (220 ILCS 5/16-111(k), 5/16-128) of the Act are not applicable because the Transaction does not involve “the sale, purchase, or any other transfer of ownership” of an Illinois division, business unit, or generating station of an Illinois electric utility, or the transfer of a business unit, division, or generating unit or station to a majority-owned subsidiary of an Illinois electric utility.

ComEd provides the following information and commitment described in Subsections 16-111(g)(i) – (g)(iv) of the Act:

- (i) A complete statement of the entries that the electric utility will make on its books and records of account to implement the proposed reorganization or transaction together with a certification from an independent certified public accountant that such entries are in accord with generally accepted principles and, if the Commission has previously approved guidelines for cost allocations between the utility and its affiliates, a certification from the chief accounting officer of the utility that such entries are in accord with those cost allocation guidelines.

Principally because the Transaction occurs at the holding company level and does not involve the sale, assignment, lease, or transfer of any asset owned by ComEd, ComEd does not anticipate that, consistent with accounting principles generally accepted in the United States, any entries will be made, or need to be made, on its books and records of account in order to implement the Transaction. Accordingly, no statement of entries is attached to this Notice.

Because ComEd will not make any entries on its books and records of account, there are no entries that an independent certified public accountant may certify are in accord with generally accepted accounting principles. Accordingly, no such certification is attached to this Notice. Likewise, because ComEd will not make any entries on its books and records of account, there is nothing for ComEd's chief accounting officer to certify as being consistent with the guidelines approved by the Commission for cost allocations between ComEd and its affiliates. Accordingly, no such certification is attached to this Notice.

- (ii) A description of how the electric utility will use proceeds of any sale, assignment, lease or transfer to retire debt or otherwise reduce or recover the costs of services provided by such electric utility.

The Transaction does not involve the sale, assignment, lease, or transfer of assets by ComEd. Hence, ComEd will accrue no sales proceeds. To the extent that ComEd's cost of service is reduced through savings produced by the merger, such reductions will be reflected in

the returns on equity reported to the Commission pursuant to Section 16-111 of the Act and reflected in its cost of providing regulated public utility services.

- (iii) A list of all federal approvals or approvals required from departments and agencies of the State, other than the Commission, that the electric utility has or will obtain before implementing the reorganization or transaction.

Exelon and PSEG will submit the Transaction for review by, or seek the approval of, the following federal and state regulatory agencies: the New Jersey Board of Public Utilities, the Pennsylvania Public Utility Commission, the Federal Energy Regulatory Commission (FERC), the Nuclear Regulatory Commission (NRC), the Securities and Exchange Commission (SEC), and the Department of Justice (DOJ). Notice of the Transaction must be given to the Connecticut Department of Public Utility Control. In addition, approvals of ancillary matters (*e.g.*, individual license transfers) will be sought from agencies including the Federal Communications Commission (FCC) (transfer of radio licenses), the New York Public Service Commission (station license transfer with respect to a PSEG generating unit), and environmental regulators. After the Transaction, Exelon will continue to be registered as a holding company with the SEC under the PUHCA. Exelon and PSEG anticipate that all regulatory approvals can be obtained within 12-15 months from the date the Transaction was announced in December, 2004, and Exelon and PSEG intend to seek shareholder approval for the Transaction in the second quarter of 2005.

- (iv) An irrevocable commitment by the electric utility that it will not, as a result of the transaction, impose any stranded cost charges that it might otherwise be allowed to charge retail customers under federal law or increase the transition charges that it is otherwise entitled to collect under this Article XVI.


ComEd hereby irrevocably commits that it will not, as a result of the Transaction, either impose any stranded cost charges that it might otherwise be allowed to charge retail customers under federal law or increase the transition charges that it is otherwise entitled to collect under Article XVI of the Act.

Dated: February 4, 2005

Respectfully submitted,

COMMONWEALTH EDISON COMPANY

By:



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VERIFICATION

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

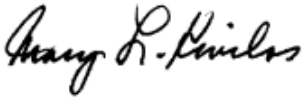
Matthew F. Hilzinger, being first duly sworn, deposes and states as follows:

1. He is the Corporate Controller of Exelon and ComEd's chief accounting officer;
2. He has reviewed the Notice to which this Verification is attached, and is familiar with the facts stated therein; and
3. That the facts stated therein are true and correct to the best of his knowledge and belief.



MATTHEW F. HILZINGER

SUBSCRIBED and SWORN
before me this 3rd day of
February, 2005.



Notary Public

My Commission expires: 10/26/05