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As filed with the Securities and Exchange Commission on March 15, 2005 File No. 70-\_\_\_\_\_

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**

**WASHINGTON, D.C. 20549**

**FORM U-1**

**APPLICATION-DECLARATION**

**UNDER**

**THE PUBLIC UTILITY HOLDING COMPANY ACT OF 1935**

Exelon Corporation  
(and the Subsidiaries listed on the  
Signature Page hereto)  
10 South Dearborn Street  
37<sup>th</sup> Floor  
Chicago, IL 60603

Public Service  
Enterprise Group Incorporated  
(on behalf of the Subsidiaries listed  
on the Signature Page hereto)  
80 Park Plaza  
Newark, New Jersey 07102

(Name of companies filing this statement and address of principal executive office)

**Exelon Corporation**

(Name of top registered holding company)

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## Item 1. Description of Proposed Transaction

### A. Introduction.

In this Form U-1 application/declaration (this “Application”), Applicants are seeking approval pursuant to Sections 6(a), 7, 8, 9, 10, 12, 13, 32 and 33 of the Public Utility Holding Company Act of 1935 (the “Act”) and the rules thereunder to engage in various transactions related to the merger of Exelon Corporation (“Exelon”) and Public Service Enterprise Group Incorporated (“PSEG”), as described more fully herein.<sup>1</sup>

On December 20, 2004, Exelon and PSEG, an electric and gas utility holding company that claims exemption from registration pursuant to Rule 2 under Section 3(a)(1) of the Act, entered into an Agreement and Plan of Merger (the “Merger Agreement”).<sup>2</sup> Pursuant to the terms of the Merger Agreement, 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 cash in lieu of any fraction of an Exelon share that a PSEG shareholder would have otherwise been entitled to receive. Exelon common stock will be unaffected by the Merger, with each issued and outstanding share remaining outstanding following the Merger as a share in the surviving company. Upon completion of the Merger, Exelon will change its name to Exelon Electric & Gas Corporation.<sup>3</sup>

As the surviving company in the Merger, Exelon will remain the ultimate corporate parent of PECO Energy Company (“PECO”) and Commonwealth Edison Company (“ComEd”) and the other Exelon subsidiaries and become the ultimate corporate parent of Public Service Electric and Gas Company (“PSE&G”), a public utility company under the Act, and the other PSEG subsidiaries.

Exelon will continue to be a registered public utility holding company under the Act, and ComEd, PECO and PSE&G will continue to be operating franchised utility companies. Exelon 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.

The Merger is subject to a number of usual and customary conditions precedent, including receipt by the parties of required state and federal regulatory approvals and filing of pre-merger notification statements under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (“HSR Act”), and the expiration or termination of the statutory waiting period thereunder. (See Item 4 - Regulatory Approvals.) The boards of directors of Exelon and PSEG have approved the proposed Merger, which will also require approval of the issuance of shares of common stock by Exelon required by the Merger Agreement by the shareholders of Exelon and approval of the Merger by the shareholders of PSEG.

In addition to the changes resulting from the Merger Agreement, the Applicants intend to revise their corporate structure (the “Exelon Generation Restructuring”). Although their plans are not yet completely finalized, the Applicants currently propose to implement the following changes, subject to approval, as required, by the Securities and Exchange Commission (the “Commission”). After obtaining

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<sup>1</sup> The Applicants are Exelon and its Subsidiaries listed on the Signature Page hereto, and PSEG and its Subsidiaries listed on the Signature Page hereto, and such other direct and indirect subsidiary companies that Exelon may hereinafter form or acquire in accordance with a Commission order or otherwise in accordance with the Act or a rule promulgated thereunder.

<sup>2</sup> A copy of the Merger Agreement was filed with the Commission by Exelon with a Current Report on Form 8-K on December 21, 2004. The Merger Agreement is incorporated herein by reference. The description of the Merger Agreement herein is qualified in its entirety by reference to the full text of the Merger Agreement.

<sup>3</sup> As appropriate in the context, the term “Exelon” refers variously to Exelon Corporation pre-Merger and to Exelon Electric & Gas Corporation post-Merger.

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necessary approvals and third party consents, PSEG Power LLC (“PSEG Power”) and its direct subsidiaries PSEG Nuclear LLC (“PSEG Nuclear”), PSEG Fossil LLC (“PSEG Fossil”) and PSEG Energy Resources & Trade LLC (“PSEG ER&T”) will all cease to exist as separate entities and will become part of Exelon Generation Company, LLC (“Exelon Generation”). The business functions of each of these former PSEG entities will become a part of the respective Exelon Generation business unit. It is anticipated that the subsidiaries owned by these PSEG entities will be retained as direct subsidiaries of Exelon Generation.

Also in connection with the Merger, PSE&G will become a direct subsidiary of Exelon Energy Delivery Company, LLC (“Delivery”).<sup>4</sup> The current subsidiaries of PSE&G will remain intact. PSEG Energy Holdings LLC (“PSEG Holdings”) will become a subsidiary of Exelon, as the successor to PSEG. The current subsidiaries of PSEG Holdings will remain intact. 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 Exelon.

A summary diagram depicting Exelon’s proposed post-Merger corporate structure is filed herewith as Exhibit G-1. Diagrams depicting the existing corporate structure of the Exelon system as well as the PSEG system are filed herewith as Exhibits G-2 and G-3, respectively.

Exelon and PSEG have proposed a plan to mitigate any generation market concentration concerns resulting from the Merger, which calls for Exelon to divest certain generation capacity.<sup>5</sup> The sale of this generation capacity will occur as soon as possible within 18 months following close of the Merger. Approval of the Commission will be required for the disposition of this generation capacity because, as a result of the Exelon Generation Restructuring, this generation capacity will be owned by Exelon Generation, a public utility under the Act. The disposition of generation capacity owed by Exelon Generation is referred to as the “Generation Divestiture.”<sup>6</sup>

In addition to authorization of the Merger, the Exelon Generation Restructuring, and the Generation Divestiture, Applicants are requesting certain related approvals, including:

1. Authorizations related to service company and other affiliate transactions.
2. Issuance by Exelon of common stock in connection with the Merger and employee and director compensation plans as described below.
3. Authorization to the extent required of the consolidation (or replacement in lieu of consolidation) of existing indebtedness and obligations of PSEG and its subsidiaries as obligations of Exelon or its subsidiaries as a result of the Merger.
4. Necessary modifications to Exelon’s existing omnibus financing authority granted by order of April 1, 2004 in Holding Company Act Release No. 27830 (the “2004 Financing Order”).

Applicants request that the Commission issue a final order granting the requested authority without an evidentiary hearing, as expeditiously as feasible, but no later than December 15, 2005.

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<sup>4</sup> This will be accomplished through a contribution of the common stock of PSE&G held by Exelon immediately following the Merger to Delivery or other appropriate corporate transaction.

<sup>5</sup> The mitigation plan also proposes to transfer control of the output of a portion of Exelon’s baseload nuclear generating capacity, which transfer is not jurisdictional under the Act.

<sup>6</sup> The Exelon Generation Restructuring and Generation Divestiture will require regulatory approvals in addition to those from the Commission as described elsewhere herein.

B. Description of Exelon and Its Subsidiaries

1. Exelon, Generally

Exelon was incorporated in Pennsylvania in February 1999. On October 20, 2000, Exelon became the ultimate parent corporation for PECO and ComEd, and registered pursuant to Section 5 of the Act.

Exelon, through its subsidiaries, operates in three business segments - Delivery, Generation and Enterprises – as described below. In addition to Exelon's three business segments, Exelon BSC, a subsidiary of Exelon, provides Exelon and its subsidiaries with financial, human resources, legal, information technology, supply management and corporate governance services, as well as direction and management of shared functions for Delivery.

Delivery. Exelon's energy delivery business consists of the purchase and sale of electricity and distribution and transmission services by ComEd in northern Illinois and by PECO in southeastern Pennsylvania and the purchase and sale of natural gas and distribution services by PECO in the Pennsylvania counties surrounding the City of Philadelphia.

Generation. Exelon's generation business consists of the owned and contracted for electric generating facilities and energy marketing operations of Exelon Generation, a 49.5% interest in two power stations in Mexico, and the competitive retail sales business of Exelon Energy Company.

Enterprises. Exelon's enterprise business consists primarily of the remaining infrastructure and electrical contracting services of Exelon Enterprises Company, LLC ("Enterprises") and other investments weighted towards the communications and energy services industries. Exelon plans to divest or wind-down the remaining assets of Enterprises during 2005.

2. The Exelon Utility Subsidiaries

Exelon indirectly owns all of the issued and outstanding membership interests of Exelon Generation, all the issued and outstanding common stock of PECO and substantially all of the issued and outstanding common stock of ComEd,<sup>7</sup> and ComEd owns all the issued and outstanding common stock of Commonwealth Edison Company of Indiana, Inc. (the "Indiana Company") (together, the "Exelon Utility Subsidiaries").

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 is subject to extensive regulation by the Pennsylvania Public Utility Commission ("PAPUC") as to electric and gas rates, the issuances of certain securities and certain other aspects of PECO's operations. PECO is also subject to regulation by the Federal Energy Regulatory Commission ("FERC") as to transmission rates, gas pipelines and certain other aspects of its business.

PECO's retail service territory covers approximately 2,100 square miles in southeastern Pennsylvania. PECO provides electric delivery service in an area of approximately 2,000 square miles, with a population of approximately 3.8 million, including 1.5 million in the City of Philadelphia. Natural gas service is supplied in an approximately 1,900 square mile area in southeastern Pennsylvania adjacent to

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<sup>7</sup> In connection with the conversion of warrants and convertible preferred stock that were outstanding prior to the 2000 merger of Unicom Corporation with PECO Energy Corp., a small number of shares of common stock of ComEd (about 0.1% of the total outstanding) are not owned by Exelon but are held by third parties. See *Exelon Corporation*, Holding Co. Act Release No. 27256, note 4 (Oct. 19, 2000) (the "2000 Merger Order").



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Philadelphia, with a population of approximately 2.3 million. PECO delivers electricity to approximately 1.5 million customers and natural gas to approximately 460,000 customers.

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 is subject to extensive regulation by the Illinois Commerce Commission (“ICC”) as to rates, the issuance of certain securities, and certain other aspects of ComEd’s operations. ComEd is also subject to regulation by the FERC as to transmission rates and certain other aspects of its business.

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 3.7 million customers.

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, required rate reductions and 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.

Effective as of January 1, 2001, Exelon effected a restructuring that involved the transfer of the electric generating assets of ComEd and PECO to Exelon Generation, a Pennsylvania limited liability company and a public utility company engaged in the generation, sale and purchase of electricity in Pennsylvania, Illinois and elsewhere and also engaged in the trading of other energy and energy-related commodities and development and ownership of exempt wholesale generators (“EWGs”).

PJM Interconnection, L.L.C. (“PJM”) is the independent system operator and the FERC-approved Regional Transmission Organization (“RTO”) for the Mid-Atlantic and a portion of the Midwest. PJM is the transmission provider under, and the administrator of, the PJM Open Access Transmission 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. ComEd’s and PECO’s transmission systems are currently under the control of PJM and, by order dated October 28, 2004 (Holding Co. Act Release No. 27904) (the “PJM Order”), the Commission found that the electric utility properties of the Exelon system satisfy the interconnection requirement of Section 2(a)(29)(A) of the Act by reason of PJM’s operational control of the transmission assets of ComEd and PECO.<sup>8</sup>

Each of ComEd and PECO is a public utility company within the meaning of the Act. ComEd is also a holding company exempt from registration pursuant to Section 3(a)(1) of the Act, by reason of its ownership of the Indiana Company, which is a fourth public utility company subsidiary, with no retail operations. Delivery is an intermediate registered holding company and a first-tier subsidiary of Exelon. Delivery owns all of the issued and outstanding common stock of PECO and substantially all of the issued and outstanding common stock of ComEd. See Note 7.

Exelon Generation is also an electric utility company within the meaning of the Act. Exelon Generation is a wholly owned subsidiary of Exelon Ventures Company, LLC (“Ventures”), which is an intermediate registered holding company and a first tier subsidiary of Exelon. Ventures and Delivery are

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<sup>8</sup> In the 2000 Merger Order approving the formation of Exelon, the Commission had found that the electric utility operations of Exelon constituted a single, integrated electric utility system, and that the gas utility operations of Exelon constituted a single, integrated gas utility system that was a permissible “additional” system under the standards of Section 2(a)(11) of the Act. The findings of the 2000 Merger Order were based in part on a certain 100 MW firm west-to-east transmission contract path (the “Contract Path”). The PJM Order found that PJM’s operational control of the transmission assets of ComEd and PECO obviated the need for the Contract Path.

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referred to herein as the “Other Registered Holding Companies.” None of the Other Registered Holding Companies has securities outstanding in the hands of the public.

### 3. Direct Non-Utility Subsidiaries of Exelon

Exelon has direct wholly owned non-utility subsidiaries (in addition to its direct, wholly owned registered holding company subsidiaries, Ventures and Delivery), as follows:

Exelon BSC, a service company, provides administrative, management and technical services to Exelon and its associate companies;

Exelon Investment Holdings, LLC, an Illinois limited liability company, is a holding company for tax-advantaged housing transactions;

UII, LLC, an Illinois limited liability company, is engaged in a like-kind exchange transaction pursuant to which a portion of the proceeds from the sale of ComEd’s fossil generating stations was invested in passive generating station leases with entities unrelated to Exelon. The generating stations were leased back to such entities as part of the transaction.<sup>9</sup>

Exelon has the following additional direct subsidiaries: Unicom Assurance Company, Ltd., an inactive captive insurance company, Exelon Capital Trust I, an inactive finance company, Exelon Capital Trust II, an inactive finance company and Exelon Capital Trust III, an inactive finance company.

### 4. Capitalization of Exelon

The total authorized shares of capital stock of Exelon consist of (i) 1,200,000,000 shares of common stock, no par value and (ii) 100,000,000 shares of preferred stock, no par value.<sup>10</sup> At the close of business on December 31, 2004, 664,187,996 shares of Exelon common stock were outstanding, and no shares of Exelon preferred stock were issued and outstanding. In addition, at that date (i) 2,499,865 shares of common stock were held by Exelon in its treasury, (ii) 25,205,285 shares of common stock were reserved for issuance pursuant to outstanding options to purchase common stock granted under Exelon’s Long-Term Incentive Plan, Exelon’s Amended and Restated Long-Term Incentive Plan, as amended, and Exelon’s 1998 Stock Option Plan (together with Exelon’s Directors’ Stock Unit Plan, the “Exelon Stock Incentive Plans”), (iii) 14,777,078 shares of common stock were reserved for the grant of additional awards under the Exelon Stock Incentive Plans, (iv) 7,000,000 shares of common stock were reserved for issuance pursuant to the Dividend Reinvestment and Stock Purchase Plan, (v) 624,495 shares of common stock were reserved for issuance pursuant to outstanding performance shares, (vi) 216,000 shares of common stock were reserved for issuance pursuant to outstanding units under Exelon’s Directors’ Stock Unit Plan, (vii) 5,357,745 shares of common stock were reserved for issuance under Exelon’s Employee Stock Purchase Plan, (viii) 1,060,053 shares of common stock were reserved for issuance pursuant to outstanding restricted shares (shares of common stock subject to forfeiture) and (ix) 1,336,516 shares of common stock were reserved for issuance pursuant to outstanding deferred shares (shares of common stock the issuance of which has been deferred pursuant to Exelon’s Deferred Compensation Plan).

As of December 31, 2004, Exelon’s capitalization on a consolidated basis was as follows:

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<sup>9</sup> Unicom Investment, Inc., an Illinois corporation, was reorganized as an Illinois limited liability company, UII, LLC on November 10, 2004.

<sup>10</sup> In connection with the proposed Merger, Exelon is seeking approval to amend its Amended and Restated Articles of Incorporation to increase its authorized common stock to 2,000,000,000 shares. See File No. 70-10291. That filing also seeks approval for solicitation of proxies in connection with the Merger and certain employee and director plan changes.

**EXELON CORPORATION**  
**CONDENSED CONSOLIDATED CAPITAL STRUCTURE**

(Dollars in Millions)  
As of December 31, 2004

**Consolidated Capitalization**

	Amount	Capital Structure Percentage
Common Equity (includes Retained Earnings of \$3,353)	\$ 9,423	40.79%
Minority Interest	42	0.18%
Preferred and Preference Stock	632	2.74%
Securitization Obligations	4,797	20.76%
Long-Term Debt	7,292	31.56%
Current Maturities of Long-Term Debt	427	1.85%
Total Long-Term Debt	7,719	33.41%
Short-Term Debt	490	2.12%
Total Capital Structure	<u>\$ 23,103</u>	<u>100.00%</u>

Additional information regarding Exelon and its subsidiary companies is set forth in the following documents, each of which has been previously filed with the Commission and is incorporated herein by reference:

(i) Annual Report on Form 10-K of Exelon (Commission File No. 1-16169), ComEd (Commission File No. 1-1839), PECO (Commission File No. 1-1401) and Exelon Generation (Commission File Number No. 333-85496) for the fiscal year ended December 31, 2004, filed with the Commission on February 23, 2005;

(ii) The following Current Reports on Form 8-K of Exelon (Commission File No. 1-16169):

<u>Description</u>	<u>Filing Date</u>
Current report, items 1.01 and 2.03	3/08/05
Current report, item 8.01	3/07/05
Current report, item 5.02	2/25/05
Current report, item 5.02	2/22/05
Current report, items 8.01 and 9.01	2/04/05
Current report, item 2.01	2/01/05
Current report, items 1.01 and 5.02	1/28/05
Current report, items 2.02, 7.01 and 9.01	1/25/05;

(iii) Annual Report on Form U5S for the fiscal year ended December 31, 2003, filed with the Commission on April 30, 2004; and

(iv) Registration Statement on Form S-4, filed with the Commission on February 10, 2005 (File No. 333-122074).

C. Description of PSEG and Its Subsidiaries.

1. PSEG, Generally.

PSEG was incorporated under the laws of the State of New Jersey in 1985 and is an exempt public utility holding company. PSEG, through its subsidiaries, operates in three business segments - Delivery, Generation and Enterprises, as described below. In addition to PSEG's three business segments, PSEG Services, a subsidiary of PSEG, provides PSEG and its subsidiaries with financial, human resources, legal, information technology, supply management and corporate governance services.

Delivery – PSEG's domestic energy delivery business consists of the transmission and distribution of electric energy and gas in New Jersey through PSE&G.

Generation – PSEG's generation businesses consist of the owned and contracted for electric generation facilities and energy marketing operations of the PSEG Power subsidiaries and the PSEG Global L.L.C. ("PSEG Global") subsidiaries. PSEG Power has three principal direct wholly owned subsidiaries: PSEG Nuclear, PSEG Fossil and PSEG ER&T. The PSEG Power generation portfolio consists of approximately 14,607 MW of generation in the Northeast and Midwest. PSEG Global has equity ownership interests in approximately 2,404 MW of generation in North America. All the generation assets in the PSEG system are held by PSEG subsidiaries with EWG or FUCO status under the Act or qualifying facility ("QF") status under the Public Utility Regulatory Policies Act of 1978, as amended ("PURPA").

Enterprises – PSEG's enterprise businesses consist primarily of (1) investments in energy-related financial transactions, leveraged leases, operating leases, leveraged buyout funds, marketable securities and a demand-side management business and (2) investments in international generation and delivery businesses qualified as EWGs and foreign utility companies through PSEG Resources L.L.C. ("PSEG Resources") and through PSEG Global.

2. The PSEG Utility Subsidiary.

PSE&G is a public utility company within the meaning of the Act and is the only utility subsidiary of PSEG. PSEG directly owns all of the issued and outstanding common stock of PSE&G.

PSE&G is an electric and gas utility company engaged principally in the transmission and distribution of electric energy and gas in New Jersey. PSE&G is subject to extensive regulation by the New Jersey Board of Public Utilities ("NJBPU") as to electric and gas rates, the issuance of securities and certain other aspects of PSE&G's operations. PSE&G is also subject to regulation by the FERC as to electric transmission rates and certain other aspects of its business.

PSE&G's retail service territory covers 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 with a population of approximately 5.5 million. PSE&G provides service to approximately 2.0 million electric customers and approximately 1.6 million gas customers.

PSE&G does not own or operate any electric generation facilities. 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 its affiliate PSEG ER&T in August 2000. Also, pursuant to an NJBPU order, PSE&G transferred its gas supply business, including its inventories and supply contracts, to a subsidiary of PSEG Power in May 2002. PSE&G continues to own and operate its electric transmission and electric and gas distribution business. PSE&G has transferred operational control over its electric transmission facilities to PJM.

All electric and gas customers in New Jersey have the ability to choose an electric energy and/or gas supplier. For those retail electric customers located in New Jersey who do not choose a competitive

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electric supplier, New Jersey's Electric Distribution Companies ("EDCs"), including PSE&G, provide basic generation service ("BGS") or provider of last resort service ("POLR"). The EDCs satisfy their BGS obligations through a competitive state-wide annual auction. PSE&G's affiliate PSEG ER&T, has historically been a successful participant in these auctions and serves several EDCs including PSE&G.

For those retail gas customers located in New Jersey who do not choose a competitive natural gas supplier, New Jersey's gas distribution companies, including PSE&G, provide basic gas supply service ("BGSS") or POLR. PSE&G has entered into a full requirements contract through 2007 with PSEG ER&T to meet the supply requirements of PSE&G's gas customers.<sup>11</sup> PSEG ER&T charges PSE&G for the gas commodity costs, which PSE&G recovers from its customers. Any difference between rates charged by PSEG ER&T under the BGSS contract and rates charged to PSE&G's customers are deferred and collected or refunded through future adjustments in retail rates.

PSE&G's natural gas facilities consist entirely of local gas distribution facilities in the State of New Jersey and neither PSE&G nor any other PSEG company owns any interstate natural gas facilities subject to the Natural Gas Act.

### 3. Direct Non-Utility Subsidiaries of PSEG.

PSEG has three direct wholly owned non-utility subsidiaries, PSEG Power, PSEG Holdings and PSEG Services:

PSEG Power - PSEG Power has three principal direct wholly owned subsidiaries: PSEG Nuclear, which owns and operates nuclear generating stations; PSEG Fossil, which develops, owns and operates domestic fossil generating stations and other non-nuclear generating stations; and 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 markets electricity, capacity, ancillary services and natural gas products on a wholesale basis. PSEG Power also provides specialized maintenance, repair and plant engineering services on energy-related electro-mechanical equipment to its affiliates.

PSEG Nuclear is an EWG and has an ownership interest in five nuclear generating units and operates three of them: the Salem Nuclear Generating Station, Units 1 and 2, located in New Jersey, each owned 57.41% by PSEG Nuclear and 42.59% by Exelon Generation; and the Hope Creek Nuclear Generating Station, located in New Jersey, which is 100% owned by PSEG Nuclear. Exelon Generation operates the Peach Bottom Atomic Power Station Units 2 and 3, located in Pennsylvania, each of which is 50% owned by PSEG Nuclear and 50% by Exelon Generation. PSEG Nuclear is subject to regulation by the FERC as to its wholesale electric sales and certain other aspects of its business. All of PSEG Nuclear's generation assets are located in PJM. As explained below, it is contemplated that PSEG Nuclear will be merged into Exelon Generation.

PSEG Fossil is an EWG and has direct interests in 12 generating stations in New Jersey and two in Pennsylvania. PSEG Fossil, together with Jersey Central Power and Light Company, is a co-licensee of the Yards Creek Pumped Storage Project, which has a FERC hydroelectric license (Project 2309). All of PSEG Fossil's directly owned generating assets are located in PJM. PSEG Fossil has certain subsidiaries, that are also EWGs, that own generating stations in Connecticut, New York, Indiana and Ohio. PSEG Fossil is subject to regulation by the FERC as to its wholesale electric sales and certain other aspects of its business. As explained below, it is contemplated that PSEG Fossil will be merged into Exelon Generation and the subsidiaries owned by PSEG Fossil will be retained as direct subsidiaries of Exelon Generation.

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<sup>11</sup> The BGSS contract continues year to year thereafter unless terminated by either party consistent with its terms.

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PSEG ER&T conducts energy trading operations and does not own any utility assets. PSEG ER&T is subject to regulation by the FERC as to its wholesale electric sales and certain other aspects of its business. As explained below, it is contemplated that PSEG ER&T will be merged into Exelon Generation.

PSEG Holdings - PSEG Holdings has two principal subsidiaries: PSEG Resources, which invests primarily in energy-related, financial transactions, and PSEG Global, which invests in international generation and delivery businesses qualified as EWGs and FUCOs and domestic generation qualified as EWGs and QFs.<sup>12</sup>

PSEG Resources has investments in energy-related financial transactions and assets including leveraged leases, operating leases, leveraged buyout funds, limited partnerships and marketable securities. PSEG Resources also engages in demand side management services in New Jersey through its subsidiaries.

PSEG Global, through various subsidiaries qualified as FUCOs and EWGs, has investments in electric generation, transmission and distribution facilities in selected international markets and through various subsidiaries qualified as EWGs and QFs, has investments in electric generation in selected domestic markets. PSEG Global's domestic generation assets are located in California, Pennsylvania, Texas, New Hampshire and Hawaii.

PSEG Services is a non-utility service company. As explained below, it is contemplated that PSEG Services will sell all of its assets to Exelon BSC, change its name, and remain as a subsidiary.

#### 4. Capitalization of PSEG.

### **PUBLIC SERVICE ENTERPRISE GROUP INCORPORATED CONDENSED CONSOLIDATED CAPITAL STRUCTURE**

(Dollars in Millions)  
As of December 31, 2004

#### **Consolidated Capitalization**

	Amount	Capital Structure Percentage
Common Equity (includes Retained Earnings of \$2,425)	\$ 5,739	29.03%
Preferred and Preference Stock	1,281	6.48%
Securitization Obligations	2,085	10.55%
Long-Term Debt	9,785	49.50%
Current Maturities of Long-Term Debt	240	1.21%
Total Long-Term Debt	10,025	50.71%
Short-Term Debt	638	3.23%
Total Capital Structure	<u>\$ 19,768</u>	<u>100.00%</u>

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<sup>12</sup> Neither PSEG Holdings nor any of its subsidiaries is a public utility company for purposes of the 1935 Act. PSEG Holdings and its subsidiaries are more fully described in Exhibit G-7.

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Additional information regarding PSEG and its subsidiary companies is set forth in the following documents, each of which has been previously filed with the Commission and is incorporated herein by reference:

- (i) Annual Report on Form 10-K of PSEG (Commission File No. 001-09120), PSE&G (Commission File No. 001-00973), PSEG Power (Commission File No. 001-49614), PSEG Holdings (Commission File No. 000-32503) for the fiscal year ended December 31, 2004, filed with the Commission on March 1, 2005;
- (ii) The following Current Reports on Form 8-K of PSEG (Commission File No. 001-09120):

<u>Description</u>	<u>Filing Date</u>
Current report, items 8.01 and 9.01	2/04/05
Current report, items 2.02, 8.01 and 9.01	2/03/05
Current report, items 1.01 and 9.01	1/24/05;

- (iii) Annual Report on Form U-3A-2 of PSEG for the fiscal year ended December 31, 2004, filed with the Commission on March 1, 2005; and
- (iv) Registration Statement on Form S-4, filed with the Commission on February 10, 2005 (File No. 333-122074).

### D. Principal Terms of the Merger Agreement

The Merger Agreement provides for a business combination whereby PSEG will be merged with and into Exelon, with Exelon surviving. At the effective time of and as a result of the Merger, (i) each outstanding share of PSEG common stock will be converted into the right to receive 1.225 shares of Exelon common stock (the "Exchange Ratio") and (ii) each share of Exelon common stock will remain outstanding. All outstanding PSEG stock options will be converted into options to purchase the number of shares of Exelon common stock determined by multiplying (a) the number of shares of PSEG common stock subject to such stock option immediately prior to the effective time by (b) the Exchange Ratio, at an exercise price per share of Exelon common stock equal to the exercise price per share of PSEG common stock under such stock option immediately prior to the effective time divided by the Exchange Ratio.

Following the effective time of the Merger, the surviving corporation, which will be renamed Exelon Electric & Gas Corporation, will have an eighteen-member board of directors, which will include twelve Exelon directors and six new members nominated by PSEG. John W. Rowe, the current Chairman, President and Chief Executive Officer of Exelon, will become the President and Chief Executive Officer of the surviving corporation. E. James Ferland, the current Chairman, President and Chief Executive Officer of PSEG, will become the non-executive Chairman of the Board of the surviving corporation until his retirement on March 31, 2007, at which time Mr. Rowe will become Chairman of the surviving corporation.

Exelon and PSEG have made customary representations, warranties and covenants in the Merger Agreement, including, among others, covenants (i) by PSEG not to (a) solicit proposals relating to alternative business combination transactions or (b) subject to certain exceptions, enter into discussions concerning alternative business combination transactions, (ii) by Exelon and PSEG to cause shareholder meetings to be held to consider approval of the Merger and related transactions, (iii) subject to PSEG's right to terminate the Merger Agreement to accept a superior proposal (as described in the Merger Agreement), for the board of directors of PSEG to recommend adoption and approval by PSEG's shareholders of the Merger Agreement and related transactions and (iv) for the board of directors of Exelon to recommend approval by Exelon's shareholders of the issuance of shares of Exelon contemplated by the Merger Agreement subject to Exelon's board of directors' right to change its recommendation as required by its fiduciary duties.

Consummation of the Merger is subject to various customary conditions, including the requisite approval by the shareholders of Exelon and PSEG, respectively, no legal impediment to the Merger, the receipt of required regulatory approvals, the absence of a material adverse effect on Exelon, PSEG or, prospectively, the surviving corporation and the absence of certain specified burdensome actions as a

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condition to the regulatory approvals for the Merger. The Merger Agreement contains certain termination rights for both Exelon and PSEG, and further provides that, upon termination of the Merger Agreement, a termination fee may be payable under specified circumstances including (i) if Exelon enters into a definitive agreement to be acquired, it must pay PSEG a termination fee of \$400 million plus PSEG's transaction expenses up to \$40 million, (ii) if Exelon's board of directors changes its recommendation, it must pay PSEG's transactions expenses up to \$40 million and (iii) if PSEG's board of directors changes its recommendation or if PSEG enters into a definitive agreement for a superior proposal to be acquired it must pay Exelon a termination fee of \$400 million plus Exelon's transaction expenses up to \$40 million.

### E. Accounting Treatment for the Merger

The Merger will be accounted for as a purchase by Exelon under accounting principles generally accepted in the United States. Under the purchase method of accounting, the assets and liabilities of PSEG will be recorded, as of completion of the Merger, at their respective fair values and added to those of Exelon. The reported financial condition and results of operations of Exelon issued after completion of the Merger will reflect PSEG's balances and results after completion of the Merger, but will not be restated retroactively to reflect the historical financial position or results of operations of PSEG. Following completion of the Merger, the earnings of the combined company will reflect purchase accounting adjustments, including changes to amortization and depreciation expense for acquired assets.

### F. Operation of the Combined System Post-Merger

Following the Merger, ComEd, PECO and PSE&G (the "Retail Utility Subsidiaries") will all be subsidiaries of Delivery and will operate their respective electric distribution systems, and PECO and PSE&G will operate their respective gas distribution systems. The electric transmission systems of the Retail Utility Subsidiaries together with the Indiana Company will be interconnected through and subject to the functional control of a single operator, PJM. The Retail Utility Subsidiaries, the Indiana Company and Exelon Generation are referred to herein as the "Utility Subsidiaries."

A more detailed description of Exelon's plans to integrate PSEG's operations with those of its existing subsidiaries is set forth in Item 3.B.4.b, below.

### G. Exelon Generation Restructuring

After obtaining any appropriate third-party consents, including consents of certain PSEG Power debt holders to certain amendments of PSEG Power debt agreements, the Applicants will undertake the Exelon Generation Restructuring such that 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 be retained as direct subsidiaries of Exelon Generation, which will continue to be an electric utility company for purposes of the Act. It is contemplated that the Exelon Generation Restructuring will take place contemporaneously with the closing of the Merger. *See* Exhibits G-1, G-2 and G-3 hereto for diagrams of the pre-Merger and post-Merger corporate structures.

It is anticipated that the current subsidiaries of PSEG Fossil that own and/or operate electric generation facilities will remain subsidiaries of Exelon Generation as EWGs. The Exelon Generation Restructuring will not result in any new "public utility" subsidiary of Exelon Generation.

Applicants seek such approval as may be required for the Exelon Generation Restructuring. <sup>13</sup>

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<sup>13</sup> Approvals related to the Exelon Generation Restructuring have been sought in the pending FERC Merger filing. A determination will be requested from the New Jersey Department of Environmental Protection ("NJDEP") that the Industrial Site Recovery Act ("ISRA") does not apply to the Merger and its related corporate reorganizations including the Generation Restructuring. Filings will also



#### H. Generation Divestiture

The proposed Merger will increase the total capacity of generation resources owned or controlled by Exelon. To ensure that the combined company does not have market power in any relevant market, Exelon and PSEG have proposed a comprehensive market power mitigation plan designed to address in full FERC's requirements for competitive markets. As part of the plan, the companies have proposed the Generation Divestiture — to divest a number of coal, mid-merit, and peaking generating plants and transfer control of the output of a portion of their baseload nuclear generating capacity.

The Applicants propose to divest 1,000 MW of peaking capacity and 1,900 MW of mid-merit capacity, including at least 550 MW of coal capacity which (when combined with the proposed nuclear baseload mitigation discussed below) should fully mitigate the market concentration in all geographic markets.<sup>14</sup> The divestiture will occur either through a swap of assets with owners of generation located outside of PJM or through an outright sale of generating facilities or units within facilities. 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.<sup>15</sup> 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.

Rather than divest their nuclear baseload units, the Applicants have proposed to FERC to implement a “virtual divestiture” whereby they will divest themselves, through sales of long-term firm energy rights, of 2,600 MW of nuclear generating capacity in PJM East. Such “virtual divestiture” will take the form of FERC jurisdictional wholesale power transactions and will not constitute the disposition of “utility assets” within the meaning of the Act, therefore, no approval by the Commission is required for the virtual divestiture.<sup>16</sup>

The Applicants have not yet identified the specific assets that they intend to divest. However, they recognize that the FERC needs to be assured that the divested generation will be located in PJM East to ensure that FERC market concentration criteria will be met. Applicants also understand that the Commission will need to approve any dispositions of “utility assets” associated with the Generation Divestiture. As a result, filed herewith as Exhibit G-4 is a list of generation facilities that will be considered for divestiture. Applicants seek Commission approval to dispose of any of the facilities identified on Exhibit G-4.

The Applicants proposed to FERC that they be given 18 months following the closing of the Merger to complete the proposed Generation Divestiture. The Applicants intend to complete the divestiture more quickly, but 18 months may be necessary to conduct a sales process, negotiate all necessary agreements and obtain all necessary regulatory approvals.

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be made with the Connecticut Siting Council and the Connecticut Department of Environmental Protection with respect to the implications of the Merger and the Generation Restructuring to the generating stations located in Connecticut and owned by a subsidiary of PSEG Fossil.

<sup>14</sup> The Department of Justice will also review potential market power issues associated with the Merger.

<sup>15</sup> “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 generation in the western part of PJM Pre-2004. “PJM Pre-2004” is the original PJM Mid-Atlantic market before PJM was expanded, plus Allegheny Energy. “Expanded PJM” consists of all the geographic markets that constitute the PJM RTO. More detail regarding these terms can be found in the Application for approval of the Merger filed with FERC included as Exhibit D-1 hereto.

<sup>16</sup> For further description of the virtual divestiture see Item 3.B.7.b below.

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Implementation of the proposed mitigation measures, including the Generation Divestiture, will be subject to review by various regulators, including the FERC. <sup>17</sup> None of the proposed mitigation, including the Generation Divestiture, would affect the integration of the combined electric utility operations for purposes of the Act.

Applicants seek such approval as may be required for the Generation Divestiture and authorization to complete the Generation Divestiture during the period of 18 months following consummation of the Merger.

### I. Affiliate Transactions

#### 1. Service Company Transactions

Under the 2000 Merger Order, the Commission authorized Exelon to organize and capitalize Exelon BSC as a service company subsidiary, found that Exelon BSC was so organized and conducted, or to be conducted, as to meet the requirements of section 13(b) of the Act with respect to reasonable assurance of efficient and economical performance of services or construction or sale of goods for the benefit of associate companies, at cost fairly and equitably allocated among them (or as permitted by Rule 90), and authorized Exelon BSC to provide ComEd, PECO and other companies in the Exelon system with administrative, management, engineering, construction, environmental, and other support services pursuant to a General Services Agreement. <sup>18</sup>

The 2000 Merger Order directed Exelon to file a post-effective amendment in File No. 70-9645 describing its accounting systems and cost allocation methodologies and requesting a supplemental order of the Commission. On October 1, 2001, Exelon filed Amendment No. 5 (Second Post-Effective) in File No. 70-9645.<sup>19</sup> Thereafter, on October 31, 2003, Exelon submitted a 60-day letter that, as supplemented, described certain proposed changes in allocation methods for “corporate governance costs,” and the reorganization of Energy Delivery Shared Services, a business unit of Exelon BSC that would begin to provide new services to ComEd and PECO effective January 1, 2004.<sup>20</sup>

In connection with the Merger, PSEG Services will sell all of its assets to Exelon BSC, change its name and remain as a subsidiary. Post-Merger, Exelon BSC intends to add the former PSEG companies as client companies under the General Services Agreement and will provide to the new client companies the same administrative, management, and technical services that it now provides to Exelon system companies, utilizing the same work order procedures and the same methods of allocating costs that are specified in the

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<sup>17</sup>Approvals related to the Generation Divestiture have been sought in the pending FERC Merger filing. Authorizations will be sought from the NJDEP pursuant to ISRA for generating stations in New Jersey that are transferred as part of the Generation Divestiture pursuant to the mitigation plan.

<sup>18</sup> The form of General Services Agreement was filed as Exhibit B-2 to Amendment No. 3 in File No. 70-9645.

<sup>19</sup> A copy of the Exelon Business Service Company Associate Transaction Procedures Manual (the “Manual”) dated October 1, 2001 was filed as Exhibit B-2.1 in File No. 70-9645. A revised copy of the Manual, which incorporated changes requested by the Commission, was provided to the Commission Staff in August of 2003. No supplemental order was ever issued, although Exelon has fully complied with the requirement to file the post-effective amendment. Therefore, Exelon requests, to the extent the Commission deems it necessary to make additional findings with respect to Exelon BSC, that it make those findings in the instant proceeding.

<sup>20</sup> Under the 2000 Merger Order, Exelon BSC is required to give written notice to the Commission at least 60 days prior to implementing any change in the type and character of the companies receiving services, the methods of allocating costs to associate companies, or the scope or character of services to be rendered.

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General Services Agreement.<sup>21</sup> In connection with the Transaction, certain employees of PSEG Services may be transferred to and become employees of Exelon BSC, which will be the sole subsidiary service company for the Exelon system.

Exelon requests that the Commission find, to the extent required, that following the transactions described herein, Exelon BSC will continue to be organized and conducted in a manner to meet the requirements of Section 13(b) of the Act. Recognizing that it will take some time for conversion to Exelon BSC platforms of the work order procedures, cost capture and allocation processes of the portion of Exelon BSC that was formerly PSEG Services, Applicants request authority to delay the full implementation of all services and systems relative to the new PSEG clients for a period not longer than one year after the date of the consummation of the Merger.

### 2. Other Inter-Company Goods and Services At Cost

#### (a) Incidental Services

The 2000 Merger Order recognized that ComEd, PECO and Exelon Generation may provide services incidental to their utility businesses, such as infrastructure services and storm outage emergency repairs, to one another and other associate companies in accordance with rules 87, 90 and 91. In accordance with these rules also, a utility may provide certain goods, through a leasing arrangement or otherwise, to one or more associate companies, and may use certain assets for the benefit of one or more associate companies. Following the Merger, PSE&G also may provide these incidental services to, or receive these incidental services from, the other Exelon companies. PSE&G also may provide goods, through a leasing arrangement or otherwise, to one or more associate companies, and may use certain assets for the benefit of one or more associate companies.

#### (b) Services Required for the Efficient Operation of Exelon Generation's Businesses

Under the 2000 Merger Order, the Commission authorized Exelon Generation and any future subsidiary of Exelon Generation and AmerGen Energy Company, LLC ("AmerGen") to provide services at cost to each other as required for the efficient operation of the Exelon system generating facilities. Although Exelon Generation is an "electric utility company" under the Act, it is not subject to state rate regulation and has no "captive" customers. Following the Merger, as is the case now, Exelon Generation will own and operate generating facilities, engage in energy marketing and trading, and invest in and own exempt wholesale generators, intermediate companies and other permitted investments such as Rule 58 energy-related companies, all of which are operated as an integral part of its system generating facilities. Accordingly, Exelon Generation proposes that post-Merger it, and all of its current and future subsidiaries, including the former PSEG subsidiaries, will provide services at cost to each other as required for the efficient operation of Exelon Generation's businesses.

#### (c) Services at the Interface between Generation and Transmission and Distribution

Under the 2000 Merger Order, the Commission authorized Exelon Generation to render and receive services at cost from ComEd and PECO related to the interface — primarily switchyard facilities — between the generation function of Exelon Generation and the transmission and distribution functions of ComEd and PECO. Applicants request authorization for ComEd, PECO, PSE&G, Exelon Generation and its subsidiaries to render and receive the same types of services at cost, among each other following the Merger.

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<sup>21</sup> Exelon and PSE&G are seeking approval of the General Services Agreement from the NJBPU. Following the Merger, Exelon BSC may file with the Commission 60-day letters regarding changes in allocation factors or other changes.

(d) Exelon Generation Services in Connection with Supply of Electricity and Natural Gas

1. Background

a. Scheduling Coordination Agreements. PSE&G is obligated to purchase electricity from certain QFs pursuant to PURPA, is obligated to purchase electricity from certain EWGs under restructured former PURPA contracts, and receives an allocation of hydroelectric power from the St. Lawrence Power Project. Pursuant to a stipulation filed at the NJBPU, PSE&G is obligated to resell this power at wholesale into the PJM spot market. As PSE&G owns no generation and engages in no other wholesale energy transactions, it relies upon its affiliate PSEG ER&T to schedule these transactions on its behalf and to submit bids for capacity as directed by PSE&G. PSEG ER&T also fulfills certain billing and accounting functions with respect to such energy and capacity. These services are provided under two agreements (“Scheduling Coordination Agreements”) pursuant to which PSE&G receives the full PJM market value for the electricity. PSE&G either (i) pays PSEG ER&T a cost-based fee, or (ii) enables PSEG ER&T to receive a credit from PJM for capacity from the purchases described above against any emergency power it would otherwise have to pay for under the PJM Open Access Transmission Tariff. The Scheduling Coordination Agreements will be assumed by Exelon Generation by operation of law.

b. BGSS Gas Contract. PSEG ER&T provides full-requirements gas supply service to PSE&G pursuant to a contract approved by the NJBPU for the purpose of satisfying all of PSE&G’s retail gas service obligations (“BGSS Gas Contract”). As part of the transaction approved by the NJBPU, PSEG ER&T assumed the PSE&G entitlements under most of its gas transportation and storage contracts with interstate pipelines. In a few cases, the entitlements remained with PSE&G and PSEG ER&T administers the contracts as PSE&G’s agent. The BGSS Gas Contract will be assumed by Exelon Generation by operation of law.

2. Exelon Generation Services in Connection with Supply of Electricity and Natural Gas.

Under the 2000 Merger Order, the Commission authorized Exelon Generation to provide, at cost, supply planning services and assistance to ComEd and PECO and to assist the utilities in obtaining energy supply resources from unaffiliated sellers, in each case in connection with the utility’s unbundled retail sales and/or wholesale sales, to the extent that energy supply is not provided by Exelon Generation. The Retail Utility Subsidiaries might require assistance from Exelon Generation with respect to the procurement process for the procurement of energy for the utilities’ bundled as well as unbundled retail sales. For this reason, and also to allow Exelon Generation to provide any jurisdictional services currently provided by PSEG ER&T pursuant to the Scheduling Coordination Agreements and the BGSS Gas Contract, the Applicants request that the authorization obtained in the 2000 Merger Order be modified not only to include PSE&G, but also to relate to the Retail Utility Subsidiaries’ bundled retail sales, as well as unbundled retail sales and/or wholesale sales, of both electricity and natural gas. Thus, the Applicants request that the Commission authorize Exelon Generation to provide, at cost, supply planning services and assistance to the Retail Utility Subsidiaries and to assist the utilities in obtaining, or disposing of, energy supply resources from unaffiliated sellers, in each case in connection with the Retail Utility Subsidiaries’ bundled and unbundled retail sales and/or wholesale sales, to the extent that energy supply is not provided by Exelon Generation. <sup>22</sup>

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<sup>22</sup> The described services will be provided at cost, with the exception of some services under the Scheduling Coordination Agreements, which provide, as an alternate mechanism for PSE&G to compensate PSEG ER&T (Exelon Generation after the Exelon Generation Restructuring) for scheduling coordination services, for PSEG ER&T to receive a credit from PJM for capacity, all as described above.

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### (e) Modification of Intercompany Services Authorized by the 2000 Merger Order

ComEd currently provides to and receives from affiliates certain services in accordance with an Affiliated Interests Agreement (“ComEd AIA”) approved by the ICC. PECO’s form of Mutual Services Agreement (“PECO MSA”) under which PECO provides and receives certain services from affiliates has been approved by the PAPUC.<sup>23</sup> In connection with the Merger, PSE&G plans to enter into a Mutual Services Agreement (the “PSE&G MSA”) to govern affiliated interest transactions between PSE&G and its affiliates other than Exelon BSC as service provider.<sup>24</sup> Such transactions would be executed at cost, consistent with Rules 90 and 91.

The 2000 Merger Order approved, as part of the filing in File No. 70-9645, Exhibit B-3.3 (Part B), which listed then existing arrangements under the ComEd AIA, the PECO MSA, or individual contracts pursuant to which ComEd and PECO received or rendered services at other than cost. Those arrangements or contracts have all either concluded, or are being conducted currently at cost. Such Exhibit B-3.3 (Part A) listed those services expected to be provided by one Exelon (non-service) company to another company at cost. These services are reported in a semi-annual report of affiliate transactions. The report for the first six months of the year is filed under a Rule 24 certificate at the time of the filing of Exelon’s Rule 24 certificate for the second quarter. The report for the second six months of the year is filed as an attachment to Exelon BSC’s Report on Form U-13-60. Exelon proposes to modify the service providers and recipients under the types of services so described in the 2000 Merger Order so that each of ComEd, PECO, PSE&G and Exelon Generation may provide, at cost, the listed services to associate companies in the new Exelon system under the same conditions as currently apply to the Exelon system companies.<sup>25</sup>

In addition to the services authorized to be provided and received as described in such Exhibit B-3.3 as contemplated by the 2000 Merger Order, as modified herein, Applicants request authorization for the following additional services to be provided at cost. These services will also be subject to the aforementioned reporting requirements.

- a) PowerLabs Services to ComEd, PECO and PSE&G. Exelon Generation was authorized to provide Instrument Calibration services to PECO in Exhibit B-3.3. Since the time of the 2000 Merger Order, the department of Exelon Generation that performed those services has been placed in a separate first-tier Rule 58 subsidiary of Exelon Generation. The new company, which is called Exelon PowerLabs, LLC (“PowerLabs”), provides Instrument Calibration services at cost to Exelon Generation under the authority in the 2000 Merger Order permitting Exelon Generation and any future subsidiary of Exelon Generation to provide services at cost to each other as required for the efficient operation of the Exelon system generating facilities. PowerLabs also provides Instrument Calibration services at cost, pursuant to Rule 87(b)(1), to Exelon BSC, which passes them through, at cost, to ComEd and PECO. Applicants request that PowerLabs be authorized to provide Instrument Calibration and other technical services, at cost, directly to ComEd, PECO and PSE&G, in addition to Exelon Generation.
- b) Energy Efficiency Audit Services by the Retail Utility Subsidiaries to Other Exelon Companies. ComEd Technical Services performs site efficiency assessments, which review

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<sup>23</sup> The ComEd AIA and PECO MSA were filed as Exhibits B-3.1 and B-3.2, respectively, in File No. 70-9645.

<sup>24</sup> Exelon and PSE&G are seeking approval of the PSE&G MSA from the NJBPU. The PSEG MSA is filed as Exhibit B-4 hereto.

<sup>25</sup> Such services as described on Exhibit B-3.3 include: services provided by the Retail Utility Subsidiaries: regulatory and legislative services, call center, central mail, fleet services, real estate and facilities, distribution technical services, telephone overflow coverage, strategic marketing and sourcing, installation and maintenance of substation equipment, purchase of materials and logistics, metering equipment and rubber goods, customer services rep emergency training, environmental and lab services, training for electrical and fire; and services provided by Exelon Generation: instrument calibration, operation of Richmond Frequency Converters and synchronous condenser maintenance.

current energy use profiles and identify cost-savings opportunities (“Energy Efficiency Audit Services”). ComEd has provided a small volume of these services at cost to Exelon Generation and PECO under Rules 87, 90 and 91, as services incidental to its utility business. In anticipation that the volume of these services may grow over time, may be provided by the other Retail Utility Subsidiaries and may be useful to other Exelon system companies, the Applicants request the Retail Utility Subsidiaries be authorized to provide Energy Efficiency Audit Services to other companies in the Exelon system at cost.

- c) Exelon Generation Maintenance, Repair and Plant Engineering Services. PSEG Power provides a range of specialized maintenance, repair and plant engineering services on energy-related electro-mechanical equipment. PSEG Power provides these services to PSEG Fossil and its EWG subsidiaries, as well as to PSEG Nuclear, PSE&G and PSEG Services. PSEG Power charges its affiliates a blended hourly rate that recovers the fully allocated cost of providing these services. PSEG Power charges PSE&G approximately \$3.4 million on an annual basis for the services it provides to PSE&G. PSEG Power charges PSEG Fossil’s EWG subsidiaries approximately \$150,000 on an annual basis for the services it provides to these entities. After the Exelon Generation Restructuring, PSEG Power will be part of Exelon Generation. Thus, Applicants request authorization for Exelon Generation to provide these services, at cost, to other Exelon companies, including, but not limited to, PSE&G, Exelon BSC, ComEd and PECO.
- d) Peak Shaving Services. To facilitate PSEG ER&T’s provision of BGSS to PSE&G, PSE&G provides a peaking natural gas supply to PSEG ER&T from three Liquefied Propane Air (“LPA”) Plants and one Liquefied Natural Gas (“LNG”) Plant. The LPA and LNG peaking supplies are economical alternatives to gas supply contracts for very short periods of time. PSE&G charges PSEG ER&T for all labor, material and other costs that are required to operate and maintain the facilities along with a carrying cost for the return on and depreciation of the investment. PECO may enter into similar arrangements with Exelon Generation regarding similar gas peak facilities owned by it. Applicants request authorization for PSE&G to provide these peak shaving services to Exelon Generation, as successor to PSEG ER&T and for PECO to provide similar peak shaving services to Exelon Generation, in the event PECO enters into similar arrangements with Exelon Generation.

#### J. Issuance of Common Stock in the Merger

Exelon requests approval to issue that number of shares of its common stock necessary to comply with its obligations under the Merger Agreement. Exelon expects that it will issue approximately 341 million shares of common stock to the former holders of PSEG common stock in the Merger. This includes approximately 14 million shares of common stock, or options on its common stock, Exelon will be required to issue at the consummation of the Merger to satisfy the obligations under various PSEG stock option and employee benefit plans.

Upon completion of the Merger, each outstanding option to purchase shares of PSEG common stock will be assumed by Exelon and substituted with an option to purchase shares of Exelon common stock, exercisable on generally the same terms and conditions that applied before the Merger. The number of shares of Exelon common stock subject to the substitute Exelon stock option will equal the number of shares of PSEG common stock subject to the PSEG stock option immediately prior to completion of the Merger, multiplied by the exchange ratio, rounded down to the nearest whole share. The per share exercise price of each substitute Exelon stock option will equal the exercise price of the PSEG stock option immediately prior to completion of the Merger divided by the exchange ratio, rounded up to the nearest whole cent. In addition, upon completion of the Merger, Exelon will assume all PSEG equity-based awards and substitute them with equity-based awards with respect to shares of Exelon common stock on generally the same terms and conditions that applied before completion of the Merger. The number of shares of Exelon common stock issuable under those awards, and the exercise prices for those awards, will be adjusted to take into account the exchange ratio (1.225) in the Merger.

K. PSEG Indebtedness Assumed

As a consequence of the Merger and the Exelon Generation Restructuring, all the existing consolidated indebtedness of PSEG will become consolidated indebtedness of Exelon. As the surviving entity in the Merger, Exelon will become the successor obligor on all outstanding indebtedness directly issued by PSEG. Further, subject to receipt of the appropriate consents, upon the Exelon Generation Restructuring, indebtedness and obligations of PSEG Power, PSEG Nuclear, PSEG Fossil and PSEG ER&T will become obligations of Exelon Generation. Prior to the closing of the Merger, PSEG Power's debt holders will be solicited for consent to amendments to certain of its existing debt instruments to reflect the changes in credit profile and other circumstances that will result from the assumption by Exelon Generation of PSEG Power indebtedness.<sup>26</sup>

Exelon will not legally assume or become successor obligor on any outstanding indebtedness of PSEG system companies, except (as noted above) for PSEG indebtedness for which Exelon is successor obligor. Exelon may issue guaranties on behalf of former PSEG system companies subject to the limitations on guaranties contained in the 2004 Financing Order, modified as described below. Likewise, except for the obligations of PSEG Power, PSEG Nuclear, PSEG Fossil and PSEG ER&T for which Exelon Generation becomes successor obligor in the Generation Restructuring, Exelon Generation will not legally assume any outstanding indebtedness of any PSEG system company. Exelon Generation may issue guaranties on behalf of former PSEG system companies subject to the limitations on guaranties contained in the 2004 Financing Order, modified as described below.

Filed herewith as Exhibit G-5 are descriptions of all outstanding indebtedness and obligations of PSEG that are expected to become consolidated indebtedness of Exelon following the Merger.<sup>27</sup> Filed as Exhibit G-6 is a description of all existing inter-company guaranties in the PSEG system that will remain in place following the Merger.<sup>28</sup>

Applicants seek approval to the extent required for the consolidation of indebtedness, or in the case of Exelon and Exelon Generation, becoming the successor obligor under the indebtedness, and continuation of inter-company guaranties, as described above. Applicants further request authority to continue existing financing arrangements, guarantees and hedging arrangements, as well as any transactions undertaken to extend the terms of or replace, refund or refinance existing obligations and the issuance of new obligations in exchange for existing obligations, provided in each case that the issuing entity's total capitalization is not increased as a result of such financing transaction except as permitted by the 2004 Financing Order modified as discussed below.

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<sup>26</sup> For purposes of the Securities Act of 1933, the assumption by Exelon Generation of the obligations of PSEG Power which have been the subject of changed terms by reason of the consent solicitation may be considered the offering of new securities by Exelon Generation that requires registration on an S-4 Registration Statement. However, as a matter of corporate law, the intention is that Exelon Generation will become the successor obligor on the obligations, as amended, by operation of law in the Exelon Generation Restructuring.

<sup>27</sup> Applicants will update this exhibit to reflect changes that may occur prior to the issuance of an order in this proceeding.

<sup>28</sup> In addition, Exelon will increase its consolidated indebtedness by approximately \$3.2 billion as a result of the outstanding consolidated obligations of PSEG Holdings, the non-utility subsidiary of PSEG which will become a first tier subsidiary of Exelon. These obligations are included in the calculations of the pro forma post-Merger capitalization of Exelon. All such obligations would have been exempt from the requirement of Commission approval under Rule 52(b) if issued by a subsidiary of a registered holding company so no approval for their assumption is sought in this proceeding.

L. Modifications to 2004 Financing Order

1. The 2004 Financing Order

On April 1, 2004, Exelon received approval from the Commission in the 2004 Financing Order (Docket No. 70-10189) to engage in certain financing transactions. The 2004 Financing Order authorized, through April 15, 2007, certain financing transactions, including the issuance of common stock, preferred securities, equity-linked securities, long-term debt and short-term debt in an aggregate amount not to exceed \$8.0 billion above the amount outstanding for Exelon and Exelon Generation at December 31, 2003, with no separate sublimit for short-term debt.<sup>29</sup> The 2004 Financing Order also authorized the use of up to \$4 billion of the proceeds of financings for investments in EWGs and FUCOs, and reserved jurisdiction over a request to use an additional \$3 billion of the proceeds of financings for investments in EWGs and FUCOs.

Because the 2004 Financing Order did not contemplate a transaction of the magnitude of the current Merger, Exelon is requesting, as noted in Item 1. J. above, approval for the issuance of its common stock in the Merger and related to stock options and employee plans. In addition, certain modifications to the 2004 Financing Order are necessary to accommodate the addition of the PSEG system into the Exelon system. Except for the issuance of common stock in the Merger and the specific modifications listed below, however, Exelon is not seeking any changes to the approvals granted in the 2004 Financing Order.

In particular, Exelon is not proposing to increase the authorized amount of new financing it will be permitted above the existing authorized \$8 billion. As noted in the 2004 Financing Order: “Applicants state that [the \$8 billion External Limit] does not include the refunding or replacement of securities where capitalization is not increased from that in place at [a specified date]. Applicants state that any refunding or replacement of securities where capitalization is not increased from that in place at [the specified date] will be through the issuance of securities of the type authorized in [the 2004 Financing Order].” Applicants request that the base level of capitalization, against which the authorized increase of \$8 billion will be measured, will be adjusted to be the pro forma capitalization of Exelon or Exelon Generation, as the case may be, as of the date of consummation of the Merger and Exelon Generation Restructuring.

Exelon proposes that the 2004 Financing Order will remain in full force and effect except to the extent expressly modified by the Commission’s order in this matter. Except as specifically modified herein, all parameters, restrictions and conditions imposed in the 2004 Financing Order will remain in effect.

2. Requested Modifications or Extensions of 2004 Financing Order<sup>30</sup>

Applicants seek approval for the following modifications to the 2004 Financing Order:

- i. The definition of “Utility Subsidiaries” under the 2004 Financing Order be amended to include PSE&G, and the definition of “Nonutility Subsidiaries” be amended to include all non-utility subsidiary companies of PSEG.<sup>31</sup>

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<sup>29</sup> The 2004 Financing Order replaced the approval granted by the Commission in Docket No. 70-9693 to engage in certain financing transactions pursuant to orders dated November 2, 2000 (Holding Co. Act Release No. 35-27266) and December 8, 2000 (Holding Co. Act Release No. 35-27296) (collectively, the “2000 Orders”) that expired on March 31, 2004. The 2000 Orders had authorized up to \$4.0 billion of financing.

<sup>30</sup> Capitalized terms used in this Item 1.L. and not otherwise defined herein shall have the meanings assigned to such terms in the 2004 Financing Order.

<sup>31</sup> The authority under the 2004 Financing Order, as it relates to non-utilities, applies to “all other direct and indirect subsidiaries that Exelon may hereinafter form or acquire in accordance with a Commission order or otherwise in accordance with the Act or a rule promulgated thereunder.” By



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- ii. The Utility Money Pool authority be amended to permit: (a) PSE&G to become a participant in the Utility Money Pool, with a participation limit for borrowing of \$1 billion, and (b) Exelon Generation to borrow up to \$1.5 billion (an increase from \$1 billion) at any one time outstanding from the Utility Money Pool.<sup>32</sup>
- iii. To authorize the establishment of a Nonutility Money Pool. <sup>33</sup>
- iv. To add authority, to the extent not exempt under Rule 52, for PSE&G to enter into Hedge Instruments and Anticipatory Hedges of the same type and under the same conditions as authorized under the 2004 Financing Order.
- v. To add authority for Exelon to enter into guarantees to or on behalf of the PSEG companies, and PSE&G to enter into Non-Exempt Utility Guarantees, all under the terms and conditions authorized under the 2004 Financing Order.
- vi. To increase to \$8 billion (from the current \$6 billion) the aggregate authority for Exelon and Exelon Generation to issue guaranties.
- vii. To add authority for PSE&G to pay dividends out of capital to the extent of PSE&G's retained earnings immediately prior to the Merger where such retained earnings are transferred to paid in capital in accordance with purchase accounting.
- viii. To add authority for Delivery to pay dividends out of capital to the extent of PSE&G's retained earnings immediately prior to the Merger where such retained earnings are transferred to paid in capital in accordance with purchase accounting.
- ix. To add authority for Exelon Generation to pay dividends out of capital to the extent of the retained earnings of PSEG Power, PSEG Nuclear, PSEG Fossil and PSEG ER&T immediately prior to the Merger where such retained earnings are transferred to paid in capital in accordance with purchase accounting.
- x. To add authority for Ventures to pay dividends out of capital to the extent of the retained earnings of (A) PSEG Power, PSEG Nuclear, PSEG Fossil and PSEG ER&T immediately prior to the Merger where such retained earnings are transferred to paid in capital in accordance with purchase accounting and (B) PSEG Holdings immediately prior to the Merger where such retained earnings are transferred to paid in capital in

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extending the authorizations of the 2004 Financing Order to the new, former PSEG, non-utility subsidiaries acquired in the Merger, such subsidiaries will be authorized, in each case subject to the restrictions and conditions of the 2004 Financing Order, inter alia to: (i) create and enter into transactions with Financing Subsidiaries, (ii) issue intra-system advances and guarantees, to the extent not exempt pursuant to Rules 45(b) and 52, to or on behalf of other Non-Utility Subsidiaries and others, (iii) benefit from the issuance by Exelon of guaranties approved by the 2004 Financing Order, (iv) participate in the Nonutility Money Pool, subject to the release of jurisdiction over the formation of the Nonutility Money Pool as specified in the 2004 Financing Order, (v) pay dividends out of capital or unearned surplus, (vi) enter into Non-Exempt Non-Utility Guaranties (as defined in the 2004 Financing Order), and (vii) change the par value, or change between par value and no-par stock, or change the form of such equity from common stock to limited partnership or limited liability company interests or similar instruments, or from such instruments to common stock, without additional Commission approval.

<sup>32</sup> The 2004 Financing Order authorized Unicom Investments, Inc. to participate in the Utility Money Pool as a lender only. Unicom Investments, Inc. has been reorganized and is now UII, LLC.

<sup>33</sup> The Commission reserved jurisdiction over the establishment of a Nonutility Money Pool in the 2004 Financing Order.

accordance with purchase accounting in the event PSEG Holdings becomes a subsidiary of Ventures rather than a direct subsidiary of Exelon. <sup>34</sup>

- x. To increase Exelon's authority to pay dividends out of capital by the amount of PSEG's retained earnings immediately prior to the Merger where such retained earnings are transferred to paid in capital in accordance with purchase accounting. <sup>35</sup>
- xi. To add authority for Exelon, Exelon Generation, Ventures, Delivery and PSE&G to declare and pay dividends out of current earnings before any deduction resulting from impairment of goodwill or other intangibles recognized as a result of the Merger.<sup>36</sup>
- xii. To increase to 75 million shares (from 42 million shares approved by the 2004 Financing Order) the number of shares of Exelon common stock that may be issued, following the Merger, under Exelon's dividend reinvestment plan, employee stock ownership plan, certain incentive compensation plans and certain other employee benefit plans, including PSEG plans assumed as part of the Merger, as described below (collectively, the "Plans").
- xiii. To increase the amount of financing proceeds that may be used for investments in EWGs and FUCOs such that "aggregate investment" within the meaning of Rule 53 does not exceed \$8.0 billion (an increase from \$4 billion currently authorized). <sup>37</sup>
- xiv. To provide that the base capitalization against which the limit of additional financing of \$8 billion authorized in the 2004 Financing Order is measured shall be the pro forma capitalization of Exelon or Exelon Generation as the case may be, as of the date of consummation of the Merger and the Exelon Generation Restructuring. Financial information given herein as to the pro forma effect of the Merger is as of the date indicated and is illustrative only of the actual opening balance sheet of Exelon post-Merger that will be used for this purpose. As required under the 2004 Financing Order, all financing where capitalization is not increased from that in place at the Merger date will be through the issuance of securities of the type authorized in the 2004 Financing Order, modified as described herein, and subject to the Financing Parameters (as defined in the 2004 Financing Order). <sup>38</sup>

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<sup>34</sup> Such dividend authority is requested in the event that Exelon were to do an internal restructuring to move PSEG Holdings, a non-utility subsidiary to be a subsidiary of Ventures rather than as a direct first tier subsidiary of Exelon as is contemplated to be the structure immediately following the Merger. No further approval under the Act would be required for such a restructuring for PSEG Holdings under the authorization granted in Holding Co. Act Release No. 27545 (June 27, 2002).

<sup>35</sup> This new approval will not affect the authority of ComEd and Exelon to pay dividends out of capital up to \$500 million as approved in the 2004 Financing Order.

<sup>36</sup> Applicants ask the Commission to reserve jurisdiction over this request pending completion of the record.

<sup>37</sup> In the 2004 Financing Order, the Commission authorized up to \$4 billion in File No. 70-10189.

<sup>38</sup> The capitalization base for Exelon and Exelon Generation, respectively, will be measured according to the balance sheet prepared to reflect consummation of the Merger, by taking the post-Merger outstanding common stock or membership interests (excluding retained earnings), preferred and preference securities, long-term debt, short-term debt, current portion of long-term debt and securitization obligations, as applicable, of Exelon and Exelon Generation. Increases in capitalization through securities issuances of Exelon and Exelon Generation, as the case may be, will count towards the \$8 billion limit; but increases in consolidated capitalization resulting from exempt securities issuances (such as issuances of state commission approved securities by the Retail Utility Subsidiaries) and increases to retained earnings will

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- xvi. To add authority for Exelon Generation to engage in tax-exempt financing pursuant to sale or lease transactions of its utility assets as described below.
- xvii. To amend the expiration of the authority granted in the 2004 Financing Order so that “Authorization Period” shall mean the period ending the later of (A) April 15, 2009 or (B) the 15th day of the month that is 40 months following the month in which the order in this matter is entered (an extension from April 15, 2007).

### 3. Parameters for Financing Authorization.

The proposed financing transactions will be subject to the Financing Parameters, as set forth in the 2004 Financing Order, without modification. Accordingly the limits on effective cost of money on financings, maturity, issuance expense and use of proceeds shall be unchanged. The 30% common equity condition shall apply to PSE&G as a “Utility Subsidiary.”<sup>39</sup> The 30% Condition will be unchanged for Exelon, ComEd, PECO and Exelon Generation. Finally, the Investment Grade Condition (as defined in the 2004 Financing Order) will apply to PSE&G to the extent it requires Commission approval for any securities issuance.<sup>40</sup>

### 4. Filing of Certificates of Notification

Exelon currently files quarterly reports in connection with the 2004 Financing Order. Applicants propose to continue to file Rule 24 certificates containing the information required by the 2004 Financing Order for the post-Merger Exelon system, including equivalent information relating to former PSEG system subsidiaries.

### 5. Increase in Shares for Plans; New and Adopted Plans

The 2004 Financing Order authorized Exelon to issue and/or acquire in open market transactions, or by some other method which complies with applicable law and Commission interpretations then in effect, up to 42 million shares of Exelon common stock (adjusted for a stock split) under Exelon’s dividend reinvestment plan, employee stock ownership plan, certain incentive compensation plans and certain other employee benefit plans. Such issuances are in addition to common stock that may be issued under the general financing authorization of \$8 billion. Exelon proposes to increase the number of shares authorized for this purpose to 75 million to accommodate two new Exelon plans and the former PSEG plans that will become Exelon’s responsibility following the Merger. Exelon stock will be used, following the Merger, to satisfy requirements under the PSEG plans to provide common stock. These plans are summarized below.

#### Exelon Corporation 2006 Long-Term Incentive Plan

The purpose of the Exelon Corporation 2006 Long-Term Incentive Plan (the “Incentive Plan”) is to encourage designated key employees of Exelon and its subsidiaries to contribute materially to the growth of the company, thereby benefiting Exelon’s shareholders. The Incentive Plan authorizes the following types of grants singly, in combination or in tandem: non-qualified stock options, incentive stock options,

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not reduce available financing. Retirement or redemption of securities or reductions in equity through stock buybacks by Exelon or Exelon Generation, as the case may be, in each case with available funds will correspondingly increase available financing.

<sup>39</sup> Under the 2004 Financing Order, the consequence of failing to satisfy the 30% Condition when required is that the Applicant issuer would not be authorized to issue securities in a transaction subject to Commission approval except for securities which would result in an increase in such common equity percentages.

<sup>40</sup> PSE&G receives approval from the NJPBU for all of its securities issuances, both long-term and short-term and, therefore, is not seeking Commission approval for any exempt securities issuances hereunder.

stock appreciation rights, restricted stock and restricted stock units, including performance share awards and performance units. 41

#### Exelon Corporation Employee Stock Purchase Plan For Unincorporated Subsidiaries

The purposes of the Exelon Corporation Employee Stock Purchase Plan For Unincorporated Subsidiaries (the “Purchase Plan”) are to provide employees of participating subsidiaries added incentive to remain employed and promote Exelon’s best interests by permitting these employees to purchase shares of Exelon common stock at below-market prices through payroll deductions on substantially the same basis as employees who participate in Exelon’s qualified employee stock purchase plan. 42

#### Public Service Enterprise Group Incentive Plans

The purposes of the Public Service Enterprise Group Incorporated 1989 Long-Term Incentive Plan (the “1989 Plan”), the Public Service Enterprise Group Incorporated 2001 Long-Term Incentive Plan (the “2001 Plan”), and the Public Service Enterprise Group Incorporated 2004 Long-Term Incentive Plan (the “2004 Plan,” and together with the 1989 Plan and 2001 Plan, the “PSEG Incentive Plans”) are to promote the growth and profitability of the company and its subsidiaries by enabling them to attract and retain the best available personnel for positions of substantial responsibility; to motivate participants, by means of appropriate incentives, to achieve long-range goals; to provide incentive compensation opportunities that are competitive with those of other similar companies; and to align participants’ interests with those of the company’s shareholders and thereby promote the long-term financial interest of the company and its subsidiaries, including the growth in value of the company’s equity and enhancement of long-term shareholder return. Outstanding, unexercised award grants under the 1989 Plan and the 2001 Plan are nonqualified stock options. Award grants under the 2004 Plan may be stock options, stock appreciation rights, restricted stock, stock units, performance shares, cash awards or any combination thereof. 43

#### Public Service Enterprise Group Incorporated Stock Plan for Outside Directors (the “Directors’ Plan”) 44

The Directors’ Plan provides annual grants (currently, 1,000 shares) of restricted stock to outside directors for service on PSEG’s Board of Directors. These shares of restricted stock vest upon the director’s retirement from the Board following his/her 70th birthday.

#### Public Service Enterprise Group Incorporated Directors’ Compensation Program (the “Directors’ Compensation Program”) 45

Under the Directors’ Compensation Program, one-half of each outside director’s annual retainer (the total amount of which is currently \$50,000) is paid in shares of PSEG common stock.

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41 The Incentive Plan is incorporated by reference to Annex H to Exelon’s Registration Statement on Form S-4 filed February 10, 2005 in File No. 333-122704, which is included as Exhibit C hereto.

42 The Purchase Plan is incorporated by reference to Annex I to Exelon’s Registration Statement on Form S-4 filed February 10, 2005 in File No. 333-122704, which is included as Exhibit C hereto.

43 The 1989 Plan is incorporated by reference to Exhibit 10 to the PSEG Quarterly Report on Form 10-Q for the quarter ended September 30, 2002, File No. 001-09120. The 2001 Plan is incorporated by reference to Exhibit 10a(7) to the PSEG Annual Report on Form 10-K for the year ended December 31, 2000, File No. 001-09120. The 2004 Plan is incorporated by reference to Exhibit 10a(21) to the PSEG Annual Report on Form 10-K for the year ended December 31, 2003, File No. 001-09120.

44 The Directors’ Plan is incorporated by reference to Exhibit 10a(17) to the PSEG Annual Report on Form 10-K for the year ended December 31, 2002, File No. 001-09120.

45 The Directors’ Compensation Program is incorporated by reference to Exhibit 10a(20) to the PSEG Annual Report on Form 10-K for the year ended December 31, 2002, File No. 001-09120.

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Public Service Enterprise Group Incorporated Deferred Compensation Program for Directors (the “Directors’ Deferred Plan”) <sup>46</sup>

PSEG outside directors who elect to defer a portion of their fees under the Directors’ Deferred Plan may elect to have all or a portion of the amounts deferred treated as if they were invested in PSEG common stock (“Phantom Stock”). Any shares distributed under the Directors’ Deferred Plan are purchased on the open market for that purpose.

Public Service Enterprise Group Incorporated Employee Stock Purchase Plan (the “ESPP”) <sup>47</sup>

The ESPP allows all employees of PSEG and its participating subsidiaries to purchase shares of PSEG common stock through payroll deduction at a 5% discount from market price.

### 6. Nonutility Money Pool

In the 2004 Financing Order, the Commission noted that Exelon requested authority to establish the Nonutility Money Pool to be operated on the same terms and conditions as the Utility Money Pool, except that Exelon funds made available to the Money Pools would be made available to the Utility Money Pool first to the extent it is operated and needed and thereafter to the Nonutility Money Pool. None of the Utility Subsidiaries will be a participant in the Nonutility Money Pool, and no loans through the Nonutility Money Pool can be made to, and no borrowings through the Nonutility Money Pool can be made by, Exelon, Ventures or Delivery. <sup>48</sup>

Furthermore, other Non-Utility Subsidiaries (i.e., Non-Utility Subsidiaries that are not currently anticipated to participate in the Non-Utility Money Pool and such that are acquired or formed in the future, collectively, “Other Non-Utility Subsidiaries”) may lend funds to and borrow from the Non-Utility Money Pool, when established, without the need for additional authority from the Commission. <sup>49</sup>

### 7. Exelon Generation Tax-Exempt Financing

Exelon Generation may be able to incur lower financing costs by taking advantage of tax-exempt financing where a governmental entity, such as a county or a state authority or agency, issues securities and lends the proceeds to Exelon Generation or where Exelon Generation sells or leases an undivided interest in one or more of its generating facilities and related assets to the governmental entity and leases back or purchases the assets and operates such assets as before. Exelon Generation’s payments to the governmental entity under such arrangements will provide payments of principal, interest and any other amounts due under the bonds issued by the governmental entity. In connection with such transactions, Exelon Generation seeks approval for the sale, lease or other transfer and lease back, purchase or other operating arrangement of generating and related assets that constitute utility assets under the Act. Such sale, lease or other transfer and lease back, purchase or other operation arrangement would be solely for financing purposes and would not affect the operation of the assets. This request does not seek to increase the amount of authorized financing and any financing under this authority would have to come within the

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<sup>46</sup> The Directors’ Deferred Plan is incorporated by reference to Exhibit 10a(1) to the PSEG Annual Report on Form 10-K for the year ended December 31, 1999, File No. 001-09120.

<sup>47</sup> The ESPP is incorporated by reference to the PSEG Registration Statement on Form S-8, No. 333-106330 filed on June 20, 2003.

<sup>48</sup> To the extent necessary, Applicants request that the Commission release jurisdiction over the formation of the Nonutility Money Pool.

<sup>49</sup> See *NiSource, Inc.*, Holding Co. Act Release No. 27789 (December 30, 2003).

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limits approved in the 2004 Financing Order, as it may be modified herein, but is solely to cover the technical disposition and acquisition of utility assets that is involved in this type of financing.<sup>50</sup>

### 8. Pro Forma Financial Information

Exelon is a financially sound company, and following the Merger will remain sound, with investment grade ratings from major rating agencies. The Exelon system's ratings as of December 31, 2004 from Standard & Poor's Corporation ("S&P"), Moody's Investors Service ("Moody's") and Fitch Investors Service, Inc. ("Fitch"), as well as the ratings of PSE&G at that date, are set forth in the following table. Exelon expects that following the Merger, it will maintain investment grade ratings at Exelon and each of the Utility Subsidiaries with respect to each type of obligation rated.<sup>51</sup>

Company and type of rating	S&P	Moody's	Fitch
Exelon			
ÿ Corporate	A-	NR	NR
ÿ Unsecured	BBB+	Baa2	BBB+
ÿ Commercial Paper	A-2	P-2	F2
ComEd			
ÿ Corporate	A-	NR	NR
ÿ Secured	A-	A3	A-
ÿ Unsecured	BBB+	Baa1	BBB+
ÿ Preferred Stock/ Trust Securities	BBB	Baa3	BBB
ÿ Commercial Paper	A-2	P-2	F2
ÿ Transitional Trust Notes <sup>52</sup>	AAA	Aaa	AAA

<sup>50</sup> The Commission has approved this type of financing on numerous occasions. E.g., *Appalachian Power Co., Holding Co.* Act Release No. 27283 (November 27, 2000).

<sup>51</sup> The Indiana Company was created for historical reasons and does not currently have any publicly issued securities or securities ratings.

<sup>52</sup> These are obligations of a special purpose subsidiary of ComEd.

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Company and type of rating	S&P	Moody's	Fitch
<b>PECO</b>			
Y Corporate	A-	NR	NR
Y Secured	A-	A2	A
Y Unsecured	BBB+	A3	A-
Y Preferred Stock	BBB	Baa2	BBB+
Y Trust Securities	BBB	Baa1	BBB+
Y Commercial Paper	A-2	P-1	F1
Y Transitional Trust Notes <sup>53</sup>	AAA	Aaa	AAA
<b>Exelon Generation</b>			
Y Corporate	A-	Baa1	—
Y Unsecured	A-	Baa1	BBB+
Y Commercial Paper	A-2	P-2	F2
<b>PSE&amp;G</b>			
Y Corporate	BBB	NR	NR
Y Secured	A-	A3	A
Y Unsecured	BBB-	Baa1	A-
Y Preferred Stock	BB+	Baa3	BBB+
Y Commercial Paper	A-3	P-2	F-2
Y PSE&G Transition Funding Notes	AAA	Aaa	AAA

NR=not rated

Exelon also has a sound capital structure. At September 30, 2004, Exelon's consolidated common equity as a percentage of consolidated capitalization was 40.18%. <sup>54</sup> Details regarding Exelon's consolidated capitalization are shown in the table in Item 1.B.4. above. Following the Merger, Exelon will

<sup>53</sup> These are obligations of a special purpose subsidiary of PECO.

<sup>54</sup> Consolidated capitalization includes securitization obligations. If securitization obligations were excluded in the calculation, Exelon's equity component of consolidated capitalization would be 50.10% at September 30, 2004.

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continue to have sound capitalization. The following shows the pro forma post-Merger Exelon consolidated capitalization as of September 30, 2004.

**EXELON CORPORATION**  
**PRO FORMA CONDENSED CONSOLIDATED CAPITAL STRUCTURE**  
(Dollars in Millions)  
As of September 30, 2004

	Exelon		Post-Merger Pro Forma	
	Amount	Capital Structure Percentage	Amount	Capital Structure Percentage
Common Equity (includes Retained Earnings of \$3,256)	\$ 9,546	40.18%	\$ 22,189	42.89%
Minority Interest	53	0.22%	53	0.10%
Preferred and Preference Stock	632	2.66%	1,913	3.70%
Securitization Obligations	4,978	20.95%	7,449	14.40%
Long-Term Debt	7,814	32.89%	18,250	35.27%
Current Maturities of Long-Term Debt	410	1.73%	901	1.74%
Total Long-Term Debt	8,224	34.62%	19,151	37.01%
Short-Term Debt	325	1.37%	985	1.90%
Total Capital Structure	<u>\$ 23,758</u>	<u>100.00%</u>	<u>\$ 51,740</u>	<u>100.00%</u>

As part of the Exelon Generation Restructuring, PSEG Power, PSEG Nuclear, PSEG Fossil and PSEG ER&T will become a part of Exelon Generation, which will continue to have a strong capitalization following those transactions. As a result of the accounting for the Merger, however, the retained earnings of the PSEG subsidiaries combining with Exelon Generation will be eliminated. Accordingly, as noted above, Applicants request that Exelon Generation be authorized to pay dividends out of capital to the extent of the pre-Merger retained earnings of PSEG Power, PSEG Nuclear, PSEG Fossil and PSEG ER&T.



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The following shows the pro forma post-Merger Exelon Generation consolidated capitalization as of September 30, 2004.

**EXELON GENERATION**  
**PRO FORMA CONDENSED CONSOLIDATED CAPITAL STRUCTURE**  
(Dollars in Millions)  
As of September 30, 2004

	Exelon Generation		Post-Merger Pro Forma	
	Amount	Capital Structure Percentage	Amount	Capital Structure Percentage
Common Equity (includes Undistributed Earnings of \$1,031)	\$ 3,330	56.54%	\$ 10,222	62.12%
Minority Interest	55	0.93%	55	0.33%
Long-Term Debt	2,444	41.49%	6,083	36.97%
Current Maturities of Long-Term Debt	61	1.04%	95	0.58%
Total Long-Term Debt	2,505	42.53	6,178	37.55%
Short-Term Debt				
<b>Total Capital Structure</b>	<b>\$ 5,890</b>	<b>100.00%</b>	<b>\$ 16,455</b>	<b>100.00%</b>

PSE&G has a sound capital structure, with capitalization at December 31, 2004 as follows:

**PUBLIC SERVICE ELECTRIC AND GAS COMPANY**  
**CONDENSED CONSOLIDATED CAPITAL STRUCTURE**

(Dollars in Millions)  
As of December 31, 2004

**Consolidated Capitalization**

	Amount	Capital Structure Percentage
Common Equity (includes Retained Earnings of \$656)	\$ 2,700	33.61%
Preferred and Preference Stock	80	1.00%
Securitization Obligations	2,085	25.96%
Long-Term Debt	2,938	36.57%
Current Maturities of Long-Term Debt	125	1.56%
Total Long-Term Debt	3,063	38.13%
Short-Term Debt	105	1.30%
<b>Total Capital Structure</b>	<b>\$ 8,033</b>	<b>100.00%</b>

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The following shows the pro forma post-Merger PSE&G consolidated capitalization as of September 30, 2004.

### **PUBLIC SERVICE ELECTRIC AND GAS COMPANY PRO FORMA CONDENSED CONSOLIDATED CAPITAL STRUCTURE**

(Dollars in Millions)  
As of September 30, 2004

	PSE&G		Post-Merger Pro Forma	
	Amount	Capital Structure Percentage	Amount	Capital Structure Percentage
Common Equity (includes Retained Earnings of \$592)	\$ 2,637	31.85%	\$ 6,000	50.04%
Preferred and Preference Stock	80	0.97%	80	0.67%
Securitization	2,124	25.65%	2,299	19.17%
Long-Term Debt	2,936	35.46%	3,053	25.46%
Current Maturities of Long-Term Debt	218	2.63%	273	2.28%
Total Long-Term Debt	3,154	38.09%	3,326	27.74%
Short-Term Debt	285	3.44%	285	2.38%
Total Capital Structure	<u>\$ 8,280</u>	<u>100.00%</u>	<u>\$ 11,990</u>	<u>100.00%</u>

#### **Item 2. Fees, Commissions And Expenses.**

The fees, commissions and expenses to be paid or incurred, directly or indirectly, in connection with the Merger, including the solicitation of proxies, registration of securities of Exelon under the Securities Act of 1933, and other related matters, are estimated to be approximately \$70 million, as discussed in Item 3.B.2.

#### **Item 3. Applicable Statutory Provisions.**

##### A. Applicable Provisions.

Sections 6(a), 7, 8, 9, 10, 12, 13, 32 and 33 of the Act and the rules thereunder are considered applicable to the proposed transactions.

To the extent that the proposed transactions are considered by the Commission to require authorizations, exemption or approval under any section of the Act or the rules and regulations thereunder other than those set forth above, request for such authorization, exemption or approval is hereby made.

##### B. Section 10 of the Act.

Section 10(b) provides that, if the requirements of Section 10(f) are satisfied, the Commission shall approve an acquisition under Section 9(a) unless the Commission finds that:

(i) such acquisition will tend towards interlocking relations or the concentration of control of public utility companies, of a kind or to an extent detrimental to the public interest or the interests of investors or consumers;

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(ii) in case of the acquisition of securities or utility assets, the consideration, including all fees, commissions, and other remuneration, to whomsoever paid, to be given, directly or indirectly, in connection with such acquisition is not reasonable or does not bear a fair relation to the sums invested in or the earning capacity of the utility assets to be acquired or the utility assets underlying the securities to be acquired; or

(iii) such acquisition will unduly complicate the capital structure of the holding-company system of the applicant or will be detrimental to the public interest or the interests of investors or consumers or the proper functioning of such holding-company system.

Section 10(c) of the Act provides that, notwithstanding the provisions of Section 10(b), the Commission shall not approve:

(i) an acquisition of securities or utility assets, or of any other interest, which is unlawful under the provisions of Section 8 or is detrimental to the carrying out of the provisions of Section 11; or

(ii) the acquisition of securities or utility assets of a public utility or holding company unless the Commission finds that such acquisition will serve the public interest by tending towards the economical and the efficient development of an integrated public utility system.

As set forth more fully below, the Merger complies with all of the applicable provisions of Section 10 of the Act and should be approved by the Commission.

### 1. Section 10(b)(1).

The standards of Section 10(b)(1) are satisfied because the proposed Merger will not “tend towards interlocking relations or the concentration of control of public utility companies, of a kind or to an extent detrimental to the public interest or the interests of investors or consumers.” By its nature, any merger results in new links between previously unrelated companies. The Commission has recognized, however, that such interlocking relationships are permissible in the interest of efficiencies and economies. See *Northeast Utilities*, 50 S.E.C. 427, 443 (1990), *as modified*, 50 S.E.C. 511 (1991), *aff’d sub nom. City of Holyoke v. SEC*, 972 F.2d 358 (D.C. Cir. 1992) (finding that interlocking relationships are necessary to integrate the two merging entities). The links that will be established as a result of the Merger are not the types of interlocking relationships targeted by Section 10(b)(1), which was primarily aimed at preventing uneconomical combinations.<sup>55</sup> In contrast, the Merger will achieve various operating synergies. Among other things, the PSEG subsidiaries will enter into contractual arrangements with other Exelon system companies under which various administrative and management services will be provided. Because substantial benefits will accrue to the public, investors and consumers from the affiliation of Exelon and PSEG, whatever interlocking relationships may arise from the combination are not detrimental.

Under the Section 10(b)(1) concentration of control test, the Commission “considers various factors, including the size of the resulting system and the competitive effects of the acquisition.” *Entergy Corp., Holding Co.* Act Release No. 25952 (Dec. 17, 1993), *request for reconsideration denied*, Holding Co. Act Release No. 26037 (Apr. 28, 1994), *remanded sub nom. Cajun Elec. Power Coop. Inc. v. SEC*, 1994 WL 704047 (D.C. Cir. Nov. 16, 1994) *on remand*, *Entergy Corp., Holding Co.* Act Release No. 26410 (Nov. 17, 1995) (citations omitted). These factors are discussed below.

#### (a) Size.

As the Commission has recognized, Section 10(b)(1) does not “impose any precise limits on holding company growth.” *American Electric Power Company, Inc.*, 46 S.E.C. 1299, 1307 (1978)

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<sup>55</sup> See Section 1(b)(4) of the Act (finding that the public interest and interests of consumers and investors are adversely affected “when the growth and extension of holding companies bears no relation to the economy of management and operation or the integration and coordination of related operating properties . . .”).

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("AEP"). The Commission has rejected a mechanical size analysis under Section 10(b)(1) in favor of assessing the size of the resulting system as it relates to the efficiencies and economies that can be achieved through the integration and coordination of the new system's utility operations. *Entergy, supra* (rejecting "conclusory assertions that the combined systems would be too large to satisfy [Section 10(b)(1)]" and finding that merger created a "large system, but not one that exceeds the economies of scale of current electrical generation and transmission technology."). Section 10(b)(1) allows the Commission to "exercise its best judgment as to the maximum size of a holding company in a particular area, considering the state of the art and the area or region affected." *AEP, supra*. The Merger will not create a "huge, complex and irrational system" but, rather, will afford the opportunity to achieve economies of scale and efficiencies for the benefit of investors and consumers.

If approved, Exelon will serve approximately 7 million electric customers and 2 million gas customers located primarily in three states. As of September 30, 2004, the combined consolidated assets of Exelon and PSEG totaled approximately \$81 billion and, for the nine months ended September 30, 2004, combined consolidated operating revenues totaled approximately \$19 billion. As of December 31, 2004, the combined owned generating capacity of Exelon and PSEG was approximately 40,363 MW.

The following table shows Exelon's relative size as compared to other registered systems in terms of assets, operating revenues and customers: <sup>56</sup>

System	Total Assets (\$ Millions)	Operating Revenues (\$ Millions)	U.S. Electric Customers (Thousands)
E.ON AG	140,897	58,405	1,208
National Grid Transco plc	57,021	12,531	3,750
Dominion Resources Inc.	44,186	12,078	3,900
American Electric Power Co. Inc.	36,743	14,545	5,013
Southern Company	35,045	11,251	4,136
Exelon (pro forma)	80,865	25,863 <sup>57</sup>	7,300

In *AEP*, the Commission noted that, although the framers of the Act were concerned about "the evils of bigness, they were also aware that the combination of isolated local utilities into an integrated system afforded opportunities for economies of scale, the elimination of duplicate facilities and activities, the sharing of production capacity and reserves and generally more efficient operations... [and] [t]hey wished to preserve these opportunities." *AEP*, 46 S.E.C. at 1309. By virtue of the Merger, Exelon will be in a position to realize precisely these types of benefits. Among other things, the Merger is expected to yield operating cost savings, corporate and administrative savings and purchasing savings, among others. These expected economies and efficiencies from the combined utility operations are described in greater detail in Item 3.B.5 below.

### (b) Concentration of Control.

The Commission's analysis under Section 10(b)(1) also includes a consideration of federal antitrust policies.

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<sup>56</sup> Data derived from U.S. Securities and Exchange Commission, Financial and Corporate Report, *Holding Companies Registered under the Public Utility Holding Company Act of 1935 as of June 1, 2004* (data provided is as of December 31, 2003); Exelon data from Unaudited Pro Forma Combined Condensed Financial Statements included in S-4 Registration Statement filed as Exhibit C hereto.

<sup>57</sup> Nine months ended September 30, 2004, Post-Merger Pro Forma annualized.

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The proposed Merger will increase the total capacity of generation resources owned or controlled by Exelon. To ensure that the combined company does not have market power in any relevant market, Exelon and PSEG have proposed a comprehensive market power mitigation plan designed to address in full FERC's requirements for competitive markets. As part of the plan, the companies have proposed the Generation Divestiture as described in Item 1.H above.

The potential competitive concerns will be considered by other regulators, including the FERC and the Department of Justice. Pursuant to the HSR Act, Exelon and PSEG are required to file with the Antitrust Division Premerger Notification and Report Forms. See 16 C.F.R. Parts 801 through 803. The HSR Act prohibits consummation of the Merger until the statutory waiting period has expired or been terminated. Similarly, the Merger cannot proceed unless and until the FERC has approved the Merger, which will include review of potential competitive concerns pursuant to its authority under Section 203 of the Federal Power Act.

In these circumstances, the Commission has found, and the courts have agreed, that it is appropriate for the Commission to look to the FERC's expertise in operating issues, in determining that the standards of Section 10(b)(1) are met. In this regard, the Court of Appeals for the D.C. Circuit has found:

[W]hen the SEC and another regulatory agency both have jurisdiction over a particular transaction, the SEC may "watchfully defer[]" to the proceedings held before - and the result reached by - that other agency.

*Madison Gas & Electric Co. v. SEC*, 168 F.3d 1337, 1341-42 (D.C. 1999), citing *City of Holyoke Gas & Electric Department v. SEC*, 972 F.2d 358 (D.C. Cir. 1992) (dismissing challenge to order approving merger that asserted Commission could not rely on FERC and state review of competitive effects). Consistent with the foregoing, the Division in its 1995 Report on the Regulation of Public Utility Holding Companies (the "1995 Report") recommended that "the SEC avoid duplicative review of acquisitions and, where possible, defer to the work of other regulators in reviewing acquisitions." 1995 Report at 66.

### 2. Section 10(b)(2).

Section 10(b)(2) of the Act precludes approval of an acquisition if the consideration to be paid in connection with the Merger, including all fees, commissions and other remuneration, is "not reasonable or does not bear a fair relation to the sums invested in or the earning capacity of the utility assets to be acquired or the utility assets underlying the securities to be acquired." The Commission has found "persuasive evidence" that the standards of Section 10(b)(2) are satisfied where, as here, the agreed upon consideration for an acquisition is the result of arms-length negotiations between the managements of the companies involved, supported by an opinion of a financial advisor. See *Entergy Corp.*, 51 S.E.C. 869, 879 (1993); *Southern Company, Holding Co.* Act Release No. 24579 (Feb. 12, 1988).

The consideration paid in the Merger is reasonable for several reasons.

First, the former PSEG shareholders will hold about 32% and the Exelon shareholders will hold approximately 68% of the shares of Exelon following the Merger.

Second, as explained in the joint proxy statement/prospectus (included in Exhibit C hereto) (the "Joint Proxy Statement"), the historical price data for Exelon and PSEG common stock provide support for the consideration of 1.225 shares of Exelon common stock for each share of PSEG common stock.

Third, the merger consideration is the product of extensive and vigorous arm's-length negotiations between Exelon and PSEG. These negotiations were preceded by extensive due diligence, analysis and evaluation of the assets, liabilities and business prospects of each of the respective companies. This process is described in "Background of the Merger" in the Joint Proxy Statement. As recognized by the Commission in *Ohio Power Co., Holding Co.* Act Release No. 16753 (June 8, 1970), prices arrived at through arms-length negotiations are particularly persuasive evidence that Section 10(b)(2) is satisfied.

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Fourth, nationally recognized independent investment bankers have reviewed extensive information concerning Exelon and PSEG, analyzed the merger consideration employing a variety of valuation methodologies, and ultimately opined that the merger consideration is fair to the respective holders of Exelon common stock and PSEG common stock. The investment bankers' analyses are described in detail and their opinions are included in full in the Joint Proxy Statement. The assistance of independent consultants in setting consideration has been recognized by the Commission as evidence that the requirements of Section 10(b)(2) have been met.

Finally, submitting the share issuance for approval by the Exelon shareholders and the Merger for approval by the PSEG shareholders will provide additional assurance that the prices paid are reasonable.

Another consideration under Section 10(b)(2) is the overall fees, commissions and expenses to be incurred in connection with the Merger. Exelon believes that the Merger costs will be reasonable and fair in light of the size and complexity of the proposed Merger, and that the anticipated benefits of the Merger to the public, investors and consumers. *See, e.g., Entergy Corp.*, 51 S.E.C. at 881, n. 63 (fees and expenses of \$38 million, representing approximately 2% of the value of the consideration paid to the shareholders of Gulf States Utilities); *Northeast Utilities*, Holding Co. Act Release No. 25548 (June 3, 1992) (fees and expenses of approximately 2% of the value of the assets to be acquired); and *American Electric Power Company, Inc.*, Holding Company Act Release No. 27186 (June 14, 2000) at n. 40 (total fees, commissions and expenses of approximately \$72.7 million, representing 1.1% of the value of the total consideration paid by American Electric Power to the shareholders of Central and South West Corp.).

The total expenses of the Merger are approximately \$70 million (\$41 million for Exelon and \$29 million for PSEG) which constitute about one half of one percent of the value of the consideration paid by Exelon in the Merger.<sup>58</sup>

Pursuant to an engagement letter dated October 26, 2004, Exelon has agreed to pay JPMorgan a fee of \$15 million in consideration for its services as financial advisor, \$5 million of which was paid following the public announcement of the execution of the Merger Agreement, \$5 million of which is payable upon approval of the issuance of shares of Exelon common stock as contemplated by the Merger Agreement by Exelon shareholders and \$5 million of which is payable upon completion of the Merger. Pursuant to an engagement letter dated November 5, 2004, Exelon has agreed to pay Lehman Brothers a fee of \$15 million in consideration for its services as financial advisor, \$5 million of which was due upon the public announcement of the execution of the Merger Agreement, \$5 million of which is payable upon approval of the issuance of shares of Exelon common stock as contemplated by the Merger Agreement by Exelon shareholders and \$5 million of which is payable upon completion of the Merger.

Pursuant to an engagement letter dated November 8, 2004, PSEG has agreed to pay Morgan Stanley a fee of \$20 million in consideration for its services as financial advisor, \$5 million of which was paid following the public announcement of the execution of the Merger Agreement, \$5 million of which is payable upon PSEG shareholder approval of the Merger Agreement and \$10 million of which is payable upon completion of the Merger.

### 3. Section 10(b)(3).

Section 10(b)(3) requires the Commission to determine whether the Merger will "unduly complicate the capital structure" or be "detrimental to the public interest or the interest of investors or consumers or the proper functioning" of the Exelon system.

The capital structure of the Exelon system will not change materially as a result of the Merger. In the Merger, Exelon will acquire 100% of the issued and outstanding common stock of PSE&G. Hence, the Merger will not create any publicly-held minority stock interest in the voting securities of any public utility

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<sup>58</sup> The value of the consideration, \$12,629 million, is taken from the pro forma financial statements in the Joint Proxy Statement.

company. The outstanding debt securities and preferred stock of PSE&G will also remain as outstanding obligations of PSE&G and will not be recourse to Exelon or any other company in the Exelon system.

The capital structures of Exelon and PSEG and the pro forma consolidated capital structure of Exelon are set forth in Item 1 hereof.

As those tables show, Exelon's pro forma consolidated common equity to total capitalization ratio of 42.89% will comfortably exceed the "traditionally acceptable 30% level." See *Northeast Utilities*, 50 S.E.C. at 440, n. 47. Common equity as a percentage of capitalization of each of the Utility Subsidiaries, other than PECO, is and will remain well over 30%.<sup>59</sup>

Section 10(b)(3) also requires the Commission to determine whether the proposed combination will be detrimental to the public interest, the interests of investors or consumers or the proper functioning of the combined Exelon system. The proposed combination of Exelon and PSEG is entirely consistent with the proper functioning of a registered holding company system. Exelon's and PSEG's electric utility operations are contiguous and interconnected and will be operated as a single interconnected and coordinated electric utility system following the Merger. Likewise, Exelon's existing gas utility operations and PSE&G's gas operations, which serve Pennsylvania and New Jersey, will be an integrated gas utility system as described *infra* following the Merger.

The Merger will result in substantial, and otherwise unavailable, savings and benefits to the public and to consumers and investors of both companies. Moreover, the Merger is subject to review by the PAPUC and the NJBPU, as well as the FERC, and notice has been given to the ICC, all of which ensures that the interests of customers will be adequately protected. For these reasons, Exelon believes that the Merger will be in the public interest and the interest of investors and consumers and will not be detrimental to the proper functioning of the resulting holding company system.

4. Section 10(c)(1).

(a) The Merger Will be Lawful Under Section 8.

Section 10(c)(1) first requires that the Merger be lawful under Section 8. That section was intended to prevent holding companies, by the use of separate subsidiaries, from circumventing state restrictions on common ownership of gas and electric operations. The Merger will not result in any new situation of common ownership of so-called "combination" systems within a given state. PSE&G already provides electric and gas service in overlapping areas of New Jersey. Moreover, the NJBPU has jurisdiction over the Merger. Accordingly, the Merger does not raise any issue under Section 8.

(b) The Merger Will Not be Detrimental to Carrying Out the Provisions of Section 11.

Section 10(c)(1) also requires that the Merger not be "detrimental to the carrying out of the provisions of section 11." Section 11(b)(1), in turn, directs the Commission generally to limit a registered holding company "to a single integrated public utility system," either electric or gas. An exception to this requirement, as discussed below, is provided in Section 11(b)(1)(A) - (C) (the "ABC clauses"), which permits a registered holding company to retain one or more additional (i.e., secondary) integrated public utility systems if the system satisfies the criteria of the ABC clauses.

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<sup>59</sup> As noted in the 2004 Financing Order, PECO has common equity of less than 30% when including securitization and the effects of a "receivable contribution" (as described in File No. 70-10189) but Exelon anticipates that PECO's common equity ratio will continue to improve and that PECO will reach a level of common equity of at least 30% of capitalization by December 31, 2010 (at which time all securitization bonds are expected to be retired and therefore will not be a consideration in the calculation). At December 31, 2004, PECO's common equity was 21% of total capitalization calculated in accordance with GAAP and was 66% excluding securitization and the effects of the receivable contribution.

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In the 2000 Merger Order, the Commission determined that Exelon's primary system, comprised of the electric utility facilities of ComEd and PECO, constitutes an integrated electric utility system; and that the gas utility properties of PECO constitute an integrated gas utility system that is retainable under the standards of the ABC clauses. At issue in this proceeding is whether Exelon's acquisition of PSE&G, which operates as both an electric and gas utility in New Jersey, will result in a system that is "detrimental to the carrying out of the provisions of section 11."

As explained more fully below, the combination of the electric utility operations of the Utility Subsidiaries will result in a single, integrated electric utility system. In addition, the combination of PSE&G's gas utility properties with those of PECO will comprise an integrated gas utility system that may be retained by Exelon as an additional system under the ABC clauses of Section 11(b)(1).

These standards are addressed below.

### (i) Integration of Electric Operations.

The threshold question is whether the electric utility properties of the Utility Subsidiaries will form a single "integrated public utility system," which, as applied to electric utility companies, is defined in Section 2(a)(29)(A) to mean:

a system consisting of one or more units of generating plants and/or transmission lines and/or distributing facilities, whose utility assets, whether owned by one or more electric utility companies, are physically interconnected or capable of physical interconnection and which under normal conditions may be economically operated as a single interconnected and coordinated system confined in its operations to a single area or region, in one or more States, not so large as to impair (considering the state of the art and the area or region affected) the advantages of localized management, efficient operation, and the effectiveness of regulation.

The Commission has interpreted this provision to establish four separate requirements for integration, as applied to an electric system: physical interconnection; coordination; limitation to a single area or region; and no impairment of localized management, efficient operation, and the effectiveness of regulation. See *National Rural Electric Cooperative Association v. Securities and Exchange Commission*, 276 F.3d 609 at 611 (D.C. Cir. 2002). The combined electric utility operations will satisfy each of these tests.

#### A. Interconnection

The first requirement for an integrated electric utility system is that the electric generation and/or transmission and/or distribution facilities comprising the system be "physically interconnected or capable of physical interconnection." As found by the Commission in the PJM Order, "electric properties within PJM are physically interconnected through PJM." In addition, the electric facilities and retail service areas of PSE&G and the Exelon Utility Subsidiaries are adjacent and their facilities are interconnected at numerous points (see Exhibit E-1). Under traditional analysis, this fact alone satisfies the interconnection requirement. See *e.g.*, *Energy East*, Holding Company Act Release No. 27546 (June 27, 2002).

#### B. Coordination.

Historically, the Commission has interpreted the requirement that an integrated electric system be economically operated under normal conditions as a single interconnected and coordinated system "to refer to the physical operation of utility assets as a system in which, among other things, the generation and/or flow of current within the system may be centrally controlled and allocated as need or economy directs." See, *e.g.*, *Conectiv, Inc.*, Holding Co. Act Release No. 26832 (Feb. 25, 1998), citing *The North American Company*, 11 S.E.C. 194, 242 (1942), *aff'd*, 133 F.2d 148 (2d Cir. 1943), *aff'd on constitutional issues*, 327 U.S. 686 (1946). The Commission has noted that, through this standard, "Congress intended that the utility properties be so connected and operated that there is coordination among all parts, and that those parts bear an integral operating relationship to one another." See *Cities Service Co.*, 14 S.E.C. 28 at 55 (1943). Traditionally, the most obvious indicia of "coordinated operations" was the ability to jointly dispatch all



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system generating units automatically on an economic basis in order to achieve the lowest overall cost of electricity. As noted in the PJM Order, the facilities of PJM members are subject to the control of a single operator, PJM: “As the single control operator, PJM exercises functional control, including centralized dispatch of generation, over a contiguous, interconnected electric transmission system that encompasses the operations of its members, including PECO and ComEd.” Of course, PSE&G is also a member of PJM and accordingly the analysis of the PJM Order applies equally to the post-Merger Exelon system.

Under Section 2(a)(29)(A), the Commission must also find that the resulting interconnected and coordinated system may be “economically operated.” This calls for a determination that coordinated operation of the combined company’s facilities is likely to produce economies and efficiencies. The question of whether a combined system will be economically operated under Section 10(c)(2) and Section 2(a)(29)(A) was addressed by the U.S. Court of Appeals in *Madison Gas and Electric Company v. SEC*, 168 F.3d 1337 (D.C. Cir. 1999). In that case, the court determined that in analyzing whether a system will be economically coordinated, the focus must be on whether the acquisition “as a whole” will “tend toward efficiency and economy.” *Id.* at 1341. As discussed below, the Merger will meet this standard.

In short, all aspects of the combined system will be centrally directed and efficiently planned and coordinated. As with other utility combinations approved by the Commission, the combined system will be capable of being economically operated as a single interconnected and coordinated system as demonstrated by the variety of means through which its operations will be coordinated and the efficiencies and economies expected to be realized by the proposed Merger.

### C. Single Area or Region.

As required by Section 2(a)(29)(A), the electric utility operations of Exelon following the Merger will be confined to a “single area or region in one or more States,” all within PJM. *See, e.g., Pepco Holding, Inc., Holding Co. Act Release No. 27553* (July 24, 2002) (“the high degree of operational coordination and energy trading that occurs within the PJM RTO demonstrate that the mid-Atlantic U.S. is a single area or region in both operational and economic terms”). The Commission should find, based on the PJM Order and the facts presented herein, that the territories of ComEd, PECO and PSE&G also constitute a “single area or region in both operational and economic terms.”

### D. Size.

The final clause of Section 2(a)(29)(A) requires the Commission to look to the size of the combined system (considering the state of the art and the area or region affected) and its effect upon localized management, efficient operation, and the effectiveness of regulation. In the instant matter, these standards are easily met. The size of the Exelon electric system will not impair the advantages of localized management, efficient operation or the effectiveness of regulation. Instead, the proposed Merger will actually increase the efficiency of operations.

**Localized Management** — Although PSE&G will necessarily come under new holding company management as a result of the Merger, it will continue to exist as a separate legal entity. PSE&G will continue to be headquartered in Newark, and the utility will continue to operate through regional offices with local service centers and line crews available to respond to customers’ needs.

This operational structure, which is similar to that currently in place at ComEd and PECO, will permit the local, district and regional management teams of PSE&G to budget for operation of the electric distribution system and to schedule work forces in order to provide the same (or better) quality of service to customers of PSE&G. In short, PSE&G will continue to be managed on a day-to-day basis at a local level, particularly in areas that must be responsive to local needs. Accordingly, the advantages of localized management will not be impaired.

**Efficient Operation** — As discussed below in the analysis of Section 10(c)(2), the Merger will result in greater economies and efficiencies. Operations will be more efficiently performed on a centralized basis because of economies of scale, standardized operating and maintenance practices and closer coordination of system-wide matters.

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Effective Regulation — The Merger will not impair the effectiveness of regulation at either the state or federal level. PSE&G will continue to be regulated by the NJBPU with respect to retail rates, service, securities issuances and other matters, and by FERC with respect to interstate electric sales for resale and transmission services.

### (ii) Integration of Gas Operations.

The gas utility properties of PSE&G, when added to those owned by PECO, will form an “integrated gas utility system,” which is defined in Section 2(a)(29)(B) to mean:

a system consisting of one or more gas utility companies which are so located and related that substantial economies may be effectuated by being operated as a single coordinated system confined in its operations to a single area or region, in one or more States, not so large as to impair (considering the state of the art and the area or region affected) the advantages of localized management, efficient operation, and the effectiveness of regulation: provided, that gas utility companies deriving natural gas from a common source of supply may be deemed to be included in a single area or region.

Thus, the definition of an integrated gas utility system has three distinct parts, each of which will be satisfied in this case.

#### A. Coordination.

In order to find coordination among the gas utility companies in the same holding company system, the Commission has historically focused primarily on the operating economies that may be effectuated through coordinated management of gas supply portfolios (i.e., gas purchase arrangements, transportation agreements, and storage assets), the access of the gas utility companies in the same holding company system to common market and supply-area hubs, the functional merger of separate gas supply departments under common management, and sharing of data management software systems. *See NIPSCO Industries, Inc.*, 53 S.E.C. 1296 at 1306-1309 (1999); *New Century Enterprises, Inc.*, Holding Co. Act Release No. 27212 (Aug. 16, 2000).

As discussed further in Item 2.B.5, below, Applicants state that the Merger will produce significant benefits to the public, investors and consumers. Applicants expect that the Merger will enable them to take advantage of future strategic opportunities in the increasingly competitive and rapidly evolving markets for energy and energy services in the United States. In particular, Applicants believe that the combined companies will be better positioned to take advantage of operating economies and efficiencies. Although PECO and PSE&G will continue to conduct their gas distribution operations through their respective corporate entities, and do not currently plan to combine gas supply operations, the systems nonetheless will be operated as a single coordinated system.

In 2004, Exelon BSC reorganized and expanded its Energy Delivery Shared Services (“EDSS”) business unit. EDSS now houses employees who provide executive or centralized management services to ComEd and PECO (but not to Exelon, Exelon Generation or Enterprises), or whose duties include performing work on both ComEd and PECO projects. At that time, each of the major operating areas of the utilities assumed a new consolidated structure, with a single management team overseeing both ComEd and PECO functions. This structure focuses on the standardization of electric utility processes across both companies and the achievement of synergies through consolidation of common functions. Numerous operational and administrative and general functions overseen by EDSS management are applied at PECO across both electric and gas operations. These include policies and practices, training and methods, contractor and supply management, call center dispatch, financial planning and accounting services, construction services and vehicle services, among others. Applicants expect that post-Merger, this model will be expanded to include PSE&G’s gas as well as electric utility operations. Thus, EDSS will house employees who will perform work on behalf of both the PECO and the PSE&G gas systems. In this way, EDSS will coordinate the management of the two gas systems in areas such as executive services, asset management, customer service and marketing services, support

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services and business operations. With respect to business operations, as the PSE&G and PECO gas systems share many common features, (e.g. percentage of cast iron, steel and plastic pipes that make up the infrastructure) coordination can also be achieved by the use of common Supervisory Control and Data Acquisition (“SCADA”) approaches and monitoring of pressures and flows at all of the points at which PSE&G and PECO take gas off the interstate pipeline systems; the use of common system design standards and criteria, the development of common material specifications to improve procurement processes and reduce costs and sharing of best work practices and the use of a common work management system. Further, PSE&G and PECO’s systems are both subject to the same federal standards with respect to construction, operation and maintenance which results in opportunities for further coordination and efficiencies.

With regard to natural gas service itself, a significant amount of the gas distributed by PECO and PSE&G is purchased from the same supply basins in Texas and Louisiana, and is transported on the Texas Eastern and Transcontinental pipelines, and is stored in common storage areas owned by those and other pipelines (e.g. Dominion, Equitrans). These common portfolio resources should bring long-term benefits to the companies’ customers. Moreover, as the dynamics and structure of the natural gas industry continue to change, the marketplace will create even more options for the companies to create value through coordination of their respective gas supply portfolios.<sup>60</sup>

### B. Single Area or Region.

The combined gas system of PECO and PSE&G will also be confined to a single area or region in New Jersey and southeastern Pennsylvania.

### C. Size.

For the same reasons given above in connection with the discussion of impacts of the Merger on the combined electric system, localized management, efficient operation, and the effectiveness of regulation will not be impaired by the resulting size of the integrated gas utility system.

### (iii) Retention of Combined Gas System.

As indicated, under the “ABC clauses” of Section 11(b)(1), a registered holding company can own “one or more” additional integrated public utility systems if certain conditions are met. Specifically, the Commission must find that (A) the additional system “cannot be operated as an independent system without the loss of substantial economies which can be secured by the retention of control by such holding company of such system,” (B) the additional system is located in one state or adjoining states, and (C) the combination of systems under the control of a single holding company is “not so large . . . as to impair the advantages of localized management, efficient operation, or the effectiveness of regulation.”

### A. Loss of Economies.

Clause A requires a showing that each additional integrated system (in this case, the integrated gas utility system formed by combining the operations of PECO and PSE&G) cannot be operated as an independent system without the loss of substantial economies which can be secured by the retention of control by a holding company of such system. Historically, the Commission has considered four ratios as a “guide” to determining whether lost economies would be “substantial” under Section 11(b)(1)(A). Specifically, the Commission has considered the estimated loss of economies expressed in terms of the ratio of increased expenses to the system’s total operating revenues, operating revenue deductions, gross income and net income. See *Engineers Public Service Co.*, 12 SEC 41 (1942), *rev’d on other grounds and remanded*, 138 F. 2d 936 (DC Cir. 1943), *vacated as moot*, 332 US 788 (1947) (“*Engineers*”), and *New England Electric System*, 41 S.E.C. 888, 893 - 899 (1964). In *Engineers*, the Commission suggested that cost increases resulting in a 6.78% loss of operating revenues, a 9.72% increase in operating revenue

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<sup>60</sup> Although PSEG ER&T currently procures the natural gas supply and manages pipeline capacity and gas storage services for the PSE&G gas system, and PECO performs these functions itself, as noted above, the source of supply, pipelines and location of storage for the two systems overlap to a large extent.

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deductions, a 25.44% loss of gross income, and 42.46% loss of net income would afford an “impressive basis for finding a loss of substantial economies” associated with a divestiture. 12 SEC at 59. More recently, the Commission has indicated that it will no longer require a comparison of resulting loss ratios to those in earlier cases. See *CP&L Energy, Inc., Holding Co.* Act Release No. 27284 (Nov. 27, 2000), fn. 40.

In its early decisions, the Commission considered the increases in operational expenses that were anticipated upon divestiture, but also took into account, as offsetting benefits, the significant competitive advantages that were perceived to flow from a separation of gas and electric operations. The Commission’s assumption was that a combination of gas and electric operations is typically disadvantageous to the gas operations and, hence, the public interest and the interests of investors and consumers would be benefited by a separation of gas from the electric operations. In more recent cases, however, the Commission has recognized that the historical ratios may not provide an adequate indication of the substantial loss of economies that may occur by forcing a separation of electric and gas. Specifically, beginning with its decision in *New Century Energies, Inc.*, 53 S.E.C. 54 (1997), the Commission took notice of the changing circumstances in today’s electric and gas industries, notably the increasing convergence of the electric and gas industries. The Commission concluded that, “in these circumstances, separation of gas and electric businesses may cause the separated entities to be weaker competitors than they would be together. This factor adds to the quantifiable loss of economies caused by increased costs.” 53 S.E.C. at 76. This view was repeated in subsequent cases, including the 2000 Merger Order and *WPL Holdings, Inc.*, 53 S.E.C. 501 (1997). The Commission has also recognized that revenue enhancement opportunities and other benefits likely to be realized from a “convergence” merger would be diminished or lost if the Commission forced a divestiture of the additional system. See *SCANA Corp., Holding Co.* Act Release No. 27133 (Feb. 9, 2000); and *Northeast Utilities, Holding Co.* Act Release No. 27127 (Jan. 31, 2000).

The Commission in the 2000 Merger Order found that the PECO gas utility operations constituted a permissible additional integrated public utility system.

The Applicants are preparing a study that analyzes the lost economies that the combined gas utility operations would suffer if Exelon could not retain them (the “Gas Study”).<sup>61</sup> Among other things, divestiture of the gas operations would cause consumers to forfeit the cost-saving benefits that they may obtain from Exelon’s ability to offer a complete package of energy products and services.

The 2000 Merger Order noted the Commission’s policy determination that “significant economies and competitive advantages inure in the ownership of both gas and electric operations.”<sup>62</sup> Besides the loss of these inherent economies, other substantial economies would be lost by the separation of the gas operations from the Exelon electric system. These lost economies would include decreased efficiencies from separate meter reading, meter testing and billing operations; expenses for duplicative customer service operations; plus a loss of savings due to the inability to exploit synergies in areas such as facilities maintenance, emergency work coordination and other administrative operations. A final consideration is that the electric and gas operations of PSE&G have long been under its control. The Merger will not alter the status quo with respect to these operations.<sup>63</sup> Further, the Merger will be subject to review by the PAPUC, which has jurisdiction over PECO, and the NJBPU, which has jurisdiction over PSE&G.

### B. Same State or Adjoining States.

The proposed Merger does not raise any issue under Section 11(b)(1)(B) of the Act, as the gas utility properties are located and operate exclusively in adjoining states, Pennsylvania and New Jersey. Thus, the requirement that each additional system be located in one State or adjoining States is satisfied.

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<sup>61</sup> See Exhibit G-9 hereto.

<sup>62</sup> 2000 Merger Order, citing *WPL Holdings, Inc., Holding Co.* Act Release No. 26856 (Apr. 14, 1998), *aff’d*, *Madison Gas and Electric Co. v. SEC*, 972 F.2d 358 (D.C. Cir. 1992); *TUC Holding Co., Holding Co.* Act Release No. 26749 (Aug. 1, 1997); and *New Century Energies, Inc.*, 53 S.E.C. 54 (1997).

<sup>63</sup> See *New Century Energies, Inc.*, 53 S.E.C. 54 (1997).

C. Size.

Further, retention of the combined gas utility business does not raise any issues under Section 11(b)(1)(C) of the Act. The combination of both electric and gas utility systems under the control of a single holding company will be “not so large . . . as to impair the advantages of localized management, efficient operation, or the effectiveness of regulation.” As the Commission has recognized, the determinative consideration is not size alone or size in an absolute sense, either big or small, but size in relation to its effect, if any, non-localized management, efficient operation and effective regulation. From these perspectives, it is clear that the continued ownership of the combined gas system by Exelon is not too large.

As of December 31, 2004, and giving effect to the Merger, the combined gas utility operations would represent only about 11% of Exelon’s post-Merger gross utility plant, and only about 14% of Exelon’s post-Merger net operating revenues.

The local operations of PSE&G will continue to be handled from PSE&G’s local operations centers, with supplemental support provided by other Exelon system companies with personnel and other resources in close proximity. Thus, the advantages of localized management will be preserved.

(iv) Retention of PSEG’s Non-Utility Interests.

Section 11(b)(1) permits a registered holding company to retain “such other businesses as are reasonably incidental, or economically necessary or appropriate, to the operations of [an] integrated public utility system.” The Commission has historically interpreted this provision to require an operating or “functional” relationship between the non-utility activity and the system’s core utility business. *See, e.g. Michigan Consolidated Gas Co.*, 44 S.E.C. 361 (1970), *aff’d*, 444 F.2d 913 (D.C. Cir. 1971); *United Light and Railways Co.*, 35 S.E.C. 516 (1954); *CSW Credit, Inc.*, 51 S.E.C. 984 (Mar. 2, 1994); and *Jersey Central Power and Light Co., Holding Co.* Act Release No. 24348 (Mar. 18, 1987).

In addition, the Commission has permitted new registered holding companies to retain passive investments which, although not meeting the functional relationship test, could nevertheless be acquired under the standards of Section 9(c)(3) of the Act.

Exhibit G-7 lists and describes those non-utility businesses conducted by PSEG and its subsidiary companies. As a result of the Merger, those non-utility businesses and interests will become businesses and interests of Exelon. Except as discussed below, these non-utility interests are fully retainable by Exelon under the Act.

In previous matters, including the 2000 Merger Order, the Commission determined it was appropriate to exclude from the computation of “aggregate investment” for purposes of Rule 58 investments made at a time the company was not part of a registered holding company system.<sup>64</sup> *See also New Century Energies, supra*. In this matter as well, Applicants ask the Commission to confirm that pre-existing investments by PSEG and its subsidiaries in “energy-related companies” prior to the effective date of Rule 58 will not count in the calculation of the 15% limitation for purposes of the safe harbor under Rule 58.

(v) Post-Merger Corporate Structure: The Intermediate Holding Company

Section 11(b)(2) of the Act requires the Commission to ensure that “the corporate structure or continued existence of any company in the holding company system does not unduly or unnecessarily complicate the structure, or unfairly or inequitably distribute voting power among security holders, of the holding company system.” Section 11(b)(2) also directs the Commission to require each registered system company “to take such action as the Commission shall find necessary in order that such holding company

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<sup>64</sup> Safe harbor under Rule 58 is available so long as, among other things, a registered holding company’s “aggregate investment” in “energy-related companies” does not exceed 15% of the consolidated capitalization of the registered holding company.

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shall cease to be a holding company with respect to each of its subsidiary companies which itself has a subsidiary company which is a holding company,” in other words, to eliminate “great-grandfather” holding companies.

Post-Merger, there will be one instance of a “great-grandfather” holding company, the continued existence of which the Commission approved in the 2000 Merger Order. Exelon, through Delivery, owns substantially all of the outstanding common stock of ComEd (see note 7) which, in turn, is a holding company for the Indiana Company. The Indiana Company has no retail customers and owns only transmission facilities with a depreciated book value at December 31, 2004 of only \$7.4 million. The operation of the Indiana Company’s transmission facilities is subject to the control of PJM. Accordingly, the Indiana Company has virtually no business operations with outside third parties. As noted in the 2000 Merger Order:

We do not believe in any event that the proposed corporate structure of the Exelon system implicates the abuses that section 11(b)(2) of the Act was intended to prevent. These abuses, facilitated by the pyramiding of holding company groups, involved the diffusion of control and the creation of different classes of debt or stock with unequal voting rights. Those abuses are not at issue in this matter.

With respect to the Delivery chain, only the presence of the Indiana Company raises an issue under section 11(b)(2). The Indiana Company has no retail customers and holds only a very small amount of transmission assets directly related to the distribution business of ComEd. . . . [T]he Indiana Company has been in existence for decades and federal and state regulators have perceived no abuses in the arrangement.

We think that it is appropriate to “look through” the intermediate holding companies (or to treat them as a single company) for purposes of the analysis under section 11(b)(2) of the Act. Accordingly, we do not find it necessary to require the elimination of the intermediate holding companies to ensure that the corporate structure of the Exelon system or continued existence of any system company “does not unduly or unnecessarily complicate the structure” of the Exelon system.

### 5. Section 10(c)(2).

The Merger will “serve the public interest by tending toward the economical and efficient development of an integrated public utility system,” and therefore will satisfy the requirements of Section 10(c)(2) of the Act.

The proposed Merger will create the nation’s premier utility company, with over seven million electric customers and two million gas customers in three states. By sharing resources and best practices, the proposed Merger will enhance operations across the Exelon system and strengthen Exelon’s ability post-Merger to provide cost-effective, safe and reliable service. The Merger will result in numerous economies and efficiencies within the meaning of the Act:

- 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.

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- 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.
- 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. 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 Locational Marginal Prices ("LMP"), particularly in PJM East.
- 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.
- Sharing of Best Practices. The Merger will combine companies with complementary areas of expertise; Exelon's expertise in generation operations and PSEG's expertise in transmission and distribution operations.
- Substantial Synergies. Exelon and PSEG have estimated synergies from the Merger to be approximately \$400 million pre-tax in the first full year after closing, growing to approximately \$500 million pre-tax annually in the second full year, excluding out-of-pocket costs to achieve and transaction costs. Approximately 85% of these synergies are cost related and 15% are based on increased production at PSEG's nuclear plants. These cost savings and productivity improvements will result from a consolidation of the proven capabilities of both companies, including implementing certain practices and processes that have been successful in achieving cost reductions since the 2000 merger of Unicom and PECO. Savings are expected to come from the elimination of duplicative activities in corporate and administrative operations, marketing and trading operations, as well as fossil, nuclear and utility management functions; improved operating efficiencies in nuclear operations; efficiencies and savings generated from consolidation of corporate programs and information technology platforms; and supply chain benefits realized from improved sourcing efficiencies.

Although some of the anticipated economies and efficiencies will be fully realized only in the longer term, they are properly considered in determining whether the standards of Section 10(c)(2) have been met. *See AEP*, 46 S.E.C. at 1320 - 1321. Some potential benefits cannot be precisely estimated; nevertheless, they too are entitled to be considered. As the Commission has observed, "[s]pecific dollar forecasts of future savings are not necessarily required; a demonstrated potential for economies will suffice even when these are not precisely quantifiable." *Centerior Energy Corp.*, 49 S.E.C. at 480.

6. [Section 10\(f\)](#).

Section 10(f) provides that:

The Commission shall not approve any acquisition as to which an application is made under this section unless it appears to the satisfaction of the Commission that such State laws as may apply in respect of such acquisition have been complied with, except where the Commission finds that compliance with such State laws would be detrimental to the carrying out of the provisions of section 11.

As previously indicated, the Merger is subject to review by or notice to each of the affected state regulators.

C. [Rules 53 and 54](#).

The 2004 Financing Order authorizes Exelon to engage in financings for the purposes of investing in EWGs and FUCOs so long as the aggregate investment in EWGs and FUCOs does not exceed \$4 billion. The 2004 Financing Order reserves jurisdiction over a request to engage in an additional \$3 billion in EWG and FUCO-related financing transactions. Exelon requests the Commission authorize it to engage in financings post-Merger for the purposes of investing in EWGs and FUCOs so long as the aggregate investment in EWGs and FUCOs does not exceed \$8.0 billion.

In support of this request, Exelon presents the following.

1. [Rule 53 Generally](#)

Under Rule 53(a), the Commission shall not make certain specified findings under Sections 7 and 12 in connection with a proposal by a holding company to issue securities for the purpose of acquiring the securities of or other interest in an EWG, or to guarantee the securities of an EWG, if each of the conditions in paragraphs (a)(1) through (a)(4) thereof are met, provided that none of the conditions specified in paragraphs (b)(1) through (b)(3) of Rule 53 exists.

As of December 31, 2004, the consolidated amount of Exelon's aggregate investment in EWGs and FUCOs (as that term is defined in Rule 53) was \$2.2 billion, which is in excess of 50% of Exelon's average consolidated retained earnings (calculated as required by Rule 53) of \$3.0 billion as of that date. As a result of the sale of Sithe Energies, Inc. ("Sithe") on January 31, 2005, Exelon's aggregate investment in EWGs decreased to approximately \$1.4 billion. In the 2004 Financing Order, the Commission authorized Exelon to enter into financing transactions in respect of an "aggregate investment" in EWGs and FUCOs of up to \$4 billion and reserved jurisdiction over the remainder of Exelon's \$7.0 billion request. It is anticipated that, as a result of the Merger, Exelon's aggregate investment in EWGs and FUCOs will be approximately \$6.5 billion.<sup>65</sup> Accordingly, Exelon requests that the Commission approve an aggregate investment limit of \$8.0 billion.

Exelon satisfies all of the requirements of Rule 53(a) except for clause (1) thereof. None of the conditions specified in Rule 53(b) is, or is expected to be, applicable.<sup>66</sup> For the reasons that follow, the proposed increased aggregate investment:

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<sup>65</sup> This amount is premised upon the successful execution of the Exelon Generation Restructuring, but not the Generation Divestiture described in Item 1.H.

<sup>66</sup> Exelon represents that it will remain in compliance with the requirements of Rule 53(a), other than Rule 53(a)(1), at all times through the Authorization Period. Exelon will file a post-effective amendment in to this Application/Declaration in the event that one of the circumstances described in Rule 53(b) should occur during the period through the end of the Authorization Period.



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- (1) Will not have a substantial adverse impact upon the financial integrity of the registered holding company system; and
- (2) Will not have an adverse impact on any utility subsidiary of the registered holding company, or its customers, or on the ability of State commissions to protect such subsidiary or customers.

Rule 53(c).

As described in Item 1.L.5, because of the accounting for the Merger under GAAP, the retained earnings of Exelon post-Merger will be less than the combined retained earnings balances of Exelon and PSEG prior to the Merger. The Commission has considered similar situations in which previously significant amounts of retained earnings were eliminated.<sup>67</sup> Write-offs reducing retained earnings have been caused by unrecovered stranded costs, disposition of generating assets, the purchase accounting required in certain mergers and other factors.<sup>68</sup> The Commission has recognized that these are extraordinary events and, while retained earnings have been reduced, the changes causing such reduction have not adversely affected the fundamental financial strength of the holding company system. In this matter there can be no question that Exelon currently is, and post-Merger will be, a financially sound holding company with significant equity.

### 2. EWG and FUCO Earnings and Losses

With regard to capitalization, since December 31, 2000, there has been no material adverse impact on Exelon's consolidated capitalization resulting from Exelon's investments in EWGs and FUCOs. Exelon's common equity ratio has remained above 30% since 2000.

<b>December 31,</b>	<b>Common Equity Ratio (%)</b>
2000	31.3
2001	35.0
2002	32.1
2003	34.9
2004	40.8

These ratios are within acceptable industry ranges. The proposed transactions will not have any material adverse impact on capitalization.

In the aggregate, Exelon's EWG and FUCO investments have been profitable for all annual periods ending December 31, 2000 through December 31, 2002 and for the quarter ended June 30, 2003. While in 2003 Exelon recorded losses of \$1.2 billion (\$729 million net of income tax) in connection with

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<sup>67</sup> See, e.g., *FirstEnergy Corp.*, Holding Co. Act Release No. 27459 (Oct. 29, 2001), *Conectiv, Inc.*, Holding Co. Act Release No. 27111 (Dec. 14, 1999).

<sup>68</sup> In *FirstEnergy, supra*, the subject merger eliminated the acquired company's retained earnings, and in *Conectiv, supra*, retained earnings were affected by write-offs resulting from de-regulation legislation and previous merger eliminating acquired company's retained earnings). See also *Northeast Utilities, Holding Co. Act Release No. 27147* (March 7, 2000) (restructuring legislation, asset divestitures and securitization resulted in EWG investments in excess of 50% of retained earnings).

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two of its EWG investments, Exelon New England Holdings Company (“EBG”) and Sithe Energies, Inc. (“Sithe”), Exelon has since transferred the ownership of EBG to EBG’s lenders (on May 25, 2004, recognizing a net gain of \$85 million) and disposed of Sithe on January 31, 2005 (see discussion below). Excluding the losses at these two companies, for which substantially all required write-offs have been taken, Exelon’s remaining EWGs were profitable in 2003. For the twelve months ending December 31, 2004, Exelon’s EWGs have been, in the aggregate, profitable. For information on EWG earnings, please see item 5a of Exelon’s quarterly filed Rule 24 certificates.

On November 25, 2003, Exelon Generation, Reservoir Capital Group (“Reservoir”) and Sithe completed a series of transactions resulting in Exelon Generation and Reservoir each indirectly owning a 50% interest in Sithe (Exelon Generation owned 49.9% prior to November 25, 2003).

Both Exelon Generation’s and Reservoir’s 50% interests in Sithe were subject to put and call options. On September 29, 2004, Exelon Generation exercised its call option and entered into an agreement to acquire Reservoir’s 50% interest in Sithe for \$97 million. On November 1, 2004, Exelon Generation entered into an agreement to sell Sithe to Dynegy Inc. (“Dynegy”) for \$135 million in cash.

On January 31, 2005, subsidiaries of Exelon Generation completed a series of transactions that resulted in Exelon Generation’s exit from its investment in Sithe. Specifically, subsidiaries of Exelon Generation closed on the acquisition of Reservoir’s 50% interest in Sithe and the sale of 100% of Sithe to Dynegy. Prior to closing on the sale to Dynegy, subsidiaries of Exelon Generation received from Sithe approximately \$65 million in cash distributions. As a result of the sale, Exelon deconsolidated from its balance sheet approximately \$820 million of debt and was released from approximately \$125 million of credit support. Additionally, Exelon issued certain guarantees to Dynegy that will be taken into account in the final determination of the gain or loss on sale.

On October 13, 2004, Sithe transferred all of the shares of Sithe International, Inc. and its subsidiaries to a subsidiary of Exelon Generation in exchange for the cancellation of a \$92 million note and accrued interest. Sithe International, through its subsidiaries, had a 49.5% interest in two Mexican business trusts that own the Termoeléctrica del Golfo (“TEG”) and Termoeléctrica Peñoles (“TEP”) power stations, two 230 MW petcoke-fired generating facilities in Tamuín, Mexico that commenced commercial operations in the second quarter of 2004. Both the TEG and TEP power stations are EWGs.

### 3. Risk Analysis and Mitigation.

Exelon has a comprehensive risk analysis and mitigation process in place.<sup>69</sup>

All of Exelon’s investments in EWGs and FUCOs are segregated from ComEd and PECO, and in the future will remain segregated from ComEd, PECO and PSE&G. Any losses that may be incurred by such EWGs and FUCOs would have no effect on the rates of the Retail Utility Subsidiaries. Exelon represents that it will not seek recovery through higher rates from the Retail Utility Subsidiaries’ utility customers in order to compensate Exelon for any possible losses that it or any Subsidiary may sustain on the investment in EWGs or FUCOs or for any inadequate returns on such investments.

### 4. Financial Ratios.

Growth in Retained Earnings. Both Exelon and PSEG have had significant increases in retained earnings over the past four years. Since the 2000 Merger, Exelon’s retained earnings have grown from \$334 million to \$3,353 million, an increase of 935%. Also during this period, PSEG’s retained earnings have increased by 66%, from \$1,459 million to \$2,425 million.

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<sup>69</sup> This process was described in detail in Amendment No. 4 in File No. 70-9693, filed December 5, 2000. Exelon is aware of proposed Rule 55, which would codify the Commission’s practice of requiring holding companies to institute a risk management process. See Holding Co. Act Release No. 27342 (Feb. 7, 2001). Exelon will comply with the requirements of Rule 55 if it is adopted.

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Financial Ratios. Exelon's requested \$8.0 billion aggregate investment in EWGs and FUCOs would represent a conservative and reasonable commitment of Exelon capital for a company the size of Exelon post-Merger. For example, investments of this amount would be equal to only approximately:

- 15.5% of Exelon's pro-forma total consolidated capitalization (\$51.7 billion),<sup>70</sup>
- 24.5% of pro forma consolidated utility plant and equipment (\$32.7 billion),
- 9.9% of pro forma total consolidated assets (\$80.9 billion), and
- 18.1% of the pro forma market value of Exelon's outstanding common stock (\$44.3 billion).<sup>71</sup>

These percentages are substantially better than the comparable figures relied on by the Commission in approving Exelon's aggregate investment in the 2004 Financing Order. Based on Exelon's financial condition at December 31, 2003, a \$7.0 billion aggregate investment in EWGs and FUCOs would have represented 28.7% of consolidated capitalization, 38.6% of consolidated utility plant, 16.7% of consolidated assets and 32.1% of market value of Exelon common stock. Accordingly, the calculations show that Exelon should be authorized to invest the proceeds of financings in EWGs and FUCOs as requested.

### 5. State Commissions.

The PAPUC has previously advised the Commission that Exelon's proposed aggregate investment of up to \$7.0 billion in EWGs and FUCOs would not adversely affect the state commission's ability to continue to assure adequate protection of utility customers and ratepayers, and the ICC has previously advised the Commission that Exelon's proposed aggregate investment of up to \$5.5 billion in EWGs and FUCOs would not adversely affect the state commission's ability to continue to assure adequate protection of utility customers and ratepayers. Exelon and PSE&G have asked the NJBPU to advise the Commission that Exelon's proposed aggregate investment of up to \$7.0 billion in EWGs and FUCOs would not adversely affect the state commission's ability to continue to assure adequate protection of utility customers and ratepayers. Exelon plans to seek any necessary confirmation from each state commission regarding its request contained herein for an increase in aggregate investment authority.

### 6. Rule 54.

Rule 54 provides that, in determining whether to approve the issue or sale of any securities for purposes other than the acquisition of any EWG or FUCO or other transactions unrelated to EWGs or FUCOs, the Commission shall not consider the effect of the capitalization or earnings of subsidiaries of a registered holding company that are EWGs or FUCOs if the requirements of Rule 53(a), (b) and (c) are satisfied. As described above in detail, Exelon may not be in compliance with all of the provisions of the Rule 53 safe harbor post-Merger. Exelon believes that, for the reasons set out above, the Commission should approve the increased limit on aggregate investment. For those same reasons, Exelon requests the Commission to make no adverse findings under Rule 54 in connection with the approvals sought herein for other purposes.

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<sup>70</sup> This calculation of capitalization includes securitization obligations.

<sup>71</sup> The market value of Exelon common stock is calculated based on the pro forma number of shares of Exelon common stock to be outstanding immediately following the Merger assuming conversion of PSEG common stock, times the closing stock price of Exelon common stock at December 31, 2004 of \$44.07 per share.

**Item 4. Regulatory Approvals.**

New Jersey Board of Public Utilities

As a utility in the State of New Jersey, PSE&G is subject to the jurisdiction of the NJBPU. Under Section 48:2-51.1 of New Jersey's public utility law, the NJBPU's approval is required in connection with the indirect transfer of the capital stock of PSE&G resulting from the Merger. In considering the Merger, the NJBPU is required to evaluate the impact of the Merger in four areas: competition, the rates of ratepayers affected by the Merger, the employees of the affected public utility, and the provision of safe and adequate utility service at just and reasonable rates.

On February 4, 2005, Exelon and PSE&G made the initial filing of their joint application with the NJBPU for approval of the indirect transfer of the capital stock of PSE&G resulting from the Merger. While New Jersey law does not specify a timetable for completion of the NJBPU's review, Exelon and PSE&G have asked that the NJBPU handle the matter on an expedited basis.

In addition, while not required by law to complete the Merger, Exelon and PSEG have made it a condition to the Merger that PSE&G receive an order from the NJBPU allowing PSE&G to defer certain pension and other post-retirement benefit expenses that will be recognized in connection with the purchase accounting treatment of the Merger, and providing that PSE&G's rate recovery of pension and other post-retirement benefits will be calculated consistently with recovery of such amounts in the absence of the Merger.<sup>72</sup> On February 4, 2005, Exelon and PSE&G made the initial filing of their joint application with the NJBPU to obtain the order.<sup>73</sup>

New Jersey Department of Environmental Protection

Subsidiaries of PSEG own facilities in New Jersey that are industrial establishments as defined in ISRA. The parties intend to file their application with NJDEP for a letter of non-applicability under ISRA with respect to the Merger, the Generation Restructuring and Merger related corporate restructurings during the first quarter of 2005.<sup>74</sup>

New York Public Service Commission

As an owner of generation facilities in the State of New York, a subsidiary of PSEG Power is subject to the jurisdiction of the New York Public Service Commission ("NYPSC"). Under Section 70 of the New York Public Service Law, the NYPSC's written consent is required in connection with the indirect transfer of ownership interests in such subsidiary of PSEG Power in connection with the Merger. Under Section 70 of the New York Public Service Law, the NYPSC must determine whether the Merger is in the public interest. The parties intend to file their application for approval with the NYPSC during the first quarter of 2005.<sup>75</sup>

Pennsylvania Public Utility Commission

PECO and PSE&G are subject to the jurisdiction of the PAPUC. The issuance to each of PECO and PSE&G of a certificate of public convenience and necessity by the PAPUC may be required as a result

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<sup>72</sup> For a description of this matter, see "Risk Factors—Risks Relating to the Merger—The combined company may be unable to obtain permission from the NJBPU to recover PSE&G's pension and other post-retirement benefit expenses, which could have an adverse effect on its cash flow and results of operations" in the Registration Statement on Form S-4 filed as Exhibit C hereto.

<sup>73</sup> See Exhibit D-2 hereto.

<sup>74</sup> See Exhibit D-5 hereto.

<sup>75</sup> See Exhibit D-6 hereto.

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of the indirect transfer of the capital stock of PSE&G in connection with the Merger under Chapters 11, 22 and 28 of the Public Utility Code of Pennsylvania. The standard for approval is whether the transaction is necessary and proper for the service, accommodation, convenience or safety of the public. This standard has been applied by the PAPUC to require that applicants demonstrate that the transaction will affirmatively promote the service, accommodation, convenience or safety of the public in some substantial way. In addition, under provisions enacted as part of Pennsylvania's electric and natural gas restructuring legislation, the PAPUC must consider:

- whether a proposed transaction is likely to result in anticompetitive or discriminatory conduct, including the unlawful exercise of market power, which would prevent retail electric or natural gas customers in Pennsylvania from obtaining the benefits of a properly functioning and workable competitive retail electric or natural gas market; and
- the effect of the proposed transaction on the natural gas distribution company employees and authorized collective bargaining agreement.

On February 4, 2005, PECO and PSE&G made the initial filing of their joint application for approval by the PAPUC under the Public Utility Code of Pennsylvania or a determination that Chapters 11, 22 and 28 are not applicable to the Merger.<sup>76</sup> While the Public Utility Code of Pennsylvania does not specify a timetable for completion of the PAPUC's review, PECO and PSE&G have asked that the PAPUC handle the matter on an expedited basis.

Illinois Commerce Commission ComEd has filed a notice with respect to the Merger with the ICC. Formal approval of the Merger by the ICC is not required.<sup>77</sup>

Connecticut As the owner of generation stations in the State of Connecticut, PSEG Power Connecticut LLC, an indirect subsidiary of PSEG Power, is subject to the jurisdiction of the Connecticut Siting Council ("CSC") under Connecticut public utility laws and the Connecticut Department of Environmental Protection ("CDEP") under Connecticut environmental law. The indirect transfer of the ownership interests in these entities may require the approval of the CDEP and will require the approval of the CSC. The parties filed their application with the CSC on March 3, 2005 and intend to file their application for approval with the CDEP during the first quarter of 2005.<sup>78</sup>

### Nuclear Regulatory Commission ("NRC")

PSEG Power holds a NRC operating license for its Salem and Hope Creek nuclear generating facilities. This license authorizes PSEG Power to own and/or operate its nuclear generating facilities. The Atomic Energy Act provides that a license may not be transferred or, in any manner disposed of, directly or indirectly, through transfer of control of any license unless the NRC finds that the transfer complies with the Atomic Energy Act and consents to the transfer. Therefore, the consent of the NRC is required for the transfer of control pursuant to the Merger of the license held by PSEG Power. The NRC will consent to the transfer if it determines that:

- the proposed transferee is qualified to be the holder of the license; and
- the transfer of the license is otherwise consistent with applicable provisions of laws, regulations and orders of the NRC.

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<sup>76</sup> See Exhibit D-4 hereto.

<sup>77</sup> See Exhibit D-3 hereto.

<sup>78</sup> See Exhibit D-7 hereto.

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The parties have filed applications with the NRC. <sup>79</sup>

### Federal Energy Regulatory Commission

Each of Exelon and PSEG has public utility subsidiaries subject to the jurisdictions of FERC under the Federal Power Act. Section 203 of the Federal Power Act provides that no public utility may sell or otherwise dispose of its jurisdictional facilities, directly or indirectly merge or consolidate its facilities with those of any other person, or acquire any security of any other public utility, without first having obtained authorization from FERC.

FERC has stated that, in analyzing a merger under Section 203, it will evaluate the following criteria:

- the effect of the merger on competition in wholesale electric power markets, utilizing an initial screening approach derived from the Department of Justice/Federal Trade Commission-Initial Merger Guidelines to determine if a merger will result in an increase in an applicant's market power;
- the effect of the merger on the applicants' FERC jurisdictional ratepayers; and
- the effect of the merger on state and federal regulation of the applicants.

On February 4, 2005 Exelon and PSEG made the initial filing of their application for approval with FERC. Included in the filing was the parties' market concentration mitigation plan.<sup>80</sup> The market concentration mitigation plan contemplates (1) the divestiture of fossil fuel generating facilities with 2,900 MW of generating capacity and (2) the transfer of control of 2,600 MW of baseload nuclear capacity through either long-term firm baseload energy sales contracts or an annual auction. Exelon and PSEG have not offered to divest any nuclear generating facilities and do not anticipate doing so.

In addition, while not required by the Federal Power Act, Exelon and PSEG have made it a condition to completion of the Merger that FERC approve under Section 205 of the Federal Power Act the sale by the public utility subsidiaries of the combined company of wholesale power and related services at market-based rates.

### Antitrust

Under the provisions of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, the Merger cannot be completed until both Exelon and PSEG file a notification of the proposed transaction with the Antitrust Division of the United States Department of Justice and the Federal Trade Commission ("FTC") and the specified waiting periods have expired or been terminated. The parties have been informed that the Antitrust Division will review the case and the FTC will not.

At any time before the Merger is completed, the Antitrust Division could challenge or seek to block the Merger under the antitrust laws, as it deems necessary or desirable in the public interest. Other competition promoting agencies with jurisdiction over the Merger could also initiate action to challenge or block the Merger. In addition, in some jurisdictions, a competitor, customer or other third party could initiate a private action under the antitrust laws challenging or seeking to enjoin the Merger, before or after it is completed. Based upon an examination of information available relating to the businesses in which the companies are engaged, Exelon and PSEG believe, with the market concentration mitigation plan they have proposed, that completion of the Merger will not violate United States or applicable foreign antitrust laws.

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<sup>79</sup> See Exhibits D-8, D-9 and D-10 hereto.

<sup>80</sup> See Exhibit D-1 hereto.

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The Merger may also be subject to review by the governmental authorities of various other jurisdictions under the antitrust laws of those jurisdictions.

### Federal Communications Commission

The Federal Communications Commission (“FCC”) must approve the transfer of control of telecommunications permits or licenses. The Communications Act of 1934 prohibits the transfer, assignment or disposal in any manner of any license, or any rights thereunder, to any person without authorization from the FCC. PSEG’s subsidiaries hold telecommunications licenses and, together with the appropriate subsidiaries of Exelon, will seek the necessary approvals from the FCC for the assignment of or transfer of control over such licenses in connection with the Merger. Under the Communications Act, the FCC will approve a transfer of control if it serves the public interest, convenience, and necessity.

### Private Letter Ruling of the Internal Revenue Service

United States Treasury Regulations generally provide for the nonrecognition of gain or loss for United States federal income tax purposes with respect to the transfer of certain decommissioning trust funds maintained by nuclear power plant owners in connection with the transfer of an interest in a nuclear power plant. The precise application of these Treasury Regulations in the context of the Merger, however, is not free from doubt. Therefore, Exelon and PSEG have agreed to seek a ruling from the Internal Revenue Service confirming that no gain or loss will be recognized for United States federal income tax purposes with respect to the transfer of PSEG’s decommissioning trust funds as a result of the Merger.

Except as stated above, no state or federal regulatory agency other than the Commission under the Act has jurisdiction over the proposed Merger.

### NJBPU Approval Regarding PSE&G Securities Issuances

The NJBPU has authority under N.J.S.A. 48:3-7, N.J.S.A. 48:3-9 and N.J.S.A. 14:1-5,9 to approve the issuance of securities by PSE&G. PSE&G, a New Jersey corporation, obtains approval from the NJBPU for all of its securities issuances, including both long-term and short-term debt securities. Its existing approvals include authority to issue up to \$750 million of short-term debt through January 2, 2007 (Order of Approval, Docket No. EF04101117 (December 2, 2004)). Further, PSE&G has authority to issue various long-term debt securities in an amount not to exceed \$525 million through December 31, 2005. (Order of Approval, Docket No. EF03121003 (April 28, 2004)). Accordingly, PSE&G is not seeking any approval from the Commission for the issuance of exempt securities, but will rely on Rule 52(a).

PSE&G has pending an application with the NJBPU seeking approval in connection with the issuance of up to \$150 million of securitization obligations under N.J.S.A. 48:3-57. If the application is approved, the NJBPU would authorize a transition bond charge which amounts would be sold by PSE&G to a special purpose Financing Subsidiary in connection with the securitization financing. Because PSE&G will be covered by the general authorizations applicable to the Exelon system approving formation and activities of Financing Subsidiaries and entering into servicing agreements at “market rates” in compliance with rating agency requirements, PSE&G will need no further approval from the Commission for the proposed \$150 million securitization financing.

### **Item 5. Procedure.**

The Commission is respectfully requested to publish the requisite notice under Rule 23 with respect to this Application as soon as possible, such notice to specify a date by which comments must be entered and such date being the date when an order of the Commission granting and permitting this Application to become effective may be entered by the Commission. The Applicants request that the Commission’s order be issued as soon as the rules allow, and that there should not be a 30-day waiting period between issuance of the Commission’s order and the date on which the order is to become effective. The Applicants hereby waive a recommended decision by a hearing officer or any other responsible officer

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of the Commission and consent that the Division of Investment Management may assist in the preparation of the Commission's decision and/or order, unless the Division opposes the matters proposed herein.

### **Item 6. Exhibits And Financial Statements.**

- A. Exhibits.
- A-1 Amended and Restated Articles of Incorporation of Exelon (incorporated by reference to Exhibit 3.1 to Exelon's Registration Statement on Form S-4, filed May 15, 2000 (File No. 333-37082))
- A-2 Amendment to Amended and Restated Articles of Incorporation of Exelon (incorporated by reference to Exhibit 3.1 to Exelon's Quarterly Report on Form 10-Q for the quarter ended June 30, 2004, filed July 28, 2004 (File No. 001-16169))
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- B-2 Exelon Indenture (incorporated by reference to Exhibit 4.1 to Exelon's Registration Statement on Form S-3, filed March 27, 2001 (File No. 333-57540))
- B-3 Exelon Generation Indenture (incorporated by reference to Exhibit 4.1 to Exelon's Registration Statement on Form S-4, filed April 4, 2002 (File No. 333-85496))
- B-4 Form of PSEG Mutual Services Agreement
- B-5 Description of Exelon Service Providers and existing agreements under State approved affiliated interest requirements (incorporated by reference to Exhibit B-3.3 to Exelon's Application on Form U-1, filed October 18, 2000 (File No. 70-09645))
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FS-4	Consolidated Statement of Operations of PSEG for the year ended December 31, 2004 (incorporated by reference to PSEG’s Annual Report on Form 10-K for the year ended December 31, 2004, filed February 28, 2005 (File No. 1-09120))

**Item 7. Information as to Environmental Effects**

The proposed transaction involves neither a “major federal action” nor “significantly affects the quality of the human environment” as those terms are used in Section 102(2)(C) of the National Environmental Policy Act, 42 U.S.C. Sec. 4321 et seq. No federal agency is preparing an environmental impact statement with respect to this matter.

SIGNATURES

Pursuant to the requirements of the Public Utility Holding Company Act of 1935, each of the undersigned companies has duly caused this amended Application/Declaration to be signed on its behalf by the undersigned thereunto duly authorized.

Date: March 15, 2005

**Public Service Enterprise Group Incorporated**

**Public Service Electric and Gas Company\***

**PSEG Power LLC\***

**PSEG Energy Holdings LLC\***

**PSEG Service Corporation**

80 Park Plaza

Newark, New Jersey 07102

\* Including one or more subsidiaries

**Exelon Corporation**

**Commonwealth Edison Company\***

**Exelon Energy Delivery Company, LLC\***

**Exelon Business Services Company\***

**Exelon Ventures, LLC\***

10 South Dearborn Street

37<sup>th</sup> Floor

Chicago, Illinois 60603

**PECO Energy Company\***

2301 Market Street

Philadelphia, Pennsylvania 19101

**Exelon Generation Company, LLC\***

300 Exelon Way

Kennett Square, Pennsylvania 19348

\* Including one or more subsidiaries

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**By Public Service Enterprise  
Group Incorporated**

By: /s/ R. Edwin Selover  
Name: R. Edwin Selover  
Title: Senior Vice President and General  
Counsel  
Public Service Enterprise Group  
Incorporated  
80 Park Plaza  
Newark, New Jersey 07102

**By Exelon Corporation**

By: /s/ Elizabeth A. Moler  
Name: Elizabeth A. Moler  
Title: Executive Vice President  
Government and Environmental Affairs and Public Policy  
Exelon Corporation  
101 Constitution Avenue, NW  
Suite 400 East  
Washington, DC 20001

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MUTUAL SERVICES AGREEMENT  
BETWEEN  
PUBLIC SERVICE ELECTRIC AND GAS COMPANY  
AND  
**[INSERT NAMES OF AFFILIATES HERE]**

THIS AGREEMENT, made and entered into this \_\_\_day of \_\_\_, 2005, by and between the following: Public Service Electric and Gas Company ("PSE&G"), a New Jersey Corporation; and **[INSERT NAMES OF AFFILIATES HERE]**, hereinafter "Affiliates." (PSE&G and its Affiliates are collectively referred to as "Parties.")

WITNESSETH:

WHEREAS, the Parties desire to enter into this Agreement providing for the performance of certain services as more particularly set forth herein; and

WHEREAS, to maximize efficiency, and to achieve cost savings, the Parties desire to avail themselves of the benefits of having services provided by the least cost provider thereof whenever possible, and to compensate such provider appropriately for such services;

WHEREAS, PSE&G and its Affiliates intend to engage in such transactions only as permitted by New Jersey law and the rules of the New Jersey Board of Public Utilities;

NOW, THEREFORE, in consideration of these premises and of the mutual agreements set forth herein, the Parties agree as follows:

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**Section 1. Definitions**

**Board** - New Jersey Board of Public Utilities.

**Providing Company** - one or more Parties to this Agreement that have agreed to provide requested services to another Party in accordance with the terms of this Agreement.

**Requesting Company** - one or more Parties to this Agreement that are requesting services to be provided by another Party in accordance with the terms of this Agreement.

**Section 2. Agreement to Provide Services**

PSE&G and Affiliates agree to provide, upon the terms and conditions set forth herein, services including but not limited to those services hereinafter referred to and described in Section 4, at such times, for such period and in such manner as Requesting Company may from time to time request and Providing Company concludes it is able and willing to provide. Providing Company will keep itself and its personnel available and competent to render to Requesting Company such services so long as it is authorized so to do by the appropriate federal and state regulatory agencies. In providing such services, Providing Company may arrange, as it deems appropriate, for the services of such experts, consultants, advisers, and other persons with necessary qualifications as are required for or pertinent to the provision of the requested services.

**Section 3. Compliance with Law**

PSE&G shall take no action pursuant to this Agreement that is inconsistent with the law of the state of New Jersey. Nothing herein shall have the effect of exempting PSE&G from the provisions of NJSA § 48:3-7, as applicable, or its successor provision.

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**Section 4. Services to be Provided**

The services expected to be provided by Providing Company hereunder may include, but are not limited to, the services set out in Schedule 2, attached hereto and made a part hereof. In addition to those identified in Schedule 2, a Providing Company shall render such additional general or special services, whether or not now contemplated, as Requesting Company may request from time to time and Providing Company determines it is able and willing to perform.

**Section 5. New Affiliates**

New direct or indirect affiliates of PSE&G, which may come into existence after the effective date of this Mutual Service Agreement, may become parties to this Agreement. The Parties hereto shall make such changes in the scope and character of the services to be provided and the method of assigning, distributing or allocating costs of such services as may become necessary to achieve a fair and equitable assignment, distribution, or allocation of costs among all Requesting Companies, including the new affiliates.

**Section 6. Compensation of Providing Company**

As compensation for the services to be provided hereunder, a Requesting Company shall generally pay to Providing Company charges for services that are no more than the cost thereof (except as otherwise directed or permitted by an appropriate regulatory authority), insofar as costs can reasonably be identified and related to the particular services in question or otherwise fairly and equitably allocated to such services. To the extent that PSE&G or any related competitive business segment, as defined in NJAC § 14:4-5.2, are participants in a particular transaction, the Requesting Company

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shall pay to Providing Company charges for services that comply with the Board's decisions, rules and regulations.

**Section 7. Service Requests**

The services described herein or contemplated to be provided hereunder shall be directly assigned, distributed or allocated by activity, project, program, work order or other appropriate basis.

**Section 8. Payment**

Payment shall be by making remittance of the amount billed or by making appropriate accounting entries on the books of the companies involved. Invoices shall be prepared on a monthly basis for services provided hereunder.

**Section 9. Effective Date and Termination**

This Agreement is executed subject to the Commission's consent and approval, and if so approved in its entirety, shall become effective as of the date of approval and shall remain in effect from said date unless terminated by the Commission or by mutual agreement. Any Party may withdraw from this Agreement by giving at least sixty days written notice to the other Parties prior to withdrawal.

**Section 10. Access to Records**

For the seven years following a transaction under this Agreement, the Requesting Company may request access to and inspect the accounts and records of the Providing Company, provided that the scope of access and inspection is limited to accounts and records that are related to such transaction.

**Section 11. Assignment**

This Agreement and the rights hereunder may not be assigned without the

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mutual written consent of all Parties hereto.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed and attested by their authorized officers as of the day and year first above written. PUBLIC SERVICE ELECTRIC AND GAS COMPANY

---

By \_\_\_\_\_

Title \_\_\_\_\_

ATTEST:

By \_\_\_\_\_

Title \_\_\_\_\_

[INSERT NAME OF AFFILIATE HERE]

By \_\_\_\_\_

Title \_\_\_\_\_

ATTEST:

By \_\_\_\_\_

Title \_\_\_\_\_

[INSERT NAMES OF AND SIGNATURE BLOCKS FOR ADDITIONAL PARTIES AS NEEDED]

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**Service Agreement Schedule 1****Allocation Ratios:**

## General:

Identifiable costs for all of the services listed in Schedule 1 will be directly charged to Client Companies, whenever possible. For costs that cannot be directly assigned or distributed, the expected allocation ratios are shown below.

## Revenue Related Ratios:

Revenues  
Sales — Units sold and/or transported  
Number of Customers

## Expenditure Related Ratios:

Total Expenditures  
Operations and Maintenance Expenditures  
Construction Expenditures

## Labor/Payroll Related Ratios:

Labor / Payroll  
Number of Employees

## Units Related Ratios:

Usage (for example: CPU's, square feet, number of vendor invoice payments)  
Consumption (for example: tons of coal, gallons of oil, MMBTU's)  
Capacity (for example: nameplate generating capacity, peak load, gas throughput)  
Other units related

## Assets Related Ratios:

Total Assets  
Current Assets  
Gross Plant

## Composite Ratios:

Total Average Assets and 12 months ended Gross Payroll  
Modified Massachusetts Formula  
Other composite ratios

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**Service Agreement Schedule 2****Services including but not limited to:**

## General:

Identifiable costs for all of the services listed below will be directly charged to Client Companies, whenever possible. For costs that cannot be directly assigned or distributed, the expected allocation ratios are reflected below and discussed in more detail in Schedule 2.

## Administrative &amp; management services including but not limited to:

- accounting
- bookkeeping
- billing
- accounts receivable
- accounts payable
- financial reporting
- audit
- executive
- finance
- insurance
- information systems services
- investment advisory services
- legal
- library
- record keeping
- secretarial & other general office support
- real estate management
- security holder services
- tax
- treasury
- other administration& management services

Expected allocation ratios: Revenue Related, Expenditure Related, Labor/Payroll Related, Units Related, Assets Related, Composite

## Personnel services including but not limited to:

- recruiting
- training & evaluation services
- payroll processing
- employee benefits administration& processing
- labor negotiations & management
- other personnel services

Expected allocation ratios: Labor/Payroll Related, Units Related, Composite

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Purchasing services including but not limited to:

- preparation & analysis of product specifications
- requests for proposals & similar solicitations
- vendor & vendor-product evaluations
- purchase order processing
- receipt, handling, warehousing and disbursement of purchased items
- contract negotiation & administration
- inventory management & disbursement
- other purchasing services

Expected allocation ratios: Expenditure Related, Labor/Payroll Related, Units Related, Assets Related, Composite

Facilities management services including but not limited to:

- office space
- warehouse & storage space
- transportation facilities (including dock & port, rail sidings and truck facilities)
- repair facilities
- manufacturing& production facilities
- fixtures, office furniture & equipment

Expected allocation ratios: Expenditure Related, Labor/Payroll Related, Units Related, Composite

Computer services including but not limited to:

- computer equipment & networks
- peripheral devices
- storage media
- software

Expected allocation ratios: Expenditure Related, Labor/Payroll Related, Units Related, Assets Related, Composite

Communications services including but not limited to:

- communications equipment
- audio & video equipment
- radio equipment
- telecommunications equipment& networks
- transmission & switching capability

Expected allocation ratios: Expenditure Related, Labor/Payroll Related, Units Related, Assets Related, Composite

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Machinery management services including but not limited to:

- equipment
- tools
- parts & supplies

Expected allocation ratios: Expenditure Related, Labor/Payroll Related, Units Related, Composite

Vehicle management services including but not limited to:

- automobiles
- trucks
- vans
- trailers
- railcars
- marine vessels
- aircraft
- transport equipment
- material handling equipment
- construction equipment

Expected allocation ratios: Expenditure Related, Labor/Payroll Related, Units Related, Composite

Operational services including but not limited to:

- drafting & technical specification development & evaluation
- consulting
- engineering
- environmental
- nuclear
- construction
- design
- resource planning
- economic& strategic analysis
- research
- testing
- training
- customer solicitation
- support & other marketing related services
- public & governmental relations
- other operational services

Expected allocation ratios: Revenue Related, Expenditure Related, Labor Payroll Related, Units Related, Assets Related, Composite



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

Exelon Corporation )  
Public Service Enterprise Group Incorporated )

Docket No. EC05-43-000

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

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February 4, 2005

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

Exelon Corporation ) Docket No. EC05-43-000  
Public Service Enterprise Group Incorporated )

**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”)<sup>1</sup> and Public Service Enterprise Group Incorporated and its subsidiaries that are public utilities subject to the Commission’s jurisdiction<sup>2</sup> (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.

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<sup>1</sup> The Exelon entities subject to the Commission’s jurisdiction are identified below in Exhibit B of this Application.

<sup>2</sup> The PSEG entities subject to the Commission’s jurisdiction are identified below in Exhibit B in this Application.

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## 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.<sup>3</sup> The Energy Delivery and Generation business segments are described below.

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<sup>3</sup> 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.<sup>4</sup> 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.<sup>5</sup> 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.

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<sup>4</sup> 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”).

<sup>5</sup> 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, Exelon engaged Dr. Hieronymus to perform an “Appendix A” analysis<sup>6</sup> 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.<sup>7</sup> 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.

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<sup>6</sup> 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).

<sup>7</sup> 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 West<sup>8</sup> and PJM South.<sup>9</sup> 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.<sup>10</sup> 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.<sup>11</sup> 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.

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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,<sup>12</sup> and has reaffirmed this statement in a number of subsequent merger cases.<sup>13</sup>

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.<sup>14</sup> These amounts are based on the assumption that

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

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

<sup>14</sup> 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.<sup>15</sup> 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.<sup>16</sup> 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

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<sup>15</sup> AEP, 90 FERC ¶ 61,242 at 61,792 (2000).

<sup>16</sup> 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."<sup>17</sup> The reason for this requirement is that the Commission is

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<sup>17</sup> 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.<sup>18</sup>

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.<sup>19</sup> 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.<sup>20</sup> 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

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<sup>18</sup> Ameren Corp., 108 FERC ¶61,094 at P44 (2004).

<sup>19</sup> 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).

<sup>20</sup> 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.<sup>21</sup> 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,

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<sup>21</sup> 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.<sup>22</sup> 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.

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<sup>22</sup> 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).<sup>23</sup>

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.<sup>24</sup>

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

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

<sup>24</sup> 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.<sup>25</sup> 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

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<sup>25</sup> 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.

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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.<sup>26</sup> 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

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<sup>26</sup> 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.<sup>27</sup> 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.

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<sup>27</sup> 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.<sup>28</sup> 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,<sup>29</sup> 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, Exelon 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

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<sup>28</sup> 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.<sup>30</sup>

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, PECO<sup>31</sup> and PSE&G<sup>32</sup> each are in the Transmission Owner sector which,

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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

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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.<sup>33</sup>

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:

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<sup>33</sup> 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.<sup>34</sup>

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.<sup>35</sup>

### **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.<sup>36</sup>

#### **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

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

<sup>35</sup> *Id.*

<sup>36</sup> 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.<sup>37</sup> 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.<sup>38</sup>

### **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.<sup>39</sup> 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.

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

<sup>38</sup> Merger Policy Statement, ¶ 31,044 at 30,124-25.

<sup>39</sup> 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.<sup>40</sup> 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.<sup>41</sup> 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.

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<sup>40</sup> Revised Filing Requirements, ¶ 31,111 at 31,902-03.

<sup>41</sup> 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.

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February 4, 2005

Respectfully submitted,

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STATE OF NEW JERSEY  
BOARD OF PUBLIC UTILITIES

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IN THE MATTER OF THE JOINT PETITION OF  
PUBLIC SERVICE ELECTRIC AND GAS  
COMPANY AND EXELON CORPORATION  
FOR APPROVAL OF A CHANGE IN CONTROL  
OF PUBLIC SERVICE ELECTRIC AND  
GAS COMPANY, AND RELATED  
AUTHORIZATIONS

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DOCKET NO.:\_\_  
  
VERIFIED JOINT  
PETITION

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

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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,

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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.<sup>1</sup>

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.<sup>2</sup>

4. Exelon’s energy delivery business is conducted through its second-tier subsidiaries PECO Energy Company (“PECO”) and Commonwealth Edison Company (“ComEd”).<sup>3</sup> 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

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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”).

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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

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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

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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

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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

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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.

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**(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

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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,

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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

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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

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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

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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

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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: Rodney Frame, Managing Principal with Analysis Group, Inc. has prepared testimony for filing in this proceeding and as a supplement in the FERC docket, analyzing the Merger for its possible impact on competition. Mr. Frame addresses the Competitive effects of the proposed merger on New Jersey electric and natural gas customers. Taking into account the mitigation proposals discussed in this testimony, Mr. Frame believes that the Merger will have no adverse effect on competition in the retail and wholesale electricity and natural gas markets affecting the New Jersey consumers.

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(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

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Jersey public utilities.<sup>4</sup> 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

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<sup>4</sup> 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).

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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

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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 Rodney Frame (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

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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

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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.

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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.

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**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.

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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

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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.

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**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

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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.

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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

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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.

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**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.  
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[jhoffman@wilentz.com](mailto:jhoffman@wilentz.com)  
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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](mailto:francis.delany@pseg.com)

On behalf of Exelon:

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Mark L. Mucci, Esq.  
Stephen B. Genzer, Esq.  
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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](mailto: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

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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

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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: \_\_\_\_\_  
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: \_\_\_\_\_  
MARK L. MUCCI, Esq.

Dated: February 4, 2005

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**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.

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Sworn to and subscribed before me this \_\_\_\_day of  
February 2005.

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Notary Public

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**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.

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Sworn to and subscribed before me this \_\_\_\_ day of  
February 2005.

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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

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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

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† 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,

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† 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 3<sup>rd</sup> day of  
February, 2005.

\_\_\_\_\_  
Notary Public

My Commission expires:

**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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Dated: February 4, 2005

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

**A. INTRODUCTION**

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

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

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

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

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

Paul R. Bonney  
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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.<sup>1</sup> 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.<sup>2</sup> The Enterprises business, which is being winded down, is an infrastructure and electrical contracting business directed principally

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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.

towards the communications and energy services industries. The Energy Delivery, Generation and Business Services segments are described below.

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).<sup>3</sup> 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.

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<sup>3</sup> 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.<sup>4</sup> 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.

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<sup>4</sup> 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

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 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 merger<sup>5</sup> 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

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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.

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).<sup>6</sup> 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.

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

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

<sup>6</sup> 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*

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.

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*(Lyonnaise) of the Remaining Outstanding Shares of United's Parent, United Water Resources, Inc., Docket Nos. A-310013F0014 and A-230077F0003 (January 27, 2000).*

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

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

#### **F. BENEFITS OF THE MERGER**

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

a. **Increased Scale and Scope; Diversification.** The combined company will have increased scale and scope in both energy delivery and generation. In addition, the combined company will have greater diversification and balance in its energy delivery business

and generation portfolio. This increased scale, scope and diversification is expected to result in improved service and reliability with greater earnings predictability.

(i) **Electric Energy Delivery.** With respect to the energy delivery business, the combined company will have three urban-based utility franchises with service areas encompassing more than 18 million people. PECO, ComEd and PSE&G are all within the PJM's control area and have turned over operational control of their respective transmission systems to PJM as the FERC-approved RTO. In addition, New Jersey, like Pennsylvania and Illinois, has restructured its electricity industry to permit and foster retail competition. Significantly, New Jersey has adopted a competitive auction model for electric distribution companies in the State to obtain energy and capacity to serve their Basic Generation Service (BGS) load. As a consequence, PSE&G has several years of experience in acquiring energy and capacity through the competitive auction process. It is anticipated that both PECO and ComEd will benefit from PSE&G's expertise in this area, since both the PUC and the ICC are contemplating the adoption of similar competitive acquisition models for Pennsylvania and Illinois electric distribution companies to acquire energy and capacity to meet their default/provider of last resort requirements at the end of their respective generation rate cap periods.

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

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

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

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

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

e. **Synergies.** The Merger will create the opportunity to achieve meaningful cost savings for the regulated and unregulated businesses of Exelon and PSEG through the sharing of best practices, the elimination of duplicative functions, improved operating efficiencies in nuclear and other generation operations and supply chain benefits from improved sourcing. The synergies that will accrue to the Pennsylvania jurisdictional regulated businesses of PECO over time will, at least in part, offset the increasing cost of providing regulated retail utility service and, thereby, may reduce the size of future rate increases.

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

g. **Impact of the Merger on Employees and Suppliers.** The Merger is expected to benefit employees by making them part of a larger, more diverse organization with



increased opportunities across the combined company's business lines. As a consequence of the Merger, the combined company should be able to streamline and increase the efficiency of its procurement process.

**h. Impact of the Merger on the Communities Served.** The Merger is expected to benefit the communities served by PECO, ComEd and PSE&G by creating a strong combined company with operating headquarters and a substantial corporate presence in Philadelphia, Newark and Chicago. In addition, these companies expect to maintain and enhance their roles as leaders and active participants in the civic and cultural life of the cities and communities they serve and to take an even greater leadership role in contributing money, time and other resources to charitable institutions and causes throughout their combined service areas.

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

#### **G. WRITTEN TESTIMONY**

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

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

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

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

#### **H. ADDITIONAL SUPPORTING DATA**

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

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

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

**Exhibit C:** Agreement and Plan of Merger.

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

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

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

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

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

**Exhibit I:** Pro forma, post-Merger income statements for Exelon for the twelve months ended December 31, 2003 and the nine months ended September 30, 2004.

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

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

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

**Exhibit M:** Customer Notice.

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

#### **I. OTHER REGULATORY AND SHAREHOLDER APPROVALS**

32. Exelon and PSE&G will submit the Merger for review by, or seek approval from, various Federal and State regulatory agencies. The principal regulatory approvals that must be obtained are: (a) the approval of the Securities and Exchange Commission (SEC) under PUHCA; (b) the approval of the FERC under the Federal Power Act (FPA); (c) the approval of the Nuclear Regulatory Commission (NRC) under Section 184 of the Atomic Energy Act of 1954; (d) the expiration or termination of the waiting period under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended; (e) the approval of the New Jersey Board of Public Utilities (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.<sup>7</sup>

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.

#### **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.

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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, 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. may determine are necessary in order for the Merger to be lawfully consummated.

Respectfully submitted,

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Counsel for Public Service  
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Dated: February 4, 2005

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STATE OF CONNECTICUT  
CONNECTICUT SITING COUNCIL

Certificate of Environmental Compatibility and : Docket No. 27  
Public Need For The Modification of :  
Bridgeport Harbor Unit No. 3 to Capability to :  
Burn Either Low-Sulfur Coal or Oil : March 3, 2005  
:  
:

**JOINT REQUEST OF PSEG POWER CONNECTICUT, LLC AND  
EXELON CORPORATION FOR APPROVAL OF TRANSFER OF CERTIFICATE OF  
ENVIRONMENTAL COMPATIBILITY AND PUBLIC NEED**

I. INTRODUCTION

On January 11, 1983, the Connecticut Siting Council (“Council”) in Docket No. 27 issued a certificate of environmental compatibility and public need (the “Certificate”) to The United Illuminating Company (“UI”) allowing UI to modify Unit No. 3 at Bridgeport Harbor Station to have the capability to burn either low-sulfur coal or oil. With Council approval, the Certificate was transferred to Wisvest-Connecticut, LLC (“Wisvest”) on March 9, 1999 in connection with Wisvest’s purchase of Bridgeport Harbor Station. With Council approval, the Certificate was subsequently transferred to PSEG Power Connecticut LLC (“Power Connecticut”) on August 1, 2002 in connection with the purchase of the issued and outstanding membership interests and limited liability company interests of Wisvest. As described below, Power Connecticut and Exelon Corporation (“Exelon”) hereby jointly request that the Council transfer the Certificate from Power Connecticut to Exelon Generation Connecticut, LLC (“EGC”).

## II. DESCRIPTION OF PROPOSED TRANSACTION

PSEG Power's ultimate parent, Public Service Enterprise Group Incorporated ("PSEGI"), entered into an Agreement and Plan of Merger with Exelon, on December 20, 2004. As part of this merger, Power Connecticut will either be merged into EGC or will become a direct subsidiary of EGC, and will be renamed Exelon Generation Connecticut, LLC. Accordingly, pursuant to Connecticut General Statutes §16-50k(b), Power Connecticut and Exelon hereby jointly request the Council approve the transfer of the Certificate from Power Connecticut to Exelon Generation Connecticut, LLC.

A copy of the application filed with the Federal Energy Regulatory Commission ("FERC") under Section 203 of the Federal Power Act by PSEGI and Exelon, which describes the transaction in detail, is attached as Bulk Exhibit 1 hereto. Exhibit 2 hereto, which is a part of the FERC Section 203 application, illustrates the post-transaction corporate structure.

## III. REQUEST FOR THE TRANSFER OF THE CERTIFICATE

Power Connecticut and Exelon hereby jointly request the transfer of the Certificate to Exelon Generation Connecticut, LLC. The proposed transaction meets the requirements of Connecticut General Statutes §16-50k(b). Exelon Generation Connecticut, LLC will comply with all conditions and requirements of the Certificate, and it is technically and financially capable of owning and operating Bridgeport Harbor Station and of complying with the conditions and requirements of the Certificate, as described in Bulk Exhibit 1. In support of this request, Power Connecticut and Exelon represent that the transaction described herein was not contemplated at or prior to the time the Certificate was issued or at or prior to the time the Certificate was previously transferred to Wisvest or to Power Connecticut. Please note that Exelon Generation Connecticut, LLC will also own and



operate New Haven Harbor Station and there are no Council certificates for New Haven Harbor Station.

IV. TIMING OF TRANSFER

Power Connecticut and Exelon anticipate that the transaction described herein will occur in the fourth quarter of 2005 and request that transfer of the Certificate be effective as of the date of the closing of the transaction. For the Council's records, we will notify the Council upon the consummation of the transaction.

V. CONCLUSION

For the reasons stated herein, Power Connecticut and Exelon respectfully request that the Council transfer the Certificate to Exelon Generation Connecticut, LLC.

Respectfully submitted,

PSEG POWER CONNECTICUT, LLC AND  
EXELON CORPORATION

By:

\_\_\_\_\_  
Franca L. DeRosa, Esq.  
Brown Rudnick Berlack Israels LLP  
185 Asylum Street, 38<sup>th</sup> Floor  
Hartford, CT 06103  
Telephone: (860) 509-6539  
Facsimile: (860) 509-6501  
Their Attorney

LIST OF EXHIBITS

Bulk Exhibit 1 – Application For Authorization of Disposition of Jurisdictional Assets Under Section 203 of the Federal Power Act \*

Exhibit 2 – Proposed Corporate Structure

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\* Four copies provided to Council

LR-N05-0094  
LCR H05-03  
LCR S05-02

U.S. Nuclear Regulatory Commission  
ATTN: Document Control Desk  
Washington, D.C. 20555-0001

**PROPOSED LICENSE TRANSFER AND CONFORMING LICENSE  
AMENDMENTS RELATING TO THE MERGER OF PUBLIC SERVICE ENTERPRISE GROUP AND EXELON CORPORATION  
HOPE CREEK GENERATING STATION  
DOCKET NO. 50-354  
FACILITY OPERATING LICENSE NO. NPF-57  
SALEM GENERATING STATION — UNIT 1 AND UNIT 2  
DOCKET NO. 50-272 AND 50-311  
FACILITY OPERATING LICENSE NO. DPR-70 AND DPR-75**

In accordance with Section 184 of the Atomic Energy Act, and 10 C.F.R. § 50.80, PSEG Nuclear LLC (“PSEG Nuclear”) requests Nuclear Regulatory Commission (“NRC”) consent to the transfer of PSEG Nuclear’s interests in Facility Operating License Nos. DPR-70 and DPR-75 for the Salem Generating Station, Units 1 and 2, respectively, and Facility Operating License No. NPF-57 for the Hope Creek Generating Station. This request is submitted by PSEG Nuclear on behalf of itself and Exelon Generation Company, LLC (“Exelon Generation”) (together, “Applicants”). The Applicants specifically request that the NRC consent to the transfer of PSEG Nuclear’s ownership interests and licensed operating authorities due to a proposed merger of PSEG Nuclear’s parent corporation Public Service Enterprise Group (“PSEG”) into the Exelon Corporation (“Exelon”). Under the merger agreement, the two companies will combine to create Exelon Electric & Gas Corporation (“EEG”), the nation’s largest utility. The merger will be accomplished by converting PSEG shares into Exelon shares and is expected to result in PSEG shareholders holding about 32% of EEG. PSEG will merge into Exelon and upon completion of the merger, Exelon will change its name to EEG. EEG will then restructure its organization. PSEG Nuclear requests that the above facilities’ operating licenses be transferred to Exelon Generation which will be an indirect wholly owned subsidiary of EEG. Applicants request NRC’s prior written consent and issuance of conforming license amendments for Exelon

***This letter forwards proprietary information in accordance with 10CFR 2.390. The balance of this letter may be considered non-proprietary upon removal of Attachment 5A.***

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Generation to be authorized to possess, use, and operate the units under essentially the same conditions and authorizations included in the existing licenses.

The transfer of the nuclear plants to Exelon Generation is being undertaken consistent with a publicly released December 20, 2004, announcement of the proposed merger of PSEG and Exelon. The merger has been unanimously approved by both companies' boards of directors, who have recommended that the merger be approved by the shareholders of each company. EEG will have an asset base of approximately \$79 billion with \$27 billion in annual revenues and \$3.2 billion in annual net income. With a total generation portfolio of approximately 52,000 MWe in domestic capacity, including long-term contracts, the combined company will be the nation's largest power generator and will be a leading domestic wholesale power marketer. By sharing resources and best practices, the combined company will be able to enhance operations and create efficiencies at all levels of the new company, including nuclear power plant generation.

Given Exelon Generation's strong, successful performance in running the nation's largest nuclear fleet, the companies expect to realize improved stability, higher capacity utilization rates and improved cost structure from combining nuclear operations under one management team. As previously docketed to the NRC, the companies have entered into a Nuclear Operating Services Contract ("NOSC"), which commenced on January 17, 2005. Under the NOSC, Exelon Generation has provided personnel to work full time in the PSEG Nuclear organization, including senior personnel to assist daily plant operations and to implement the Exelon Nuclear Management Model, which defines proven practices that Exelon Generation has used to manage its successful nuclear performance improvement program. This effort is currently assisting PSEG Nuclear in improving the operations of the Salem and Hope Creek facilities.

PSEG currently owns 57.41% each of Salem, Units 1 and 2, and 100% of the Hope Creek unit, and is the operator of these three nuclear plants.<sup>1</sup> Exelon Generation currently is the non-operating owner of 42.59% each of Salem, Units 1 and 2. As a result of the proposed transfers, Exelon Generation will become the owner of PSEG Nuclear's current ownership shares and will assume operational responsibility for these units. No physical changes will be made to the nuclear plants as a result of these transfers. The NOSC is in place and in

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<sup>1</sup> PSEG Nuclear is also a non-operating owner of 50% interests in Peach Bottom Atomic Power Station, Units 2 and 3. By separate application under 10 C.F.R. § 50.80, PSEG will seek NRC consent to transfer of these licensed interests to Exelon Generation.

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effect there will be no significant change in the day-to-day management and operations of the plants. Current nuclear personnel and the existing organizations will continue to support the nuclear plants as more fully described in Attachment 1 of this submittal. Organization changes will occur as combined areas of expertise are integrated.

Because the proposed transfer results in a change in the name of the licensees, PSEG Nuclear also requests NRC approval of certain administrative amendments to conform the operating licenses and plant Technical Specifications to reflect the proposed transfers, which are being submitted in accordance with 10 C.F.R. § 50.90. In accordance with 10 C.F.R. § 50.91(b)(1), a copy of this submittal has been sent to the State of New Jersey. The changes are listed in Attachment 2 and Attachment 3 to this letter. Administrative changes to documents other than the existing licenses and the Technical Specifications will be necessary upon completing the transfer of the nuclear plants. Changes to documents such as the Updated Final Safety Analysis Reports, Physical Security Plans, and Emergency Plans will be achieved in a timely fashion during periodic or routine updates as required by NRC regulations, such as 10 C.F.R. § 50.71(e).

Additional information pertaining to the proposed reorganization, including the information required under 10 C.F.R. § 50.80, is included in Attachment 1. As this information demonstrates, the proposed merger and restructuring (1) will not have any adverse impact on the operation of Salem Units 1 and 2 and Hope Creek Unit 1; (2) will not negatively affect the managerial, technical, or financial qualifications of the licensed owner and operator of these plants; (3) will not affect assurance of decommissioning funding for the units; and (4) will not result in foreign ownership, control or domination of the licensee. Attachments 2 and 3 include mark-ups of the facility operating licenses and the relevant portions of the plant Technical Specifications, reflecting the conforming administrative amendments associated with the transfers.

In summary, the proposed merger and restructuring will not be inimical to the common defense and security or result in any undue risk to public health and safety, and the transfer of the NRC licenses associated with the merger will be consistent with the requirements of the Atomic Energy Act, NRC regulations, and the guidelines set forth in the relevant NRC Standard Review Plans.

There are certain regulatory approvals and filings beyond that of the NRC, which must be addressed prior to the completion of the merger and subsequent corporate restructuring and the transfer of the nuclear generating assets to Exelon Generation. These include, for example, approvals by the Federal

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Energy Regulatory Commission (“FERC”) and filings with the Securities and Exchange Commission (“SEC”). To facilitate the merger and restructuring, PSEG Nuclear respectfully requests the NRC review and complete action on this submittal within six months. Upon NRC approval of this proposed change, PSEG Nuclear requests that the amendments be made effective on the date of issuance. Consistent with past practice, we request that the approval allow for an execution of the merger, corporate restructuring and the license transfers to take place within a succeeding twelve month period. PSEG Nuclear will keep the NRC informed of any significant changes in the status of the other required approvals or other developments that could have an impact on the schedule for the merger, restructuring and license transfer.

The attached information includes a proprietary addendum Attachment 5A supporting this license transfer request that necessarily includes certain confidential business and financial information. Accordingly, PSEG Nuclear is submitting an affidavit formally requesting, pursuant to 10 C.F.R. § 2.390, that this proprietary information be withheld from public disclosure. A non-proprietary version of this attachment that is suitable for public disclosure is provided as Attachment 5.

In the event that the NRC has any questions about the proposed merger or wishes to obtain any additional information about the reorganization, please contact Christina L. Perino at (856) 339-1989.

I declare under penalty of perjury that the foregoing is true and correct.

Sincerely,

Executed on \_\_\_\_

Frank Cassidy  
President and Chief Operating Officer PSEG  
Nuclear

Attachments (5)  
Addendum (1)  
Affidavits (2)

***This letter forwards proprietary information in accordance with 10CFR 2.390. The balance of this letter may be considered non-proprietary upon removal of Attachment 5A.***

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LR-N05-0094

C Mr. S. Collins, Administrator — Region I  
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USNRC Senior Resident Inspectors – Salem and HC (X24)

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Trenton, NJ 08625

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REF:

LCR H05-03  
LCR S05-02  
LR-N05-0094

STATE OF NEW JERSEY

)

SS.

COUNTY OF SALEM

)

Frank Cassidy, being duly sworn according to law deposes and says:

I am President and Chief Operating Officer PSEG Nuclear, and as such, I am familiar with the contents of the attachment accompanying this correspondence (LR-N05-0094), concerning the Salem Generating Station, Units 1 and 2, and the Hope Creek Station, Unit 1, and the matters set forth therein regarding PSEG Nuclear and its affiliates are true and correct to the best of my knowledge, information and belief.

PSEG Nuclear requests that this correspondence be treated as confidential and withheld from public disclosure pursuant to 10 C.F.R. §2.390(a)(4).

Specifically, Attachment 5A contains information associated with the proposed Exelon Corporation merger and contains commercial and financial information that is privileged and confidential. Other than PSEG Nuclear's disclosure as required under 10 C.F.R. §50.80, the information therein has been held in confidence and not disclosed to the public. Internal distribution of this information has likewise been limited to essential PSEG Nuclear personnel.

Subscribed and Sworn to before me

this \_\_\_\_\_ day of \_\_\_\_\_, 2005

\_\_\_\_\_  
Notary Public of New Jersey



REF: LCR H05-03  
LCR S05-02  
LR-N05-0094

STATE OF ILLINOIS

)

COUNTY OF DUPAGE

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SS.

Jeffrey A. Benjamin, being duly sworn according to law deposes and says:

I am Vice President, Licensing and Regulatory Affairs of Exelon Generation Company LLC, and as such, I am familiar with the contents of the attachments accompanying this correspondence (LR-N05-0094), concerning the Salem Generating Station, Units 1 and 2, and the Hope Creek Station, Unit 1, and the matters set forth therein regarding Exelon Generation Company, LLC and its affiliates are true and correct to the best of my knowledge, information and belief.

Exelon Generation Company, LLC requests that this correspondence be treated as confidential and withheld from public disclosure pursuant to 10 C.F.R. §2.390(a)(4).

Specifically, Attachment 5A contains information associated with the proposed Exelon Corporation merger and contains commercial and financial information that is privileged and confidential. Other than Exelon Generation Company's disclosure as required under 10 C.F.R. §50.80, the information therein has been held in confidence and not disclosed to the public. Internal distribution of this information has likewise been limited to essential Exelon Generation Company, LLC personnel.

Subscribed and Sworn to before me

this \_\_\_ day of \_\_\_, 2005

\_\_\_\_\_  
Notary Public of Illinois

## PROPOSED LICENSE TRANSFER and CONFORMING LICENSE AMENDMENTS

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**SALEM NUCLEAR GENERATING STATION UNITS 1 AND 2  
HOPE CREEK GENERATING STATION  
FACILITY OPERATING LICENSES DPR-70, DPR-75 and NPF-57  
DOCKET NOS. 50-272, 50-311 and 50-354**

**ATTACHMENT 1  
EVALUATION OF REVISIONS TO THE OPERATING LICENSES AND TECHNICAL SPECIFICATIONS  
RELATING TO THE MERGER OF PUBLIC SERVICE ENTERPRISE GROUP and EXELON CORPORATION**

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## 1. Introduction

PSEG Nuclear LLC (“PSEG Nuclear”) submits the following information and requests, pursuant to 10 C.F.R. § 50.80, Nuclear Regulatory Commission (“NRC”) consent to the transfer of PSEG Nuclear’s interests in Facility Operating License Nos. DPR-70 and DPR-75 for the Salem Generating Station, Units 1 and 2, respectively, and Facility Operating License No. NPF-57 for the Hope Creek Generating Station (collectively referred to as the “Nuclear Plants”). This request is submitted by PSEG Nuclear on behalf of itself and Exelon Generation Company, LLC (“Exelon Generation”) (together, “Applicants”). The Applicants specifically request that the NRC consent to the transfer of PSEG Nuclear’s licensed authorities and responsibilities due to a proposed merger between PSEG Nuclear’s parent company Public Service Enterprise Group (“PSEG”) and Exelon Corporation (“Exelon”). Under the merger agreement, the two companies will combine to create Exelon Electric & Gas Corporation (“EEG”), the nation’s largest utility. The merger will be accomplished by converting PSEG shares into Exelon shares and is expected to result in PSEG shareholders holding about 32% of EEG. PSEG will merge into Exelon and upon completion of the merger, Exelon will change its name to EEG. EEG will then restructure its organization. Exelon Generation will be an indirect wholly owned subsidiary of EEG and is the proposed owner and operator of the Nuclear Plants. Applicants request NRC’s prior written consent and issuance of conforming amendments for Exelon Generation to be authorized to possess, use, and operate the Nuclear Plants under essentially the same conditions and authorizations included in the existing licenses.

PSEG Nuclear currently owns 57.41% of Salem Generating Station, Units 1 and 2, and 100% of the Hope Creek Generating Station Unit 1, and is the operating licensee holder for these three Nuclear Plants.<sup>2</sup> PSEG Nuclear is making this application as a result of an announced merger between PSEG and Exelon. As described more fully below, Exelon Generation will be an indirect wholly-owned subsidiary of EEG. As a result of the proposed transfers, Exelon Generation will become the owner of PSEG Nuclear’s current ownership shares of the Nuclear Plants and will assume operational responsibility for these units.

No physical changes will be made to the Nuclear Plants as a result of these transfers. There will be no significant change in the day-to-day management and operations of the Nuclear Plants as Exelon Generation has been supporting plant operation at the Nuclear Plants under a previously executed Nuclear Operating Services Agreement. Nuclear personnel and the existing organizations will continue to support the plants as fully described further in Section 4, below.

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<sup>2</sup> PSEG Nuclear is also a non-operating owner of 50% interests in Peach Bottom Atomic Power Station, Units 2 and 3. By separate application under 10 C.F.R. § 50.80, PSEG Nuclear will seek NRC consent to transfer of these ownership interests to Exelon Generation.

Because the proposed merger and restructuring affects the named licensees, PSEG Nuclear also requests NRC approval of certain administrative amendments to conform the operating licenses and plant Technical Specifications to reflect the proposed transfers. Proposed changes are shown in mark-ups included as Attachments 2 and 3.

Administrative changes to documents other than the existing licenses and the Technical Specifications will be necessary upon completing the transfer of the Nuclear Plants. Changes to documents such as the Updated Final Safety Analysis Report, Physical Security Plan and Emergency Plan will be made in a timely fashion during periodic or routine licensing correspondence or updates required by NRC regulations, such as 10 C.F.R. § 50.71(e). Changes to other documents, such as procedures, drawings, and manuals will be made in accordance with periodic or routine internal processes applicable to those documents.

## 2. Statement of Purpose of Transfer and Nature of the Transaction Making the Transfer Necessary or Desirable

The transfer of the nuclear plants to Exelon Generation is being undertaken consistent with a public announcement released December 20, 2004 of the merger between Exelon and PSEG. The merger has been unanimously approved by both companies' boards of directors, who have recommended that the merger be approved by shareholders. EEG will have an asset base of approximately \$79 billion with \$27 billion in annual revenues and \$3.2 billion in annual net income. With a total generation portfolio of approximately 52,000 MWe in domestic capacity, including long-term contracts, the combined company will be the nation's largest power generator and will be a leading domestic wholesale power marketer.<sup>3</sup> By sharing resources and best practices, the combined company will be able to enhance operations and create efficiencies at all levels of the new company, including nuclear power plant generation.

Given Exelon Generation's strong, successful performance in running the nation's largest nuclear fleet, the companies expect to realize improved stability, higher capacity utilization rates and an improved cost structure from combining nuclear operations under one management team. As previously docketed to the NRC, the companies have entered into a Nuclear Operating Services Contract ("NOSC"), which commenced on January 17, 2005. Under the NOSC, Exelon Generation has provided personnel to work full time in the PSEG Nuclear organization, including senior personnel to assist daily plant operations and to implement the Exelon Nuclear Management Model, which defines proven

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<sup>3</sup> PSEG and Exelon have proposed to the Federal Energy Regulatory Commission a plan to divest by various means approximately 5500 MW of generation capacity to mitigate any market concentration issues resulting from the merger.

practices that Exelon Generation has used to manage its successful nuclear performance improvement program. This is currently assisting PSEG Nuclear in improving the operations of the Nuclear Plants.

PSEG Nuclear currently owns 57.41% each of Salem Generating Station, Units 1 and 2, and 100% of the Hope Creek Generating Station Unit 1, and is the operator of these three nuclear plants. Exelon Generation currently is the non-operating owner of 42.59% each of Salem Generating Station, Units 1 and 2. As a result of the proposed transfers, Exelon Generation will become the owner of PSEG Nuclear's current ownership shares and will assume operational responsibility for these units. No physical changes will be made to the nuclear plants as a result of these transfers. The NOSC is in place and in effect there will be no significant change in the day-to-day management and operations of the plants. Current nuclear personnel and the existing organizations will continue to support the nuclear plants. Organization changes will occur as combined areas of expertise are integrated.

The new corporate structure is illustrated in Attachment 4. The ultimate parent entity will be EEG with a wholly-owned deregulated subsidiary Exelon Ventures Company, LLC that in turn, wholly owns Exelon Generation.

As presently conceived by PSEG Nuclear and Exelon Generation, and consistent with the terms of the proposed merger, the key responsibilities, attributes, and relationships of the reorganized companies will be:

- (a) Exelon Generation will assume title to PSEG Nuclear's interests in the Nuclear Plants (including all real estate, buildings, equipment, spare parts, fixtures, inventory, documents, records, assignable contracts, other property necessary for the operation and maintenance of the plants, and all used and spent nuclear fuel and other licensed materials at the plants).
- (b) Exelon Generation will assume all responsibility for the operation and maintenance of the Nuclear Plants. <sup>4</sup>
- (c) Nuclear employees of PSEG Nuclear at the Nuclear Plants and at other locations will become employees of Exelon Generation or a wholly-owned subsidiary of Exelon Generation.
- (d) Exelon Generation will continue to have approval from the Federal Energy Regulatory Commission ("FERC") to sell wholesale power at market-based rates.

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<sup>4</sup> The transfer of the Nuclear Plants from PSEG Nuclear to Exelon Generation is conditioned upon receiving all necessary regulatory approvals, specifically including approval of this requested transfer and completing the merger.

- (e) Contracts associated with the electric generating business, including, but not limited to, wholesale electric purchase and sales agreements, fuel contracts, and other contractual rights and liabilities related to the Nuclear Plants, will be transferred by PSEG Nuclear to Exelon Generation.
- (f) Exelon Generation will become responsible for the decommissioning of the Nuclear Plants. As is discussed further below, Exelon Generation will become the owner of the Nuclear Decommissioning Trust Funds presently maintained by PSEG Nuclear.

3. General Corporate Information Regarding Exelon Generation Company, LLC

A. Name of New Licensee

The new licensee will be Exelon Generation Company, LLC.

B. Address

80 Park Plaza  
Newark, NJ 07102

C. Description of Business or Occupation

Exelon Generation is a limited liability company organized under the laws of the State of Pennsylvania. Exelon Generation is engaged principally in power generation of electricity as an EWG authorized to sell electricity at market-based rates.

D. Organization and Management

The proposed organization and management structure is more fully described in the Technical Qualifications section below.

Under Sections 103d and 104d of the Atomic Energy Act of 1954, as amended, an operating license may not be transferred to “any corporation or other entity if the Commission knows or has reason to believe it is owned, controlled, or dominated by an alien, a foreign corporation or a foreign government,” or if in the opinion of the Commission, the transfer “would be inimical to the common defense and security.” Following the proposed transfer, Exelon Generation will not be owned, controlled or dominated by an alien, a foreign corporation or a foreign government. The combined holding company, EEG, will be a public company with shares traded on the New York Stock Exchange. The shares are expected to be widely held – initially by the current shareholders of Exelon and Public Service Enterprise Group. In addition, neither PSEG Nuclear nor Exelon

Generation is acting as agent or representative of any other person in filing this application.

#### 4. Technical Qualifications

The technical qualifications of Exelon Generation to carry out its responsibilities as the licensed operator of the Nuclear Plants will meet or exceed the technical qualifications of the present PSEG Nuclear operating organization. The merger and proposed license transfers will bring the Nuclear Plants into the Exelon Generation nuclear operating organization. Exelon Generation currently operates the nation's largest nuclear fleet. Exelon Generation has demonstrated the ability to achieve and sustain performance improvement at its nuclear plants, and to operate its facilities reliably and safely.

##### I. Nuclear Organization

When the merger and proposed transfers become effective, Exelon Generation will assume responsibility for and control over the operation of the Nuclear Plants. Nuclear employees of PSEG Nuclear at the Nuclear Plants and at other locations will become employees of Exelon Generation or a wholly-owned subsidiary of Exelon Generation. The Nuclear Plants operating organizations will be integrated into the Exelon Generation nuclear organization, reporting to the Exelon Generation Chief Nuclear Officer (CNO). Once the merger is complete, the Exelon Generation nuclear organization will be headquartered at Kennett Square, Pennsylvania.

An organization chart illustrating the Exelon Generation nuclear organization, integrating Salem and Hope Creek, is contained in Attachment 4 to this application. The integrated Exelon Generation organization will provide:

- (1) A single CNO accountable for overall management, leadership, performance, and nuclear safety;
- (2) A Chief Operating Officer ("COO") with several Senior Vice Presidents as direct reports, with responsibilities for operations and operations support, providing a nuclear management team with a manageable span of control over nuclear units and nuclear support functions (primarily based on regional considerations);
- (3) Individual Site Vice Presidents with direct onsite responsibility and accountability for safe and reliable operation of their units;



- (4) Implementation of common high standards, best practices, effective programs and processes, and management controls; and
- (5) Effective and integrated oversight and technical support functions for the Exelon Generation nuclear stations.

The Exelon Generation nuclear organization is based upon an overriding philosophy of an engaged nuclear management team that establishes and enforces high standards and clear accountabilities. Exelon Generation specifically implements a management model that incorporates disciplined processes to assure day-to-day safety and operating rigor; performance reporting, monitoring, and metrics; and appropriate financial controls. Exelon Generation's management model emphasizes material condition assessment; function or department-specific gap analyses; templates for outage planning, preparation, and execution; human performance improvement; and issues management (including employee issues). Exelon Generation has established at its current nuclear facilities, a track record of improving and sustaining safety and operating performance.

Exelon Generation will apply its management model and also continue ongoing performance improvement initiatives at the Nuclear Plants, including initiatives in the area of safety conscious work environment and the corrective action program.

## II. Management Qualifications

The CNO of Exelon Generation will continue to be Mr. Christopher Crane. The CNO reports to Mr. John L. Skolds, Executive Vice President, Exelon and President of Exelon Generation. The CNO will be the senior corporate officer with all the necessary authority and full responsibility for the safe and reliable operation of the Exelon Generation nuclear fleet, including the Nuclear Plants. Several technical support functions, including Licensing and Regulatory Affairs and Nuclear Oversight, report directly to the CNO. The senior Vice President, Operations, with responsibility for the Nuclear Plants, will also report directly to the CNO.

The COO will continue to be Mr. Charles Pardee. The COO reports to the CNO and will have day-to-day management responsibilities for the plants and operations support. The other Senior Vice Presidents, Operations, and Senior Vice President, Operations Support, will report to the COO.

A Site Vice President is assigned for each operating nuclear site and reports to a Senior Vice President, Operations. The Site Vice President will be the senior nuclear executive on site with responsibility for overall plant nuclear safety and for compliance with the NRC operating licenses.

Chairpersons of the Nuclear Safety Review Boards for the Nuclear Plants will report directly to the CNO and will advise the CNO with respect to nuclear safety performance. The Station Operations Review Committees will advise the Plant Managers on matters of nuclear safety in plant operations.

### III. Support Functions

In integrating the Nuclear Plants into the Exelon Generation nuclear organization, Exelon Generation will also integrate the support functions for the stations. These organizations and personnel will be located and assigned with clear and unambiguous responsibilities and reporting relationships. Certain support functions (*e.g.*, information technology) may be provided by an affiliated Exelon company.

Technical support in particular will be integrated under the Senior Vice President, Engineering and Technical Support and the Senior Vice President, Operations Support. This includes support for: engineering, fuels, project management, outages, training, security, operations, maintenance/work control, chemistry, radwaste, radiation protection, and industrial safety. These functions will not be diminished at the Nuclear Plants. The Exelon Generation integrated approach and the implementation of common programs, processes and best practices presents an opportunity for improvement at the Nuclear Plants.

PSEG Nuclear will also transfer to Exelon Generation control over the assets related to the Nuclear Plants that Exelon Generation will need to maintain and operate the units in accordance with NRC requirements. This will include, in addition to the plants and equipment, the necessary books, records, operating safety and maintenance manuals, and engineering and construction documents. Any necessary contracts with architect engineers, nuclear steam supply system vendors, and other major vendors, will also be assigned or transferred (as necessary) to Exelon Generation.

### IV. Conclusion

In total, Exelon Generation and its management team have the necessary technical qualifications to assume operational responsibility for the Nuclear Plants. The Exelon Generation nuclear management team is experienced and qualified, and the nuclear organization is well-designed to accommodate the addition of three units into its current fleet. The necessary management processes and controls will be applied, with clear lines of authority and communication. Technical support will continue to be available, and will be enhanced by the merger of PSEG Nuclear into a successful nuclear organization that can apply common programs, processes, and best practices. The nuclear onsite organizations and staff

will also be incorporated into the Exelon Generation organization. Accordingly, the proposed transfers have the potential to achieve synergies and to significantly improve performance of the Nuclear Plants.

## 5. Financial Qualifications

### A. Projected Operating Costs and Revenues

Following the proposed merger and proposed transfers, including the transfer of the Nuclear Plants held by PSEG Nuclear to Exelon Generation, Exelon Generation will continue to be financially qualified as the licensed owner and operator.

Exelon Generation will continue to own, operate, and market power from a diverse portfolio of nuclear, fossil, and hydroelectric generating units. Exelon Generation will continue to sell electricity to electric utility affiliates and market electricity at wholesale pursuant to rate tariffs approved by the Federal Energy Regulatory Commission. Exelon Generation presently meets, and will continue to meet, the financial qualifications requirement of 10 CFR 50.33, "Contents of applications; general information," paragraph (f)(2), by obtaining revenue from the sale of electricity from the nuclear plants sufficient to cover nuclear operating costs. Exelon Generation's substantial generating assets and revenue streams — including revenue streams from nuclear units and from fossil and hydroelectric units, as well as revenue from power marketing and other business operations — also provide assurance of Exelon Generation's ability to cover fixed operating costs associated with a six-month shutdown of one or more of the nuclear units.

Furthermore, based upon the financial stature of the company, Exelon Generation expects to have an investment grade bond rating, which will enable the company to raise additional funds as necessary.

The proprietary Addendum includes Attachment 5A which contains Exelon Generation and PSEG Nuclear five-year, post-merger financial projections for Exelon Generation, incorporating the combined generation capacity (nuclear and non-nuclear) to be operated by Exelon Generation. A non-proprietary version of this attachment that is suitable for public disclosure is provided as Attachment 5. The five year projections cover the first five years after the merger (beginning in 2006) and include: total revenue, total operating expenses, income before taxes, taxes, and net income. The financial information includes assumptions regarding the total generation supply and the price of electricity, as well as a projected balance sheet for Exelon Generation demonstrating the substantial assets of the combined generation business.

## B. Decommissioning Funding Assurance

Under 10 C.F.R. § 50.75(b), a reactor licensee is required to provide decommissioning funding assurance by one or more of the methods described in 10 C.F.R. § 50.75(e). A funding assurance mechanism approved by the NRC is in place for Exelon Generation that meets these requirements.

For PSEG Nuclear, the amounts accumulated in the funds at the end of 2002 exceeded the amount needed to be collected by that date to be consistent with the formulas in 10 C.F.R. §50.75(c). The PSEG Nuclear fund is presently fully funded with no further collections through the state regulatory process anticipated. For the present Exelon Generation share, the amounts accumulated in the funds at the end of 2002 also exceeded the amounts needed to be collected. Exelon Generation is continuing to make collections for its existing share, and those collections are unaffected by the proposed transaction.

## 6. Restricted Data

This application does not contain any Restricted Data or classified National Security Information, and it is not expected that any such information will become involved in the license activities. However, in the event that such information does become involved, and in accordance with 10 C.F.R. § 50.37, "Agreement Limiting Access to Classified Information," PSEG Nuclear and Exelon Generation agree that it will appropriately safeguard such information and will not permit any individual to have access to such information until the individual has been appropriately approved for such access under the provisions of 10 C.F.R. Part 25, "Access Authorization for Licensee Personnel," and/or Part 95, "Security Facility Approval and Safeguarding of National Security Information and Restricted Data."

## 7. Other Nuclear Regulatory Issues

### A. Continuation of Current Design and Licensing Basis

The proposed license transfer and conforming administrative amendments will authorize Exelon Generation to own, operate, and maintain the Nuclear Plants in accordance with the existing and respective operating licenses and Technical Specifications, and will subject Exelon Generation to all applicable provisions of the Atomic Energy Act and the NRC's rules, regulations and orders. The transfer and conforming administrative

amendments do not affect the physical configuration of the facility or substantively change the operating licenses (including Technical Specifications) under which the Nuclear Plants operate.

Exelon Generation will control or have access to the design and licensing basis documents to the same extent as PSEG Nuclear now does. While there will be certain administrative amendments to the Operating Licenses and corresponding Technical Specifications as indicated in Attachments 2 and 3 to this application, Exelon Generation does not seek any other changes to the current design and licensing basis for each nuclear plant.

Likewise, the proposed transfers will not change or invalidate design or operations information presently appearing in the Updated Final Safety Analysis Reports (“UFSARs”) for the units. Changes to the UFSARs necessary to reflect the proposed transfers and the conforming license amendments will be incorporated into the UFSARs on a schedule that complies with 10 C.F.R. § 50.71(e), and not necessarily prior to NRC approval of this request.

#### B. Price-Anderson Indemnity and Nuclear Insurance

In accordance with 10 C.F.R. § 140.92, Article IV.2, “Financial Protection Requirements and Indemnity Agreements,” PSEG Nuclear requests NRC approval of the assignment and transfer of the Price Anderson indemnity agreements for Salem, Hope Creek and Peach Bottom to Exelon Generation upon the consent to the proposed license transfer. Prior to the license transfers, Exelon Generation will obtain all required nuclear property damage insurance pursuant to 10 C.F.R. § 50.54(w) and nuclear liability insurance pursuant to 10 C.F.R. 140. Exelon Generation’s Projected Income Statement and expected investment-grade rating, discussed above, provide adequate assurance that, pursuant to the requirements of 10 C.F.R. § 140.21(e) and (f), Exelon Generation would be able to pay its share of deferred premiums in the amount of \$10 million per nuclear unit.

#### C. Standard Contract for Disposal of Spent Nuclear Fuel

On or after the transfer date, Exelon Generation will assume responsibility for storage and disposal of spent nuclear fuel at the Nuclear Plants. PSEG Nuclear will assign, and Exelon Generation will assume, PSEG Nuclear’s rights and obligations under the Standard Contract with the Department of Energy.

#### D. Off-Site Power Considerations

The physical system for supplying off-site power to the Nuclear Plants will be unchanged as a result of the transfer. The system is currently maintained and operated in accordance with the Lower Delaware Valley Transmission System Agreement of September 13, 1977, by and between Atlantic City Electric Company, Delmarva Power and Light Company, Jersey Central Power & Light Company, Philadelphia Electric Company, and PSE&G, as supplemented and amended, and in accordance with the PJM Interconnection Agreement. These agreements address, among other things, coordination of switching voltage levels and scheduling of maintenance outages, as well as additions, modifications, and normal maintenance of the transmission facilities. These agreements will remain in effect and will provide assurance of reliable sources of off-site power and continued compliance with General Design Criterion 17. Exelon Generation will assume the rights and obligations of PSEG Nuclear pursuant to these agreements.

#### E. Exclusion Area Control

Upon approval of the transfer, Exelon Generation will own all of PSEG Nuclear's interests in the Salem and Hope Creek exclusion area and will have authority to determine all activities within the exclusion area to the extent required by 10 C.F.R. Part 100.

#### F. Other Issues

##### 1. Emergency Preparedness

Upon consummation of the transfer, Exelon Generation will assume authority and responsibility for functions necessary to fulfill the emergency planning requirements specified in 10 C.F.R. § 50.47(b) and Part 50, Appendix E. Transition plans will be established to ensure that the support described in the existing emergency plans will be maintained following the transfer.

Any changes made to the existing Salem and Hope Creek emergency plans will be made in accordance with 10 C.F.R. § 50.54(q). Because only a change in licensee is involved, no changes are anticipated that will result in a decrease in the effectiveness of the plans. Any specific emergency plan changes will be submitted to the NRC after the changes are made in accordance with 10 C.F.R. § 50.54(q) and Appendix E, Section V. If as a result of the transfers, any conditions are identified that would decrease the effectiveness of the approved

emergency plans, application to the NRC will be made and such proposed changes will not be implemented until approved by the NRC.

While Exelon Generation anticipates that no substantive changes will be made to the existing on-site emergency program, certain corporate support and/or corporate oversight functions may be changed, transferred on-site, or transferred to a corporate support organization. Persons assigned to perform these functions will meet the same or similar qualification requirements as the existing responsible corporate support personnel.

The current off-site emergency facilities and equipment, including the Emergency Operations Facility (“EOF”), the Training Center, and radiation monitoring equipment, will be transferred to Exelon Generation. As necessary, ownership of off-site emergency sirens will also be transferred to Exelon Generation and existing easements for the siren locations will be assigned to Exelon Generation. Existing agreements for support from organizations and agencies not affiliated with PSEG Nuclear will also be assigned to Exelon Generation, as necessary. PSEG Nuclear plans to notify the parties to such agreements in advance of the transfer and advise those parties of Exelon Generation’s responsibility for management and operation of the Nuclear Plants.

In sum, the proposed license transfer will not impact compliance with the emergency planning requirements.

## 2. Security

Upon consummation of the transfer, Exelon Generation will assume authority and responsibility for the functions necessary to fulfill the security planning requirements specified in 10 C.F.R. Part 73. PSEG Nuclear does not anticipate any substantive changes to the existing NRC-approved physical security, guard training and qualifications, and safeguards contingency plans. Any changes that do occur, or necessary conforming changes, will be made in accordance with 10 C.F.R. § 50.54(p). Transition plans will be established to ensure that the support described in the existing security plans will be maintained following the transfer.

Exelon Generation anticipates that no substantive changes will be made to the existing on-site security program, but that certain corporate support and/or corporate oversight functions may be changed, transferred on site, or transferred to a corporate support organization. Persons assigned to perform these functions will meet

the same or similar qualification requirements as the existing responsible corporate support personnel.

Existing agreements for support from organizations and agencies not affiliated with PSEG Nuclear will be assigned to Exelon Generation, as necessary. PSEG Nuclear plans to notify the parties to such agreements in advance of the transfer of the licenses to Exelon Generation and to advise those parties of Exelon Generation's responsibility for management and operation of the plants.

In sum, the proposed license transfer will not impact compliance with physical security requirements.

### 3. Quality Assurance Program

Upon consummation of the transfer, Exelon Generation will assume authority and responsibility for the functions necessary to fulfill the quality assurance ("QA") requirements of 10 C.F.R. Part 50, Appendix B. PSEG Nuclear anticipates that it will be able to transfer all of the current functions of the existing QA organization to Exelon Generation. PSEG Nuclear does not anticipate any substantive changes to the existing Quality Assurance Plans, but any changes that do occur will be made in accordance with 10 C.F.R. § 50.54(a).

### 4. Training

The off-site Training Center and Simulator Buildings will be transferred to Exelon Generation. The proposed license amendment will not impact compliance with the operator re-qualification program requirements of 10 C.F.R. § 50.54 (and related sections), and will not impact maintenance of the Institute of Nuclear Power Operations accreditation for licensed and non-licensed training. Upon transfer of the license, Exelon Generation will assume ultimate responsibility for implementation of present training programs. Changes to the programs to reflect the transfer will not decrease the scope of the approved operator re-qualification program without the specific authorization of the NRC in accordance with 10 C.F.R. § 50.54(i).

### 8. Other Required Approvals/Schedule

The merger is conditioned upon, among other things, the approval by shareholders of both companies, and a number of regulatory approvals or reviews by federal and state energy authorities. These include, in addition to the NRC, the New Jersey Board of Public Utilities, the Pennsylvania Public Utility Commission, the Illinois Commerce Commission (notice filing only), the Federal



Energy Regulatory Commission, the Securities and Exchange Commission, and either the Department of Justice or the Federal Trade Commission on antitrust matters, depending upon which agency reviews the transaction. The companies intend to seek shareholder approval in the second quarter of 2005 and anticipate that the required regulatory approvals can be obtained within 12-15 months.

To facilitate implementation of the merger and subsequent restructuring, Exelon Generation and PSEG Nuclear are requesting NRC approval of the proposed transfers within six months, to be effective immediately upon issuance and allowing execution of the merger, restructuring, and transfers within a succeeding 12-month period. Exelon Generation will inform the NRC of any significant changes in the schedule.

Certain rulings by the Internal Revenue Service and/or certain legislative changes to the Internal Revenue Code or changes in IRS regulations may also be necessary to assure that decommissioning funds accumulated in the qualified and non-qualified decommissioning funds for the Nuclear Plants and presently maintained by PSEG Nuclear may be transferred to Exelon Generation on a tax-free basis. PSEG Nuclear and Exelon Generation intend to seek necessary letter rulings or changes necessary for the transfer of the funds on a tax-free basis. To the extent that satisfactory private letter rulings or other tax relief are not timely obtained, the parties will update the NRC on alternative plans for decommissioning funding assurance.

#### 9. Regulatory Safety Analysis

The changes proposed by LCR H05-03, for the Hope Creek Generating Station, and LCR S05-02, for the Salem Generating Station, are shown in Attachment 2 and Attachment 3. Attachment 2 contains the changes associated with the Operating License for each of the three units, while Attachment 3 contains the Technical Specification changes for each unit.

Consistent with the generic determination in 10 CFR 2.1315, "Generic determination regarding license amendments to reflect transfers," paragraph (a), the proposed license transfers and conforming license amendments involve no significant hazards consideration.

The proposed conforming license amendments also delete specific license conditions relating to the terms and conditions of decommissioning trust agreements. In place of these license conditions, the requirements of 10 CFR 50.75(h)(1) will apply. As stated in 10 CFR 50.75(h)(4), deletion of those license conditions involves no significant hazards consideration.

The transfers and proposed amendments do not involve any change in the design or licensing basis, plant configuration, or operation of the referenced nuclear stations. All Limiting Conditions of Operation, Limiting Safety System

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Settings and Safety Limits specified in Technical Specifications remain unchanged. Also, the physical security plans, emergency response plans, operator training and requalification programs, and the quality assurance plans are not substantively or materially changed by the proposed license transfers and amendments.

Therefore, the proposed approval does not: (1) involve an increase in the probability or consequences of an accident previously analyzed; (2) create the possibility of a new or different kind of accident from the accidents previously evaluated; or (3) involve a significant reduction in a margin of safety.

#### 10. Environmental Considerations

This license transfer application and accompanying administrative amendments are exempt from environmental review, because they fall within the categorical exclusion appearing at 10 C.F.R. § 51.22(c)(21), “Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions,” for which neither an Environmental Assessment nor an Environmental Impact Statement is required. Moreover, the proposed license transfer and conforming amendments do not involve any amendment to the license or other change that would directly affect the actual operation of the facilities involved in any substantive way. The proposed transfer and amendments to the license do not involve an increase in the amount, or a change in the types, of any radiological effluents that may be allowed to be released off-site, and do not involve any increase in the amounts or change in the types of any non-radiological effluents that may be released off-site. Further, no increase in the individual or cumulative occupational radiation exposure is expected.

**SALEM NUCLEAR GENERATING STATION UNITS 1 AND 2  
HOPE CREEK GENERATING STATION  
FACILITY OPERATING LICENSES DPR-70, DPR-75 and NPF-57  
DOCKET NOS. 50-272, 50-311 and 50-354**

**ATTACHMENT 2  
FACILITY OPERATING LICENSE CHANGES**

- A. Salem Unit 1**
- B. Salem Unit 2**
- C. Hope Creek**

**RELATING TO THE MERGER OF PUBLIC SERVICE ENTERPRISE GROUP  
and EXELON CORPORATION**

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**Facility Operating License Changes**

**A. Salem Unit 1**

References to Public Service Enterprise Group or PSEG Nuclear LLC are being replaced with Exelon Generation Company in the following Sections:

<b>License section, page number</b>	<b>Action Description</b>
Heading, page 1	Delete PSEG Nuclear LLC
Paragraph 1.A, page 1	Delete “filed by the Public Service Electric and Gas Company, Philadelphia Electric Company, Delmarva Power and Light Company, and Atlantic City Electric Company and the application for license amendment dated November 8, 1976, filed by Public Service Electric and Gas Company” and change “comply” to “complies”
Paragraph 1.E, page 1	Change PSEG Nuclear LLC to Exelon Generation Company, LLC (Exelon Generation Company) and change “licensees are” to “licensee is”
Paragraph 1.F, page 2	Change “licensees have” to “licensee has”
Paragraph 2, page 2	Delete “PSEG Nuclear LLC, and” and change “licensees” to “licensee”
Paragraph 2.A, page 2	Delete PSEG Nuclear LLC (in two places) and change to read “owned and operated by the Exelon Generation Company”
Paragraph 2.B(1), page 3	Delete PSEG Nuclear LLC, and the
Paragraphs 2.B(2) through (6), page 3	Change PSEG Nuclear LLC to Exelon Generation Company (in five places)
Paragraphs 2.C(1), (4), (5) and (10), pages 4 and 4b	Change PSEG Nuclear LLC to Exelon Generation Company (in five places)
Paragraph 2.C(11), page 4b	Delete in its entirety
Paragraph 2.C(13), page 4c	Replace \$53,780,652 with [ ] to designate an amount to be determined by the NRC
Paragraphs 2.C(14) and (15), page 4c	Delete in their entirety
Paragraph 2.E, page 5	Change licensees to licensee
Paragraph 2.I.6, page 5a	Change PSEG Nuclear LLC to Exelon Generation Company
Paragraph 2.J, page 5c	Change PSEG Nuclear LLC to Exelon Generation Company

**Facility Operating License Changes**

**B. Salem Unit 2**

References to Public Service Enterprise Group or PSEG Nuclear LLC are being replaced with Exelon Generation Company in the following Sections:

<b>License section, page number</b>	<b>Action Description</b>
Heading, page 1	Delete PSEG Nuclear LLC
Paragraph 1.A, page 1	Delete “filed by Public Service Electric and Gas Company for itself and the Philadelphia Electric Company, Delmarva Power and Light Company, and Atlantic City Electric Company”
Paragraph 1.E, page 1	Change PSEG Nuclear LLC to Exelon Generation Company, LLC (Exelon Generation Company)
Paragraphs 1.F and 1.G, page 2	Change licensees are to licensee is
Paragraph 2, page 2	Delete “PSEG Nuclear LLC, and the”, add a comma after Exelon Generation Company and change licensees to licensee
Paragraph 2.A, page 2	Change licensees to licensee
Paragraph 2.B(1), page 2	Delete PSEG Nuclear LLC, and the
Paragraphs 2.B(2) through (6), page 3	Change PSEG Nuclear LLC to Exelon Generation Company (in five places)
Paragraph 2.C(1), page 3	Change PSEG Nuclear LLC to Exelon Generation Company
Paragraph 2.C(2), page 4	Change PSE&G to Exelon Generation Company
Paragraphs 2.C(10) and (26), pages 7 and 21	Change PSEG Nuclear LLC to Exelon Generation Company (in three places)
Paragraph 2.C(27), pages 21 and 22	Delete in its entirety
Paragraph 2.C(29), page 22	Replace \$45,059,302 with [ ] to designate an amount to be determined by the NRC
Paragraphs 2.C(30) and (31), page 22a	Delete in their entirety
Paragraph 2.E, page 23	Change licensees to licensee
Paragraph 2.G, page 23	Change PSEG Nuclear LLC to Exelon Generation Company (in two places)
Paragraphs 2.H and 2.I, page 24	Change PSEG Nuclear LLC to Exelon Generation Company
Paragraphs 2.J and 2.K, page 24	Change licensees to licensee
Paragraph 2.N, page 25	Change PSEG Nuclear LLC to Exelon Generation Company

### Facility Operating License Changes

#### C. Hope Creek

References to Public Service Enterprise Group or PSEG Nuclear LLC are being replaced with Exelon Generation Company in the following Sections:

License section, page number	Action Description
Heading, page 1	Change PSEG Nuclear LLC to Exelon Generation Company, LLC
Paragraph 1.A, page 1	Delete "filed by the Public Service Electric & Gas Company, acting on behalf of itself and Atlantic City Electric Company (the licensees)"
Paragraph 1.E, page 1	Change PSEG Nuclear LLC to Exelon Generation Company, LLC (Exelon Generation Company)
Paragraph 2, page 2	Change PSEG Nuclear LLC to Exelon Generation Company, LLC (Exelon Generation Company)
Paragraph 2.A, page 2	Change PSEG Nuclear LLC to Exelon Generation Company (in two places)
Paragraphs 2.B(1), (3), (4), (5) and (6), pages 2 and 3	Change PSEG Nuclear LLC to Exelon Generation Company (in five places)
Paragraphs 2.C(1), (2), (5), (7), (8) and (14), pages 3 through 6	Change PSEG Nuclear LLC to Exelon Generation Company (in seven places)
Paragraph 2.C(15), pages 6 and 7	Delete in its entirety
Paragraph 2.F, page 8	Change PSEG Nuclear LLC to Exelon Generation Company

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**SALEM NUCLEAR GENERATING STATION UNITS 1 AND 2  
HOPE CREEK GENERATING STATION  
FACILITY OPERATING LICENSES DPR-70, DPR-75 and NPF-57  
DOCKET NOS. 50-272, 50-311 and 50-354**

**ATTACHMENT 3  
TECHNICAL SPECIFICATION CHANGES**

- A. Salem Unit 1**
- B. Salem Unit 2**
- C. Hope Creek**

**RELATING TO THE MERGER OF PUBLIC SERVICE ENTERPRISE GROUP  
and EXELON CORPORATION**

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### Technical Specification Changes

#### A. Salem Unit 1

References to Public Service Enterprise Group or PSEG Nuclear are being replaced with Exelon Generation Company, LLC in the following Sections:

Technical Specification section, page number	Action Description
Definition 1.16, page 1-4	Change PSE&G to Exelon Generation Company, LLC
Bases 3/4.9.3, page B 3/4 9-1b	Change PSEG to Exelon Generation Company, LLC
6.17, page 6-30	Change PSEG to Exelon Generation Company, LLC
Appendix B cover sheet	Change PSEG Nuclear LLC to Exelon Generation Company, LLC
Appendix B, section 4.2.1, page 4-1	Change PSEG Nuclear LLC to Exelon Generation Company, LLC
Appendix C, heading, page 1	Delete "PSEG Nuclear LLC, and the"

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### Technical Specification Changes

#### B. Salem Unit 2

References to Public Service Enterprise Group or PSEG Nuclear are being replaced with Exelon Generation Company, LLC in the following Sections:

<b>Technical Specification section, page number</b>	<b>Action Description</b>
Definition 1.16, page 1-4	Change PSE&G to Exelon Generation Company, LLC
Bases 3/4.9.3, page B 3/4 9-1c	Change PSEG to Exelon Generation Company, LLC
6.16, page 6-30	Change PSEG to Exelon Generation Company, LLC
Appendix B cover sheet	Change PSEG Nuclear LLC to Exelon Generation Company, LLC
Appendix B, section 4.2.1, page 4-1	Change PSEG Nuclear LLC to Exelon Generation Company, LLC
Appendix C, heading, page 1	Delete "PSEG Nuclear LLC, and the" and add a comma prior to LLC

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### Technical Specification Changes

#### C. Hope Creek

References to Public Service Enterprise Group or PSEG Nuclear are being replaced with Exelon Generation Company, LLC in the following Sections:

Technical Specification section, page number	Action Description
3.7.1.3, page 3/4 7-5	Change PSE&G to Exelon Generation Company, LLC
3/4.7.3, page 3/4 7-9	Change PSE&G to Exelon Generation Company, LLC (in five places)
Bases 3/4.8, page B 3/4 8-2	Change PSEG Nuclear LLC to Exelon Generation Company, LLC
6.9.1.9, page 6-20	Change PSEG Nuclear LLC to Exelon Generation Company, LLC
6.15, page 6-26	Change PSEG to Exelon Generation Company, LLC
Appendix B cover sheet	Change PSEG Nuclear LLC to Exelon Generation Company, LLC
Appendix B, section 4.2.2, page 4-2	Change PSE&G to Exelon Generation Company, LLC (in two places)
Appendix C, heading, page 1	Change PSEG Nuclear LLC to Exelon Generation Company, LLC

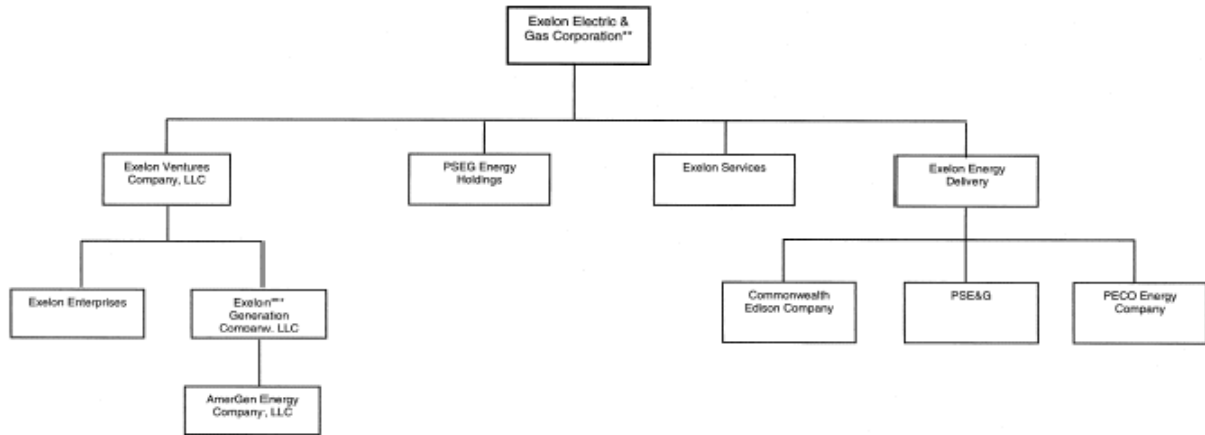
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**SALEM NUCLEAR GENERATING STATION UNITS 1 AND 2  
HOPE CREEK GENERATING STATION  
FACILITY OPERATING LICENSES DPR-70, DPR-75 and NPF-57  
DOCKET NOS. 50-272, 50-311 and 50-354**

**ATTACHMENT 4  
PROPOSED EXELON ELECTRIC AND GAS CORPORATE STRUCTURE  
and  
EXELON GENERATION NUCLEAR ORGANIZATION CHART  
RELATING TO THE MERGER OF PUBLIC SERVICE ENTERPRISE GROUP  
and EXELON CORPORATION**

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## Exelon Electric & Gas — Post Merger\*



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\* Entity names may change at the time of restructuring, but such name changes will not alter the structure as depicted above.

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

\*\*\* Entity that owns the nuclear generating assets of Exelon and will own the nuclear generating assets of PSEG Nuclear.

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**SALEM NUCLEAR GENERATING STATION UNITS 1 AND 2  
HOPE CREEK GENERATING STATION  
FACILITY OPERATING LICENSES DPR-70, DPR-75 and NPF-57  
DOCKET NOS. 50-272, 50-311 and 50-354**

**ATTACHMENT 5 (NON-PROPRIETARY)**

**EXELON GENERATION COMPANY PROJECTED INCOME STATEMENT  
and  
EXELON GENERATION AND PSEG POWER CONSOLIDATION KEY ASSUMPTIONS  
and  
EXELON GENERATION COMPANY CONSOLIDATED BALANCE SHEET  
RELATING TO THE MERGER OF PUBLIC SERVICE ENTERPRISE GROUP  
AND EXELON CORPORATION**

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**EXELON GENERATION COMPANY**  
**Projected Income Statement (with Purchase Accounting) (\$M)**

	2006	2007	2008	2009	2010
<b>Operating Revenues</b>					
<b>Operating Expenses</b>					
Purchased Power					
Fuel					
Operation & Maintenance					
Depreciation & Amortization					
Administrative & Other					
Decommissioning Expense					<i>redacted</i>
Decommissioning Recoveries					
<i>Total Operating Expenses</i>					
<b>Operating Income (Loss)</b>					
<b>Other Income (Deductions)</b>					
<b>Income before Income Taxes</b>					
<b>Income Taxes</b>					
<b>Net Income (Loss)</b>					

Note 1: Projected Income Statement does not reflect the effect of our market power mitigation plan to divest 5,500 MW of capacity, as such plan has not yet been finalized. Even with the mitigation plan in effect, change to the Projected Income Statement will not be material.

Note 2: Detailed long range planning for Exelon Generation covered the period from 2006 to 2009; projected Net Income in 2010 is the same as 2009 based on the assumption of no projected growth.

**EXELON GENERATION AND PSEG POWER CONSOLIDATION**  
**Key Assumptions**

	2006	2007	2008	2009	2010
<b>Generation (GWh)</b>					
Fossil & Hydro					
Nuclear					<i>redacted</i>
Subtotal					
<b>Purchases from Other Suppliers</b>					
<b>Total Supply (GWh)</b>					
<b>Market Sales (GWh)</b>					
<b>Average Market Price (\$/MWh)</b>					
<b>Scheduled Nuclear Refueling Outages</b>					

**Exelon Generation Company**  
**Consolidated Balance Sheet as of 9/30/04**  
(\$M)

	Generation Historical (unaudited)	Power Historical (unaudited) (a)	Pro Forma Adjustments	Generation Pro Forma
<b>ASSETS</b>				
Cash and Cash equivalents				
Restricted cash and investments				
Accounts receivable, net				
Mark-to-market derivative assets				
Inventories				
Deferred income taxes				
Other				
<b>TOTAL CURRENT ASSETS</b>				
Property, plant and equipment, net				
Nuclear decommissioning trust funds				
Investments				
Goodwill				
Mark-to-market derivative assets				
Deferred debits and other assets				
<b>TOTAL ASSETS</b>				<i>redacted</i>
<b>LIABILITIES AND MEMBER'S EQUITY</b>				
Long-term debt due within one year				
Accounts payable				
Mark-to-market derivative liabilities				
Accrued expenses				
Other				
<b>TOTAL CURRENT LIABILITIES</b>				
Long-term debt				
Deferred credits and other liabilities:				
Deferred income taxes				
Unamortized investment tax credits				
Asset retirement obligations				
Pension and post-retirement benefit obligations				
Spent nuclear fuel obligation				
Payables to affiliates				
Mark-to-market derivative liabilities				
Other				
<b>TOTAL DEFERRED CREDITS AND OTHER LIABILITIES</b>				
Minority interest of consolidated subsidiaries				
<b>MEMBER'S EQUITY</b>				
Membership interest				
Undistributed earnings				
Accumulated other comprehensive loss				
<b>TOTAL MEMBER'S EQUITY</b>				
<b>TOTAL LIABILITIES AND MEMBER'S EQUITY</b>				

**NOTES TO UNAUDITED PRO FORMA BALANCE SHEET - CONDENSED - redacted**

**SALEM NUCLEAR GENERATING STATION UNITS 1 AND 2  
HOPE CREEK GENERATING STATION  
FACILITY OPERATING LICENSES DPR-70, DPR-75 and NPF-57  
DOCKET NOS. 50-272, 50-311 and 50-354**

**ATTACHMENT 5A (PROPRIETARY)**

**EXELON GENERATION COMPANY PROJECTED INCOME STATEMENT  
and  
EXELON GENERATION AND PSEG POWER CONSOLIDATION KEY  
ASSUMPTIONS  
and  
EXELON GENERATION COMPANY CONSOLIDATED BALANCE SHEET  
RELATING TO THE MERGER OF PUBLIC SERVICE ENTERPRISE GROUP  
and EXELON CORPORATION**

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**Exelon Generation Consolidated Company**  
**Projected Income Statement (with Purchase Accounting) (\$M)**

	2006	2007	2008	2009	2010
<b>Operating Revenues</b>	11,170	11,532	11,661	11,835	11,835
<b>Operating Expenses</b>					
Purchased Power	2,014	1,841	1,719	1,689	1,689
Fuel	2,413	2,422	2,508	2,587	2,587
Operation & Maintenance	2,801	2,828	2,762	2,779	2,779
Depreciation & Amortization	536	571	613	656	656
Administrative & Other	609	552	501	484	484
<i>Total Operating Expenses</i>	8,373	8,212	8,103	8,196	8,196
<b>Operating Income (Loss)</b>	2,797	3,319	3,557	3,639	3,639
<b>Other Income (Deductions)</b>	(311)	(264)	(300)	(287)	(287)
<b>Income before Income Taxes</b>	2,486	3,055	3,258	3,352	3,352
<b>Income Taxes</b>	977	1,196	1,270	1,315	1,315
<b>Total Extraordinary Items</b>		45			
<b>Net Income (Loss)</b>	<b>1,509</b>	<b>1,904</b>	<b>1,987</b>	<b>2,037</b>	<b>2,037</b>

Note 1: Projected Income Statement does not reflect the effect of our market power mitigation plan to divest 5,500 MW of capacity, as such plan has not yet been finalized. Even with the mitigation plan in effect, change to the Projected Income Statement will not be material.

Note 2: Detailed long range planning for Exelon Generation covered the period from 2006 to 2009; projected Net Income in 2010 is the same as 2009 based on the assumption of no projected growth.

**EXELON GENERATION AND PSEG POWER CONSOLIDATION**  
**Key Assumptions**

	2006	2007	2008	2009	2010
<b>Generation (GWh)</b>					
Fossil & Hydro	33,737	32,551	34,396	34,394	34,394
Nuclear	167,203	167,822	168,206	168,502	168,502
Subtotal	200,940	200,373	202,602	202,896	202,896
<b>Purchases from Other Suppliers</b>	24,000	16,979	15,572	15,293	15,293
<b>Total Supply (GWh)</b>	224,940	217,352	218,174	218,189	218,189
<b>Market Sales (GWh)</b>	224,940	217,352	218,174	218,189	218,189
<b>Average Market Price (\$/MWh)</b>	\$ 31.15	\$ 35.49	\$ 37.94	\$ 38.25	\$ 38.25
<b>Scheduled Nuclear Refueling Outages</b>	12	10	12	11	11

**Exelon Generation Company**  
**Consolidated Balance Sheet as of 9/30/04**  
(\$M)

	Generation Historical (unaudited)	Power Historical (unaudited) (a)	Pro Forma Adjustments		Generation Pro Forma
<b>ASSETS</b>					
Cash and Cash equivalents	\$ 270	\$ 16	\$ (9)	(j)	\$ 277
Restricted cash and investments	163	—			163
Accounts receivable, net	929	610	(22)	(j)	1,517
Mark-to-market derivative assets	403	169	(45)	(j)	527
Inventories	347	852	13	(j)	1,212
Deferred income taxes	34	—	14	(i)	48
Other	164	122	(40)	(j)	246
<b>TOTAL CURRENT ASSETS</b>	<b>2,310</b>	<b>1,769</b>	<b>(89)</b>		<b>3,990</b>
Property, plant and equipment, net	6,914	4,926	2,061	(c)	13,930
			29	(d)	
Nuclear decommissioning trust funds	4,943	1,011	—		5,954
Investments	103	20	—		123
Goodwill	—	16	4,019	(b)	4,035
Mark-to-market derivative assets	422	38	(16)	(j)	444
Deferred debits and other assets	792	290	63	(d)	1,135
			(10)	(j)	
<b>TOTAL ASSETS</b>	<b>\$ 15,484</b>	<b>\$ 8,070</b>	<b>\$ 6,057</b>		<b>\$ 29,611</b>
<b>LIABILITIES AND MEMBER'S EQUITY</b>					
Long-term debt due within one year	\$ 61	\$ —	\$ 34	(e)	\$ 95
Accounts payable	884	598	(39)	(j)	1,443
Mark-to-market derivative liabilities	655	375	(7)	(j)	1,023
Accrued expenses	375	111	—		486
Other	100	414	(17)	(j)	497
<b>TOTAL CURRENT LIABILITIES</b>	<b>2,075</b>	<b>1,498</b>	<b>(29)</b>		<b>3,544</b>
Long-term debt	2,444	3,316	323	(e)	6,083
Deferred credits and other liabilities:					
Deferred income taxes	429	(44)	155	(i)	540
Unamortized investment tax credits	212	6	—		218
Asset retirement obligations	3,472	303	548	(f)	4,323
Pension and post-retirement benefit obligations	625	—	302	(g)	1,006
			79	(g)	
Spent nuclear fuel obligation	875	—	—		875
Payables to affiliates	1,274	—	—		1,274
Mark-to-market derivative liabilities	391	146	(47)	(j)	490
Other	302	179	512	(h)	981
			(12)	(j)	
<b>TOTAL DEFERRED CREDITS AND OTHER LIABILITIES</b>	<b>7,580</b>	<b>590</b>	<b>1,537</b>		<b>9,707</b>
Minority interest of consolidated subsidiaries	55	—			55
<b>MEMBER'S EQUITY</b>					
Membership interest	2,495	714	(714)	(k)	9,373
			6,878	(b)	
Undistributed earnings	1,031	2,102	(2,102)	(k)	1,023
			(8)	(j)	
Accumulated other comprehensive loss	(196)	(150)	150	(k)	(174)
			22	(j)	
<b>TOTAL MEMBER'S EQUITY</b>	<b>3,330</b>	<b>2,666</b>	<b>4,226</b>		<b>10,222</b>
<b>TOTAL LIABILITIES AND MEMBER'S EQUITY</b>	<b>\$ 15,484</b>	<b>\$ 8,070</b>	<b>\$ 6,057</b>		<b>\$ 29,611</b>

## NOTES TO UNAUDITED PRO FORMA BALANCE SHEET - CONDENSED

(a) Power Historical Presentation – Certain reclassifications have been made to Power’s historical presentation in order to conform to Generation’s historical presentation.

(b) Goodwill – The total estimated purchase price of the merger, based on the average per share price of Exelon common stock during the two trading days before and the two trading days after December 20, 2004, the date the merger was announced, was first calculated at the Exelon parent company level. In order to reflect the impact of the merger at the Generation and Power level, management has estimated that \$6,878 million of the total purchase price was allocable to Power. The excess of estimated purchase price over the book values of the assets acquired and liabilities assumed is as follows (\$ in millions):

Total estimated purchase price allocated to Power	6,878
Less: Book value of Power assets acquired and liabilities assumed	(2,666)
Excess of estimated purchase price over net book value of assets acquired	<u>4,212</u>

Under the purchase method of accounting, the total estimated purchase price, as shown in the table above, is allocated to Power’s net tangible and identifiable intangible assets acquired and liabilities assumed based on their estimated fair values as of September 30, 2004. The fair value of these assets and liabilities and the allocation of purchase price are preliminary and are subject to change pending additional information that may come to our knowledge and restructuring decisions made upon completion of the merger. The purchase method of accounting applied to the merger is based on current accounting literature, which may be amended prior to the completion of the merger and could materially impact the allocation of purchase price. Additionally, the amount of total purchase price allocated to Power may change, potentially materially. The preliminary adjustments to the assets acquired and liabilities assumed are as follows (\$ in millions):

Excess of purchase price over net book value of assets acquired	\$ 4,212
Adjustments to goodwill related to:	
Property, plant and equipment, net	(2,090)
Deferred tax assets	(14)
Other assets (exclusive of intercompany transactions)	(42)
Pension and postretirement benefit obligations	381
Long-term debt	357
Asset retirement obligation	548
Power sale contracts	512
Deferred tax liabilities	155
Total adjustments	<u>(193)</u>
Total adjustment to goodwill	<u>\$ 4,019</u>

Pursuant to Statement of Financial Accounting Standards No. 142, “Goodwill and Other Intangible Assets,” goodwill is not amortized; rather, impairment tests are performed at least annually, or more frequently if circumstances indicate an impairment may have occurred. If an impairment exists, the goodwill is immediately written down to its fair value through a current charge to earnings. Accordingly, the goodwill arising from the merger will be subject to an impairment test at least annually.

(c) Power Generating Assets – Represents the pro forma adjustment of \$2,061 million required to record Power’s power generating assets at estimated fair market value, comprised of a \$3,015 million write-up of Power’s nuclear generating facilities and a (\$954) million write-down of Power’s fossil and other facilities. These adjustments were determined based on Generation’s and Power’s managements’ estimates of fair value based on estimates of cost per kilowatt hour of power.

The preliminary analyses indicated fair value estimates of Power’s fossil and other facilities ranging from \$2.4 billion to \$4.2 billion. The (\$954) million adjustment reflects the difference between the \$3.3 billion midpoint of the range and the \$4.3 billion book value of the facilities as of September 30, 2004, as management believes this to be an appropriate estimate of the fair value of the underlying assets.

These adjustments will be depreciated over the estimated remaining useful lives of the underlying assets.

These adjustments could be materially affected by changes in estimates of future capacity factors, operating costs and the expected market price for electricity at closing of the merger. Independent appraisals are expected to be completed by the closing of the merger.

(d) Nuclear Fuel – Represents the pro forma adjustment of \$92 million required to record Power’s nuclear fuel supply at estimated fair market value. The adjustment was determined based on nuclear fuel supply contracts previously entered into by Power with terms favorable to current market prices. The adjustment includes fair value adjustments to the nuclear fuel physically contained in the nuclear reactors as well as to nuclear fuel supply contracts. Accordingly, \$29 million of this adjustment was recorded as an increase to property, plant and equipment, net for fuel in the reactors and \$63 million was recorded as an intangible asset within other non-current assets for nuclear fuel supply contracts. The intangible asset will be amortized on a straight-line basis over the terms of the underlying contracts.

(e) Debt – Represents the pro forma adjustment of \$357 million required to record Power’s third-party debt at estimated fair market value. The final fair value determination will be based on prevailing market interest rates at the completion of the merger and the necessary adjustment will be amortized as a reduction (in the case of a premium to book value) or an increase (in the case of a discount to book value) to interest expense over the remaining life of the individual debt issues.

(f) Asset Retirement Obligations – Represents the pro forma adjustment of \$548 million required to record Power’s asset retirement obligations related to its nuclear generating facilities at estimated fair market value. The adjustment was determined based on differences between the discount rate and other assumptions used by Generation and Power. This adjustment could be materially affected by changes in interest rates, updated nuclear decommissioning cost studies, the timing and amount of actual cash flows, and changes in management’s assumptions related to nuclear decommissioning.

(g) Pension and Post-Retirement Benefit Obligations – Represents the pro forma adjustments of \$302 million and \$79 million required to record Power’s allocated portion of the pension and post-retirement benefit obligations, respectively, to reflect the elimination of intangible assets, previously deferred gains and losses, prior service cost and transition obligations; the fair value of the projected benefit obligation discounted at market rates in effect at September 30, 2004 (6%); and the market value of plan assets at September 30, 2004 for the funded plans.

The final fair value determination and allocation of the pension and post-retirement benefit obligations may differ materially, largely due to potential changes in discount rates, return on plan assets up to the date of completion of the merger and the conforming of certain Generation and Power assumptions surrounding the determination of these obligations.

(h) Power Supply and Fuel Contracts – Represents the pro forma adjustment of \$512 million required to record at estimated fair market value Power’s power supply and fuel contracts, which are accounted for as “normal purchase, normal sale” transactions under SFAS No. 133, “Accounting for Derivative Instruments and Hedging Activities,” or other contractual commitments. This adjustment was recorded as an increase to goodwill and will be accreted to earnings based on the remaining lives of the underlying contracts.

This adjustment was determined based on market information, if available, as well as Generation’s and Power’s managements’ view of the forward market curves for energy prices. This adjustment could be materially affected by changes in market prices of power, the forward price curves for the underlying commodities and changes in contract terms.

(i) Deferred Income Taxes – The current deferred tax asset represents the estimated impact on the allocation of purchase price to current liabilities. The current deferred tax liability represents the estimated impact on the allocation of purchase price to current assets. The non-current deferred tax liability represents the estimated impact on the allocation of purchase price to non-current assets. These estimates are based on the estimated prospective statutory tax rate of 40% for the combined company and could change based on changes in the applicable tax rates and finalization of the combined company’s tax position.

(j) Intercompany Transactions – Represents the pro forma adjustment required to eliminate cash advances, accounts receivable and payable, inventories and other current and non-current assets and liabilities between Generation and Power recorded at September 30, 2004 in each company’s historical financial statements. These amounts relate primarily to purchases and sales of energy between the parties, as well as billings for services provided by one company to the other in connection with the operation of co-owned nuclear generating facilities.

(k) Member’s Equity / Accumulated Other Comprehensive Loss – Represents pro forma adjustments to eliminate the historical member’s equity of Power and allocation of purchase price in connection with the merger.

March 3, 2005

U.S. Nuclear Regulatory Commission  
Attn: Document Control Desk  
Washington, DC 20555-0001

Braidwood Station, Units 1 and 2  
Facility Operating License Nos. NPF-72 and NPF-77  
NRC Docket Nos. STN 50-456 and STN 50-457

Byron Station, Units 1 and 2  
Facility Operating License Nos. NPF-37 and NPF-66  
NRC Docket Nos. STN 50-454 and STN 50-455

Dresden Nuclear Power Station, Units 1, 2, and 3  
Facility Operating License Nos. DPR-2, DPR-19 and DPR-25  
NRC Docket Nos. 50-10, 50-237 and 50-249

LaSalle County Station, Units 1 and 2  
Facility Operating License Nos. NPF-11 and NPF-18  
NRC Docket Nos. 50-373 and 50-374

Limerick Generating Station, Units 1 and 2  
Facility Operating License Nos. NPF-39 and NPF-85  
NRC Docket Nos. 50-352 and 50-353

Peach Bottom Atomic Power Station, Units 1, 2, and 3  
Facility Operating License Nos. DPR-12, DPR-44 and DPR-56  
NRC Docket Nos. 50-171, 50-277, and 50-278

Quad Cities Nuclear Power Station, Units 1 and 2  
Facility Operating License Nos. DPR-29 and DPR-30  
NRC Docket Nos. 50-254 and 50-265

Zion Nuclear Power Station, Units 1 and 2  
Facility Operating License Nos. DPR-39 and DPR-48  
NRC Docket Nos. 50-295 and 50-304

Subject: Application for Approval of License Transfers

In accordance with 10 CFR 50.80, "Transfer of licenses," Exelon Generation Company, LLC

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(Exelon Generation) requests NRC consent to transfers of the facility operating licenses for the nuclear generating stations listed above.

Specifically, to the extent necessary, Exelon Generation requests NRC consent to indirect transfers of the licenses for Braidwood Station, Units 1 and 2 (Braidwood); Byron Station, Units 1 and 2 (Byron); Dresden Nuclear Power Station, Units 1, 2, and 3 (Dresden); LaSalle County Station, Units 1 and 2 (LaSalle); Limerick Generating Station, Units 1 and 2 (Limerick); Quad Cities Nuclear Power Station, Units 1 and 2 (Quad Cities); and Zion Nuclear Power Station, Units 1 and 2 (Zion).

In addition, Exelon Generation and PSEG Nuclear LLC (PSEG Nuclear) jointly request NRC consent to indirect and direct transfers of the licenses for the Peach Bottom Atomic Power Station, Units 1, 2, and 3 (Peach Bottom). The indirect transfer relates to Exelon Generation's ownership and operating interests in that station. The direct transfer relates to the transfer of the non-operating ownership interest in that station held by PSEG Nuclear.

All of the proposed license transfers are associated with the pending merger of Exelon Corporation (the parent company of Exelon Generation and referred to as Exelon) and Public Service Enterprise Group (the ultimate parent company of PSEG Nuclear and referred to as PSEG) and the subsequent restructuring of the merged companies. Under the merger agreement, the two companies will combine to create Exelon Electric & Gas Corporation (EEG), the nation's largest utility. The merger will be accomplished by converting PSEG shares into Exelon shares and is expected to result in PSEG shareholders holding about 32% of EEG. PSEG will merge into Exelon and upon completion of the merger, Exelon will change its name to Exelon Electric and Gas Corporation. EEG will then restructure its organization. The combined company will have assets of approximately \$79 billion and will serve three major metropolitan areas, more than seven million retail electric customers in Illinois, New Jersey, and Pennsylvania, and more than two million gas customers in Pennsylvania and New Jersey.

The Braidwood, Byron, Dresden, LaSalle, Limerick, Quad Cities, and Zion stations are presently owned and operated by Exelon Generation.<sup>1</sup> Accordingly, Exelon Generation is an NRC licensee for these facilities. Exelon Generation is a wholly-owned subsidiary of Exelon Ventures Company, LLC, which in turn is a wholly-owned subsidiary of Exelon. As a result of the merger, Exelon Generation will remain a wholly-owned subsidiary of Exelon Ventures Company, LLC, and that company will become a wholly-owned subsidiary of EEG. Exelon Generation will continue to be the owner of the stations and the NRC operating licensee. Exelon Generation is requesting the approval of indirect license transfers for these stations, to the extent necessary, solely due to the merger creating EEG.

Exelon Generation is currently the sole owner of Peach Bottom Unit 1, holds a 50% ownership interest in Peach Bottom Units 2 and 3, and is the NRC-licensed operator of all three Peach Bottom units. PSEG Nuclear owns the remaining 50% non-operating interest in Peach Bottom, Units 2 and 3. As a result of the merger there will again be an indirect transfer of the Exelon Generation ownership and operating interests in the three units due to the merger creating EEG

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<sup>1</sup> Exelon Generation is the sole owner of all of these stations except Quad Cities. MidAmerican Energy Company is the owner of 25% of the Quad Cities station. MidAmerican's non-operating ownership share is not involved in this application.

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described above. In addition, Exelon Generation and PSEG Nuclear request NRC consent to the direct transfer of PSEG Nuclear's ownership interest in Units 2 and 3. Following the transfer, Exelon Generation will hold a 100% ownership interest in the Peach Bottom facility and will continue to be the NRC-licensed operator of each unit.

Because all of the referenced facilities will continue to be operated by the Exelon Generation Nuclear Group following the merger, the proposed license transfers will not impact the technical qualifications of the operating licensees. The merger will also bring into the Exelon Generation nuclear organization the Salem Generating Station, Units 1 and 2, and the Hope Creek Generating Station. (This transaction is addressed by a separate NRC license transfer application.) Exelon expects substantial synergies from the merger, both in financial and operational terms. Exelon Generation expects to build upon its strong, successful performance in running the nation's largest nuclear fleet.

The attached application contains the information required by 10 CFR 50.80 to demonstrate that:

- (1) Exelon Generation will continue to possess the technical and financial qualifications to own and operate these facilities;
- (2) Exelon Generation will not, as a result of the merger, become owned, controlled, or dominated by a foreign corporation or government; and
- (3) The proposed transfers and restructuring do not raise any other significant safety or NRC regulatory issues.

With respect to the Peach Bottom facility, because of the transfer of the PSEG Nuclear ownership interest, the attached application also includes proposed conforming license amendments. Exelon Generation and PSEG Nuclear request approval of these amendments in accordance with 10 CFR 50.90, "Application for amendment of license or construction permit." These license amendments involve no significant hazards considerations. The Peach Bottom Plant Operations Review Committee has reviewed and approved the amendment request. In addition, in accordance with 10 CFR 50.91, "State consultation," paragraph (b), appropriate state representatives are being notified.

The merger is conditioned upon, among other things, the approval by shareholders of both companies and a number of regulatory approvals or reviews by federal and state energy authorities. These include, in addition to the NRC, the New Jersey Board of Public Utilities, the Pennsylvania Public Utility Commission, the Illinois Commerce Commission (notice filing only), the Federal Energy Regulatory Commission, the Securities and Exchange Commission, and either the Department of Justice or the Federal Trade Commission, depending upon which agency reviews the anti-trust aspects of the merger. The companies intend to seek shareholder approval in the second quarter of 2005 and anticipate that the regulatory approvals can be obtained within 12-15 months of its December 2004 announcement date.

To facilitate implementation of the merger and subsequent restructuring, Exelon Generation and PSEG Nuclear are requesting NRC approval of the proposed transfers within six months, to be effective immediately upon issuance. Consistent with past practice, we request the approval to

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permit subsequent execution of the merger, restructuring, and the license transfers within a succeeding 12-month period.

If there are any questions regarding these license transfer requests, please contact Kenneth A. Ainger at (856) 339-2136.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on \_\_\_\_\_

\_\_\_\_\_  
Jeffrey A. Benjamin – Vice President,  
Licensing and Regulatory Affairs  
Exelon Generation Company, LLC

Attachment: Application for Consent to License Transfers and Conforming License Amendments

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STATE OF NEW JERSEY )  
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COUNTY OF SALEM )  
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AFFIRMATION

I, Frank Cassidy, being duly sworn, hereby depose and state:

I am Frank Cassidy, Chief Operating Officer, PSEG Nuclear LLC; that I am duly authorized to file this Affirmation with the Nuclear Regulatory Commission; that I am familiar with the content of the Application for Approval of License Transfers filed herewith; and that the matters set forth therein with regard to PSEG Nuclear LLC and Peach Bottom Atomic Power Station, Units 2 and 3, are true and correct to the best of my knowledge, information, and belief.

Subscribed and Sworn to before me  
this \_\_\_\_\_ day of \_\_\_\_\_, 2005

\_\_\_\_\_  
Notary Public, State of New Jersey

Commission Expires: \_\_\_\_\_

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**APPLICATION FOR CONSENT TO LICENSE TRANSFERS  
AND CONFORMING LICENSE AMENDMENTS**

**I. INTRODUCTION**

Exelon Corporation (Exelon) is the parent company of Exelon Generation Company, LLC (Exelon Generation). Exelon Generation is currently the licensed owner and operator of Braidwood Station, Units 1 and 2 (Braidwood); Byron Station, Units 1 and 2 (Byron); Dresden Nuclear Power Station, Units 1, 2, and 3 (Dresden); LaSalle County Station, Units 1 and 2 (LaSalle); Limerick Generating Station, Units 1 and 2 (Limerick); Quad Cities Nuclear Power Station, Units 1 and 2 (Quad Cities);<sup>1</sup> and Zion Nuclear Power Station, Units 1 and 2 (Zion). Exelon Generation also owns interests in and operates Peach Bottom Atomic Power Station, Units 1, 2, and 3 (Peach Bottom). Exelon Generation is the sole owner of Peach Bottom Unit 1, a 50% owner of Peach Bottom Units 2 and 3, and the licensed operator of all three Peach Bottom units.

Public Service Enterprise Group (PSEG) is the parent company of PSEG Nuclear LLC (PSEG Nuclear). PSEG Nuclear owns the remaining 50%, non-operating interest in Peach Bottom Units 2 and 3.<sup>2</sup>

In December 2004, Exelon and PSEG announced that they entered into a merger agreement to combine their companies and create Exelon Electric & Gas Corporation (EEG), the nation's largest utility. The merger will be accomplished by converting PSEG shares into Exelon shares and is expected to result in PSEG shareholders holding about 32% of EEG. PSEG will merge into Exelon and upon completion of the merger, Exelon will change its name to Exelon Electric & Gas Corporation. EEG will then restructure its organization. The merger will create a combined company with total assets of approximately \$79 billion serving three major metropolitan areas, more than seven million retail electric customers in Illinois, New Jersey and Pennsylvania, and more than two million gas customers in Pennsylvania and New Jersey.

As a result of the merger, Exelon Generation is requesting, to the extent necessary, NRC approval of the following license transfers in accordance with 10 CFR 50.80:

- An indirect transfer of Exelon Generation's licenses to own and operate the Braidwood, Byron, Dresden, LaSalle, Limerick, Quad Cities, and Zion stations.

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<sup>1</sup> MidAmerican Energy Company is the owner of 25% of the Quad Cities station. MidAmerican's non-operating ownership share is not involved in this application.

<sup>2</sup> PSEG Nuclear is also the majority owner of the Salem Generating Station, Units 1 and 2 (Salem), the sole owner of the Hope Creek Generating Station (Hope Creek), and the licensed operator of those facilities. Salem and Hope Creek are the subject of a separate application being submitted to the NRC and are not addressed here.

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- An indirect transfer of Exelon Generation's license to own its current shares of the Peach Bottom units and its license to operate those units.

Exelon Generation and PSEG Nuclear jointly request NRC approval of the following license transfer in accordance with 10 CFR 50.80:

- A direct transfer of PSEG Nuclear's share of Peach Bottom Units 2 and 3 to Exelon Generation.

With respect to the Peach Bottom station, Exelon Generation and PSEG Nuclear also request NRC approval, in accordance with 10 CFR 50.90, of conforming administrative license amendments (contained in Enclosure 2) to reflect the transfer of the PSEG Nuclear non-operating ownership interest to Exelon Generation.

This application provides the necessary information to support the proposed transfers, and to demonstrate that the transfers are justified and will not lead to any undue risk to public health and safety.

## II. GENERAL INFORMATION

The merger of Exelon and PSEG will further the business objectives of the two companies, creating substantial synergies in both financial and operational terms. The combined company — to be named Exelon Electric & Gas Corporation — will encompass a wealth of executive experience in a new and larger organization, with increased service territory. Exelon Generation will continue to be a leader in the nuclear generation business.

When the merger is effective, John Rowe — the current Chairman, President and Chief Executive Officer of Exelon — will become the president and chief executive officer of EEG. James Ferland — the current Chairman, President and Chief Executive Officer of PSEG — will become non-executive chairman of the Board of Directors of EEG. The new Board of Directors will be comprised of directors to be nominated at a ratio of two-thirds by Exelon and one-third by PSEG.

The merger and restructure will be accomplished by a series of transactions. As relevant to this application, the current PSEG Power LLC (PSEG Power) — a parent of PSEG Nuclear — will merge into and be survived by Exelon Generation. The PSEG Power subsidiaries — including PSEG Nuclear — will be dissolved, liquidated, or merged into and survived by Exelon Generation. The PSEG Power business functions will be rolled into corresponding Exelon Generation business units. (If ultimately deemed more prudent, a direct or indirect PSEG Power subsidiary may be maintained and will be a direct subsidiary of Exelon Generation.)

Exelon Generation is currently a wholly-owned subsidiary of Exelon Ventures Company, LLC, (Exelon Ventures) which in turn is a wholly-owned subsidiary of Exelon. As a result of the merger and restructuring, Exelon Generation will remain a wholly-owned subsidiary of Exelon Ventures. Exelon Ventures will become a wholly-owned subsidiary of EEG. An organization chart for the post-merger company is contained in Enclosure 1 of this application.

Exelon Generation will continue to be the owner of the Exelon interests in the referenced nuclear stations, and will continue to be the NRC licensee with exclusive operating authority for

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those stations. Exelon Generation is requesting the approval of indirect license transfers for these stations, to the extent necessary, solely due to the merger creating EEG. Exelon Generation is requesting the approval of the direct transfer of the PSEG Nuclear ownership interests in Peach Bottom Units 2 and 3 to permit the transfer of these interests to Exelon Generation. Following that transfer, Exelon Generation will hold a 100% ownership interest in Peach Bottom and Exelon Generation will continue to be the operator of that station.

### III. REGULATORY ISSUES FOR LICENSE TRANSFERS

#### A. Identification and Ownership of the Licensee

Exelon Generation will continue to be the NRC licensee for all of the stations addressed in this application. As a result of the transaction, Exelon Generation will become a wholly-owned subsidiary of EEG, which will be headquartered in Chicago, Illinois. The combined holding company will be a public company with shares traded on the New York Stock Exchange. The shares are expected to be widely held — initially by the current shareholders of Exelon and PSEG.

Exelon Generation will continue to be the NRC licensee and will be headquartered at:

80 Park Plaza  
Newark, NJ 07102

Exelon Generation's nuclear organization will be headquartered at:

200 Exelon Way  
Kennett Square, Pennsylvania 19348

The Chief Nuclear Officer and other senior executives of Exelon Generation responsible for the facilities addressed in this application will not change as a result of the merger.

As a result of the merger or restructuring, Exelon Generation will not become owned, controlled or dominated by foreign interests. Exelon Generation will remain a U.S. limited liability company that will be a subsidiary of Exelon Ventures, a U.S. limited liability company, which in turn will be a subsidiary of EEG, a U.S. corporation. The majority (if not all) of the directors and officers of EEG, and officers of Exelon Ventures and Exelon Generation will be U.S. citizens.

#### B. Technical Qualifications of Exelon Generation

The technical qualifications of Exelon Generation will not be affected by the merger creating EEG, the restructuring, nor by the acquisition of the PSEG Nuclear share of Peach Bottom Units 2 and 3. The Exelon Generation organizations and personnel presently responsible for all of the referenced nuclear stations will continue to operate and support the stations with no change. Likewise, Exelon Generation's programs, procedures, and conduct of operations will not be altered for these facilities as a result of the merger.

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## C. Financial Qualifications of Exelon Generation

### 1. Operating Financial Qualifications

The proposed merger and proposed transfers, including the transfer of the 50% ownership in Peach Bottom held by PSEG Nuclear to Exelon Generation, will not affect the financial qualifications of Exelon Generation as the licensed owner and operator.

Exelon Generation will continue to own, operate, and market power from a diverse portfolio of nuclear, fossil, and hydroelectric generating units. Exelon Generation will continue to sell electricity to electric utility affiliates and will market electricity pursuant to rate tariffs approved by the Federal Energy Regulatory Commission. Exelon Generation presently meets, and will continue to meet, the financial qualifications requirement of 10 CFR 50.33, "Contents of applications; general information," paragraph (f)(2) by obtaining revenue from the sale of electricity from the nuclear plants sufficient to cover nuclear operating costs. Exelon Generation's substantial generating assets and revenue streams — including revenue streams from nuclear units and from fossil and hydroelectric units, as well as revenue from power marketing and other business operations — also provide assurance of Exelon Generation's ability to cover fixed operating costs associated with a six-month shutdown of one or more of the nuclear units.<sup>3</sup>

Furthermore, based upon the financial stature of the company, Exelon Generation expects to have an investment grade bond rating, which will enable the company to raise additional funds as necessary.

In the license amendment application submitted by Exelon Generation and PSEG Nuclear addressing the direct transfer of the licenses for ownership/operation of the Salem and Hope Creek units (Docket Nos. 50-272, 50-311, and 50-354), Exelon Generation and PSEG Nuclear have submitted five-year, post-merger financial projections for Exelon Generation, incorporating the combined generation capacity (nuclear and non-nuclear) to be operated by Exelon Generation. The five year projections cover the first five years after the merger (beginning in 2006) and include: total revenue, total operating expenses, income before taxes, taxes, and net income. The financial information includes assumptions regarding the total generation supply and the price of electricity, as well as a projected balance sheet for Exelon Generation demonstrating the substantial assets of the combined generation business. To the extent even required for the present application, that information is incorporated herein by reference.<sup>4</sup>

### 2. Decommissioning Funding Assurance

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<sup>3</sup> With respect to Peach Bottom Units 2 and 3, Exelon Generation and PSEG Nuclear presently have the financial qualifications to be licensees for those units — based on their respective abilities to cover operating costs by revenues from sales of electricity from the units. Combining the two shares therefore cannot reduce financial qualifications.

<sup>4</sup> The five-year financial projections are proprietary. Exelon Generation and PSEG Nuclear have requested that the proprietary information be withheld from public disclosure pursuant to 10 CFR 2.390. A non-proprietary version was also provided to the NRC on the docket.

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The proposed indirect license transfers do not affect the present decommissioning funding assurance provided by Exelon Generation. The sources of decommissioning funding and the status of the decommissioning funds for the stations are unchanged as a result of the merger creating EEG.

With respect to Peach Bottom, the decommissioning funds currently held by PSEG Nuclear for its ownership interest, or the beneficial interest in those funds, will be transferred to Exelon Generation's existing decommissioning trust funds for the respective unit. Therefore, the transfer of the PSEG ownership interest to Exelon Generation will not reduce the total financial assurance for Peach Bottom, Units 2 and 3.

The status of decommissioning funding for Peach Bottom was shown in the most recent decommissioning funding reports submitted by PSEG Nuclear and Exelon Generation<sup>5</sup> and will be updated in status reports, as required by 10 CFR 50.75, "Reporting and recordkeeping for decommissioning planning," paragraph (f), to be submitted by March 31, 2005.

For PSEG Nuclear, the amounts accumulated in the funds at the end of 2002 exceeded the amount needed to be collected by that date to be consistent with the formulas in 10 CFR 50.75(c). The PSEG Nuclear fund is presently fully funded with no further collections through the state regulatory process anticipated. For the present Exelon Generation share, the amounts accumulated in the funds at the end of 2002 also exceeded the amount needed to be collected. Exelon Generation is continuing to make collections for its existing share, and those collections are unaffected by the proposed transaction.

The proposed conforming license amendments for Peach Bottom, Units 2 and 3 delete specific license conditions relating to the terms and conditions of decommissioning trust agreements. In place of these license conditions, the requirements of 10 CFR 50.75(h)(1) will apply.

### 3. Nuclear Insurance

Exelon Generation will continue to maintain the financial protection required by 10 CFR 140, "Financial Protection Requirements and Indemnity Agreements," and the property insurance required by 10 CFR 50.54, "Conditions of licenses," paragraph (w) for all the referenced stations.

For Peach Bottom, Exelon Generation will assume the additional pro rata responsibility presently held by PSEG Nuclear with respect to retrospective liability in accordance with 10 CFR 140.21. The financial information discussed above demonstrates the ability of Exelon Generation to meet the additional share of the maximum annual retrospective liability.

### D. Restricted Data and Classified Nuclear Security Information

This application does not contain any Restricted Data or other classified defense information, and it is not expected that any such information will become involved in the operation of the affected plants. As provided in 10 CFR 50.37, "Agreement limiting access to Classified

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<sup>5</sup> PSEG Nuclear letter to NRC, "NRC Decommissioning Funding Status Report," dated March 25, 2003; Exelon Generation letter to NRC, "Report on Status of Decommissioning Funding for Reactors," dated March 31, 2003.

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Information,” Exelon Generation will not permit any individual to have access to Restricted Data or National Security Information until the individual has been approved for such access under the provisions of 10 CFR 25, “Access Authorization for Licensee Personnel.”

#### E. Environmental Considerations

This application, and the accompanying administrative license amendments for Peach Bottom, are exempt from environmental review because they fall within the categorical exclusion of 10 CFR 51.22, “Criterion for categorical exclusion; identification of licensing and regulatory actions eligible for categorical exclusion or otherwise not requiring environmental review,” paragraph (c)(21). This application does no more than request approvals of indirect and direct license transfers and conforming license amendments for Peach Bottom, Units 2 and 3. Additionally, the proposed license transfers and conforming license amendments do not involve any amendment or other change that would directly affect the actual operation of the facilities involved in any substantive way. The proposed transfers and amendments do not involve an increase in the amounts, or a change in the types, of any radiological effluents that may be allowed to be released off-site, and do not involve any increase in the amounts or change in the types of any non-radiological effluents that may be released off-site. Further, no increase in the individual or cumulative occupational radiation exposure is involved.

#### F. No Significant Hazards Consideration

Consistent with the generic determination in 10 CFR 2.1315, “Generic determination regarding license amendments to reflect transfers,” paragraph (a), the proposed license transfers and conforming license amendments for Peach Bottom, Units 2 and 3 involve no significant hazards consideration.

The proposed conforming license amendments for Peach Bottom, Units 2 and 3 also delete specific license conditions relating to the terms and conditions of decommissioning trust agreements. In place of these license conditions, the requirements of 10 CFR 50.75(h)(1) will apply. As stated in 10 CFR 50.75(h)(4), deletion of those license conditions involves no significant hazards consideration.

The transfers and proposed amendments do not involve any change in the design or licensing basis, plant configuration, or operation of the referenced nuclear stations. All Limiting Conditions for Operation, Limiting Safety System Settings and Safety Limits specified in Technical Specifications remain unchanged. Also, the physical security plans, emergency response plans, operator training and requalification programs, and the quality assurance plans are not substantively and materially changed by the proposed license transfers and amendments.

Therefore, the proposed approvals do not: (1) involve an increase in the probability or consequences of an accident previously analyzed; (2) create the possibility of a new or different kind of accident from the accidents previously evaluated; or (3) involve a significant reduction in a margin of safety.

#### IV. OTHER REGULATORY APPROVALS AND SCHEDULE

The merger is conditioned upon, among other things, the approval by shareholders of both companies and a number of regulatory approvals or reviews by federal and state energy

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authorities. These include, in addition to the NRC, the New Jersey Board of Public Utilities, the Pennsylvania Public Utility Commission, the Illinois Commerce Commission (notice filing only), the Federal Energy Regulatory Commission, the Securities and Exchange Commission, and either the Department of Justice or the Federal Trade Commission, depending upon which agency reviews the anti-trust aspects of the merger. The companies intend to seek shareholder approval in the second quarter of 2005 and anticipate that the regulatory approvals can be obtained within 12-15 months of its December 2004 announcement date.

To facilitate implementation of the merger, Exelon Generation and PSEG Nuclear are requesting NRC approval of the proposed transfers within six months, to be effective immediately upon issuance and permit subsequent execution of the merger, restructuring, and transfers within a succeeding 12-month period. Exelon Generation will inform the NRC of any significant changes in the schedule.

#### V. CONCLUSIONS

For the reasons discussed above, the proposed indirect and direct license transfers (and the administrative license amendments for Peach Bottom Units 2 and 3) will not: (1) have any adverse impact on the operation of the nuclear stations; (2) adversely affect the managerial or technical qualifications of Exelon Generation, the operator of the nuclear stations; (3) impair Exelon Generation's financial qualifications as the owner and operator of the nuclear stations; or (4) result in any foreign ownership, control or domination of Exelon Generation. Accordingly, the proposed transfers and amendments will not result in any undue risk to public health and safety, will not be inimical to the common defense and security, and will be consistent with the Atomic Energy Act and NRC regulations.



March 3, 2005

U.S. Nuclear Regulatory Commission  
Attn: Document Control Desk  
Washington, DC 20555-0001

Clinton Power Station, Unit 1  
Facility Operating License No. NPF-62  
NRC Docket No. 50-461

Oyster Creek Generating Station  
Facility Operating License No. DPR-16  
NRC Docket No. 50-219

Three Mile Island Nuclear Station, Unit 1  
Facility Operating License No. DPR-50  
NRC Docket No. 50-289

Subject: Application for Approval of Indirect License Transfers

In accordance with 10 CFR 50.80, "Transfer of licenses," AmerGen Energy Company, LLC (AmerGen) is requesting NRC consent, to the extent necessary, of indirect transfers of Facility Operating License Nos. NPF-62, DPR-16, and DPR-50 for Clinton Power Station, Unit 1 (Clinton), Oyster Creek Generating Station (Oyster Creek) and Three Mile Island Nuclear Station, Unit 1 (TMI-1), respectively. There are no license amendments needed in connection with the proposed indirect license transfers.

The proposed indirect license transfers are associated with the pending merger of Exelon Corporation (the ultimate parent company of AmerGen and referred to as Exelon) and Public Service Enterprise Group (PSEG) and the subsequent restructuring of the merged companies. Under the merger agreement, the two companies will combine to create Exelon Electric & Gas Corporation (EEG), the nation's largest utility. The merger will be accomplished by converting PSEG shares into Exelon shares and is expected to result in PSEG shareholders holding about 32% of EEG. PSEG will merge into Exelon and upon completion of the merger, Exelon will change its name to Exelon Electric & Gas Corporation. EEG will then restructure its organization. The combined company will have assets of approximately \$79 billion and will serve three major metropolitan areas, more than seven million retail electric customers in Illinois, New Jersey, and Pennsylvania, and more than two million gas customers in Pennsylvania and New Jersey.

AmerGen is the licensed owner and operator of Clinton, Oyster Creek and TMI-1. AmerGen is a wholly-owned subsidiary of Exelon Generation Company, LLC (Exelon Generation). Exelon Generation is a wholly-owned subsidiary of Exelon Ventures Company, LLC (Exelon Ventures), which in turn is a wholly-owned subsidiary of Exelon. As a result of the merger, AmerGen will

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remain a wholly-owned subsidiary of Exelon Generation; Exelon Generation will remain a wholly-owned subsidiary of Exelon Ventures; Exelon Ventures will become a wholly-owned subsidiary of EEG. AmerGen will continue to be the owner of the stations and the NRC operating licensee. AmerGen is requesting the approval of indirect license transfers for these stations, to the extent necessary, solely due to the merger creating EEG.

The attached application contains the information required by 10 CFR 50.80 to demonstrate that:

- (1) AmerGen will continue to possess the technical and financial qualifications to own and operate these facilities;
- (2) AmerGen will not, as a result of the merger, become owned, controlled, or dominated by a foreign corporation or government;
- (3) The proposed transfers do not raise any other significant safety or NRC regulatory issues.

The merger is conditioned upon, among other things, the approval by shareholders of both companies and a number of regulatory approvals or reviews by federal and state energy authorities. These include, in addition to the NRC, the New Jersey Board of Public Utilities, the Pennsylvania Public Utility Commission, the Illinois Commerce Commission (notice filing only), the Federal Energy Regulatory Commission, the Securities and Exchange Commission, and either the Department of Justice or the Federal Trade Commission, depending upon which agency reviews the anti-trust aspects of the merger. The companies intend to request shareholder approval in the second quarter of 2005 and anticipate that the regulatory approvals can be obtained within 12 to 15 months of its December 2004 announcement date.

To facilitate implementation of the merger and subsequent restructuring, AmerGen is requesting NRC approval of the proposed indirect transfers within six months, to be effective immediately upon issuance. Consistent with past practice, we request the approval to permit subsequent execution of the merger and restructuring within a succeeding 12-month period.

If there are any questions regarding these license transfer requests, please contact Kenneth A. Ainger at (856) 339-2136.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on \_\_\_\_\_

\_\_\_\_\_  
Jeffrey A. Benjamin, Vice President  
Licensing and Regulatory Affairs  
AmerGen Energy Company, LLC

Attachment: Application for Consent to Indirect License Transfers

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## APPLICATION FOR CONSENT TO INDIRECT LICENSE TRANSFERS

### I. INTRODUCTION

Exelon Corporation (Exelon) is the parent company of AmerGen Energy Company, LLC (AmerGen). AmerGen is currently the licensed owner and operator of Clinton Power Station, Unit 1 (Clinton), Oyster Creek Nuclear Generating Station (Oyster Creek), and Three Mile Island Nuclear Station, Unit 1 (TMI-1).

In December 2004, Exelon and Public Service Enterprise Group of New Jersey (PSEG) announced that they entered into a merger agreement to combine their companies and create Exelon Electric & Gas Corporation (EEG), the nation's largest utility. The merger will be accomplished by converting PSEG shares into Exelon shares and is expected to result in PSEG shareholders holding about 32% of EEG. PSEG will merge into Exelon and upon completion of the merger, Exelon will change its name to Exelon Electric & Gas Corporation. EEG will then restructure its organization. The merger will create a combined company with total assets of approximately \$79 billion serving three major metropolitan areas, more than seven million retail electric customers in Illinois, New Jersey and Pennsylvania, and more than two million gas customers in Pennsylvania and New Jersey.

As a result of the merger, AmerGen is requesting, to the extent necessary, NRC approval of indirect license transfers in accordance with 10 CFR 50.80, "Transfer of licenses," for Clinton, Oyster Creek, and TMI-1. This application provides the necessary information to support the proposed transfers, and to demonstrate that the transfers are justified and will not lead to any undue risk to public health and safety.

### II. GENERAL INFORMATION

The merger of Exelon and PSEG will further the business objectives of the two companies, creating substantial synergies in both financial and operational terms. The combined company — Exelon Electric & Gas Corporation — will encompass a wealth of executive experience in a new and larger organization, with increased service territory. The combined company, through its subsidiaries Exelon Generation Company, LLC (Exelon Generation) and AmerGen, will continue to be a leader in the nuclear generation business.

When the merger is effective, John Rowe — the current Chairman, President and Chief Executive Officer of Exelon — will become the President and Chief Executive Officer of EEG. James Ferland — the current Chairman, President and Chief Executive Officer of PSEG — will become non-executive chairman of the Board of Directors of EEG. The new Board of Directors will be comprised of directors to be nominated at a ratio of two-thirds by Exelon and one-third by PSEG.

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The merger will be accomplished by a series of transactions. As relevant to this application, the current PSEG Power LLC (PSEG Power) — the parent of PSEG Nuclear, LLC (PSEG Nuclear)<sup>1</sup> — will merge into and be survived by Exelon Generation. The PSEG Power subsidiaries — including PSEG Nuclear — will be dissolved, liquidated, or merged into and survived by Exelon Generation. The PSEG Power business functions will be rolled into their corresponding Exelon Generation business units. (If ultimately deemed more prudent, a direct or indirect PSEG Power subsidiary may be maintained and will be a direct subsidiary of Exelon Generation.)

AmerGen will continue to be the owner and operator of the referenced nuclear stations. AmerGen will remain a wholly-owned subsidiary of Exelon Generation. Exelon Generation is currently a wholly-owned subsidiary of Exelon Ventures Company, LLC, (Exelon Ventures) which in turn is a wholly-owned subsidiary of the present Exelon. As a result of the merger and restructuring, Exelon Generation will remain a wholly-owned subsidiary of Exelon Ventures. Exelon Ventures will become a wholly-owned subsidiary of EEG. AmerGen is requesting the approval of indirect license transfers for the referenced stations, to the extent necessary, solely due to the merger creating EEG.

An organization chart for the post-merger company is contained in Enclosure 1 of this application.

### III. REGULATORY ISSUES FOR LICENSE TRANSFERS

#### A. Identification and Ownership of the Licensee

AmerGen will continue to be the NRC licensee for all of the stations addressed in this application. As a result of the transaction, AmerGen will become a wholly-owned subsidiary of EEG, which will be headquartered in Chicago, Illinois. The combined holding company will be a public company with shares traded on the New York Stock Exchange. The shares are expected to be widely held — initially by the current shareholders of Exelon and PSEG.

AmerGen will continue to maintain its headquarters at:

200 Exelon Way  
Kennett Square, Pennsylvania 19348

The AmerGen nuclear organization will continue to be integrated with the Exelon Generation nuclear organization, which will be headquartered at the same address.

The Chief Executive Officer, who is the Chief Nuclear Officer, and other senior executives of AmerGen responsible for the facilities addressed in this application will not change as a result of the merger.

As a result of the merger AmerGen will not become owned, controlled or dominated by foreign interests. AmerGen will remain a U.S. limited liability company that will be a wholly-owned subsidiary of Exelon Generation, a U.S. limited liability company. Exelon Generation will remain

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<sup>1</sup> PSEG Nuclear is a licensee for the Salem Generating Station, Hope Creek Generating Station, and Peach Bottom Atomic Power Station. Those facilities are the subjects of separate license transfer applications.

a wholly-owned subsidiary of Exelon Ventures, a U.S. limited liability company. Exelon Ventures will be a subsidiary of EEG, a U.S. corporation.

The management committee of AmerGen will not change as a result of the license transfers. The majority (if not all) the directors and officers of EEG will be U.S. citizens. The directors and officers of Exelon Ventures will not change as a result of the merger and will continue to be U.S. citizens. The directors and officers of Exelon Generation will continue to be U.S. citizens.

B. Technical Qualifications of AmerGen

The technical qualifications of AmerGen will not be affected by the merger creating EEG. The AmerGen organizations and personnel presently responsible for all of the referenced nuclear stations will continue to operate and support the stations with no change. Likewise, AmerGen's programs, procedures, and conduct of operations will not be altered for these facilities as a result of the merger.

C. Financial Qualifications of AmerGen

1. Operating Financial Qualifications

The proposed merger and proposed transfers will not affect the financial qualifications of AmerGen as the licensed owner and operator.

AmerGen will continue to own, operate, and market power from the referenced stations. AmerGen will continue to sell electricity to electric utility affiliates and will market electricity pursuant to rate tariffs approved by the Federal Energy Regulatory Commission. AmerGen presently meets, and will continue to meet, the financial qualifications requirement of 10 CFR 50.33, "Contents of applications; general information," paragraph (f)(2), by obtaining revenue from the sale of electricity from the nuclear plants sufficient to cover nuclear operating costs.

The proposed transfer does not affect the existing contingency funding arrangement for AmerGen provided by Exelon Generation. Exelon Generation's substantial generating assets, encompassing a diverse portfolio of nuclear, fossil, and hydroelectric generating units, will continue to provide revenue streams and added assurance of AmerGen's ability to cover fixed operating costs associated with a six-month shutdown of one or more of the nuclear units.

Furthermore, based upon the financial stature of the company, Exelon Generation expects to have an investment grade bond rating, which will enable the company to raise additional funds as necessary.

The financial projections for AmerGen standing alone do not change as a result of the proposed license transfers. In the license transfer application submitted by Exelon Generation and PSEG Nuclear addressing the direct transfer of the licenses for ownership/operation of the Salem and Hope Creek units (Docket Nos. 50-272, 50-311, and 50-354), Exelon Generation and PSEG Nuclear have submitted five-year post-merger financial projections for Exelon Generation, incorporating the combined generation capacity (nuclear and non-nuclear) to be operated by Exelon Generation, including AmerGen. The five year projections cover the first five years after the merger (beginning in 2006) and include: total revenue, total operating expenses, income before taxes, taxes, and net income. The financial information includes assumptions regarding the total generation supply and the price of electricity, as well as a projected balance sheet for Exelon Generation demonstrating the substantial assets of the combined generation business.

To the extent even required for the present application, that information is incorporated herein by reference.<sup>2</sup>

## 2. Decommissioning Funding Assurance

The proposed indirect license transfers do not affect the present decommissioning funding assurance provided by AmerGen. The sources of decommissioning funding and the status of the decommissioning funds for the stations are unchanged as a result of the merger at the holding company level.

Financial assurance for decommissioning for all three stations continues to be provided by the prepayment method, coupled with an external trust fund, in accordance with 10 CFR 50.75, "Reporting and recordkeeping for decommissioning planning," paragraph (e)(1)(i). The status of decommissioning funding for the three stations was shown in the most recent AmerGen decommissioning funding report<sup>3</sup> and will be updated in a status report, as required by 10 CFR 50.75(f), to be submitted by March 31, 2005.

## 3. Nuclear Insurance

AmerGen will continue to maintain the financial protection required by 10 CFR 140, "Financial Protection Requirements and Indemnity Agreements," and the property insurance required by 10 CFR 50.54, "Conditions of licenses," paragraph (w), for all the referenced stations. These arrangements are not impacted by the proposed license transfers.

### D. Restricted Data and Classified Nuclear Security Information

This application does not contain any Restricted Data or other classified defense information, and it is not expected that any such information will become involved in the operation of the affected plants. As provided in 10 CFR 50.37, "Agreement limiting access to Classified Information," AmerGen will not permit any individual to have access to Restricted Data or National Security Information until the individual has been approved for such access under the provisions of 10 CFR 25, "Access Authorization for Licensee Personnel."

### E. Environmental Considerations

This application does no more than request approvals of indirect license transfers. The proposed license transfers do not involve any amendment to the plant licenses or any other change that would directly affect the actual operation of the facilities involved in any substantive way. The proposed transfers do not involve an increase in the amounts, or a change in the types, of any radiological effluents that may be allowed to be released off-site, and do not involve any increase in the amounts or change in the types of any non-radiological effluents that may be released off-site. Further, no increase in the individual or cumulative occupational radiation exposure is involved.

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<sup>2</sup> The five year financial projections are proprietary. Exelon Generation and PSEG Nuclear have requested that the proprietary information be withheld from public disclosure pursuant to 10 CFR 2.390. A non-proprietary version was also provided to the NRC on the docket.

<sup>3</sup> AmerGen letter to NRC, "Report on Status of Decommissioning Funding for Reactors," dated March 31, 2003.

#### IV. OTHER REGULATORY APPROVALS AND SCHEDULE

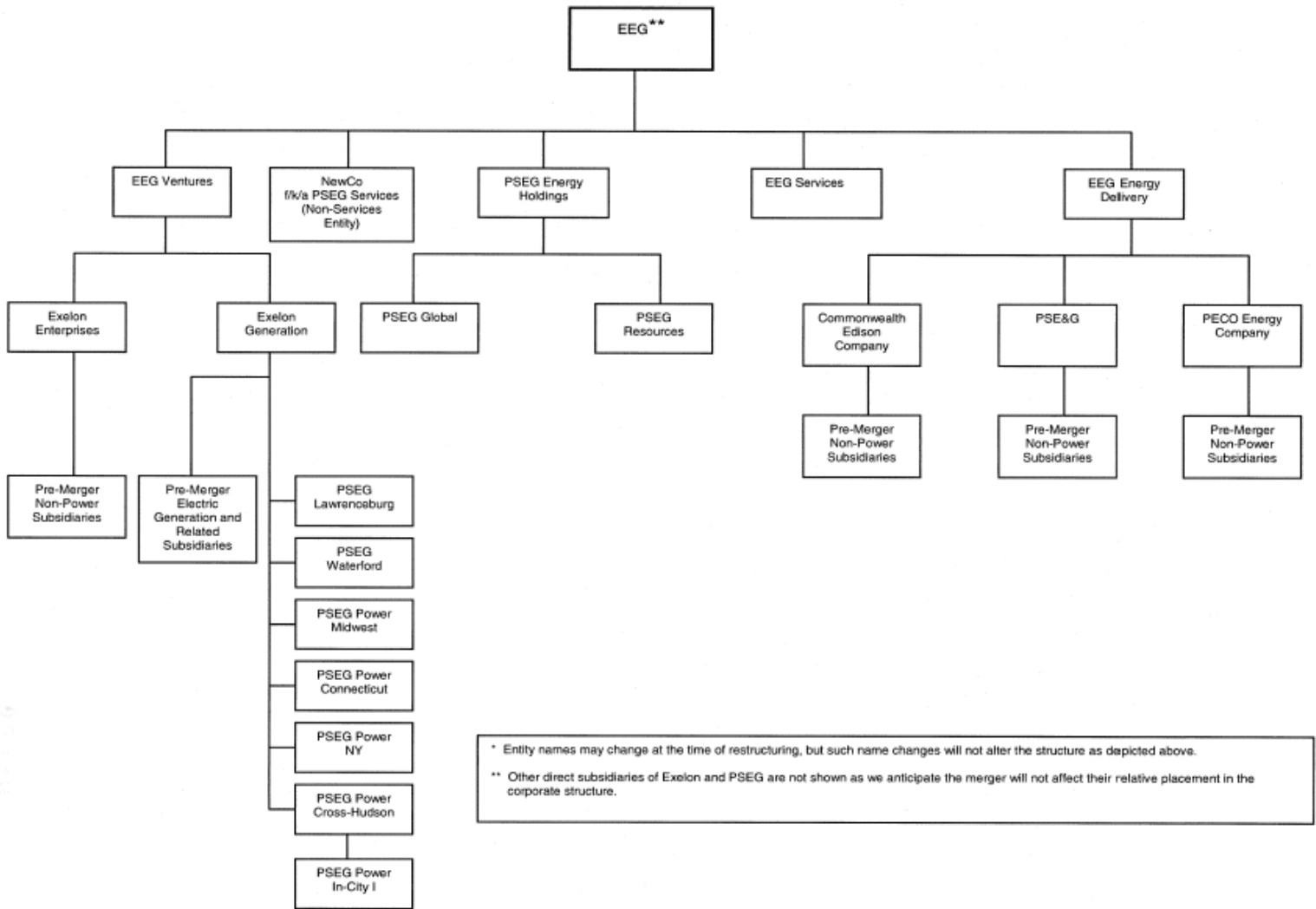
The merger of Exelon Corporation and Public Service Enterprise Group is conditioned upon, among other things, the approval by shareholders of both companies and a number of regulatory approvals or reviews by federal and state energy authorities. These include, in addition to the NRC, the New Jersey Board of Public Utilities, the Pennsylvania Public Utility Commission, the Illinois Commerce Commission (notice filing only), the Federal Energy Regulatory Commission, the Securities and Exchange Commission, and either the Department of Justice or the Federal Trade Commission, depending upon which agency reviews the anti-trust aspects of the merger. The companies intend to seek shareholder approval in the second quarter of 2005 and anticipate that the regulatory approvals can be obtained within 12 to 15 months of its December 2004 announcement date.

To facilitate implementation of the merger, AmerGen is requesting NRC approval of the proposed transfers within six months, to be effective immediately upon issuance and permit subsequent execution of the merger and restructuring within a succeeding 12-month period. AmerGen will inform the NRC of any significant changes in the schedule.

#### V. CONCLUSIONS

For the reasons discussed above, the proposed indirect license transfers will not: (1) have any adverse-impact on the operation of the referenced nuclear stations; (2) adversely affect the managerial or technical qualifications of AmerGen, the operator of the nuclear stations; (3) impair AmerGen's financial qualifications as the owner and operator of the nuclear stations; or (4) result in any foreign ownership, control or domination of AmerGen. Accordingly, the proposed transfers will not result in any undue risk to public health and safety, will not be inimical to the common defense and security, and will be consistent with the Atomic Energy Act and NRC regulations.

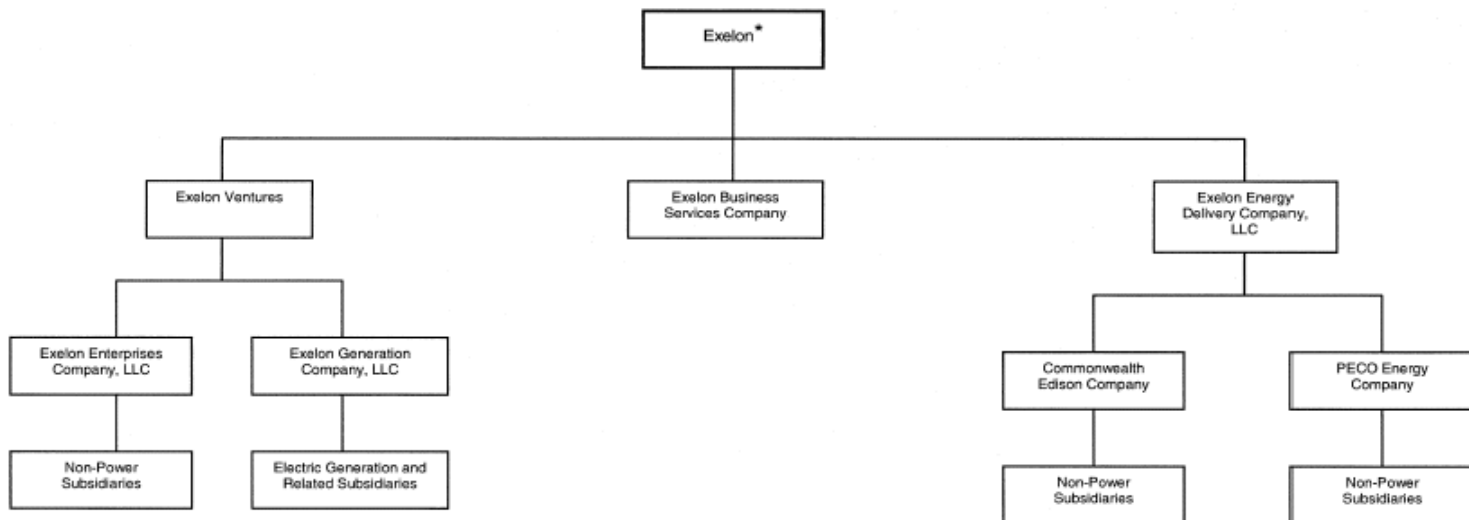
Exelon Electric & Gas – Post Merger\*



\* Entity names may change at the time of restructuring, but such name changes will not alter the structure as depicted above.  
 \*\* Other direct subsidiaries of Exelon and PSEG are not shown as we anticipate the merger will not affect their relative placement in the corporate structure.

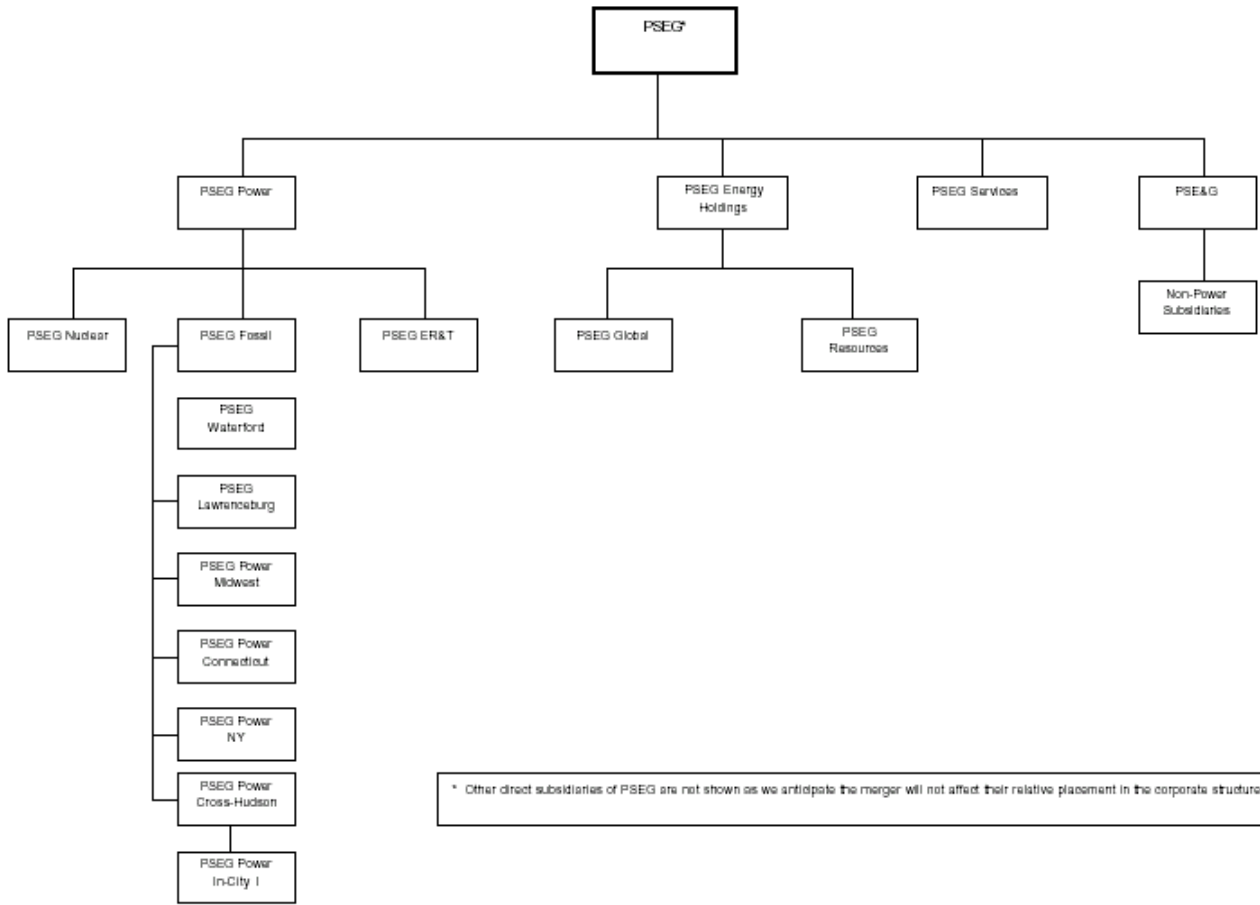


Exelon – pre-Merger\*



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

PSEG – Pre-Merger\*



## Eligible Units for Generation Divestiture

Units	Type	MW (winter rating) <sup>1</sup>	Current Owner	Pre-Merger Status	Post Merger Status*
Grand Central Landfill**	NUG	9	Waste Management	NA	NA
MMLP NUG (Montenay)**	NUG	28	Montenay Energy Resources of Montgomery County, Inc	NA	NA
Conowingo	HY	512	Susquehanna Power Co. and PECO Energy Power Co.	EWG	EWG
Oyster Creek***	NU	637	AmerGen	EWG	EWG
Limerick***	NU	2,358	Exelon Generation	Utility	Utility
Salem***	NU	2,066	42.59% Exelon Generation 57.41% PSEG Nuclear	Utility EWG	Utility Utility
Hope Creek***	NU	1,118	PSEG Nuclear	EWG	Utility
Yards Creek	HY	200	PSEG Fossil	EWG	Utility <sup>2</sup>
Eddystone 1-2	ST	599	Exelon Generation	Utility	Utility
Cromby 1	ST	147	Exelon Generation	Utility	Utility
Hudson 2	ST	620	PSEG Fossil	EWG	Utility
Mercer 1-2	ST	682	PSEG Fossil	EWG	Utility
Bergen, 1ST, 1SC, 1CC	CC	1,245	PSEG Fossil	EWG	Utility
Linden CC	CC	1,218	PSEG Fossil	EWG	Utility
Bergen 3	GT	24	PSEG Fossil	EWG	Utility
Sewaren 1-4	ST	495	PSEG Fossil	EWG	Utility
Hudson 1	ST	422	PSEG Fossil	EWG	Utility
Kearny 7-8	ST	340	PSEG Fossil	EWG	Utility
Pennsbury 1-2	GT	6	Exelon Generation	Utility	Utility
Cromby 2	ST	211	Exelon Generation	Utility	Utility
Kearny (PSEG)	CT	159	PSEG Fossil	EWG	Utility
Burlington (PSEG)	CT	200	PSEG Fossil	EWG	Utility
Eddystone 3-4	ST	760	Exelon Generation	Utility	Utility
Essex	GT	93	PSEG Fossil	EWG	Utility
Linden 7-8	GT	186	PSEG Fossil	EWG	Utility
Edison	GT	194	PSEG Fossil	EWG	Utility
Fairless Hills	ST	60	Exelon Generation	Utility	Utility
Cromby IC1	IC1	3	Exelon Generation	Utility	Utility
Delaware 1	1	3	Exelon Generation	Utility	Utility
Schuyhill 1, 10-11, IC1	ST, GT IC1	216	Exelon Generation	Utility	Utility
Croydon	GT	497	Exelon Generation	Utility	Utility
Essex 10, 11, 12	GT	618	PSEG Fossil	EWG	Utility

<sup>1</sup> The MW ratings were obtained from publicly available sources and may differ from ratings contained in other filings submitted to the Commission by either Exelon or PSEG or their subsidiaries.

<sup>2</sup> In the event that the FERC hydro license for the Yards Creek facility is not transferred to Exelon Generation, Yards Creek may remain an EWG subsidiary of Exelon Generation.

Units	Type	MW (winter rating) <sup>1</sup>	Current Owner	Pre-Merger Status	Post Merger Status*
Edison	GT	388	PSEG Fossil	EWG	Utility
Richmond	GT	132	Exelon Generation	Utility	Utility
Kearny 9, 10, 12	GT	383	PSEG Fossil	EWG	Utility
National Park	GT	24	PSEG Fossil	EWG	Utility
Falls	GT	60	Exelon Generation	Utility	Utility
Moser	GT	60	Exelon Generation	Utility	Utility
Delaware 9-12	GT	74	Exelon Generation	Utility	Utility
Eddystone 10-40	GT	76	Exelon Generation	Utility	Utility
Southwark 3-6	GT	72	Exelon Generation	Utility	Utility
Chester 7-9	GT	54	Exelon Generation	Utility	Utility
Burlington 8-11	GT	448	PSEG Fossil	EWG	Utility
Bayonne 1-2	GT	48	PSEG Fossil	EWG	Utility
Sewaren 6	GT	140	PSEG Fossil	EWG	Utility
Mercer 3	GT	140	PSEG Fossil	EWG	Utility
Linden 5, 6	GT	188	PSEG Fossil	EWG	Utility
Salem 3	GT	46	42.59% Exelon Generation 57.41% PSEG Nuclear	Utility  EWG	Utility  Utility
Total		18,259			

Key:

NUG	Non utility generator
HY	Hydroelectric
NU	Nuclear
ST	Steam turbine (coal or gas)
CC	Combined cycle (gas)
GT	Gas turbine

\* A Post-Merger Status of “utility” means that the particular generating unit will be owned directly by Exelon Generation following the Exelon Generation Restructuring as described in the Form U-1 Application-Declaration to which this document is an exhibit (the “U-1”) (not as a separate EWG subsidiary) and accordingly its disposition to the extent occurring after closing of the Merger will constitute the disposition of utility assets under the Act. All the generating units owned by PSEG Fossil and PSEG Nuclear are currently held as exempt wholesale generators (“EWGs”). Conversely, if an eligible unit remains an EWG following the Merger no Commission approval will be required for its divestiture.

\*\* The output of these units is purchased from the unrelated third party owners. Any divestiture of the output of these units to satisfy market power mitigation would be a FERC jurisdictional wholesale electric sale and not involve disposition of any utility assets by Exelon under the Act.

\*\*\* See Item 1. H. of the U-1 for a discussion of the “virtual divestiture” with respect to the nuclear generating units.

**Long-Term Debt as of December 31, 2004\***

	<u>Maturity</u>	
<b>PSEG</b>		
Senior Note 6.89%	2005-2009	\$ 245
Senior Note 4.66%(C)	2009	200
Debt Supporting Trust Preferred Securities (A)	2007-2047	1,201
Other		8
<b>Principal Amount Outstanding</b>		<u>1,654</u>
<b>Amounts Due Within One Year (B)</b>		<u>(49)</u>
<b>Total Long-Term Debt of PSEG (Parent)</b>		<u>\$ 1,605</u>
<b>PSE&amp;G</b>		
First and Refunding Mortgage Bonds:		
9.125%	2005	125
6.75%	2006	147
LIBOR plus 0.125% (E) (I)	2006	175
6.25%	2007	113
6.75%	2016	171
6.45%	2019	5
9.25%	2021	134
6.38%	2023	157
5.20%	2025	23
(Series A) Auction Rate(I)	2028	64
(Series AE) Auction Rate(F)(I)	2029	93
(Series AD) Auction Rate(F)(I)	2030	88
(Series AC) Auction Rate(F)(I)	2031	104
5.45%	2032	50
6.40%	2032	100
(Series B-1) Auction Rate(I)	2033	50
(Series B-2) Auction Rate(I)	2033	50
(Series B-3) Auction Rate(I)	2033	45
8.00%	2037	7
5.00%	2037	8
Medium-Term Notes:		
4.00%	2008	250
8.16%	2009	16
8.10%	2009	44
5.125%	2012	300
5.00%	2013	150
5.375%	2013	300
5.00%(D)	2014	250
7.04%	2020	9
7.18%	2023	5
7.15%	2023	34
<b>Principal Amount Outstanding</b>		<u>3,067</u>
<b>Amounts Due Within One Year (B)</b>		<u>(125)</u>
<b>Net Unamortized Discount</b>		<u>(4)</u>
<b>Total Long-Term Debt of PSE&amp;G (Excluding Securitization) (Parent)</b>		<u>\$ 2,938</u>

\* This chart does not include debt of PSEG Holdings and its subsidiaries, which will be non-utilities for purposes of the 1935 Act post-Merger.

**Transition Funding (PSE&G)****Securitization Bonds:**

5.74%(H)	2007	\$ 34
5.98%	2008	183
(Libor + 0.30%)	2011	496
6.45%	2013	328
6.61%	2015	454
6.75%	2016	220
6.89%	2017	370
<b>Principal Amount Outstanding</b>		<u>2,085</u>
<b>Amounts Due Within One Year (B)</b>		<u>(146)</u>
<b>Total Securitization Debt of Transition Funding</b>		<u>\$ 1,939</u>
<b>Total Long-Term Debt of PSE&amp;G</b>		<u>\$ 4,877</u>

**PSEG Power, LLC****Senior Notes:**

6.875%	2006	\$ 500
3.75% (G)	2009	250
7.75%	2011	800
6.95%	2012	600
5.00% (G)	2014	250
5.50%	2015	300
8.625%	2031	500
<b>Total Senior Notes</b>		<u>\$ 3,200</u>
<b>Pollution Control Notes:</b>		
5.00%	2012	\$ 66
5.50%	2020	14
5.85%	2027	19
5.75%	2031	25
<b>Total Pollution Control Notes</b>		<u>\$ 124</u>
<b>Net Unamortized Discount</b>		<u>(8)</u>
<b>Total Long-Term Debt of PSEG Power, LLC</b>		<u>\$ 3,316</u>

(A) As of the year ended December 31, 2004, the annual dividend requirement of PSEG's Trust Preferred Securities (Guaranteed Preferred Beneficial Interest in PSEG's Subordinated Debentures), including those issued in connection with the Participating Units, and their embedded costs was approximately \$104 million and 8.98%.

Enterprise Capital Trust I, Enterprise Capital Trust II, Enterprise Capital Trust III, Enterprise Capital Trust IV and PSEG Funding Trust II were formed and are controlled by PSEG for the purpose of issuing Quarterly Trust Preferred Securities (Quarterly Guaranteed Preferred Beneficial Interest in PSEG's Subordinated Debentures). The proceeds were loaned to PSEG and are evidenced by Deferrable Interest Subordinated Debentures. If and for as long as payments on the Deferrable Interest Subordinated Debentures have been deferred, or PSEG had defaulted on the indentures related thereto or its guarantees thereof, PSEG may not pay any dividends on its common and preferred stock. The Subordinated Debentures support the Preferred Securities issued by the trusts.

In September 2002, PSEG Funding Trust I issued 9.2 million Participating Units with a stated amount of \$50 per unit. Each unit consists of a 6.25% trust preferred security due 2007 having a liquidation value of \$50, and a stock purchase contract obligating the purchasers to buy shares of PSEG Common Stock in an amount equal to \$50 on November 16, 2005. In exchange for the obligations under the purchase contract, the purchasers receive quarterly contract adjustment payments at the annual rate of 4.00% through the purchase date. The number of new shares to be issued on November 16, 2005 will depend upon the average closing price per share of PSEG Common Stock for the 20 consecutive trading days ending the third trading day immediately preceding November 16, 2005. Based on the formula described in the purchase contract, at that time PSEG will issue between 11.4 million and 13.7 million shares of its common stock. The net proceeds from the sale of the Participating Units was \$446 million. In connection with the issuance of the Participating Units, PSEG recorded a \$54 million reduction to equity associated with the stock purchase contracts.

- (B) The aggregate principal amounts of mandatory requirements for sinking funds and maturities for each of the five years following December 31, 2004 are as follows:

Year	PSEG	PSE&G	Transition Funding	Power	Total
2005	\$ 49	\$ 125	\$ 146	\$ —	\$ 320
2006	49	322	—	500	871
2007	509	113	34	—	656
2008	49	250	183	—	482
2009	249	60	—	250	559
	<u>\$ 905</u>	<u>\$ 870</u>	<u>\$ 363</u>	<u>\$ 750</u>	<u>\$ 2,888</u>

- (C) In September 2004, PSEG issued and sold \$200 million of its 4.66% Series A Senior Notes due 2009 in a private placement. The proceeds were used to reduce short-term debt.
- (D) In August 2004, PSE&G issued \$250 million of 5.00% Medium-Term Notes due 2014. The proceeds of this issuance were used to redeem the remaining outstanding \$254 million of PSE&G's First and Refunding Mortgage Bonds, 7% Series SS due 2024 in September 2004.
- (E) In June 2004, PSE&G issued \$175 million of floating rate First and Refunding Mortgage Bonds due 2006. The interest is set quarterly at LIBOR plus 0.125%. The proceeds were primarily used to redeem \$159 million of 7.375% Series TT First and Refunding Mortgage Bonds due 2014 in June 2004.
- (F) In August 2004, PSE&G issued \$104 million of its First and Refunding Mortgage Bonds, Pollution Control Series AC due 2031; \$88 million of its First and Refunding Mortgage Bonds, Pollution Control Series AD due 2030; and \$93 million of its First and Refunding Mortgage Bonds, Pollution Control Series AE due 2029. The proceeds were used to refund \$104 million of PSE&G's First and Refunding Mortgage Bonds, Pollution Control Series Q due 2031, \$88 million of PSE&G's First and Refunding Mortgage Bonds, Pollution Control Series R due 2030 in August 2004; and \$93 million of PSE&G's First and Refunding Mortgage Bonds, Pollution Control Series S due 2029 in October 2004.
- (G) In March 2004, Power issued \$250 million of 3.75% Senior Notes due April 2009 and \$250 million of 5.00% Senior Notes due April 2014. The net proceeds of \$488 million, together with other available cash, were used to fund the repayment of \$800 million of project finance debt of certain of Power's subsidiaries.
- (H) In December 2004, September 2004, June 2004 and March 2004, Transition Funding repaid approximately \$38 million, \$37 million, \$30 million and \$32 million, respectively, of its transition bonds.
- (I) As of December 31, 2004, variable interest rates were 2.66%, 1.75%, 1.80%, 1.85%, 1.80%, 1.80%, 1.80%, 1.80%, respectively.

<u>Amount</u>	<u>Guarantor</u>	<u>Type of Guarantee</u>
\$1,731 million	Exelon Corporation	Surety: \$431 million Energy Marketing: \$146 million Nuclear insurance: \$698 million Leases: \$10 million Preferred Securities: \$178 million Letters of Credit: \$21 million Performance Contracts: \$201 million
\$32 million	ComEd	Surety: \$3 million Capacity guarantee: \$29 million Letters of Credit: \$28 million
\$24 million	PECO	Surety: \$24 million Letters of Credit: \$29 million
\$115 million	Generation	Energy marketing: \$115 million Letters of Credit: \$95 million
\$82 million	PSE&G	Surety: \$7 million Leases: \$75 million
\$2,054 million	PSEG Power LLC	Surety: \$9 million Energy Trading: \$1,583 million Nuclear insurance: \$317 million Letters of Credit: \$145 million
\$12 million	PSEG	Workers Compensation: \$12 million
\$1 million	PSEG Services	Surety: \$1 million



**APPENDIX A****ANALYSIS OF NON-UTILITY INTERESTS OF PSEG****1. PSEG**

Public Service Enterprise Group Incorporated (“PSEG”) has four direct wholly owned subsidiaries: Public Service Electric and Gas Company (“PSE&G”), PSEG Power LLC (“PSEG Power”), PSEG Energy Holdings L.L.C. (“PSEG Holdings”), and PSEG Services Corporation (“PSEG Services”), and has an interest in nine trusts which were formed for financing purposes. PSEG also has indirect subsidiaries, as described below.<sup>1</sup>

**1.1. PSE&G**

PSE&G is an electric and gas utility company engaged principally in the transmission, distribution and sale of electric energy service and in the transmission, distribution and sale of gas service in New Jersey. PSE&G has the following subsidiaries:

**1.1.A. New Jersey Properties, Inc.** (“NJP”), a New Jersey corporation, with principal executive offices at 80 Park Plaza, Newark, New Jersey 07102, acquires real estate from time to time as necessary to support the remediation of sites affected by the manufactured gas plant operations of PSE&G or its predecessors.<sup>2</sup> NJP currently owns unimproved real estate in the following New Jersey municipalities: Bayonne, East Rutherford, Morristown, Trenton, Bordentown, and Newark. NJP also currently owns real estate with improvements in the following New Jersey municipalities: an apartment complex in South Amboy; a house in Gloucester; and a now vacant building in Bloomfield.

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<sup>1</sup> In addition to the changes resulting from the Merger Agreement, the Applicants intend to revise their corporate structure. The Applicants propose to implement the following changes:

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 will become a direct subsidiary of Exelon Electric & Gas Corporation (“Exelon”), as the successor to PSEG. The current subsidiaries of PSEG Energy Holdings will remain intact.
3. PSEG Services will sell all of its assets to Exelon Business Services Company (“Exelon BSC”), change its name, and remain as a subsidiary. Post merger, Exelon BSC will be the sole “service company” of Exelon.
4. After obtaining necessary approvals and third party consents, PSEG Power and its direct subsidiaries PSEG Nuclear LLC, PSEG Fossil LLC and PSEG Energy Resources & Trade LLC will all cease to exist as separate entities and will become part of Exelon Generation Company LLC (“Exelon Generation”). The business functions of these former PSEG entities will become a part of their respective Exelon Generation business unit. It is anticipated that the subsidiaries owned by these PSEG entities will be retained as direct subsidiaries of Exelon Generation.

<sup>2</sup> The Commission has approved the purchase of real estate that is incidentally related to the utility operations of a registered system. *See NiSource Inc., Holding Co.* Act Release No. 27263 (Oct. 30, 2000) and cases cited therein.

**1.1.B. Public Service Corporation of New Jersey** (“PSC of New Jersey”), a New Jersey corporation, with principal executive offices at 80 Park Plaza, Newark, New Jersey 07102. PSC of New Jersey owns 1% of Public Service New Millennium Economic Development Fund L.L.C., as described below.<sup>3</sup>

**1.1.C. Public Service New Millennium Economic Development Fund L.L.C.** (“New Millennium”) with principal executive offices at 80 Park Plaza, Newark, New Jersey 07102, is a direct, 99% owned subsidiary of PSE&G, with the remaining 1% owned by PSC of New Jersey. New Millennium supports economic development and programs providing technology to improve education and health care in urban areas of New Jersey.<sup>4</sup>

**1.1.D. Gridco International L.L.C.**, a Delaware limited liability company, with principal executive offices at 1209 Orange Street, New Castle County, Wilmington, Delaware 19801, is a direct, 50% owned subsidiary of PSE&G, with the remaining 50% owned by a non-affiliate, Potomac Electric Power Company, and is inactive.

**1.1.E. PSE&G Transition Funding LLC** (“PSEG Transition Funding”), a Delaware limited liability company, has its principal offices at 80 Park Plaza, Newark, New Jersey 07102. PSE&G is the sole member of PSEG Transition Funding, which was organized for the purpose of purchasing intangible transition property, investing in investment securities, entering into related credit enhancement transactions and issuing transition bonds.<sup>5</sup>

**1.1.F. PSEG Area Development L.L.C.** (“Area Development”), a New Jersey limited liability company and a wholly owned subsidiary of PSE&G, with principal executive offices at 80 Park Plaza, Newark, New Jersey 07102. Area Development was formed to hold membership interests in limited liability companies that will provide the following services in New Jersey: real estate site finding, listing and referral, corporate relocation, strategic land use and economic development planning.

**1.1.F.1. PSEG SiteFinders L.L.C.** (“SiteFinders”), a New Jersey limited liability company and a wholly owned subsidiary of Area Development, with principal executive offices at 10 Route 46 East, Fairfield, New Jersey 07004, was formed to provide real estate site finding and listing and referral services in New Jersey.<sup>6</sup>

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<sup>3</sup> See, e.g., *CP&L Energy, Inc. Holding Co.* Act Release No. 27284 (Nov. 27, 2000) (allowing retention of intermediate entities holding interests in retainable non-utility businesses).

<sup>4</sup> *E.ON AG, Holding Co.* Act Release No. 27539 (June 14, 2002) (authorizing retention of subsidiary engaged in economic/corporate citizen projects), citing *GPU, Inc., Holding Co.* Act Release No. 27459 (Oct. 29, 2001) (authorizing retention of Cleveland Development Partnership I, a partnership that funds revitalization projects in Cleveland); *WPL Holdings, Inc., Holding Co.* Act Release No. 26856 (April 14, 1998) (authorizing retention of the 2001 Development Corporation, a company organized to promote economic development in Cedar Rapids, Iowa); *The Potomac Edison Company, Holding Co.* Act Release No. 25312 (May 14, 1991) (authorizing retention of the Virginia Economic Development Corporation, a for-profit, economic development corporation created to stimulate and promote growth and retain jobs in rural Virginia).

<sup>5</sup> *Exelon Corporation, Holding Co.* Act Release No. 27259 (Oct. 20, 2000) (authorizing retention of entity used for issuance of transition or securitization bonds).

<sup>6</sup> See *E.ON AG* and cases cited therein.

**1.1.F.2. PSEG Economic Development L.L.C.** (“PSEG Economic Development”), a New Jersey limited liability company and a wholly owned subsidiary of Area Development, with principal executive offices at 80 Park Plaza, Newark, New Jersey 07102. Economic Development was formed to provide corporate relocation, strategic land use and economic development planning services in New Jersey.<sup>7</sup>

**1.1.G. PSE&G Capital, L.P.**, a New Jersey limited partnership, has its principal executive offices at 80 Park Plaza, Newark, New Jersey 07102, of which PSE&G is the sole general partner. PSE&G Capital, L.P. was formed and controlled by PSE&G for the purpose of issuing Monthly Income Preferred Securities, and is currently active.<sup>8</sup>

**1.1.H. PSE&G Capital Trust I**, a Delaware Trust, has its principal executive offices at 80 Park Plaza, Newark, New Jersey 07102, and is inactive.

**1.1.I. PSE&G Capital Trust II**, a Delaware Trust, has its principal executive offices at 80 Park Plaza, Newark, New Jersey 07102, and is inactive.

**1.1.J. PSE&G Capital Trust III**, a Delaware Trust, has its principal executive offices at 80 Park Plaza, Newark, New Jersey 07102, and is inactive.

**1.1.K. PSE&G Capital Trust IV**, a Delaware Trust, has its principal executive offices at 80 Park Plaza, Newark, New Jersey 07102, and is inactive.

**1.1.L. PSE&G Capital Trust V**, a Delaware Trust, has its principal executive offices at 80 Park Plaza, Newark, New Jersey 07102, and is inactive.

**1.1.M. PSE&G Capital Trust VI**, a Delaware Trust, has its principal executive offices at 80 Park Plaza, Newark, New Jersey 07102, and is inactive.

**1.1.N. PSE&G Capital Trust VII**, a Delaware Trust, has its principal executive offices at 80 Park Plaza, Newark, New Jersey 07102, and is inactive.

**1.2. PSEG Power**

PSEG Power, a Delaware limited liability company and a wholly owned subsidiary of PSEG, has its principal executive offices at 80 Park Plaza, Newark, New Jersey 07102. PSEG Power has six direct wholly owned subsidiaries, and has an interest in five trusts, which were formed for financing purposes, and indirect wholly owned subsidiaries, discussed below. PSEG Power also provides to its affiliates a range of specialized maintenance, repair and plant engineering services on energy-related electro-mechanical equipment.<sup>9</sup>

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<sup>7</sup> *Id.*

<sup>8</sup> See *CenterPoint Energy, Inc., Holding Co.* Act Release No. 27548 (July 5, 2002) (authorizing the retention of financing subsidiaries).

<sup>9</sup> See, e.g., *CP&L Energy, Inc. Holding Co.* Act Release No. 27284 (Nov. 27, 2000) (allowing retention of intermediate entities holding interests in retainable non-utility businesses). As noted above, it is contemplated that PSEG Power and its direct subsidiaries PSEG Nuclear, PSEG Fossil and PSEG ER&T will all cease to exist as separate entities and will be owned as a part of Exelon Generation. It is anticipated that the subsidiaries owned by these PSEG entities will be retained as direct subsidiaries of Exelon Generation.

**1.2.A. PSEG Fossil LLC** (“PSEG Fossil”), a Delaware limited liability company, has its principal executive offices at 80 Park Plaza, Newark, New Jersey 07102. PSEG Fossil was formed to own and operate fossil fueled generating stations. PSEG Fossil has six direct wholly owned subsidiaries, as discussed below. PSEG Fossil is an EWG.<sup>10</sup>

**1.2.A.1. PSEG Power New York Inc.** (“PSEG Power New York”), a Delaware corporation, has its principal executive offices at Route 144, Glenmont, New York 12077. PSEG Power New York was formed to own and operate fossil fueled generating stations in New York. PSEG Power New York is an EWG.

**1.2.A.2. PSEG Power Cross Hudson Corporation** (“PSEG Power Cross Hudson”), a Delaware corporation, has its registered office at 1209 Orange Street, Wilmington, Delaware 19801, was formed for the purpose of developing power projects for delivery into New York City but has recently announced that these projects will be discontinued. PSEG Power Cross Hudson owns no physical assets. PSEG Power Cross Hudson has one direct wholly owned subsidiary, as discussed below.

**1.2.A.2.(a) PSEG In-City I LLC** (“PSEG In-City”), a Delaware limited liability company, has its registered office at 1209 Orange Street, Wilmington, Delaware 19801, was formed for the purpose of developing power projects for delivery into New York City but has recently announced that these projects will be discontinued. PSEG In-City owns no assets.

**1.2.A.3. PSEG Lawrenceburg Energy Company LLC** (“PSEG Lawrenceburg”), a Delaware limited liability company, has its registered office at 1209 Orange Street, Wilmington, Delaware 19801, owns a power facility in Lawrenceburg, Indiana. PSEG Lawrenceburg is an EWG.

**1.2.A.4. PSEG Waterford Energy LLC** (“PSEG Waterford”), a Delaware limited liability company, has its registered office at 1209 Orange Street, Wilmington, Delaware 19801, and owns a power facility in Waterford, Ohio. PSEG Waterford is an EWG.

**1.2.A.5. PSEG Power Midwest LLC** (“PSEG Power Midwest”), a Delaware limited liability company, has its registered office at 1209 Orange Street, Wilmington, Delaware 19801, and operates the Power generating facilities of PSEG Lawrenceburg and PSEG Waterford. PSEG Power Midwest is an EWG.

**1.2.A.6. PSEG Power Connecticut LLC** (“PSEG Power Connecticut”), a Connecticut limited liability company, has its registered office at 1 Commercial Plaza, Hartford, Connecticut 06103 in care of CT Corporation Systems, and owns and operates fossil-fueled electric generation assets in Connecticut. PSEG Power Connecticut is an EWG.

**1.2.B. PSEG Nuclear LLC** (“PSEG Nuclear”), a Delaware limited liability company, has its principal executive offices at 80 Park Plaza, Newark, New Jersey 07102, and was formed to own and operate nuclear-fueled electric generation assets. PSEG Nuclear has one direct wholly owned subsidiary, as discussed below. PSEG Nuclear is an EWG.

**1.2.B.1. The Francis Corporation**, a New Jersey corporation, has its principal executive offices at 80 Park Plaza, Newark, New Jersey 07102, owns and from time to time acquires land to satisfy regulatory requirements associated with PSEG Nuclear's facilities.<sup>11</sup>

**1.2.C. PSEG Power Fuels LLC** ("PSEG Power Fuels"), a Delaware limited liability company, has its registered office at 1209 Orange Street, Wilmington, Delaware 19801, was formed in 2000 to hold an interest in Keystone Fuel LLC and Conemaugh Fuel LLC, which purchase fuel for the Keystone and Conemaugh generation facilities of PSEG Fossil, respectively.

**1.2.D. PSEG Energy Resources & Trade LLC** ("PSEG ER&T"), a Delaware limited liability company, has its principal executive offices at 80 Park Plaza, Newark, New Jersey 07102. PSEG ER&T markets electricity, natural gas and capacity and ancillary services primarily throughout the greater North East region (Northeast, Mid-Atlantic and Mid-West) of the United States.<sup>12</sup>

**1.2.E. PSEG Power Capital Investment Co. LLC**, a Delaware limited liability company, has its principal executive offices at 1300 Market Street, Suite 602, Wilmington, Delaware 19801, and was formed to provide financing to Power and its subsidiaries.<sup>13</sup>

**1.2.F. PSEG Power Development LLC** ("PSEG Power Development"), a Delaware limited liability company, has its registered office at 1209 Orange Street, Wilmington, Delaware 19801, and was formed to support continuing development activities of Power. PSEG Power Development also owns an apartment building in Bridgeport, Connecticut.<sup>14</sup>

**1.2.G. PSEG Power Capital Trust I**, a Delaware Trust, has its principal executive offices at 80 Park Plaza, Newark, New Jersey 07102, and is inactive.

**1.2.H. PSEG Power Capital Trust II**, a Delaware Trust, has its principal executive offices at 80 Park Plaza, Newark, New Jersey 07102, and is inactive.

**1.2.I. PSEG Power Capital Trust III**, a Delaware Trust, has its principal executive offices at 80 Park Plaza, Newark, New Jersey 07102, and is inactive.

**1.2.J. PSEG Power Capital Trust IV**, a Delaware Trust, has its principal executive offices at 80 Park Plaza, Newark, New Jersey 07102, and is inactive.

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<sup>11</sup> See, e.g., *New Century Energies, Inc.*, Holding Co. Act Release No. 27212 (Aug. 16, 2000) (permitting retention of interests in real property in connection with generating facilities).

<sup>12</sup> See Rule 58(b)(1)(v). As noted above, it is contemplated that PSEG Power and its direct subsidiaries PSEG Nuclear, PSEG Fossil, and PSEG ER&T will all cease to exist as separate entities and will be owned as a part of Exelon Generation. It is anticipated that the subsidiaries owned by these PSEG entities will be retained as direct subsidiaries of Exelon Generation.

<sup>13</sup> See *CenterPoint Energy, Inc.*, Holding Co. Act Release No. 27548 (July 5, 2002) (authorizing the retention of financing subsidiaries).

<sup>14</sup> See, e.g., *Black Hill Corporation*, Holding Co. Act Release No. 27933 (Dec. 29, 2004) (authorizing retention of nonutility subsidiary engaged in development of non-utility generating projects).

**1.2.K. PSEG Power Capital Trust V**, a Delaware Trust, has its principal executive offices at 80 Park Plaza, Newark, New Jersey 07102, and is inactive.

### 1.3. PSEG Energy Holdings

PSEG Energy Holdings, a New Jersey limited liability company, has its principal executive offices at 80 Park Plaza, Newark, New Jersey 07102. PSEG Energy Holdings is the parent of PSEG's energy-related businesses other than PSEG Power and PSE&G. PSEG Energy Holdings has certain subsidiaries, as described below.<sup>15</sup>

**1.3.A. PSEG Resources L.L.C.** ("PSEG Resources"), a New Jersey limited liability company, has its principal executive offices at 80 Park Plaza, Newark, New Jersey 07102.<sup>16</sup> PSEG Resources provides energy infrastructure financing in developed countries. PSEG Resources invests primarily in energy-related, financial transactions and manages a diversified portfolio of more than 60 investments, including leveraged leases, operating leases and leveraged buyout ("LBO") funds, limited partnerships and marketable securities. The remainder of PSEG Resources' portfolio is further diversified across a wide spectrum of asset types and business sectors, including leveraged leases of aircraft and railcars, real estate and industrial equipment, limited partnership interests in project finance transactions, LBO and venture funds and marketable securities. As of December 31, 2004, PSEG Resources comprised approximately 10% of PSEG's assets. PSEG Resources' 2004 revenues were approximately 2% of PSEG's revenues and PSEG Resources' 2004 earnings available to PSEG were \$65 million. PSEG Resources is a wholly owned subsidiary of PSEG Energy Holdings. PSEG Resources has direct and indirect wholly owned subsidiaries, as described below.

As of December 31, 2004, 95% of the consolidated assets of PSEG Resources were leveraged lease investments. The following excerpt from the combined Annual Report on Form 10-K for the year ended December 31, 2004 for PSEG, PSE&G, PSEG Power and PSEG Energy Holdings describes generally PSEG Resources' leveraged lease investment portfolio:

PSEG Resources maintains a portfolio that is designed to provide a fixed rate of return. Income on leveraged leases is recognized by a method which produces a constant rate of return on the outstanding net investment in the lease, net of the related deferred tax liability, in the years in which the net investment is positive. Any gains or losses incurred as a result of a lease termination are recorded as Operating Revenues as these events occur in the ordinary course of business of managing the investment portfolio.

In a leveraged lease, the lessor acquires an asset by obtaining equity representing approximately 15% to 20% of the cost and incurring non-recourse lease debt for the balance. The lessor acquires economic and tax ownership of the asset and then leases it to the lessee for a period of time no greater than 80% of its

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<sup>15</sup> *CP&L Energy, Inc. Holding Co. Act Release No. 27284 (Nov. 27, 2000)* (allowing retention of intermediate entities holding interests in retainable non-utility businesses).

<sup>16</sup> *Id.*

remaining useful life. As the owner, the lessor is entitled to depreciate the asset under applicable federal and state tax guidelines. In addition, the lessor receives income from lease payments made by the lessee during the term of the lease and from tax receipts associated with interest and depreciation deductions with respect to the leased property. The ability of PSEG Resources to realize these tax benefits [is] dependent on operating gains generated by its affiliates and allocated pursuant to PSEG's consolidated tax sharing agreement. Lease rental payments are unconditional obligations of the lessee and are set at levels at lease sufficient to service the non-recourse lease debt. The lessor is also entitled to any residual value associated with the leased asset at the end of the lease term. An evaluation of the after-tax cash flows to the lessor determines the return on the investment. Under accounting principles generally accepted in the U.S. (GAAP), the lease investment is recorded on a net basis and income is recognized as a constant return on the net unrecovered investment.

One of the defining characteristics of a leveraged lease investment is that the holder of the investment does not operate or control the leased facilities or equipment or have any voice in decisions regarding the operation of the leased property. This lack of significant involvement with leased property by the lessor/equity investor has led, for example, both the SEC and the Federal Energy Regulatory Commission ("FERC") to exclude generally lessor/equity investors from jurisdictional status under the 1935 Act and the Federal Power Act, respectively.<sup>17</sup>

The leveraged lease transactions in which PSEG Resources has equity investments contain, however, customary event of default provisions which may allow PSEG Resources to take over

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<sup>17</sup> The following SEC orders permit retention of passive leveraged lease investments (the "Lease Investment Orders"): *PEPCO Holdings, Inc.*, Holding Co. Act Release No. 27553 (July 24, 2002); *Exelon Corp.*, Holding Co. Act Release No. 27256 (Oct. 19, 2000); *Conectiv Inc.*, Holding Co. Act Release No. 26832 (Feb. 25, 1998); and *Central and Southwest Corp.*, Holding Co. Act Release No. 35-23578 (Jan. 22, 1985). The Commission in 1985 authorized CSW to invest in the equity portion of leveraged leases pursuant to Section 9(c)(3) of the Act which exempts from Section 9(a) and 10 acquisitions as the Commission deems "appropriate in the ordinary course of business" of the acquiring company and not detrimental to the protected interests. *Central and South West Corporation*, Holding Co. Act Release No. 23578 (Jan. 22, 1985) (in which the Commission concluded that it was in the "ordinary course of business" for a company to attempt to reduce its tax liability where the investment was intended to be a passive investment, not entry into the ownership and management of a new business). A recent delegated authority decision ordered Ameren to divest certain subs engaged in leveraged leasing activities. *Ameren Corporation*, Holding Co. Act Release No. 10078 (April 15, 2004), where, among other things, certain of the leveraged lease arrangements were not passive. While the order further notes that the investments had no operating or functional relationship to Ameren's core utility operations, that fact does not seem to be dispositive in view of the investments approved in CSW.

See also Rule 7(d). Where, for different reasons, the technical requirements of Rule 7(d) could not be met, the staff of the SEC has granted no-action comfort in a series of letters relating to leveraged lease transactions. See, e.g., *Dominion Equipment II, Inc.* (March 25, 2003) and no-action letters cited therein at fn. 16.

The FERC has repeatedly determined that passive lease ownership interests in jurisdictional facilities do not result in public utility status under section 203 of the FPA. See e.g., *Springerville Unit 3 Holdings LLC*, Docket EC04-12-000, 105 FERC ¶ 61,345 (2003).

operation of the subject leased properties.<sup>18</sup> In the event that default remedies are exercised, (i) notice will be given to the Commission and (ii) if it appears that PSEG Resources or any of its affiliates would operate a leased asset for more than five years, a subsequent confidential submission would be made to the Commission to set forth and analyze relevant facts and circumstances to be followed by any necessary or appropriate filings under the 1935 Act and the rules and regulations thereunder.<sup>19</sup>

PSEG Resources has direct investments in nine leveraged lease transactions:<sup>20</sup> interests in gas-fired combined cycle electric generating stations located in the Netherlands; an interest in a coal-fired steam electric generating station located in the Netherlands; interests in three gas-fired cogeneration facilities located in Germany; interests in gas distribution network facilities located in the Netherlands; and an interest in a gas-fired cogeneration facility located in the Netherlands.<sup>21</sup>

**1.3.A.1. Public Service Resources Corporation** (“PSRC”), a New Jersey corporation, has its principal executive offices at 80 Park Plaza, Newark, New Jersey 07102. PSRC has direct and indirect wholly owned subsidiaries, as described below.

PSRC has direct investments in fourteen leveraged lease transactions:<sup>22</sup>

- Whitehorn Units 2 and 3, leased to Puget Sound Energy, Inc., as to which a filing on Form U7-d is maintained (File No. 32-340). Units 2 and 3 are a simple cycle combustion turbine electric generating facility.<sup>23</sup>

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<sup>18</sup> The FERC has concluded that lease default provisions are not a present assignment of rights to passive lease participants that would subject them to jurisdiction under section 201 of the Federal Power Act. *Springerville Unit 3 Holdings LLC*, 105 FERC ¶ 61,345 (2003), numbered paragraph 12. If default remedies are exercised so that passive participants would operate the leased facility in order to make sales of electric energy at wholesale or to engage in transmissions in interstate commerce, the passive participants would become FERC-regulated public utilities and would be required to make appropriate filings pursuant to section 205 of the Federal Power Act. *Id.*, at fn. 5.

<sup>19</sup> It has been the custom for the Commission to grant three year grace periods with respect to non-retainable assets. The applicants are requesting a five-year period due to complex issues that arise in connection with lease defaults; for example, the exercise by the leveraged lease debt of paramount rights viz-a-viz the lease equity upon lease defaults and the acceleration of deferred tax liabilities in connection with loss of title to leased assets if the lease debt forecloses. Premature disposition of a troubled lease investment only exacerbates a successful resolution of the credit and operational issues that can make a particular lease investment troubled. Five year horizons are requested below for Resource’s two existing troubled lease investments. See footnotes 33 and 50 below.

<sup>20</sup> Actual title is held in a common law grantor trust that is not organized as a business trust or statutory trust under the business trust/statutory trust authorizing legislation under the laws of any state or foreign jurisdiction, and which is not a “company” for purposes of the 1935 Act. See Section 2(a)(2) of the Act; see also *Oglethorpe Power Corp.* SEC No-Action Letter (Jan. 27, 1986). In each of the described matters, the identified PSEG entity is the sole beneficiary of such trust. Formally organized business trusts and statutory trusts will, however, be separately itemized.

<sup>21</sup> Leveraged lease investments are retainable. See the Lease Investment Orders.

<sup>22</sup> *Id.*

<sup>23</sup> See the *Lease Investment Orders; Ameren Corp.*, Holding Co. Act Release No. 26809 (Dec. 30, 1997) (expressly allowing retention of leveraged lease investments in utility assets held under Rule 7(d)).



- Seminole Generating Station Unit 2 leased to Seminole Electric Power Cooperative, Inc. as to which a filing on Form U7-d is maintained (File No. 32-435). Unit 2 is a coal-fired electric generation facility.<sup>24</sup>
- PSRC has five leveraged lease investments in certain foreign energy assets: a high-voltage direct current electric transmission link in New Zealand; a waste-to-energy facility in the Netherlands; a gas-fired combined cycle electric generating station in the Netherlands; and components of two gas distribution systems, both in the Netherlands.<sup>25</sup>
- PSRC has six leveraged lease investments in transportation equipment (aircraft and railcars) leased to domestic airlines and foreign railroads.<sup>26</sup>
- PSRC has a leveraged lease investment in a portfolio of eight regional shopping centers in five states.<sup>27</sup>

As of December 31, 2004, the remaining 5% of the consolidated assets of PSEG Resources were (A) LBO funds (\$27 million or 1%), marketable securities (\$3 million), and other investments (\$15 million or 1%),<sup>28</sup> (B) owned property (\$72 million or 2%),<sup>29</sup> and (C) current and other assets (\$17 million or 1%).

**1.3.A.1.(a) Resources Capital Financing Corporation** (“RCFC”), a New Jersey corporation, has its principal executive offices at 80 Park Plaza, Newark, New Jersey 07102. RCFC is inactive.

**1.3.A.1.(b) Resources Capital Investment Corporation** (“RCIC”), a New Jersey corporation, has its principal executive offices at 80 Park Plaza, Newark, New Jersey 07102. RCIC has direct investments in two leveraged lease transactions: an interest in a waste-to-energy facility in the Netherlands and an undivided percentage ownership in a coal-fired steam electric generating plant in the Netherlands.<sup>30</sup> RCIC has one direct wholly owned subsidiary, as described below.

**1.3.A.1.(b)(i) Peterborough Power Limited C, Inc.** (“PPLC”), a Delaware corporation, has its principal executive offices at 1300 North Market Street, Suite 400, Wilmington, Delaware 19801. PPLC is inactive.

**1.3.A.1.(c) Resources Capital Sales Corporation** (“RCSC”) is incorporated under the laws of the United States Virgin Islands and has its principal executive offices at 50 Kronprindsens, 2nd Floor, GERS Building, Saint Thomas, United States Virgin Islands 00802. RCSC is inactive.

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<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> See 1.3.A.1 (j) below, each a passive investment. Percentage interest does not exceed 6.65% (with an investment balance under \$2 million) with the largest single investment at approximately \$20 million.

<sup>29</sup> See the owned office complexes discussed at 1.3.A.1.(d) and 1.3.A.1.(p) below.

<sup>30</sup> *Id.*

**1.3.A.1.(d) Resources Capital Management Corporation** (“RCMC”), a New Jersey corporation, has its principal executive offices at 80 Park Plaza, Newark, New Jersey 07102. RCMC has investments in a project financing and several leveraged leases. RCMC has direct and indirect wholly owned subsidiaries, as described below. RCMC has direct investments in leveraged lease transactions as follows:

- an undivided percentage ownership in a 1,500 megawatt (“MW”) gas-fired cogeneration facility located in Midland, Michigan, and leased under a long-term leveraged lease to Midland Cogeneration Venture Limited Partnership (SEC File Number 33037977). This facility has been certified by the FERC as a qualifying cogeneration facility (“QF”) under the Public Utility Regulatory Policies Act of 1978, as amended (“PURPA”). FERC Docket QF87-237-000 (CMS Midland, Inc.).<sup>31</sup>
- two separate undivided interests (aggregating 20.279%) in the Merrill Creek Reservoir located in Hunterdon County, New Jersey, each leased under a long-term leveraged lease to an unaffiliated public utility company (one a subsidiary of First Energy Corp., and the other a subsidiary of PEPCO Holdings, Inc.).<sup>32</sup>
- a third separate 44.241% undivided interest in Merrill Creek Reservoir leased under a long-term leveraged lease to PECO Energy Company, a public-utility subsidiary of Exelon.<sup>33</sup>
- RCMC has four leveraged lease investments in certain foreign energy assets: an undivided percentage ownership interest in a coal-fired steam electric generating plant in the Netherlands; an ownership interest in a high-voltage direct current electric transmission link in New Zealand; and components of two gas distribution systems, both in the Netherlands.<sup>34</sup>
- RCMC has a leveraged lease investment in a portfolio in three shopping centers located in Michigan and Ohio.<sup>35</sup>

RCMC owns a four-building commercial office complex in Syracuse, New York. Through the third quarter of 2003, RCMC’s involvement with the commercial office complex was via a leveraged lease investment. Due to illiquidity problems faced by the lessee, RCMC’s investment was restructured to eliminate the lessee so that RCMC would lease directly to commercial tenants. Due to the restructuring transaction, RCMC can no longer account for its investment as a leveraged lease under GAAP. RCMC continues actively to seek long-term commercial tenants for all available space at the office complex.<sup>36</sup>

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<sup>31</sup> *Id.*

<sup>32</sup> *Id.* PSEG Fossil conducts Merrill Creek Reservoir operations on behalf of its co-owners and owns separately a 13.906% undivided interest. The PSEG Fossil undivided interest is not part of, and is otherwise unaffected by, the Merrill Creek Reservoir leveraged lease financing transactions

<sup>33</sup> The individual interest was subleased to Exelon Generation Company, LLC effective January 1, 2001. The applicants are requesting that the Commission reserve jurisdiction as to this leveraged lease investment.

<sup>34</sup> These interests are retainable under the Lease Investment Orders.

<sup>35</sup> *Id.*

<sup>36</sup> Applicants undertake to divest ownership of the referenced office complex within five years of the date of the order in this matter or make a filing with the Commission prior to the expiration of one year from the date of the

**1.3.A.1.(d)(i) LMC Resources Capital Limited Partnership** (“LMCRCLP”), a Michigan limited partnership, has its principal executive offices at 80 Park Plaza, Newark, New Jersey 07102. RCMC is the 1% general partner and the 98% limited partner in LMCRCLP (the remaining 1% limited partner interest is held by an affiliate. LMCRCLP’s sole asset and activity is as a holding company for its sole subsidiary.

**1.3.A.1.(d)(i)(A) LMC Phase II, L.L.C.**, a Delaware limited liability company, has its principal executive offices at 80 Park Plaza, Newark, New Jersey 07102. LMC Phase II has a leveraged lease investment in two office towers located in Detroit, Michigan.<sup>37</sup>

**1.3.A.1.(d)(ii) RCMC Sales Corporation** (“RCMC SC”) is incorporated under the laws of the United States Virgin Islands and has its principal executive offices at 50 Kronprindsens Gade, 2nd Floor, GERS Building, Saint Thomas, United States Virgin Islands 00802. RCMC SC is inactive.

**1.3.A.1.(d)(iii) RCMC One, Incorporated**, a New Jersey corporation, has its principal executive offices at 80 Park Plaza, Newark, New Jersey 07102, and is inactive.

**1.3.A.1.(d)(iv) RCMC, Inc.** (“RCMCInc”), a Delaware corporation, has its principal executive offices at 1300 Market Street, Suite 400, Wilmington, Delaware 19801. RCMCInc has an 80% limited partnership interest in First Air Partners, L.P., a Delaware limited partnership (“FAP”). FAP has an interest as a 50% limited partner in Pure Air on the Lake, Limited Partnership, a Delaware limited partnership (“Pure Air LP”), which owns and operates an advanced fuel gas desulphurization (“AFGD”) system at Northern Indiana Public Service Company’s Bailly Generating Station, Units 7 and 8. As the AFGD scrubber removes sulphur dioxide from the station’s waste gas, the sulphur dioxide reacts with limestone in the scrubber to produce commercially viable synthetic gypsum. RCMCInc and the general partner in FAP have agreed to make any modifications to the partnership agreement of FAP as may be necessary or appropriate for RCMCInc’s limited partnership interest to fall within the staff no-action letters that conclude that limited partnership interests are not voting securities under Section 2(a)(7) of the 1935 Act.<sup>38</sup> Accordingly, FAP will not become a direct or indirect subsidiary of Exelon.<sup>39</sup>

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order explaining why it should be permitted under the 1935 Act to retain its interest in the office complex. The commercial real estate market in Syracuse is presently characterized by an over-abundance of office space. RCMC is requesting a five-year retention period in order for market conditions to improve before it disposes of its interest in the referenced office complex. Active management of the complex is handled by an unrelated third party pursuant to long-term contract. This approach was taken in recent matters, including *PEPCO Holdings, Inc.*, Holding Co. Act Release No. 27553 (July 24, 2002), and *Exelon Corp.*, Holding Co. Act Release No. 27256 (Oct. 19, 2000), and the longer divestiture period is consistent with the approach taken in *E.ON AG*, Holding Co. Act Release No. 27539 (June 14, 2002).

<sup>37</sup> This interest is retainable under the Lease Investment Orders.

<sup>38</sup> See, e.g., *METC Investment Inc*, SEC No-Action Letter (Nov. 25, 2003).

<sup>39</sup> Under the FAP partnership agreement, RCMCInc is entitled to a preferred return. Accordingly, under GAAP, RCMCInc accounts for its limited partnership investment as an investment in the preferred stock of an unrelated person. Due to deferred taxes, RCMCInc has a negative net investment (less than \$10 million) in FAP at the present time. This investment is retainable as a miscellaneous limited partnership interest under the authority of *Ameren Corp.*, Holding Co. Act Release No. 26809 (Dec. 30, 1997) (the “1997 Ameren Order”) and *WPL Holdings Inc.*, Holding Co. Act Release No. 28656 (Aug. 14, 1998). See also Rule 58(b)(1)(ix) and (x).

**1.3.A.1.(d)(v) RCMC I, Inc.** (“RCMC I”), a Delaware corporation, has its principal executive offices at 1300 Market Street, Suite 405, Wilmington, Delaware 19801. RCMC I has two direct leveraged lease investments: (i) an office facility in Denver, Colorado; and (ii) an undivided interest in the Grand Gulf Unit 1 nuclear generating facility located in Mississippi and leased to System Energy Resources, Inc., a subsidiary of Entergy Corporation (as to which lease investment a filing on Form U-7D is maintained), as part of a long-term lease financing transaction.<sup>40</sup>

RCMC I has one direct wholly owned subsidiary, as described below.

**1.3.A.1.(d)(v)(A) KLF 98-C2, Inc.** (“KLFC2”), a Delaware corporation, with principal, executive offices at 1300 North Market Street, Suite 400, Wilmington, Delaware 19801, and is inactive.

**1.3.A.1.(d)(vi) Danskammer OP LLC**, (“Danskammer OP”), a Delaware limited liability company, has its principal executive offices at 1300 North Market Street, Suite 400, Wilmington, Delaware 19801. Danskammer OP has one direct wholly owned subsidiary, as described below. Danskammer OP’s only business is the ownership of membership interests of its subsidiary. Danskammer OP is an EWG. FERC Docket EG01-169-000, 95 FERC ¶ 62,121 (2000).

**1.3.A.1.(d)(vi)(A) Danskammer OL LLC** (“Danskammer OL”), a Delaware limited liability company, has its principal executive offices at 1300 North Market Street, Suite 400, Wilmington, Delaware 19801. Danskammer OL holds title to two units (aggregating 370 MW) of the four-unit, 500 MW Danskammer station located in Newburgh, New York and leases such units to Dynegy Danskammer, L.L.C., a wholly owned subsidiary of Dynegy Holdings, Inc. (“DHI”) (SEC File No. 000-29311) as part of a long-term leveraged lease transaction. A 1933 Act registration statement relating to the subject transaction (initially filed on July 10, 2001, SEC File No. 333-64802) describes the lease transaction. The sole asset of Danskammer OL is the subject leveraged lease transaction. Danskammer OL is an EWG. FERC Docket No. EG01-168-000, 95 FERC ¶ 62,120 (2001).<sup>41</sup>

**1.3.A.1.(d)(vii) Roseton OP LLC** (“Roseton OP”), a Delaware limited liability company, has its principal executive offices at 1300 North Market Street, Suite 400, Wilmington, Delaware 19801. Roseton OP has one direct wholly owned subsidiary, as described below. Roseton OP’s sole asset and activity are as a holding company for its sole subsidiary. Roseton OP is an EWG. FERC Docket EG01-167-000, 95 FERC ¶ 62,117 (2001).

**1.3.A.1.(d)(vii)(A) Roseton OL LLC** (“Roseton OL”), a Delaware limited liability company has its principal executive offices at 1300 North Market Street, Suite 400, Wilmington, Delaware 19801. Roseton OL holds title to the two units (aggregating 1,200 MW) of the Roseton station located in Newburgh, New York and leases such units to Dynegy Roseton, L.L.C., a wholly owned subsidiary of DHI as part of a long-term leveraged lease transaction. A 1933 Act

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<sup>40</sup> Both investments are retainable. See the Lease Investment Orders. The Grand Gulf leveraged lease investment is retainable under the 1997 *Ameren Order*.

<sup>41</sup> The FERC also issued an order specifically confirming the status of the OP and OL entities (as passive participants in the transaction) as not thereby becoming jurisdictional public utility companies under the Federal Power Act. *Dynegy Danskammer, LLC and Dynegy Roseton, LLC*, 94 FERC 61, 316 (2001). The entities are exempt as EWGs. In addition, they would be retainable under the Lease Investment Orders.

registration statement relating to the subject transaction (initially filed on July 10, 2001, SEC File No. 333-64802) describes the lease transaction. The sole asset of Roseton OL is the subject leveraged lease transaction. Roseton OL is an EWG. FERC Docket No. EG01-170-000, 95 FERC ¶ 62,118 (2001).<sup>42</sup>

**1.3.A.1.(d)(viii) GCN 2000-2** (“GCN 2”), a Delaware business trust, has its principal executive office at 1100 North Market Street, Wilmington, DE 19890-0001. GCN 2’s sole asset and activity is a leveraged lease investment in a gas distribution network in the Netherlands.<sup>43</sup>

**1.3.A.1.(e) PSRC Sales Corporation One** (“PSRC One”) is incorporated under the laws of the United States Virgin Islands, and has its principal executive offices at 50 Kronprindsens Gade, 2nd Floor, GERS Building, Saint Thomas, United States Virgin Islands 00802. PSRC One is inactive.

**1.3.A.1.(f) PSRC Sales Corporation Two** (“PSRC Two”) is incorporated under the laws of the United States Virgin Islands, and has its principal executive offices at 50 Kronprindsens Gade, 2nd Floor, GERS Building, Saint Thomas, United States Virgin Islands 00802. PSRC Two is inactive.

**1.3.A.1.(g) PSRC Sales Corporation Three** (“PSRC Three”) is incorporated under the laws of the United States Virgin Islands, and has its principal executive offices at 50 Kronprindsens Gade, 2nd Floor, GERS Building, Saint Thomas, United States Virgin Islands 00802. PSRC Three is inactive.

**1.3.A.1.(h) PSRC Sales Corporation Four** (“PSRC Four”) is incorporated under the laws of the United States Virgin Islands, with principal executive offices at 50 Kronprindsens Gade, 2nd Floor, GERS Building, Saint Thomas, United States Virgin Islands 00802. PSRC Four has certain contract rights with respect to a leased aircraft owned by PSRC but is otherwise inactive.<sup>44</sup>

**1.3.A.1.(i) PSRC, Inc.** (“PSRCI”), a Delaware corporation, has its principal executive offices at 1300 Market Street, Suite 400, Wilmington, Delaware 19801. PSRCI has two direct leveraged lease transactions, both of which involve gas-fired combined cycle electric generating plants located in the Netherlands, UNA Merwede 2 and UNA Purmerend 2.<sup>45</sup> PSRCI has one direct wholly owned subsidiary, as described below.

**1.3.A.1.(i)(i) PPL B KLF 98-C1, Inc.** (“PPLKLF”), a Delaware corporation, has its principal executive offices at 1300 North Market Street, Suite 400, Wilmington, Delaware 19801, and is inactive.

**1.3.A.1.(j) PSRC II, Inc.** (“PSRC II”), a Delaware corporation, has its principal executive offices at 1300 Market Street, Suite 400, Wilmington, Delaware 19801. PSRC II has investments in a number of investment funds, including leveraged buyout and venture capital

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<sup>42</sup> *Id.*

<sup>43</sup> This interest is retainable under the Lease Investment Orders.

<sup>44</sup> *Id.*

<sup>45</sup> *Id.*

funds, and other miscellaneous investments and securities. PSRC II's fund investments involve non-controlling limited partner interests. At December 30, 2004, PSRC II's investment balance in these investments and securities is less than \$50 million in the aggregate.<sup>46</sup> PSRC II has a 1% limited partnership interest in LMCRCPLP, item 1.3.A.1.(d)(i) above.

**1.3.A.1.(k) PSEG Demand Management Co., Inc.** ("DMC"), a Delaware corporation, has its principal executive offices at 80 Park Plaza, Newark, New Jersey 07102. DMC is a party to certain demand-side management contracts.<sup>47</sup>

**1.3.A.1.(l) PSEGR PJM LLC** ("PSEGR PJM"), a Delaware limited liability company, has its principal executive offices at 80 Park Plaza, Newark, New Jersey 07102. PSEGR PJM has indirect investments in three generation facilities: (1) the Conemaugh Station (Conemaugh), a generating facility located near New Florence, Pennsylvania, (2) the Keystone Station (Keystone), a generating facility located in Plumcreek Township, Pennsylvania, and (3) the Shawville Station (Shawville), a generating facility located in Bradford Township, Pennsylvania. PSEGR PJM has three direct and six indirect wholly owned subsidiaries, as described below. PSEGR PJM's sole assets and activities are in respect of the leveraged lease investments in certain coal-fired electric generating units located in Pennsylvania (with an aggregate capacity of 4,035 MW), as described below at 1.3.A.1(1)(i)(A)(i), 1.3.A.1(1)(ii)(A)(i) and 1.3.A.1(1)(iii)(A)(i).

**1.3.A.1.(l)(i) PSEGR Conemaugh, LLC** ("PSEGR Conemaugh"), a Delaware limited liability company, has its principal executive offices at 80 Park Plaza, Newark, New Jersey 07102. PSEGR Conemaugh has one direct and one indirect wholly owned subsidiary, as described below. PSEGR Conemaugh's sole asset and activity are as a holding company for its direct and indirect subsidiary.

**1.3.A.1.(l)(i)(A) PSEGR Conemaugh Generation, LLC** ("Conemaugh Generation"), a Delaware limited liability company, has its principal executive offices at 80 Park Plaza, Newark, New Jersey 07102. Conemaugh Generation has one direct wholly owned subsidiary, as described below. Conemaugh Generation's sole asset and activity are as a holding company for its sole subsidiary.

**1.3.A.1.(l)(i)(A)(i) Conemaugh Lessor Genco LLC** ("Conemaugh Lessor"), a Delaware limited liability company, has its principal executive offices at 80 Park Plaza, Newark, New Jersey 07102. Conemaugh Lessor holds title to a 16.45% undivided interest in the two-unit, 1,711 MW Conemaugh generating station located in New Florence, Pennsylvania and leases such interest to Reliant Energy Mid-Atlantic Power Holdings, LLC ("REMA") (SEC File Number 333-51464) as part of a long-term leveraged lease transaction.<sup>48</sup> A 1933 Act registration statement with respect to the publicly-offered lease debt relating to the subject transaction (initially filed on

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<sup>46</sup> See *PEPCO Holdings, Inc.*, Holding Co. Act Release No. 27553 (July 24, 2002), App. A, fn. 36 (and prior orders cited therein).

<sup>47</sup> Rule 58(b)(1)(i).

<sup>48</sup> REMA also operates the Conemaugh station on behalf of its co-owners. Among the other co-owners are PECO Energy Company, with a 20.72% undivided interest, and PSEG Fossil (1.2.A), with a 22.50% undivided interest. The PECO Energy and PSEG Fossil undivided interests are not part of, and are otherwise unaffected by, the referenced leveraged lease investment transaction.

December 8, 2000, File No. 333-51464) describes the subject lease transaction. The sole asset of Conemaugh Lessor is the subject leveraged lease transaction. Conemaugh Lessor is an EWG. FERC Docket EG00-184-000, 92 FERC ¶ 62,059 (2000).<sup>49</sup>

**1.3.A.1.(I)(ii) PSEGR Keystone, LLC** (“PSEGR Keystone”), a Delaware limited liability company, has its principal executive offices at 80 Park Plaza, Newark, New Jersey 07102. PSEGR Keystone has one direct, and one indirect wholly owned subsidiary, as described below. PSEGR Keystone’s sole asset and activity are as a holding company for its direct subsidiary and its indirect subsidiary.

**1.3.A.1.(I)(ii)(A) PSEGR Keystone Generation, LLC** (“Keystone Generation”), a Delaware limited liability company, has its principal executive offices at 80 Park Plaza, Newark, New Jersey 07102. Keystone Generation has one direct wholly owned subsidiary, as described below. Keystone Generation’s sole asset and activity are as a holding company for its sole subsidiary.

**1.3.A.1.(I)(ii)(A)(i) Keystone Lessor Genco LLC** (“Keystone Lessor”), a Delaware limited liability company, has its principal executive offices at 80 Park Plaza, Newark, New Jersey 07102. Keystone Lessor holds title to a 16.67% undivided interest in the two-unit, 1,711 MW Keystone generating station located in Plumcreek Township, Pennsylvania, and leases such interests to REMA as part of a long-term leveraged lease transaction. The debt portion of such transaction is encompassed within the registration statement referenced at 1.3.1(1)(i)(A)(i) above. The sole asset of Keystone Lessor is the subject leveraged lease transaction. Keystone Lessor is an EWG. FERC Docket EG00-182-000, 92 FERC ¶ 62,058 (2000).

**1.3.A.1.(I)(iii) PSEGR Shawville, LLC** (“PSEGR Shawville”), a Delaware limited liability company, has its principal executive offices at 80 Park Plaza, Newark, New Jersey 07102. PSEGR Shawville has one direct, and one indirect wholly owned subsidiary, as described below. PSEGR Shawville’s sole business is the ownership of its direct subsidiary and its indirect subsidiary.

**1.3.A.1.(I)(iii)(A) PSEGR Shawville Generation, LLC** (“Shawville Generation”), a Delaware limited liability company, has its principal executive offices at 80 Park Plaza, Newark, New Jersey 07102. Shawville Generation has one direct wholly owned subsidiary, as described below. Shawville Generation’s sole business is to act as a holding company for its subsidiary.

**1.3.A.1.(I)(iii)(A)(i) Shawville Lessor Genco LLC** (“Shawville Lessor”), a Delaware limited liability company, has its principal executive offices at 80 Park Plaza, Newark, New Jersey 07102. Shawville Lessor holds title to all (100%) of the four-unit, 613 MW Shawville generating station in Bradford Township, Pennsylvania and leases such interest to REMA as part of a long-term leveraged lease transaction. The debt portion of such transaction is encompassed within the registration statement referenced at 1.3.A.1(1)(i)(A)(i) above. The sole asset of the Shawville Lessor is the subject leveraged lease transaction. Shawville Lessor is an EWG. FERC Docket EG00-183-000, 92 FERC 62,057 (2000).<sup>50</sup>

**1.3.A.1.(m) Noord Gas Trust 1999-D** (“Noord D”), a Delaware business trust, has its principal executive office at 1100 North Market Street, Wilmington, DE 19890-0001. Noord D’s sole

<sup>49</sup> This interest is retainable under the Lease Investment Orders.

<sup>50</sup> *Id.*

asset and activity is a leveraged lease investment in six gas distribution networks in the Netherlands.<sup>51</sup>

**1.3.A.1.(o) GCN 2000-1** (“GCN 1”), a Delaware business trust, has its principal executive office at 1100 North Market Street, Wilmington, DE 19890-0001. GCN 1’s sole asset and activity is a leveraged lease investment in a gas distribution network in the Netherlands.<sup>52</sup>

**1.3.A.1.(p) MK Plaza Trust** (“MK Plaza Trust”), a Delaware business trust, has its principal executive office at 80 Park Plaza, T-22, Newark, New Jersey. MK Plaza Trust owns a commercial office complex in Boise, Idaho. Until recently, MK Plaza Trust’s involvement with the office complex was via a leveraged lease investment. Due to illiquidity problems faced by the lessee (caused primarily by the Chapter 11 reorganization of the lessee’s principal sub-tenant), the leveraged lease investment was restructured to eliminate the lessee so that MK Plaza Trust would lease directly to commercial tenants. Due to the restructuring transaction, MK Plaza Trust can no longer account for its investment as a leveraged lease under GAAP. MK Plaza Trust continues actively to seek long-term commercial tenants for all available space at the office complex.<sup>53</sup>

**1.3.A.1.(q) WLM Retail Partnership** is a general partnership in which PSRC is one of two general partners. WLM Retail’s principal executive office is at 80 Park Plaza, Newark, New Jersey 07102. Over the last three fiscal years, PSRC’s partnership interest has entitled it to receive a percentage of all cash to be distributed by WLM Retail in excess of debt service requirements. WLM’s sole asset and activity is a leveraged lease investment in thirty retail stores through the United States.<sup>54</sup>

**1.3.A.2. Nesbitt Asset Recovery LLC** (“Nesbitt”), a Delaware limited liability company with various series contained within it, has its principal executive offices at 1300 North Market Street, Suite 400, Wilmington, Delaware 19801. Nesbitt has three direct and two indirect wholly owned subsidiaries, as described below. The purpose of Nesbitt is to maximize the recovery of PSEG Resources (1.3.A) in respect of PSEG Resources’ direct and indirect interests in assets which are leased to third parties where (1) PSEG Resources has determined that there is a significant possibility that a lessee may default and/or a lease may be terminated early and/or the leased asset may be returned by the lessee and/or there may be a dispute concerning return conditions, renewal rents or purchase option prices and (2) PSEG Resources will either (A) contribute and/or sell interests in the affected assets and operative documents to Nesbitt, or (B) cause Nesbitt to enter into asset management or asset remarketing agreements with respect to leveraged lease and limited partnership assets held by PSEG Resources or its affiliates. Nesbitt performs its recovery maximization activities only for its affiliates and not third parties. At present, Nesbitt’s assets and activities are in respect of long-term leveraged lease investments in certain coal-fired electric

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<sup>51</sup> *Id.*

<sup>52</sup> *Id.*

<sup>53</sup> Applicants undertake to divest ownership of the referenced office complex within five years of the date of the order in this matter or make a filing with the Commission prior to the expiration of three years from the date of the order explaining why it should be permitted under the 1935 Act to retain its interest in the office complex. This approach was taken in recent matters, including *PEPCO Holdings, Inc.*, Holding Co. Act Release No. 27553 (July 24, 2002), and *Xelton Corp.*, Holding Co. Act Release No. 27256 (Oct. 19, 2000).

<sup>54</sup> This interest is retainable under the Lease Investment Orders.



generating units located in Illinois (with an aggregate capacity of approximately 2,582 MW) described below.

**1.3.A.2(a) Nesbit Asset Recovery, Series P-1** (“Series P-1”) (formerly named Powerton Trust I), a Delaware business trust, has its principal executive office at 1300 North Market Street, Suite 400, Wilmington, Delaware 19801. Series P-1 is an EWG. FERC Docket EG00-164-000, 92 FERC 62,049 (2000). Series P-1 holds title to a 63.6% undivided interest in the two-unit 1.538 MW Powerton generating station located in Pekin, Illinois and leases such interest to Midwest Generation LLC (SEC File No. 333-59348) as part of a long-term leveraged lease financing transaction. A 1933 Act registration statement with respect to the publicly-offered lease debt relating to the subject transaction (initially filed on April 20, 2001, File No. 333-59348) describes the subject lease transaction. The sole asset of Series P-1 is the subject leveraged investment.<sup>55</sup>

**1.3.A.2(b) Nesbitt Asset Recovery, Series J-1** (“Series J-1”) (formerly named Joliet Trust I), a Delaware business trust, has its principal place of business at 1300 North Market Street, Suite 400, Wilmington, Delaware 19801. Series J-1 is an EWG. FERC Docket EG00-160-000, 92 FERC 62,053 (2000). Series J-1 holds title to a 63.6% undivided interest in two units (Units 7 and 8, aggregating 1,044 MW) at the three-unit, 1,358 MW Joliet power station located in Joliet, Illinois and leases such interest to Midwest Generation LLC as part of a long-term leveraged lease finance transaction. The publicly owned leveraged lease debt relating to the subject transaction was offered pursuant to the registration statement referenced in 1.3.A.2(a) above.<sup>56</sup>

**1.3.A.2.(c) PSEGR Midwest, LLC** (“PSEGR Midwest”), a Delaware limited liability company, has its principal executive offices at 80 Park Plaza, Newark, New Jersey 07102. PSEGR Midwest is inactive and has two direct wholly owned subsidiaries, as described below.

**1.3.A.2.(c)(i) Powerton Generation I, LLC** (“Powerton Generation”), a Delaware limited liability company, has its principal executive offices at 80 Park Plaza, Newark, New Jersey 07102. Powerton Generation is inactive.

**1.3.A.2.(c)(ii) Joliet Generation I, LLC** (“Joliet Generation”), a Delaware limited liability company, has its principal executive offices at 80 Park Plaza, Newark, New Jersey 07102. Joliet Generation is inactive.

**1.3.A.3 Noord Gas Trust 1999-A** (“Noord A”), a Delaware business trust, has its principal executive office at 1100 North Market Street, Wilmington, Delaware 19890-0001. Noord A’s sole asset and activity is a leveraged lease investment in a gas distribution networks in the Netherlands.<sup>57</sup>

**1.3.A.4 Noord Gas Trust 1999-B** (“Noord B”), a Delaware business trust, has its principal executive office at 1100 North Market Street, Wilmington, Delaware 19890-0001. Noord B’s

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<sup>55</sup> *Id.*

<sup>56</sup> *Id.*

<sup>57</sup> *Id.*

sole asset and activity is a leveraged lease investment in eight gas distribution networks in the Netherlands.<sup>58</sup>

**1.3.A.5 Noord Gas Trust 1999-C** (“Noord C”), a Delaware business trust, has its principal executive office at 1100 North Market Street, Wilmington, Delaware 19890-0001. Noord C’s sole asset and activity is a leveraged lease investment in a gas distribution networks in the Netherlands.<sup>59</sup>

**1.3.A.6 Langerlo Statutory Trust 1999** (“Langerlo”), a Connecticut statutory trust, has its principal executive office at One Federal Street, Boston, Massachusetts 02110. Langerlo’s sole asset and activity is a leveraged lease investment in a power station in Belgium consisting of a coal-fired unit and a gas-fired combined cycle unit.<sup>60</sup>

**1.3.A.7 Linz District Heating Statutory Trust** (“Linz”), a Delaware business trust, has its principal executive office at 1100 North Market Street, Wilmington, Delaware 19890-0001. Linz’s sole asset and activity is a leveraged lease investment in a district heating network in Austria.<sup>61</sup>

**1.3.A.8 REMU Electricity Trust No. 1** (“REMU”), has its principal executive office at 1100 North Market Street, Wilmington, DE 19890-0001. REMU’s sole asset and activity is a leveraged lease investment in an electric distribution network in the Netherlands.<sup>62</sup>

**1.3.A.9 ESG Electricity Network Trust** (“ESG”), a Delaware business trust, has its principal executive office at 1100 North Market Street, Wilmington, Delaware 19890-0001. ESG’s sole asset and activity is a leveraged lease investment in an electric distribution network in Austria.<sup>63</sup>

**1.3.B. PSEG Global L.L.C.** (“PSEG Global”), a New Jersey limited liability company, with principal executive offices at 80 Park Plaza, Newark, New Jersey 07102.<sup>64</sup> Through its subsidiaries, Global participates in the development and operation of projects in the generation and distribution of energy, which includes cogeneration and other power-production facilities and electric distribution companies. Some of the generation facilities are domestic facilities designated as “qualifying facilities” (“QFs”) under the Public Utility Regulatory Policies Act of 1978, as amended. Also, the owners of some of the remaining facilities are “foreign utility companies” (“FUCOs”) while some are EWGs. Global is a wholly owned subsidiary of PSEG Energy Holdings. As of December 31, 2004, PSEG Global comprised approximately 14% of PSEG’s assets. PSEG Global’s 2004 revenues were approximately 8% of PSEG’s revenues and

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<sup>58</sup> *Id.*

<sup>59</sup> *Id.*

<sup>60</sup> *Id.*

<sup>61</sup> *Id.*

<sup>62</sup> *Id.*

<sup>63</sup> *Id.*

<sup>64</sup> *CP&L Energy, Inc. Holding Co. Act Release No. 27284* (Nov. 27, 2000) (allowing retention of intermediate entities holding interests in retainable non-utility businesses).

PSEG Global's 2004 earnings available to PSEG were \$69 million. PSEG Global has five direct wholly owned subsidiaries as well as many indirect subsidiaries that include limited and general partnership interests as discussed below.

**1.3.B.1. PSEG Baja Inc.** a Delaware corporation, with its registered office at 300 Delaware Avenue, Suite 1232, Wilmington, Delaware 19801, is inactive.

**1.3.B.2. PSEG Global USA L.L.C.** ("PSEG Global USA"), a New Jersey limited liability company with its registered office at 80 Park Plaza, Newark, New Jersey 07102, has direct and indirect subsidiaries including limited and general partnership interests as described below.<sup>65</sup>

**1.3.B.2.(a) CEMAS Corporation**, a Delaware corporation, with its registered office at 1209 Orange Street, Wilmington, Delaware 19801, is inactive.<sup>66</sup>

**1.3.B.2.(b) PSEG Sviluppo S.r.L.**, an Italian company, with its registered office at Corso of Porta Vigentina 35, 20122 Milan, Italy, was formed for the purpose of asset management in Italy. PSEG Sviluppo S.r.L is owned 98% by Global USA and 2% by PSEG International L.L.C. Dissolution proceedings were started January 1, 2003 and are currently ongoing.

**1.3.B.2.(c) National Energy Partners**, a Delaware general partnership, with principal executive offices at 80 Park Plaza, Newark, New Jersey 07102, owns 100% of GWF Power Systems Company, Inc. <sup>67</sup> Global USA is a 50% general partner in National Energy Partners. National Energy Partners has the following, direct and indirect subsidiaries as described below.

**1.3.B.2.(c)(i) GWF Power Systems Company, Inc.** ("GWFPSC"), a California corporation, with principal executive offices at 4300 Railroad Avenue, Pittsburg, California 94565, which has the following direct and indirect wholly owned and partially owned subsidiaries as described below.<sup>68</sup>

**1.3.B.2.(c)(i)(A) GWF Bay Area, Inc.**, a California corporation, with principal executive offices at 4300 Railroad Avenue, Pittsburg, California 94565, is a 2% managing general partner of GWF Power Systems, L.P. ("GWFLP").<sup>69</sup> GWF Bay Area, Inc. is an indirect 50% owned subsidiary of Global USA.

**1.3.B.2.(c)(i)(A)(i) GWF Power Systems, L.P.** ("GWFLP"), a Delaware limited partnership, with principal executive offices at 4300 Railroad Avenue, Pittsburg, California 94565, owns and operates five petroleum-coke fired small-power production QFs in Contra Costa County, California.<sup>70</sup> Global USA directly owns a 48.5%, limited partnership interest in GWFLP. In

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<sup>65</sup> *Id.*

<sup>66</sup> *New Century Energies, Inc.*, Holding Co. Act Release No. 26748 (Aug. 1, 1997) (authorizing retention of subsidiary engaged in marketing, developing, financing, constructing, managing and operating foreign exempt projects).

<sup>67</sup> *CP&L Energy, Inc.* Holding Co. Act Release No. 27284 (Nov. 27, 2000) (allowing retention of intermediate entities holding interests in retainable non-utility businesses).

<sup>68</sup> *Id.*

<sup>69</sup> *Id.*

<sup>70</sup> See Rule 58(b)(1)(viii).

addition, PSEG Bay Area Inc., as described below, owns a 0.5% general partnership interest, and GWF Bay Area, Inc., owns a 2% general-partnership interest, in GWFLP.

**1.3.B.2.(c)(i)(B) GWF Hanford, Inc.**, a California corporation, with principal executive offices at 4300 Railroad Avenue, Pittsburg, California 94565, which is a 2% managing general partner of Hanford, L.P. (“HLP”).<sup>71</sup> GWF Hanford, Inc. is an indirect 50% owned subsidiary of Global USA.

**1.3.B.2.(c)(i)(B)(i) Hanford, L.P.** (“HLP”), a Delaware limited partnership, with principal executive offices at 4300 Railroad Avenue, Pittsburg, California 94565, is the owner of a petroleum coke fired small-power production QF in Hanford, California.<sup>72</sup> Global USA directly owns a 48.5% limited partnership interest in HLP. PSEG Hanford Inc. owns a 0.5% general partnership interest in HLP, and GWF Hanford, Inc. owns a 2% general partnership interest in HLP.

**1.3.B.2.(d) PSEG Asia Inc.**, a Delaware corporation, with its registered offices at 1209 Orange Street, Wilmington, Delaware 19801, is inactive. PSEG Asia Inc. has one direct wholly owned subsidiary, as described below.

**1.3.B.2.(d)(i) PSEG Asia Ltd.**, a Bermuda limited liability company, with principal executive offices at Clarendon House, 2 Church Street, Hamilton, Bermuda is inactive.

**1.3.B.2.(e) PSEG Conemaugh Management Inc.**, a New Jersey corporation, with principal executive offices at 80 Park Plaza, Newark, New Jersey 07102, is a 0.5% general partner in Pennsylvania Renewable Resources, Associates.<sup>73</sup>

**1.3.B.2.(e)(i) Pennsylvania Renewable Resources, Associates** (“PRRA”), a Pennsylvania limited partnership, with principal executive offices at 1370 Avenue of the Americas, Suite 3300, New York, New York 10019, owns a hydroelectric QF in Saltsburg, Pennsylvania.<sup>74</sup> PSEG Mount Carmel Inc., as described below, is a 49.5% limited partner in PRRA.

**1.3.B.2.(f) PSEG GWF Inc.**, a New Jersey corporation, with principal executive offices at 80 Park Plaza, Newark, New Jersey 07102, which has the following direct wholly owned subsidiaries as described below.<sup>75</sup>

**1.3.B.2.(f)(i) PSEG Bay Area Inc.**, a Delaware corporation, with principal executive offices at 4300 Railroad Avenue, Pittsburg, California 94565, is a 0.5% general partner in GWFLP, which

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<sup>71</sup> *CP&L Energy, Inc. Holding Co. Act Release No. 27284 (Nov. 27, 2000)* (allowing retention of intermediate entities holding interests in retainable non-utility businesses).

<sup>72</sup> See Rule 58(b)(1)(viii).

<sup>73</sup> *CP&L Energy, Inc. Holding Co. Act Release No. 27284 (Nov. 27, 2000)* (allowing retention of intermediate entities holding interests in retainable non-utility businesses).

<sup>74</sup> See Rule 58(b)(1)(viii).

<sup>75</sup> *CP&L Energy, Inc. Holding Co. Act Release No. 27284 (Nov. 27, 2000)* (allowing retention of intermediate entities holding interests in retainable non-utility businesses).

is the owner and operator of five petroleum coke-fired small-power production facilities in Contra Costa County, California.<sup>76</sup> All five facilities are QFs.

**1.3.B.2.(f)(ii) PSEG Hanford Inc.**, a Delaware corporation, with principal executive offices at 4300 Railroad Avenue, Pittsburg, California 94565, is a 0.5% general partner in HLP, which is the owner of a petroleum coke-fired small-power production QF in Hanford, California.<sup>77</sup>

**1.3.B.2.(g) PSEG Hawaiian Investment Inc.**, a Delaware corporation, with its registered office at 1209 Orange Street, Wilmington, Delaware 19801, owns a 48.49%, limited-partnership interest in Kalaeloa Investment Partners, L.P., a Delaware limited partnership.<sup>78</sup>

**1.3.B.2.(h) PSEG Hawaiian Management Inc.**, a Delaware corporation, with its registered office at 1209 Orange Street, Wilmington, Delaware 19801, is a 1% general partner in Kalaeloa Investment Partners, LP.<sup>79</sup>

**1.3.B.2.(h)(i) Kalaeloa Investment Partners, LP** (“KIPLP”), a Delaware limited partnership, with its registered office at 1209 Orange Street, Wilmington, Delaware 19801, owns a 99% limited-partnership interest in Kalaeloa Partners, L.P.<sup>80</sup>

**1.3.B.2.(h)(i)(A) Kalaeloa Partners, L.P.** (“KPLP”), a Delaware limited partnership, with its registered office at 1209 Orange Street, Wilmington, Delaware 19801, owns a heavy oil-fired cogeneration QF on the Island of Oahu in Hawaii. KPLP is an EWG.

**1.3.B.2.(i) TPS Holdings II, Inc.**, a Delaware corporation, with its registered office at 1209 Orange Street, Wilmington, Delaware 19801, is inactive. TPS Holdings II, Inc. has the following direct wholly owned subsidiary, as described below.

**1.3.B.2.(i)(a) TPS Holdings III, Inc.**, a Delaware corporation, with its registered office at 1209 Orange Street, Wilmington, Delaware 19801, is inactive.

**1.3.B.2.(j) PSEG India Inc.**, a Delaware corporation, with its registered office at 1209 Orange Street, Wilmington, Delaware 19801, holds one share of PSEG India Private Limited (“PIPL”).<sup>81</sup>

**1.3.B.2.(k) PSEG India Private Limited** (“PIPL”), an Indian company, with its registered office at No. 81 Murugesu Naicker Office Complex, Greaves Road, Chennai, 600 006, India, was formed for the purpose of developing power-production facilities in India.<sup>82</sup> PIPL is inactive.

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<sup>76</sup> *Id.*

<sup>77</sup> *Id.*

<sup>78</sup> *See, e.g., Black Hills Corporation, supra* (authorizing retention of intermediate entities holding interests in EWGs).

<sup>79</sup> *Id.*

<sup>80</sup> *Id.*

<sup>81</sup> *CP&L Energy, Inc. Holding Co. Act Release No. 27284* (Nov. 27, 2000) (allowing retention of intermediate entities holding interests in retainable non-utility businesses).

<sup>82</sup> *New Century Energies, Inc., Holding Co. Act Release No. 26748* (Aug. 1, 1997) (authorizing retention of subsidiary engaged in marketing, developing, financing, constructing, managing and operating foreign exempt projects).

Global USA owns all but one share of PIPL. The remaining one (1) share is owned by PSEG India Inc.

**1.3.B.2.(l) PSEG International Services Inc.**, a Delaware corporation, with its registered office at 1209 Orange Street, Wilmington, Delaware 19801, provides management operations and maintenance personnel to some of the international subsidiaries of Global USA.<sup>83</sup>

**1.3.B.2.(m) PSEG Kalaeloa Inc.**, a Delaware corporation, with its registered office at 1209 Orange Street, Wilmington, Delaware 19801, was formed for the purpose of acquiring a 1%, general-partnership interest in KPLP, a Delaware limited partnership.<sup>84</sup> The remaining 99%, limited-partnership interest is owned by KIPLP.

**1.3.B.2.(n) PSEG Leasing Inc.**, a New Jersey corporation, with principal executive offices at 80 Park Plaza, Newark, New Jersey 07102, is a 50% general partner in National Energy Leasing Partners.<sup>85</sup>

**1.3.B.2.(n)(i) National Energy Leasing Partners**, a Delaware partnership, with its registered offices at One Riverchase Parkway South, Birmingham, Alabama 35244, is inactive.

**1.3.B.2.(o) PSEG Mount Carmel Inc.**, a New Jersey corporation, with principal executive offices at 80 Park Plaza, Newark, New Jersey 07102, is a 49.5% limited partner in PRRA.<sup>86</sup> PSEG Conemaugh Management Inc. owns a 0.5%, general-partnership interest in PRRA, resulting in a 50%, indirect ownership by Global USA.

**1.3.B.2.(p) PSEG New Hampshire Inc.**, a New Hampshire corporation, with principal executive offices at 9 Capital Street, Concord, New Hampshire,<sup>87</sup> is co-managing 40% general-partner in Bridgewater Power Company, L.P.

**1.3.B.2.(p)(i) Bridgewater Power Company, L.P.**, a New Hampshire limited partnership, with principal executive offices at Route 3, Bridgewater, New Hampshire 03222, owns a biomass-fired small power-production QF in Bridgewater, New Hampshire.<sup>88</sup>

**1.3.B.2.(q) PSEG Project Services Inc.**, a New Jersey corporation, with principal executive offices at 80 Park Plaza, Newark, New Jersey 07102, provides engineering procurement

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<sup>83</sup> *Id.*

<sup>84</sup> *CP&L Energy, Inc. Holding Co. Act Release No. 27284 (Nov. 27, 2000)* (allowing retention of intermediate entities holding interests in retainable non-utility businesses).

<sup>85</sup> *Id.*

<sup>86</sup> *CP&L Energy, Inc. Holding Co. Act Release No. 27284 (Nov. 27, 2000)* (allowing retention of intermediate entities holding interests in retainable non-utility businesses).

<sup>87</sup> *Id.*

<sup>88</sup> *See Rule 58(b)(1)(viii).*

construction and management services and owns a 50% general-partnership interest in each of the following two limited partnerships, as described below.<sup>89</sup>

**1.3.B.2.(q)(i) National Energy Constructors**, a Delaware general partnership, with principal executive offices at One Riverchase Parkway South, Birmingham, Alabama 35244, has constructed five petroleum coke-fired small power-production QFs owned and operated by GWFLP and a petroleum coke-fired small power-production QF owned by HLP.<sup>90</sup>

**1.3.B.2.(q)(ii) Tracy Operators**, a California general partnership, with principal executive offices at 14800 West Schulte Road, Tracy, California 95376, operates and maintains a biomass-fired small power-production QF in Tracy, California in which PSEG Tracy L.L.C., has an ownership interest as described below.<sup>91</sup>

**1.3.B.2.(r) PSEG Tracy L.L.C.**, a New Jersey limited liability company, with its registered office at 80 Park Plaza, T-20, Newark, New Jersey, 07102, is a 34.5% general partner in Thermal Energy Development Partnership, L.P.<sup>92</sup>

**1.3.B.2.(r)(i) Thermal Energy Development Partnership, L.P.**, a Delaware limited partnership with its registered office at 2711 Centerville Road, Suite 400, Wilmington, Delaware 19808, owns a biomass-fired small power-production QF in Tracy, California.<sup>93</sup>

**1.3.B.2.(s) PSEG U.S. Services Inc.**, a Delaware corporation, with its registered office at 1209 Orange Street, Wilmington, Delaware 19801, is inactive.

**1.3.B.2.(t) PSEG International L.L.C.**, a Delaware limited liability company, with its registered office at 1209 Orange Street, Wilmington, Delaware 19801, has the following direct and indirect wholly owned and partially owned subsidiaries, as described below.<sup>94</sup>

**1.3.B.2.(t)(i) PSEG Americas Services Inc.**, a Delaware corporation, with its registered office at 1209 Orange Street, Wilmington, Delaware 19801, provides management operations and maintenance personnel to some of the international subsidiaries of Global USA.<sup>95</sup>

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<sup>89</sup>*Black Hill Corporation*, Holding Co. Act Release No. 27933 (Dec. 29, 2004) (authorizing retention of nonutility subsidiary engaged in development of non-utility generating projects).

<sup>90</sup> *Id.*

<sup>91</sup> See Rule 58(b)(1)(viii).

<sup>92</sup> *CP&L Energy, Inc.* Holding Co. Act Release No. 27284 (Nov. 27, 2000) (allowing retention of intermediate entities holding interests in retainable non-utility businesses).

<sup>93</sup> See Rule 58(b)(1)(viii).

<sup>94</sup> *CP&L Energy, Inc.* Holding Co. Act Release No. 27284 (Nov. 27, 2000) (allowing retention of intermediate entities holding interests in retainable non-utility businesses).

<sup>95</sup> *New Century Energies, Inc.*, Holding Co. Act Release No. 26748 (Aug. 1, 1997) (authorizing retention of subsidiary engaged in marketing, developing, financing, constructing, managing and operating foreign exempt projects).

**1.3.B.2.(t)(ii) PSEG Millbank Inc.**, formerly PSEG Middle East Inc., a Delaware corporation, with its registered office at 1209 Orange Street, Wilmington, Delaware 19801, is inactive and has the following two direct wholly owned subsidiaries, as described below.

**1.3.B.2.(t)(ii)(A) PSEG Global Power Holdings Ltd.**, a Bermuda limited liability company, with principal offices at Clarendon House, 2 Church Street, Hamilton HMCX HM11, Bermuda, is inactive.

**1.3.B.2.(t)(ii)(B) PSEG UK Services Limited**, a United Kingdom company, with its registered office at 100 New Bridge Street, London EC4V 6JA, United Kingdom, was formed for the purpose of providing employment services.<sup>96</sup>

**1.3.B.2.(t)(iii) PSEG (Bermuda) Holdings II Ltd.** (“Bermuda Holdings II”), a Bermuda limited liability company, with principal, executive offices at Clarendon House, 2 Church Street, Hamilton, Bermuda, has the following direct subsidiary, as described below.

**1.3.B.2.(t)(iii)(A) PSEG Bhilai Energy Company Ltd.** (“BHILAI”), a Mauritius company, with its registered office at 608 St. James Court, St. Denis Street, Port Louis, Mauritius, is a direct wholly owned subsidiary of Bermuda Holdings II. BHILAI is inactive.

**1.3.B.2.(t)(iv) PSEG Americas L.L.C.**, a Delaware limited liability company, with its registered office at 1209 Orange Street, Wilmington, Delaware 19801, has the following direct and indirect wholly owned and partially owned subsidiaries, and owns a 0.01% interest in PSEG Americas Operating Company as described below.<sup>97</sup>

**1.3.B.2.(t)(iv)(A) La Plata I, Inc.** (“La Plata I”), a Delaware corporation, with its registered office at 2711 Centerville Road, Suite 400, Wilmington, Delaware 19808, is a direct and wholly owned subsidiary of PSEG Americas L.L.C. La Plata I is inactive.

**1.3.B.2.(t)(iv)(B) TPS Holdings, Inc.**, a Delaware corporation, with its registered office at 1209 Orange Street, Wilmington Delaware 19801, owns a 49.5% limited partnership interest in Texas Independent Energy, L.P. (“TIELP”). TPS Holdings, Inc. is a direct and wholly owned subsidiary of PSEG Americas L.L.C. and has the following direct subsidiary, as described below:

**1.3.B.2.(t)(iv)(B)(i) TPS General Partner LLC** (“TPS GP”), a Delaware limited liability company, with its registered office at 1209 Orange Street, Wilmington, Delaware 19801, owns a 0.5% general partnership interest in TIELP.

**1.3.B.2.(t)(iv)(B) PSEG Texgen Holdings Inc.** (“Texgen”), a Delaware corporation, with its registered office at 300 Delaware Avenue, Suite 1232, Wilmington, Delaware 19801, was formed for the purpose of future investments in Texas. Texgen has the following direct and indirect subsidiaries, as described below.<sup>98</sup>

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<sup>98</sup> *Id.*

<sup>99</sup> *CP&L Energy, Inc. Holding Co. Act Release No. 27284 (Nov. 27, 2000)* (allowing retention of intermediate entities holding interests in retainable non-utility businesses).

<sup>100</sup> *See Black Hills, supra* (permitting retention on intermediate entities holding interests in non-utility companies).



**1.3.B.2.(t)(iv)(B)(i) PSEG Texgen I Inc.** (“Texgen I”), a Delaware corporation, with its registered office at 300 Delaware Avenue, Suite 1232, Wilmington, Delaware 19801, owns a 0.5% interest in Texas Independent Energy, L.P. (“TIELP”).<sup>99</sup>

**1.3.B.2.(t)(iv)(B)(ii) PSEG Texgen II Inc.** (“Texgen II”), a Delaware corporation, with its registered office at 300 Delaware Avenue, Suite 1232, Wilmington, Delaware 19801, owns a 49.5% interest in TIELP.<sup>100</sup>

**1.3.B.2.(t)(iv)(B)(ii)(a) Texas Independent Energy, L.P. (“TIELP”)**, a Delaware limited partnership, with its registered office at 1209 Orange Street, Wilmington, Delaware 19801, was formed for the purpose of investing in power-generating facilities in Texas. Texgen I and Texgen II, respectively, own a 0.5% general partnership interest and a 49.25% limited partnership interest in TIELP. TPS GP and TPS Holdings, Inc., respectively, own the remaining 0.5% general partnership interest and 49.5% limited partnership interest in TIELP. TIELP has the following subsidiaries.<sup>101</sup>

**1.3.B.2.(t)(iv)(B)(ii)(a)(i) Guadalupe Power I, LLC**, a Delaware limited liability company, with its registered office at 1209 Orange Street, Wilmington, Delaware 19801, is a wholly owned subsidiary of TIELP and owns a 1% general-partnership interest in Guadalupe Power Partners, LP, as described below.<sup>102</sup>

**1.3.B.2.(t)(iv)(B)(ii)(a)(ii) Guadalupe Power II, LLC**, a Delaware limited liability company, with its registered office at 1209 Orange Street, Wilmington, Delaware 19801, is a wholly owned subsidiary of TIELP and owns a 99%, limited-partnership interest in GPP, as described below.<sup>103</sup>

**1.3.B.2.(t)(iv)(B)(ii)(a)(ii)(a) Guadalupe Power Partners, LP (“GPP”)**, a Delaware limited partnership with its registered office at 1209 Orange Street, Wilmington, Delaware 19801, owns a natural gas-fired power-generating facility in Guadalupe County, Texas. GPP is an EWG.

**1.3.B.2.(t)(iv)(B)(ii)(a)(iii) Odessa-Ector Power I, LLC**, a Delaware limited liability company, with its registered office at 1209 Orange Street, Wilmington, Delaware 19801, is a wholly owned subsidiary of TIELP and owns a 1% general-partnership interest in Odessa-Ector Power Partners, LP (“OEPP”) and Odessa-Ector Power Partners Services, L.P. (“OEPPS”), as described below.<sup>104</sup>

**1.3.B.2.(t)(iv)(B)(ii)(a)(iv) Odessa-Ector Power II, LLC**, a Delaware limited liability company, with its registered office at 1209 Orange Street, Wilmington, Delaware 19801, is a wholly owned subsidiary of TIELP and owns a 99% limited-partnership interest in OEPP and OEPPS, as described below.<sup>105</sup>

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<sup>99</sup> *Id.*

<sup>100</sup> *Id.*

<sup>101</sup> *Id.*

<sup>102</sup> *Id.*

<sup>103</sup> *Id.*

<sup>104</sup> *Id.*

<sup>105</sup> *Id.*

**1.3.B.2.(t)(iv)(B)(ii)(a)(iv)(a) Odessa-Ector Power Partners, L.P.** (“OEPP”), a Delaware limited partnership, with its registered office at 1209 Orange Street, Wilmington, Delaware 19801, owns a natural gas-fired power-generating facility in Ector County, Texas. OEPP is an EWG.

**1.3.B.2.(t)(iv)(B)(ii)(a)(iv)(b) Odessa-Ector Power Partners Services, L.P.** (“OEPPS”), a Delaware limited partnership, with its registered office at 1209 Orange Street, Wilmington, Delaware 19801, was formed for the purpose of holding an interest in a 12.5 mile interconnection to a natural-gas transportation pipeline, located in Ector County, Texas. OEPP is currently the only entity transporting natural gas over these facilities.<sup>106</sup>

**1.3.B.2.(t)(iv)(B)(ii)(a)(v) Texas Independent Energy Operating Company, LLC** (“TIE”), a Delaware limited liability company, with its registered office at 1209 Orange Street, Wilmington, Delaware 19801, is a wholly owned subsidiary of TIELP and was formed to operate and maintain the eligible power-generating facility owned by each of GPP and OEPP.<sup>107</sup> TIE is an EWG.

**1.3.B.2.(t)(iv)(B)(iii) PSEG Preferred Partner L.L.C.**, a Delaware limited liability company, with its registered office at 1209 Orange Street, Wilmington, Delaware 19801, was formed for the purpose of developing power-generating facilities in Texas.<sup>108</sup>

**1.3.B.2.(t)(iv)(C) PSEG Global Funding II LLC**, a Delaware limited liability company, with its registered office at 1209 Orange Street, Wilmington, Delaware 19801, directly owns PSEG Global Funding Corp.<sup>109</sup>

**1.3.B.2.(t)(iv)(C)(i) PSEG Global Funding Corp.**, a Delaware corporation, with its registered office at 1209 Orange Street, Wilmington, Delaware 19801, wholly owns PSEG Global Funding III Company. In addition, PSEG Global Funding Corp. has an 80% interest in Asociacion o Cuentas en Participacion (“CEP”), as described below.<sup>110</sup>

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<sup>106</sup> See *Black Hills*, *supra*, see also *American Electric Power Co., Inc.*, Holding Co. Act Release No. 27842 (April 30, 2004) (authorizing investment in defined “energy-related assets” including oil and natural gas production, gathering, processing, storage and transportation facilities and equipment, liquid oil reserves and storage facilities, and associate facilities that will be incidental to and assist applicants and their affiliates in connection with marketing, brokering and trading activities), and *Central and South West Corporation*, Holding Co. Act Release No. 25385 (Sept. 26, 1991) (authorizing acquisition of gas pipeline that would, among other things, serve needs of system generation).

<sup>107</sup> See Rule 58(b)(1)(vii).

<sup>108</sup> *Black Hill Corporation*, Holding Co. Act Release No. 27933 (Dec. 29, 2004) (authorizing retention of nonutility subsidiary engaged in development of non-utility generating projects).

<sup>109</sup> *New Century Energies, Inc.*, Holding Co. Act Release No. 26748 (Aug. 1, 1997) (authorizing retention of subsidiary engaged in marketing, developing, financing, constructing, managing and operating foreign exempt projects).

<sup>110</sup> *Id.*

**1.3.B.2.(t)(iv)(C)(i)(a) PSEG Global Funding III Company**, a Cayman Islands company, with its registered office at Ugland House, South Church Street, George Town, Grand Cayman, Cayman Islands, British West Indies, has interests in the following entities.<sup>111</sup>

**1.3.B.2.(t)(iv)(C)(i)(a)(i) Asociacion o Cuentas en Participacion (“CEP”)** is a contractual arrangement through which PSEG Global Funding Corp. and PSEG Global Funding III Company have an 80% and a 20% interest, respectively, in the profits and losses of CEP.<sup>112</sup> CEP was formed for the purpose of making investments in South America, and by such contractual arrangement has beneficial ownership in the following two entities.

**1.3.B.2.(t)(iv)(C)(i)(a)(i)(a) PSEG Finance Company**, a Cayman Islands company, has its registered office at Ugland House, South Church Street, George Town, Grand Cayman, Cayman Islands, British West Indies. PSEG Finance Company is wholly owned by PSEG Global Funding III Company.<sup>113</sup>

**1.3.B.2.(t)(iv)(C)(i)(a)(i)(b) PSEG Peru S.R.L.**, a Peruvian limited liability company, with its registered office at Victor Andres Belaunde 147, Via Principal 155, Edificio Centro Empresarial Camino Real, Oficina 1201, San Isidro, Peru, is 99.97% owned by PSEG Global Funding III Company and 0.03% owned by PSEG Finance Company.<sup>114</sup>

**1.3.B.2.(t)(iv)(D) PSEG Global Management Inc.**, a Delaware corporation, with its registered office at 1209 Orange Street, Wilmington, Delaware 19801, was formed for the purpose of providing energy-related services.<sup>115</sup>

**1.3.B.2.(t)(iv)(E) Sempra Energy International Chile Holdings I B.V.**, a Dutch company, with its registered office at Olympic Plaza, Fred. Roeskestraat 123, Amsterdam, 1076 EE, The Netherlands, was formed for the purpose of investing in Latin America. PSEG Americas L.L.C. owns 0.10810% of Sempra Energy International Chile Holdings I B.V.<sup>116</sup>

**1.3.B.2.(t)(v) PSEG China Holdings Ltd.**, formerly PSEG Gongyi Power Ltd., a Bermuda limited liability company, with principal offices at Clarendon House, 2 Church Street, Hamilton, Bermuda, is inactive.

**1.3.B.2.(t)(vi) PSEG Philippine Holdings LLC (“PPHLLC”)**, a Delaware limited liability company, with its registered office at 1209 Orange Street, Wilmington, Delaware 19801, has one direct 27.67% owned subsidiary and seventeen indirect partially owned subsidiaries, as described below. Through its subsidiaries, PPHLLC owns certain interests in the Philippines. PPHLLC was formed in 1997 for the purpose of jointly developing a generation facility in the Philippines with F & J Prince Corporation, a Philippines company (“F & J Prince”). PPHLLC and F & J

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<sup>111</sup> *Id.*

<sup>112</sup> *Id.*

<sup>113</sup> *Id.*

<sup>114</sup> *Id.*

<sup>115</sup> *Id.*

<sup>116</sup> *Id.*

Prince jointly own Magellan Capital Holdings Corporation (“MCHC”), which proposed to develop the generation facility. Since that time, however, MCHC has deferred the proposed project pending more favorable market conditions. In connection with the proposed project, MCHC’s subsidiaries acquired a site in the Philippines as well as office space in Makati City, Philippines. PPHLLC does not exercise control, however, over either MCHC or F & J Prince. With the exception of certain de minimis limestone mining claims in the Philippines, PPHLLC and its subsidiaries own no other assets.<sup>117</sup>

**1.3.B.2.(t)(vi)(A) Magellan Capital Holdings Corporation** (“MCHC”), a Philippine company, with executive offices at 5/F Citibank Center, 8741 Paseo de Roxas, Makati City, 1226 Philippines, was formed for the purpose of investing in power facilities in the Philippines and, through its subsidiaries, owns office space in Makati City, Philippines. <sup>118</sup> MCHC is 27.67% owned by PPHLLC and 67% owned by F & J Prince Holdings Corporation, a nonassociate company, and has the following, direct and indirect, wholly owned and partially owned subsidiaries:<sup>119</sup>

**1.3.B.2.(t)(vi)(A)(i) Magellan Utilities Development Corporation** (“MUDC”), a Philippines company, with executive offices at 5/F Citibank Center, 8741 Paseo de Roxas, Makati City, 1226 Philippines, was formed for the purpose of investing in a power facility in the Philippines. MUDC is 43% owned by MCHC.<sup>120</sup>

**1.3.B.2.(t)(vi)(A)(i)(a) Pinamucan Power Corporation**, a Philippines company, with executive offices at 5/F Citibank Center, 8741 Paseo de Roxas, Makati City, 1226 Philippines, is inactive. MUDC wholly owns Pinamucan Power Corporation.

**1.3.B.2.(t)(vi)(A)(i)(a)(i) Magellan Power Partnership**, a Philippines company, with executive offices at 5/F Citibank Center, 8741 Paseo de Roxas, Makati City, 1226 Philippines, is inactive. Pinamucan Power Corporation owns 75% of Magellan Power Partnership. MCHC owns 25% of Magellan Power Partnership.

**1.3.B.2.(t)(vi)(A)(ii) Batangas Agro-Industrial Development Corporation** (“BAIDC”), a Philippines company, with executive offices at 5/F Citibank Center, 8741 Paseo de Roxas, Makati City, 1226 Philippines, owns certain real property in combination with its subsidiaries, which real property was acquired to furnish a site for the generating facility that MUDC proposed to construct. BAIDC owns various subsidiaries, which hold title to part of the land intended for the MUDC project.<sup>121</sup> MCHC wholly owns BAIDC.

**1.3.B.2.(t)(vi)(A)(ii)(a) Fruits of the East, Inc.**, a Philippines company, with executive offices at 5/F Citibank Center, 8741 Paseo de Roxas, Makati City, 1226 Philippines, owns a portion of

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<sup>117</sup> *Id.*

<sup>118</sup> *Id.*

<sup>119</sup> *Id.*

<sup>120</sup> *Id.*

<sup>121</sup> *New Century Energies, Inc., Holding Co. Act Release No. 27212 (Aug. 16, 2000)* (permitting retention of interested in real property in connection with generating facilities).

the real property that was acquired to furnish a site for the proposed generation facility, but is otherwise inactive.<sup>122</sup> BAIDC owns 99.75% of Fruits of the East, Inc.

**1.3.B.2.(t)(vi)(A)(ii)(b) King Leader Philippines, Inc.**, with executive offices at 5/F Citibank Center, 8741 Paseo de Roxas, Makati City, 1226 Philippines, owns a portion of the real property that was acquired to furnish a site for the proposed generation facility, but is otherwise inactive. BAIDC wholly owns King Leader Philippines.<sup>123</sup>

**1.3.B.2.(t)(vi)(A)(ii)(c) Hometel Integrated Management Corporation**, with executive offices at 5/F Citibank Center, 8741 Paseo de Roxas, Makati City, 1226 Philippines, owns a portion of the real property that was acquired to furnish a site for the proposed generation facility, but is otherwise inactive. BAIDC owns 99.918% of Hometel Integrated Management Corporation.<sup>124</sup>

**1.3.B.2.(t)(vi)(A)(ii)(d) Samar Commodities Trading, Inc.**, with executive offices at 5/F Citibank Center, 8741 Paseo de Roxas, Makati City, 1226 Philippines, owns a portion of the real property that was acquired to furnish a site for the proposed generation facility, but is otherwise inactive. Samar Commodities Trading, Inc. is 99.99% owned by BAIDC.<sup>125</sup>

**1.3.B.2.(t)(vi)(A)(ii)(e) Tropical Aqua Resources, Inc.**, with executive offices at 5/F Citibank Center, 8741 Paseo de Roxas, Makati City, 1226 Philippines, owns a portion of the real property that was acquired to furnish a site for the proposed generation facility, but is otherwise inactive. BAIDC owns 99.999% of Tropical Aqua Resources, Inc.<sup>126</sup>

**1.3.B.2.(t)(vi)(A)(ii)(f) United Philippine Oil Trading, Inc.**, with executive offices at 5/F Citibank Center, 8741 Paseo de Roxas, Makati City, 1226 Philippines, owns a portion of the real property that was acquired to furnish a site for the proposed generation facility, but is otherwise inactive. BAIDC owns 99.999% of United Philippine Oil Trading, Inc.<sup>127</sup>

**1.3.B.2.(t)(vi)(A)(iii) Pinamucan Industrial Estates, Inc.**, a Philippines company, with executive offices at 5/F Citibank Center, 8741 Paseo de Roxas, Makati City, 1226 Philippines, owns a portfolio of bond and money market investments. Pinamucan Industrial Estates, Inc. owns a 10.006% interest in F & J Prince, but is otherwise inactive. MCHC owns 99.9% of Pinamucan Industrial Estates, Inc.

**1.3.B.2.(t)(vi)(A)(iv) F & J Prince Holdings Corporation (“F & J Prince”)**, a Philippines company, with executive offices at 5/F Citibank Center, 8741 Paseo de Roxas, Makati City, 1226 Philippines, is a publicly traded holding company that is listed on the Philippine Stock Exchange.

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<sup>122</sup> *Id.*

<sup>123</sup> *New Century Energies, Inc.*, Holding Co. Act Release No. 26748 (Aug. 1, 1997) (authorizing retention of subsidiary engaged in marketing, developing, financing, constructing, managing and operating foreign exempt projects).

<sup>124</sup> *New Century Energies, Inc.*, Holding Co. Act Release No. 27212 (Aug. 16, 2000) (permitting retention of interested in real property in connection with generating facilities).

<sup>125</sup> *Id.*

<sup>126</sup> *Id.*

<sup>127</sup> *Id.*

Other than its interest in MCHC and in Pointwest Technologies Corporation, described below, F & J Prince owns no assets. F & J Prince owns 67% of MCHC, and is 9.85% owned by MCHC and 10.006% owned by Pinamucan Industrial Estates, Inc. <sup>128</sup>

**1.3.B.2.(t)(vi)(A)(iv)(a) Pointwest Technologies Corporation**, a Philippines company, with executive offices at 5/F Citibank Center, 8741 Paseo de Roxas, Makati City, 1226 Philippines, was formed to engage in the business of developing, designing and marketing information technology systems. Pointwest Technologies Corporation offers outsourcing information technology services from the Philippines. F & J Prince Holdings Corporation owns 23.69% of Pointwest Technologies Corporation.

**1.3.B.2.(t)(vi)(A)(v) Malabrigo Corporation**, a Philippines company, with executive offices at 5/F Citibank Center, 8741 Paseo de Roxas, Makati City, 1226 Philippines, was formed for the purpose of operating coal mines and holding mineral and water rights. MCHC owns 99.8% of Malabrigo Corporation.

**1.3.B.2.(t)(vi)(A)(vi) Magellan Capital Corporation**, a Philippines company, with executive offices at 5/F Citibank Center, 8741 Paseo de Roxas, Makati City, 1226 Philippines, is inactive. MCHC owns 99.998% of Magellan Capital Corporation.

**1.3.B.2.(t)(vi)(A)(vii) Magellan Capital Realty Development Corporation**, a Philippines company, with offices at 5/F Citibank Center, 8741 Paseo de Roxas, Makati City, 1226 Philippines, is inactive. MCHC owns 99.998% of Magellan Capital Realty Development Corporation.

**1.3.B.2.(t)(vi)(A)(viii) Magellan Capital Trading Corporation**, a Philippines company, with offices at 5/F Citibank Center, 8741 Paseo de Roxas, Makati City, 1226 Philippines, is inactive. MCHC owns 99.998% of Magellan Capital Trading Corporation.

**1.3.B.2.(t)(vii) PSEG Pontianak (L) Ltd.**, a Malaysian company, with its registered office at Level 1, Lot 7, Block F, Saguking Commercial Building, 87000 Jalan Patau-Patau, Labuan F.T., Malaysia, has one direct 93.75% owned subsidiary, as described below.

**1.3.B.2.(t)(viii)(A) PT Pontianak Power**, an Indonesian company, with principal executive offices at Jl. Dr. Saharjo 52 Jakarta, 12970 Indonesia, is inactive.

**1.3.B.2.(t)(viii) PSEG Zhou Kou Power Ltd.**, a Bermuda limited liability company, with principal executive offices at Clarendon House, 2 Church Street, Hamilton, Bermuda, is inactive.

**1.3.B.2.(t)(ix) PSEG Rades Services Inc. ("Rades")**, a Delaware corporation, with its registered office at 1209 Orange Street, Wilmington, Delaware 19801, was formed for the purpose of providing management services for projects in Tunisia. Rades is inactive.

**1.3.B.2.(t)(x) PSEG Elcho Services Inc.**, a Delaware corporation, with its registered office at 1209 Orange Street, Wilmington, Delaware 19801, was formed for the purpose of providing management services for projects in Chorzow, Poland.<sup>129</sup>

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<sup>128</sup> *New Century Energies, Inc.*, Holding Co. Act Release No. 26748 (Aug. 1, 1997) (authorizing retention of subsidiary engaged in marketing, developing, financing, constructing, managing and operating foreign exempt projects).

**1.3.B.2.(t)(xi) PSEG Europe Ltd.**, a United Kingdom company, with its registered office at 100 New Bridge Street, EC4V 6JA, United Kingdom, was formed for the purpose of managing development activities in Europe and the Middle East. <sup>130</sup> PSEG Europe Ltd. has the following wholly owned subsidiaries.

**1.3.B.2.(t)(xi)(A) PSEG Technical Services Ltd.**, a United Kingdom company, with its registered office at 100 New Bridge Street, EC4V 6JA, United Kingdom, was formed for the purpose of providing technical services to power facilities in Poland. <sup>131</sup> PSEG Technical Services Ltd. is inactive.

**1.3.B.2.(t)(xi)(B) PSEG Offshore Operations Ltd.**, a United Kingdom company, with its registered office at 100 New Bridge Street, EC4V 6JA, United Kingdom. PSEG Offshore Operations Ltd. is inactive.

**1.3.B.2.(t)(xi)(C) PSEG Operations Tunisia Ltd.**, a United Kingdom company, with its registered office at 100 New Bridge Street, EC4V 6JA, United Kingdom, is inactive.

**1.3.B.2.(t)(xii) PSEG Operaciones I Company**, a Cayman Islands company with its registered office at Ugland House, P.O. Box 309, George Town, Grand Cayman, Cayman Islands, British West Indies, was formed for the purpose of making investments in South America. <sup>132</sup>

**1.3.B.2.(t)(xiii) PSEG Operaciones II Company**, a Cayman Islands company, with its registered office at Ugland House, P.O. Box 309, George Town, Grand Cayman, Cayman Islands, British West Indies, was formed for the purpose of making investments in South America. <sup>133</sup>

**1.3.B.2.(t)(xiii)(A) Asociacion o Cuentas en Participacion (“CEPII”)** is a contractual arrangement through which PSEG Operaciones II Company has an 80% interest, and PSEG Operaciones I Company has a 20% interest, in the profits and losses of CEPII. <sup>134</sup> CEPII was formed for the purpose of making investments in South America, and by such contractual arrangement has beneficial ownership in the following two entities.

**1.3.B.2.(t)(xiii)(A)(i) PSEG Cuenta Finance Company**, formerly Andina Mendoza I Company, a Cayman Islands company, with its registered office at Ugland House, P.O. Box 309, George Town, Grand Cayman, Cayman Islands, British West Indies, was formed for the purpose of making investments in South America. <sup>135</sup>

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<sup>129</sup> *New Century Energies, Inc.*, Holding Co. Act Release No. 26748 (Aug. 1, 1997) (authorizing retention of subsidiary engaged in marketing, developing, financing, constructing, managing and operating foreign exempt projects).

<sup>130</sup> *Id.*

<sup>131</sup> *Id.*

<sup>132</sup> *Id.*

<sup>133</sup> *Id.*

<sup>134</sup> *Id.*

<sup>135</sup> *Id.*

**1.3.B.2.(t)(xiii)(A)(ii) PSEG Generacion y Energia Chile Limitada**, a Chilean limited liability company, was formed for the purpose of making investments in Latin America. PSEG Generacion y Energia Chile Limitada owns an electric-generating station in Chile, and is an EWG.

**1.3.B.2.(t)(xiii)(B) PSEG Chile Company**, a Cayman Islands company, with its registered office at Ugland House, P.O. Box 309, George Town, Grand Cayman, Cayman Islands, British West Indies, was formed for the purpose of making investments in South America.<sup>136</sup> PSEG Chile Company is wholly owned by PSEG Operaciones I Company.

**1.3.B.2.(t)(xiv) North Bay Power LLC**, a Delaware limited liability company, with its registered office at 1209 Orange Street, Wilmington, Delaware 19801, is inactive.<sup>137</sup>

**1.3.B.2.(t)(xv) PSEG Henrietta Turbine Inc.**, formerly PSEG Mexico Inc., a Delaware corporation, with its registered office at 1209 Orange Street, Wilmington, Delaware 19801, is inactive.

**1.3.B.2.(t)(xvi) PSEG California Corp.**, a Delaware corporation, with its registered office at 1209 Orange Street, Wilmington, Delaware 19801, was formed for the purpose of investing in North America. PSEG California Corp. has the following 50% owned subsidiary, as described below.<sup>138</sup>

**1.3.B.2.(t)(xvi)(A) GWF Energy LLC**, a Delaware limited liability company, with its registered office at 1209 Orange Street, Wilmington, Delaware 19801, owns three natural gas-fired peaker facilities in California. GWF Energy LLC is an EWG.<sup>139</sup>

**1.3.B.2.(t)(xvii) PSEG California II Corp.**, a Delaware corporation, with its registered office at 1209 Orange Street, Wilmington, Delaware 19801, was formed for the purpose of investing in North America.<sup>140</sup> PSEG California II Corp. owns a 10% interest in GWF Energy LLC.

**1.3.B.2.(t)(xviii) PSEG California III Corp.**, a Delaware corporation, with its registered office at 1209 Orange Street, Wilmington, Delaware 19801, is inactive.

**1.3.B.2.(t)(xix) PSEG Tracy Turbine Inc.**, a Delaware corporation, with its registered office at 1209 Orange Street, Wilmington, Delaware 19801, is inactive.

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<sup>136</sup> *Id.*

<sup>137</sup> See *Black Hill Corporation*, Holding Co. Act Release No. 27933 (Dec. 29, 2004) (authorizing retention of nonutility subsidiary engaged in development of non-utility generating projects); and *New Century Energies, Inc.*, Holding Co. Act Release No. 26748 (Aug. 1, 1997) (authorizing retention of subsidiary engaged in marketing, developing, financing, constructing, managing and operating foreign exempt projects).

<sup>138</sup> *Black Hill Corporation*, Holding Co. Act Release No. 27933 (Dec. 29, 2004) (authorizing retention of nonutility subsidiary engaged in development of non-utility generating projects).

<sup>139</sup> *Id.*

<sup>140</sup> *Id.*



**1.3.B.2.(u) PSEG Chilquinta Finance LLC**, a Delaware limited liability company, with its registered office at 1209 Orange Street, Wilmington, Delaware 19801, is a holding company that has the following 50% owned subsidiary.<sup>141</sup>

**1.3.B.2.(u)(i) Chilquinta Energia Finance Co. LLC**, a Delaware limited liability company, with its registered office at 1209 Orange Street, Wilmington, Delaware, 19801, was formed for the purpose of operating and investing in various projects in Latin America.<sup>142</sup>

**1.3.B.2.(v) PSEG Polska Sp. z o.o. w likwidacji**, a Polish company, with its registered office at ul. Emilii Plater 53, 18 Pietro, Warsaw, Poland 00-113, was formed for the purpose of managing investments in Poland, and is currently being liquidated.

**1.3.B.3. PSEG Global International Holdings LLC (“PGIHLLC”)**, a Delaware limited liability company, with its registered office at 1209 Orange Street, Wilmington, Delaware 19801, was formed for the purpose of serving as a holding company for various international investments.<sup>143</sup> PGIHLLC is wholly owned by Global.

**1.3.B.3.(a) PSEG Americas Ltd.**, a Bermuda limited liability company, with principal executive offices at Clarendon House, 2 Church Street, Hamilton, Bermuda, owns a 90% interest in PSEGAOC.<sup>144</sup> PSEG Americas Ltd. has the following direct and indirect wholly owned and partially owned subsidiaries:

**1.3.B.3.(a)(i) Andina Mendoza Company**, a Cayman Islands company, with its registered office at Ugland House, South Church Street, George Town, Grand Cayman, Cayman Islands, British West Indies, is inactive.<sup>145</sup>

**1.3.B.3.(a)(ii) Inversiones PSEG Americas Chile Holding Limitada (“Inversiones Chile”)**, a Chilean limited liability company, with its registered office at Miraflores 222, Piso 24, Santiago, Chile, was formed for the purpose of investing in SAESA and Empresa Electrica de la Frontera S.A. (“Frontel”).<sup>146</sup> Inversiones Chile is 57.78% owned by PSEG Americas Ltd., 34.71% owned by Inversiones Electricas del Sur Dos Limitada, 7.5% owned by PSEG Finance Company, and 0.0043% owned by PSEG Chilean Equity II Ltd. (“Chilean Equity II”).

**1.3.B.3.(a)(ii)(A) Empresa Electrica de la Frontera S.A. (“Frontel”)**, a Chilean company, with its registered office at Isidora Goyenechea No. 3621, Piso 20, Las Condes, Santiago, Chile, owns

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<sup>141</sup> *New Century Energies, Inc.*, Holding Co. Act Release No. 26748 (Aug. 1, 1997) (authorizing retention of subsidiary engaged in marketing, developing, financing, constructing, managing and operating foreign exempt projects).

<sup>142</sup> *Id.*

<sup>143</sup> *CP&L Energy, Inc.* Holding Co. Act Release No. 27284 (Nov. 27, 2000) (allowing retention of intermediate entities holding interests in retainable non-utility businesses).

<sup>144</sup> *Id.*

<sup>145</sup> *New Century Energies, Inc.*, Holding Co. Act Release No. 26748 (Aug. 1, 1997) (authorizing retention of subsidiary engaged in marketing, developing, financing, constructing, managing and operating foreign exempt projects).

<sup>146</sup> *Id.*

electric distribution facilities in Chile. Frontel, is 98.361% owned by Inversiones Chile and 0.006% owned by Chilean Equity II. Frontel owns a 0.1% direct interest in each of Compania Electrica Osorno S.A. (“Creo”) and a 0.1% interest in each of Sistema de Transmision del Sur S.A. (“STS”), Sociedad Generadora Austral S.A. (“SGA”), and Sociedad Austral de Electricidad Overseas Ltd. (“SAEOL”), as described below. Frontel is a FUCO.

**1.3.B.3.(a)(ii)(B) Sociedad Austral de Electricidad S.A. (“SAESA”)**, a Chilean sociedad anonima, with its registered office at Isidora Goyenechea No. 3621, Piso 20, Las Condes, Santiago, Chile, owns electric distribution facilities in Chile. SAESA is 99.965% owned by Inversiones Chile and 0.0056% owned by Chilean Equity II. SAESA has certain direct and indirect partially owned subsidiaries as described below. SAESA is a FUCO.

**1.3.B.3.(a)(ii)(B)(i) Sociedad Austral de Electricidad Overseas Ltd. (“SAEOL”)**, a Cayman Island Company, with its registered office at Corporate Centre, Windward One, West Bay Road, PO Box 31106 SMB, Grand Cayman, Cayman Islands, was formed for the purpose of investing in Latin America.<sup>147</sup> SAESA holds a 99.9% ownership interest in SAEOL and Frontel holds the remaining 0.1% of SAEOL.

**1.3.B.3.(a)(ii)(B)(i)(a) Empresa de Energia Rio Negro S.A. (“Edersa”)**, an Argentine sociedad anonima, with its registered office at Mengelle 145 Cipolletti, Rio Negro Province, Argentina, owns electric distribution facilities in Chile. Edersa is 50% owned by SAEOL. Edersa is a FUCO.

**1.3.B.3.(a)(ii)(B)(ii) Empresa Electrica de Aisen S.A. (“Edelaysen”)**, a Chilean sociedad anonima, with its registered office at Bulnes 441, Osorno, Chile, owns electric distribution facilities in Chile. Edelaysen is 91.66% owned by SAESA. Edelaysen is a FUCO.

**1.3.B.3.(a)(ii)(B)(iii) Compania Electrica Osorno S.A. (“CREO”)**, a Chilean sociedad anonima, with its registered office at Manuel Bulnes 441, Osorno, Chile, was formed for the purpose of investing in Latin America and owns electric distribution facilities in Chile. CREO is 0.1% owned by Frontel and 99.9% owned by SAESA. CREO is a FUCO.

**1.3.B.3.(a)(ii)(B)(iv) Sistema de Transmision del Sur S.A. (“STS”)**, a Chilean sociedad anonima, with its registered office at Isidora Goyenechea No. 3621, Piso 20, Las Condes, Santiago, Chile, owns electric transmission facilities in Chile. STS is 0.1% owned by Frontel and 99.9% owned by SAESA. STS has a 7.142% ownership interest in one subsidiary, as described below. STS is a FUCO.

**1.3.B.3.(a)(ii)(B)(v) Sociedad Generadora Austral S.A. (“SGA”)**, a Chilean sociedad anonima, with its registered office at Isidora Goyenechea No. 3621, Piso 20, Las Condes, Santiago, Chile, was formed for the purpose of engaging in the energy broker business.<sup>148</sup> SGA is 99.9% owned by SAESA and 0.1% owned by FRONTEL. SGA has a 7.142% ownership interest in CDEC-SO (see below).

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<sup>147</sup> *New Century Energies, Inc.*, Holding Co. Act Release No. 26748 (Aug. 1, 1997) (authorizing retention of subsidiary engaged in marketing, developing, financing, constructing, managing and operating foreign exempt projects).

<sup>148</sup> *E.ON AG*, Holding Co. Act Release No. 27539 (June 14, 2002).

**1.3.B.3.(a)(ii)(B)(v)(a) Centro de Despacho Economico de Carga del Sistema Electrico Interconectado Central CDEC-SOC Limitada**, (“CDEC-SO”), a Chilean limited liability company, with its registered office in Chile, owns electric distribution facilities in Chile. STS and SGA, which is wholly owned by FUCOs, each own a 7.142% interest in CDEC-SO.<sup>149</sup>

**1.3.B.3.(a)(iii) PSEG Americas Operating Company** (“PSEGAOC”), a Cayman Island company, with its registered office at Uglan House, South Church Street, George Town, Grand Cayman, Cayman Islands, British West Indies, is a 90% directly owned subsidiary of PSEG Americas Ltd. PSEG Americas L.L.C. holds an additional 0.01% interest in this company. PSEGAOC is inactive.

**1.3.B.3.(a)(iv) PSEG Brasil Ltda.**, a Brazilian limited liability company, with its registered office at Avenida das Nacoes Unidas, 12.995, 10 andar, salas 10, Edificio Plaza Centenario, Chacara Itaim, Sao Paulo, Sao Paulo, CEP 04578-000, Brazil, provides management and business-development services.<sup>150</sup> PSEG Americas Ltd. directly owns 99.99973% of PSEG Brasil Ltda. Ipe Energia S.A. (“IPE”), as described below, directly owns the remaining 0.00027%.

**1.3.B.3.(a)(v) PSEG Brazil II Company**, a Cayman Islands company, with its registered office at Uglan House, South Church Street, George Town, Grand Cayman, Cayman Islands, British West Indies, has one 50% owned subsidiary.

**1.3.B.3.(a)(v)(A) PSEG Trader S.A.**, a Brazilian company, with its registered office at Avenida das Nacoes Unidas, 12.995, 10 andar, conjunto 101, sala 13, Edificio Plaza Centenario, Chacara Itaim, Sao Paulo, Sao Paulo, CEP 04578-000, Brazil, is inactive. PSEG Brazil III Company owns the remaining 50% interest in PSEG Trader S.A.

**1.3.B.3.(a)(vi) PSEG Brazil III Company**, a Cayman Islands company, with its registered office at Uglan House, South Church Street, George Town, Grand Cayman, Cayman Islands, British West Indies, has one, 50% owned subsidiary, PSEG Trader S.A., which is also 50% owned by PSEG Brazil II Company.

**1.3.B.3.(a)(vii) PSEG Brazil Investment Company**, a Cayman Islands company, with its registered office at Uglan House, South Church Street, George Town, Grand Cayman, Cayman Islands, British West Indies, was formed for the purpose of indirectly acquiring privatized assets in Brazil.<sup>151</sup> PSEG Brazil Investment Company has the following direct and indirect wholly owned and partially owned subsidiaries, as described below.

**1.3.B.3.(a)(vii)(A) Pampa Energia Ltda.**, a Cayman Islands company, with its registered office at Uglan House, South Church Street, George Town, Grand Cayman, Cayman Islands, British West Indies, was formed for the purpose of indirectly acquiring privatized assets in Brazil.<sup>152</sup>

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<sup>149</sup> *Id.*

<sup>150</sup> *New Century Energies, Inc.*, Holding Co. Act Release No. 26748 (Aug. 1, 1997) (authorizing retention of subsidiary engaged in marketing, developing, financing, constructing, managing and operating foreign exempt projects).

<sup>151</sup> *Id.*

<sup>152</sup> *Id.*

Pampa Energia Ltda. has the following direct and indirect wholly owned and partially owned subsidiaries, as described below.

**1.3.B.3.(a)(vii)(A)(i) PSEG Brazil Company**, a Cayman Islands company, with its registered office at Uglan House, South Church Street, George Town, Grand Cayman, Cayman Islands, British West Indies, was formed for the purpose of indirectly acquiring an interest in Rio Grande Energia S.A. (“RGE”), as described below.<sup>153</sup> PSEG Brazil Company currently owns a 50% interest in PSEG Participacoes S.A. and in IPE Energia Ltda. (“IPE”). PSEG Brazil I Company owns the remaining 50% interest in PSEG Participacoes S.A. and in IPE.

**1.3.B.3.(a)(vii)(A)(i)(a) PSEG Participacoes S.A.**, a Brazilian sociedad anonima, with its registered office at Av. das Nacoes Unidas, 12.995, 10 andar, conjunto 101, sala 14, Edificio Plaza Centenario Building, Chacara Itaim, Sao Paulo, Sao Paulo, CEP 04578-000, Brazil, is inactive.

**1.3.B.3.(a)(vii)(A)(i)(b) Ipe Energia Ltda.** (“IPE”), a Brazilian company, with its registered office at Avenida das Nacoes Unidas, 12.995, 10 andar, sala 11, Edificio Plaza Centenario, Chacara Itaim, Sao Paulo, CEP 04578-000, Brazil, owns a 32.46% interest in RGE. IPE also owns 0.00027% of PSEG Brasil Ltda.<sup>154</sup>

**1.3.B.3.(a)(vii)(A)(i)(b)(i) Rio Grande Energia S.A.** (“RGE”), formerly Companhia Norte e Nordeste de Distribuicao de Energia Eletrica, a Brazilian sociedad anonima, with its registered office at Rua Sao Luiz, 77, 7 andar, Porto Alegre, Rio Grande do Sul, Brazil, is a Brazilian electric distribution company located in the State of Rio Grande do Sul. IPE owns 32.46% of RGE. RGE has the following, wholly owned subsidiary. RGE is a FUCO.

**1.3.B.3.(a)(vii)(A)(i)(b)(i)(a) Sul Geradora Participacoes S.A.**, a Brazilian sociedade anonima, with its registered office at Av. Eng. Luiz Carlos Berrini, 1297-13 anadar parte, CEP 04571-010, Sao Paulo, Sao Paulo, Brazil, was formed for the purpose of participation in importation, exportation and commerce of agricultural products.<sup>155</sup>

**1.3.B.3.(a)(vii)(A)(ii) PSEG Brazil I Company**, a Cayman Islands company, with its registered office at Uglan House, South Church Street, George Town, Grand Cayman, Cayman Islands, British West Indies, was formed for the purpose of acquiring an indirect ownership interest in RGE and currently owns a 50% interest in PSEG Participacoes S.A. and in IPE. PSEG Brazil Company owns the remaining 50% interest in PSEG Participacoes S.A. and in IPE. PSEG Brazil I Company also owns a 99.945% interest in Conversora de Fertilizante e Energia do Parana Ltda., a Brazilian limited liability company, and PSEG Brazil Company holds the remaining 0.055% ownership interest.<sup>156</sup>

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<sup>153</sup> *Id.*

<sup>154</sup> *CP&L Energy, Inc. Holding Co. Act Release No. 27284 (Nov. 27, 2000)* (allowing retention of intermediate entities holding interests in retainable non-utility businesses).

<sup>155</sup> *E.ON AG, Holding Co. Act Release No. 27539 (June 14, 2002)* (FUCO exemption of FUCO subsidiaries).

<sup>156</sup> *CP&L Energy, Inc. Holding Co. Act Release No. 27284 (Nov. 27, 2000)* (allowing retention of intermediate entities holding interests in retainable non-utility businesses).

**1.3.B.3.(a)(vii)(A)(ii)(a) Conversora de Fertilizante e Energia do Parana Ltda.**, formerly PSEG Brasil Operacoes Ltda., has its registered office at Avenida das Nacoes Unidas, 12.995, 10 andar, Conjunto 101, sala 12, Edificio Plaza Centenario, Chacara Itaim, Sao Paulo, Sao Paulo, CEP 04578-000, Brazil. <sup>157</sup> PSEG Brazil I Company currently owns approximately a direct 99.95% interest in Conversora de Fertilizante e Energia do Parana Ltda. PSEG Brazil Company directly owns the remaining approximately 0.05%.

**1.3.B.3.(a)(viii) PSEG Brazil Operating Company**, a Cayman Islands company, with its registered office at Ugland House, South Church Street, George Town, Grand Cayman, Cayman Islands, British West Indies, has one, 0.1% owned subsidiary, as described below. <sup>158</sup>

**1.3.B.3.(a)(viii)(A) Inversiones Electricas del Sur Limitada**, a Chilean company, with its registered office at Miraflores 222, Piso 24, Santiago, Chile, was formed for the purpose of investing in Latin America. <sup>159</sup> Inversiones Electricas del Sur Limitada is 99.9% owned by PSEG Americas Ltd. and 0.1% owned by PSEG Brazil Operating Company.

**1.3.B.3.(a)(viii)(B) Inversiones Electricas del Sur Dos Limitada**, a Chilean company, with its registered office at Miraflores 222, Piso 24, Santiago, Chile, was formed for the purpose of investing in Latin America. <sup>160</sup> Inversiones Electricas del Sur Dos Limitada is 99.9% owned by PSEG Americas Ltd. and 0.1% owned by PSEG Brazil Operating Company.

**1.3.B.3.(a)(ix) PSEG (Bermuda) Holdings III Ltd.**, a Bermuda limited liability company, with principal, executive offices at Clarendon House, 2 Church Street, Hamilton, Bermuda, was formed for the purpose of investing in India. <sup>161</sup> PSEG (Bermuda) Holdings III Ltd. has one direct wholly owned subsidiary and several indirect subsidiaries, as described below.

**1.3.B.3.(a)(ix)(A) PSEG India Ltd.**, a Mauritius company, with its registered office at 608 St. James Court, St. Denis Street, Port Louis, Mauritius, has the following direct wholly owned and indirect partially owned subsidiaries, as described below. <sup>162</sup>

**1.3.B.3.(a)(ix)(A)(i) PSEG Ambalamugal Energy Company Ltd.**, a Mauritius company, with its registered office at 608 St. James Court, St. Denis Street, Port Louis, Mauritius, was formed for the purpose of investing in power facilities in India. <sup>163</sup> PSEG Ambalamugal Energy

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<sup>157</sup> *Id.*

<sup>158</sup> *Id.*

<sup>159</sup> *New Century Energies, Inc.*, Holding Co. Act Release No. 26748 (Aug. 1, 1997) (authorizing retention of subsidiary engaged in marketing, developing, financing, constructing, managing and operating foreign exempt projects).

<sup>160</sup> *Id.*

<sup>161</sup> *Id.*

<sup>162</sup> *CP&L Energy, Inc.* Holding Co. Act Release No. 27284 (Nov. 27, 2000) (allowing retention of intermediate entities holding interests in retainable non-utility businesses).

<sup>163</sup> *Id.*

Company Ltd. owns one share of PSEG PPN Operations Private Ltd. (“PPN Operations”), as described below.

**1.3.B.3.(a)(ix)(A)(ii) PSEG North Chennai Ltd.**, a Mauritius company, with its registered office at 608 St. James Court, St. Denis Street, Port Louis, Mauritius, was formed for the purpose of investing in power facilities in India. <sup>164</sup> PSEG North Chennai Ltd. has a 26% interest in Tri-Sakthi Investments Limited (“TSIL”) and a 50% interest in Tri-Sakthi Energy Private Limited (“TSEPL”).

**1.3.B.3.(a)(ix)(A)(ii)(a) Tri-Sakthi Investments Limited (“TSIL”)**, a Mauritius company, with its registered office at 3rd Floor, TM Building, Pope Hennessy Street, Port Louis, Mauritius, has a 50% interest in TSEPL, as described below. <sup>165</sup>

**1.3.B.3.(a)(ix)(A)(iii)(a)(i) Tri-Sakthi Energy Private Limited (TSEPL”)**, an Indian company, with its registered office at No. 7 “Mamatha Complex,” II Floor, 13 Whites Road, Chennai, India 600014, was formed for future investments in India. TSEPL has had one project only, i.e., the 525 MW North Chennai Phase III thermal power project at Ennore. The Madras High Court has admitted a winding-up petition filed against TSEPL by PSEG North Chennai Ltd.

**1.3.B.3.(a)(x) PSEG Cayman Americas Company**, a Cayman Islands company, with its registered office at Ugland House, South Church Street, George Town, Grand Cayman, Cayman Islands, British West Indies, has the following subsidiary:

**1.3.B.3.(a)(x)(A) PSEG Cayman Americas V Company**, a Cayman Islands company, with its registered office at Ugland House, South Church Street, George Town, Grand Cayman, Cayman Islands, British West Indies, is inactive.

**1.3.B.3.(a)(xi) PSEG Global Funding II Corp.**, a Delaware corporation, with its registered office at 1209 Orange Street, Wilmington, Delaware 19801, was formed for future investments in South America. <sup>166</sup>

**1.3.B.3.(a)(xii) PSEG Luxembourg S.a.r.l.**, a Luxembourg company, with its registered office at 4 Rue Carlo Hemmer, Luxembourg, was formed as a holding company for entities in various jurisdictions. <sup>167</sup>

**1.3.B.3.(a)(xiii) Transamerica Energy Company**, a Cayman Islands company, with its registered office at Ugland House, South Church Street, George Town, Grand Cayman, Cayman Islands, British West Indies, was formed for the purpose of making a future investment in Latin

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<sup>164</sup> *New Century Energies, Inc.*, Holding Co. Act Release No. 26748 (Aug. 1, 1997) (authorizing retention of subsidiary engaged in marketing, developing, financing, constructing, managing and operating foreign exempt projects).

<sup>165</sup> *Id.*

<sup>166</sup> *New Century Energies, Inc.*, Holding Co. Act Release No. 26748 (Aug. 1, 1997) (authorizing retention of subsidiary engaged in marketing, developing, financing, constructing, managing and operating foreign exempt projects).

<sup>167</sup> *CP&L Energy, Inc.* Holding Co. Act Release No. 27284 (Nov. 27, 2000) (allowing retention of intermediate entities holding interests in retainable non-utility businesses).

America.<sup>168</sup> Transamerica Energy Company has an 80% interest in Asociacion en Participacion (“AenPII”), as described below.

**1.3.B.3.(a)(xiii)(A) Asociacion en Participacion** (“AenPII”) is a contractual arrangement through which Transamerica Energy Company has an 80% interest, and PSEG Americas Ltd. has a 20% interest, in the profits and losses of AenPII. <sup>169</sup> AenPII was formed for the purpose of making investments in South America, and by such contractual arrangement has beneficial ownership in the following two entities:

**1.3.B.3.(a)(xiii)(A)(i) Electroandes S.A.**, a Peruvian sociedad anonima, with its registered address at Avenida Canaval y Moreyra 380, Torre Siglo XXI, Piso 16, San Isidro, Lima 27, Peru, was formed for the purpose of investing in Latin America and owns a hydro-powered electric generation station. Electroandes S.A. is a FUCO.

**1.3.B.3.(a)(xiii)(A)(ii) PSEG Peru Company**, a Cayman Islands company, with its registered office at Ugland House, South Church Street, George Town, Grand Cayman, Cayman Islands, British West Indies, is inactive.

**1.3.B.3.(a)(xiv) Venergy Holdings Company**, a Cayman Islands company, with its registered office at Ugland House, South Church Street, George Town, Grand Cayman, Cayman Islands, British West Indies, has the following direct and indirect partially owned and wholly owned subsidiaries, as described below: <sup>170</sup>

**1.3.B.3.(a)(xiv)(A) Turboven Company Inc.**, a Cayman Islands company, with its registered office at Fourth Floor, One Capital Place, P. O. Box 847, Grand Cayman, Cayman Islands, British West Indies, is a 50% owned, direct subsidiary of Venergy Holdings Company. <sup>171</sup> Turboven Company Inc. has the following direct wholly owned subsidiaries:

**1.3.B.3.(a)(xiv)(A)(i) Turboven Cagua Company Inc.** (“CAGUA”), a Cayman Islands company, with its registered office at Fourth Floor, One Capital Place, P. O. Box 847, Grand Cayman, Cayman Islands, British West Indies, was formed for the purpose of making investments in Latin America. CAGUA is a FUCO.

**1.3.B.3.(a)(xiv)(A)(ii) Turboven Maracay Company Inc.** (“MARACAY”), a Cayman Islands company, with its registered office at Fourth Floor, One Capital Place, P. O. Box 847, Grand Cayman, Cayman Islands, British West Indies, was formed for the purpose of making investments in Latin America. Maracay is a FUCO.

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<sup>168</sup> *New Century Energies, Inc.*, Holding Co. Act Release No. 26748 (Aug. 1, 1997) (authorizing retention of subsidiary engaged in marketing, developing, financing, constructing, managing and operating foreign exempt projects).

<sup>169</sup> *Id.*

<sup>170</sup> *CP&L Energy, Inc.* Holding Co. Act Release No. 27284 (Nov. 27, 2000) (allowing retention of intermediate entities holding interests in retainable non-utility businesses).

<sup>171</sup> *Id.*

**1.3.B.3.(a)(xiv)(A)(iii) Turboven Valencia Company Inc** (“VALENCIA”), a Cayman Islands company, with its registered office at Fourth Floor, One Capital Place, P. O. Box 847, Grand Cayman, Cayman Islands, British West Indies, is inactive.

**1.3.B.3.(a)(xiv)(A)(iv) Turboven La Victoria Company Inc.**, a Cayman Islands company with its registered office at Fourth Floor, One Capital Place, P. O. Box 847, Grand Cayman, Cayman Islands, British West Indies, was formed for the purpose of making investments in Latin America. <sup>172</sup>

**1.3.B.3.(a)(xv) Rayo-Andino Gestora Company**, a Cayman Islands company, with its registered office at Ugland House, South Church Street, George Town, Grand Cayman, Cayman Islands, British West Indies, has one direct 0.014% owned subsidiary, as described below. <sup>173</sup>

**1.3.B.3.(a)(xv)(A) Promotora Termica del Cafe S.C.A.**, a Colombian company, with its registered office at Carrera 11 No. 86-60, Oficina 301 de Santafe de Bogota, Colombia, is inactive.

**1.3.B.3.(a)(xvi) Rayo-Andino Inversora Company**, a Cayman Islands company, with its registered office at Ugland House, South Church Street, George Town, Grand Cayman, Cayman Islands, British West Indies, has a direct 92.843% interest in Promotora Termica del Cafe S.C.A., with an additional 0.03% interest owned by Rayo-Andino Gestora Company. <sup>174</sup> Rayo-Andino Inversora Company has a 100% interest in PSEG International Holding Company, as described below.

**1.3.B.3.(a)(xvi)(A) PSEG International Holding Company**, a Cayman Island company, with its registered office at Ugland House, South Church Street, George Town, Grand Cayman, Cayman Islands, British West Indies, has the following direct and indirect subsidiaries, as described below. <sup>175</sup>

**1.3.B.3.(a)(xvi)(A)(i) PSEG International Holding II Company**, a Cayman Island company, with its registered office at Ugland House, South Church Street, George Town, Grand Cayman, Cayman Islands, British West Indies, is inactive.

**1.3.B.3.(a)(xvi)(A)(ii) PSEG Holdings Pte Ltd.**, a Singapore company, with principal executive offices at 95 South Bridge Road, #09-00 Pidemco Centre, Singapore 058717, was formed for the purpose of investing in power facilities in Israel. PSEG Holdings Pte Ltd. is a party to a contract

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<sup>172</sup> *New Century Energies, Inc.*, Holding Co. Act Release No. 26748 (Aug. 1, 1997) (authorizing retention of subsidiary engaged in marketing, developing, financing, constructing, managing and operating foreign exempt projects).

<sup>173</sup> *CP&L Energy, Inc.* Holding Co. Act Release No. 27284 (Nov. 27, 2000) (allowing retention of intermediate entities holding interests in retainable non-utility businesses).

<sup>174</sup> *CP&L Energy, Inc.* Holding Co. Act Release No. 27284 (Nov. 27, 2000) (allowing retention of intermediate entities holding interests in retainable non-utility businesses).

<sup>175</sup> *Id.*



upon which it may pursue legal action. Other than this contract, PSEG Holdings Pte Ltd. owns no assets.<sup>176</sup>

**1.3.B.3.(a)(xvii) PSEG Chilean Equity II Ltd.** (“Chilean Equity II”), a Cayman Islands company, with its registered office at Ugland House, South Church Street, George Town, Grand Cayman, Cayman Islands, British West Indies, is a direct wholly owned subsidiary of PSEG Americas Ltd. and has the following direct and indirect subsidiaries, as described below.<sup>177</sup>

**1.3.B.3.(a)(xvii)(A) PSEG Chilean Equity Ltd.** (“Chilean Equity”), a Cayman Islands company, with its registered office at Ugland House, South Church Street, George Town, Grand Cayman, Cayman Islands, British West Indies, was formed for the purpose of making investments in Chile and Peru.<sup>178</sup> Chilean Equity II owns 99.9% of Chilean Equity.

**1.3.B.3.(a)(xvii)(A)(i) PSEG Venezuela S.R.L.**, a Venezuelan limited liability company, with its registered office at Edificio ABA, Calle Veracruz, Las Mercedes, Caracas, 1060, Venezuela, owned 99.95% by Chilean Equity and 0.05% by PSEG Chilean Equity III Ltd., was formed for the purpose of making investments in South America.<sup>179</sup>

**1.3.B.3.(a)(xvii)(A)(ii) PSEG Chilean Equity III Ltd.**, a Cayman Islands company, with its registered office at Ugland House, South Church Street, George Town, Grand Cayman, Cayman Islands, British West Indies, was formed for the purpose of making investments in Chile.<sup>180</sup>

**1.3.B.3.(a)(xvii)(A)(iii) Asociacion en Participacion** (“AenP”) is a contractual arrangement through which Chilean Equity has a 76% interest, and PSEG Americas Ltd. has a 24% interest, in the profits and losses of AenP. AenP was formed for the purpose of making investments in South America, and by such contractual arrangement has beneficial ownership in the following entities.<sup>181</sup>

**1.3.B.3.(a)(xvii)(A)(iii)(a) Chilquinta Energia S.A.** (“CHILQUINTA”), a Chilean sociedad anonima, with principal, executive offices at General Cruz No. 222, Valparaiso, Chile, owns electric distribution facilities in Chile. AenP has a 49.9925% beneficial ownership interest in CHILQUINTA. CHILQUINTA is a FUCO.

**1.3.B.3.(a)(xvii)(A)(iii)(a)(i) Energas S.A.**, a Chilean sociedad anonima, with principal place of business at General Cruz No. 222, Valparaiso, Chile, was formed for the purposes of acquiring, producing, storing, distributing and selling gas and related business in the Fifth Region of

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<sup>176</sup> *New Century Energies, Inc.*, Holding Co. Act Release No. 26748 (Aug. 1, 1997) (authorizing retention of subsidiary engaged in marketing, developing, financing, constructing, managing and operating foreign exempt projects).

<sup>177</sup> *CP&L Energy, Inc.* Holding Co. Act Release No. 27284 (Nov. 27, 2000) (allowing retention of intermediate entities holding interests in retainable non-utility businesses).

<sup>178</sup> *Id.*

<sup>179</sup> *Id.*

<sup>180</sup> *Id.*

<sup>181</sup> *Id.*

Chile.<sup>182</sup> CHILQUINTA directly owns a 99.99% interest in Energas S.A. Compania Electrica del Litoral S.A. (“Compania Electrica”) owns the remaining 0.01%.

**1.3.B.3.(a)(xvii)(A)(iii)(a)(ii) Energia de Casablanca S.A.**, a Chilean sociedad anonima, with principal place of business at Portales 187, Casablanca, Chile, was formed for the purposes of distributing, generating, acquiring and selling electric or other kinds of energy and related business. CHILQUINTA directly owns a 69.75% interest in Energia de Casablanca S.A.<sup>183</sup>

**1.3.B.3.(a)(xvii)(A)(iii)(a)(iii) Compania Electrica del Litoral S.A.** (“Compania Electrica”), a Chilean sociedad anonima, with principal place of business at Alameda 949, Of. 2002, Santiago, Chile, was formed for the purpose of producing, acquiring, transporting, distributing and selling electric energy and related business.<sup>184</sup> CHILQUINTA directly owns a 75.61% interest in Compania Electrica.

**1.3.B.3.(a)(xvii)(A)(iii)(a)(iii)(a) Inmobiliaria del Litoral S.A.**, a Chilean sociedad anonima, with principal place of business at Alameda 949, Of. 2002, Santiago, Chile, was formed for the purposes of producing, acquiring, transporting, distributing and selling electric energy and related business.<sup>185</sup> Compania Electrica directly owns an 80% interest in Inmobiliaria del Litoral S.A. Generadora Electrica Sauce Los Andes S. A. holds the remaining 20% interest.

**1.3.B.3.(a)(xvii)(A)(iii)(a)(iii)(b) Generadora Electrica Sauce Los Andes S. A.**, a Chilean sociedad anonima, with principal place of business at Alameda 949, Of. 2002, Santiago, Chile, was formed for the purposes of producing, acquiring, transporting, distributing and selling electric energy and related business.<sup>186</sup> Compania Electrica directly owns a 99.5% interest in Generadora Electrica Sauce Los Andes S.A. and CHILQUINTA holds the remaining 0.5% interest.

**1.3.B.3.(a)(xvii)(A)(iii)(a)(iv) Luzlinares S. A.**, a Chilean sociedad anonima, with principal place of business at Max Jara 478, Linares, Chile, was formed for the purpose of distributing, generating, acquiring and selling electric or other kinds of energy and related business.<sup>187</sup> CHILQUINTA directly owns an 85% interest in Luzlinares S.A.

**1.3.B.3.(a)(xvii)(A)(iii)(a)(v) Luzparral S.A.**, a Chilean sociedad anonima, with principal place of business at Max Jara 478, Linares, Chile, was formed for the purposes of distributing, generating, acquiring and selling electric or other kinds of energy and related business.<sup>188</sup> CHILQUINTA directly owns a 56.588% interest in Luzparral S.A.

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<sup>182</sup> E.ON AG, Holding Co. Act Release No. 27539 (June 14, 2002).

<sup>183</sup> *Id.*

<sup>184</sup> *Id.*

<sup>185</sup> *Id.*

<sup>186</sup> *Id.*

<sup>187</sup> *Id.*

<sup>188</sup> *Id.*

**1.3.B.3.(a)(xvii)(A)(iii)(b) Inversiones PSEG Chile Holdco Limitada**, a Chilean sociedad de responsabilidad limitada, with its registered office at Miraflores 222, Piso 24, Santiago, Chile, was formed for the purpose of holding investments in Chile and has the following direct partially owned subsidiary, as described below.<sup>189</sup>

**1.3.B.3.(a)(xvii)(A)(iii)(b)(i) Tecnored S.A.** (“Tecnored”), a Chilean corporation, with principal executive offices at Av. Apoquindo 3721, Piso 13, Santiago, Chile, owns electric generation facilities in Chile and provides additional services to CHILQUINTA, and is 50% owned by Inversiones PSEG Chile Holdco Limitada. Tecnored is a FUCO.

**1.3.B.3.(a)(xvii)(A)(iii)(c) Peruvian Opportunity Company S.A.C.** (“POC”) is a Peruvian company, with its registered office at Victor Andres Belaunde 147, Edificio Real 3, Piso 12, San Isidro, Lima 27, Peru. <sup>190</sup> AenP has a 50% beneficial ownership interest in POC. POC has direct and indirect, wholly owned and partially owned subsidiaries, as described below.

**1.3.B.3.(a)(xvii)(A)(iii)(c)(i) Ontario Quinta S.R.L.** (“Ontario”), a Peruvian limited liability company, with its registered office of Av. Canaval y Moreyra N DEG. 380 Piso 16, San Isidro Lima 27, Peru, was formed for the purpose of making investments in Peru.<sup>191</sup> POC owns more than 99%, and Chilean Equity owns less than 1%, of Ontario.

**1.3.B.3.(a)(xvii)(A)(iii)(c)(i)(a) Luz del Sur S.A.A.** (“LUZ”), a Peruvian sociedad anonima, with principal executive offices at Canaval y Moreyra 380, Piso 16, San Isidro, Lima 27, Peru, is an electric-distribution company serving southern Lima, Peru. LUZ is 61.16% owned by Ontario, 12.79% owned by POC and 1.927% owned by Energy Business International S.R.L. (“EBI”). LUZ is a FUCO.

**1.3.B.3.(a)(xvii)(A)(iii)(c)(i)(a)(i) Empresa de Distribucion Electrica de Canete S.A.** (“Edecanete”), a Peruvian sociedad anonima, has its executive offices at Av. 28 de Julio 386, San Vicente de Canete, Canete.<sup>192</sup> LUZ owns a 99.9999% interest and each of Tecsur S.A. and Inmobiliaria Luz del Sur S.A. owns a 0.00005% interest.

**1.3.B.3.(a)(xvii)(A)(iii)(c)(i)(a)(ii) Inmobiliaria Luz del Sur S.A.**, a Peruvian sociedad anonima, with principal executive offices at Av. 28 de Julio 386, San Vincente de Canete, Canete, Peru, is 99.9999% owned by LUZ.<sup>193</sup>

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<sup>189</sup> *CP&L Energy, Inc.* Holding Co. Act Release No. 27284 (Nov. 27, 2000) (allowing retention of intermediate entities holding interests in retainable non-utility businesses).

<sup>190</sup> *CP&L Energy, Inc.* Holding Co. Act Release No. 27284 (Nov. 27, 2000) (allowing retention of intermediate entities holding interests in retainable non-utility businesses).

<sup>191</sup> *New Century Energies, Inc.*, Holding Co. Act Release No. 26748 (Aug. 1, 1997) (authorizing retention of subsidiary engaged in marketing, developing, financing, constructing, managing and operating foreign exempt projects).

<sup>192</sup> *E.ON AG*, Holding Co. Act Release No. 27539 (June 14, 2002).

<sup>193</sup> *Id.*

**1.3.B.3.(a)(xvii)(A)(iii)(c)(i)(a)(iii) Luz del Sur International A. V. V.**, an Aruban company, with principal place of business at Zoutmanstraat 35, Oranjestad, Aruba, is wholly owned by LUZ.<sup>194</sup>

**1.3.B.3.(a)(xvii)(A)(iii)(c)(ii) Energy Business International S.R.L.** (“EBI”), a Peruvian company, with principal place of business at Av. Canaval y Moreyra 380 (piso 16), Lima 27, Peru, is a holding company with a 1.927% interest in LUZ. EBI is 99.966% owned by POC.

**1.3.B.3.(a)(xvii)(A)(iii)(c)(iii) PSEG Sempra Peruvian Services Company**, a Cayman Islands company, with its registered office at Ugland House, South Church Street, Georgetown, Grand Cayman, Cayman Islands, British West Indies, was formed for the purpose of investing in power facilities in Latin America. <sup>195</sup> PSEG Sempra Peruvian Services Company owns 99.8% of IeSE, and PSEG Sempra Peruvian Services Company II owns the remaining 0.2% of IeSE.

**1.3.B.3.(a)(xvii)(A)(iii)(c)(iii)(a) Inversiones en Servicios Electricos S.R.L.** (“IeSE”), a Peruvian company, with its registered office at Av. Camino Real No. 390, Oficina No. 801, Edificio Torre Central, Centro Camino Real, San Isidro, Lima 27, Peru, was formed for the purpose of investing in Latin America. <sup>196</sup> IeSE owns 51.79% of Tecsur S.A.

**1.3.B.3.(a)(xvii)(A)(iii)(c)(iii)(a)(i) Tecsur S.A.**, a Peruvian sociedad anonima, with executive offices at Pasaje Calango 158 San Juan De Miraflores, Lima, Peru, is an energy-related services company. <sup>197</sup> Ontario owns a 3.72% interest, POC owns a 31.51% interest, and IeSE owns a 51.79% interest, in Tecsur S.A.

**1.3.B.3.(a)(xvii)(A)(iii)(c)(iv) PSEG Sempra Peruvian Services Company II**, a Cayman Islands company, with its registered office at Ugland House, South Church Street, George Town, Grand Cayman, Cayman Islands, British West Indies, was formed for the purpose of investing in power facilities in Latin America. <sup>198</sup> PSEG Sempra Peruvian Services Company II owns 0.2% of IeSE.

**1.3.B.3.(a)(xvii)(A)(iii)(d) PSEG Cayman Americas IV Company**, a Cayman Islands company, with its registered office at Ugland House, South Church Street, George Town, Grand Cayman, Cayman Islands, British West Indies, was formed for the purpose of making future investments in Latin America and is wholly owned by PSEG Americas Ltd. <sup>199</sup>

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<sup>194</sup> *Id.*

<sup>195</sup> *New Century Energies, Inc.*, Holding Co. Act Release No. 26748 (Aug. 1, 1997) (authorizing retention of subsidiary engaged in marketing, developing, financing, constructing, managing and operating foreign exempt projects).

<sup>196</sup> *Id.*

<sup>197</sup> *E.ON AG*, Holding Co. Act Release No. 27539 (June 14, 2002).

<sup>198</sup> *New Century Energies, Inc.*, Holding Co. Act Release No. 26748 (Aug. 1, 1997) (authorizing retention of subsidiary engaged in marketing, developing, financing, constructing, managing and operating foreign exempt projects).

<sup>199</sup> *Id.*

**1.3.B.3.(a)(xvii)(A)(iii)(e) Servicios Tecnicos PSEG Chile Limitada**, a Chilean limited liability company, with its registered office at Isidora Goyenechea No. 3621, Piso 20, Las Condes, Santiago, Chile, was formed for the purpose of providing management services. <sup>200</sup> PSEG Americas Ltd. Owns 99.9% and Chilean Equity owns 0.1% of Servicios Tecnicos PSEG Chile Limitada.

**1.3.B.3.(a)(xviii) Inframax**, a Cayman Islands company, with its registered office at Ugland House, South Church Street, George Town, Grand Cayman, Cayman Islands, British West Indies, and is inactive.

**1.3.B.3.(a)(xix) PSEG Americas II Ltd.** a Bermuda company, with principal executive offices at Clarendon House, 2 Church Street, Hamilton, Bermuda, has one direct 50% owned subsidiary and one indirect 17.13% owned subsidiary, as described below. <sup>201</sup>

**1.3.B.3.(a)(xix)(A) Turbogeneradores de Venezuela, C.A. (“TGV”)**, a Venezuelan compania anonima, with principal executive offices at Avenida Francisco de Miranda, Torre Country Club, Chacaito, Caracas 1050, Venezuela, is 50% directly owned by PSEG Americas II Ltd. TGV owns 17.13% of Turbogeneradores Maracay, C.A. (TGM). <sup>202</sup>

**1.3.B.3.(a)(xix)(A)(i) Turbogeneradores Maracay, C.A. (“TGM”)**, a Venezuelan company with principal executive offices at Avenida Francisco de Miranda, Torre Country Club, Chacaito, Caracas 1050, Venezuela, owns an investment in a gas-fired electric power-generation facility in Maracay, Venezuela. <sup>203</sup> TGM is a FUCO.

**1.3.B.3.(a)(xx) PSEG China L.L.C.**, a Delaware limited liability company, with its registered office at 1209 Orange Street, Wilmington, Delaware 19801, is inactive.

**1.3.B.3.(a)(xxi) PSEG Salalah L.L.C.**, a Delaware limited liability company, with its registered office at 1209 Orange Street, Wilmington, Delaware 19801, has the following direct and indirect wholly owned and partially owned subsidiaries:<sup>204</sup>

**1.3.B.3.(a)(xxi)(A) Salalah Power Holdings, Ltd.**, a Bermuda limited liability company, with principal executive offices at Clarendon House, 2 Church Street, Hamilton, Bermuda, is wholly owned by PSEG Salalah L.L.C. and has the following direct and indirect wholly owned and partially owned subsidiaries: <sup>205</sup>

**1.3.B.3.(a)(xxi)(A)(i) Dhofar Power Company S.A.O.C. (“Dhofar Power”)**, an Oman company , with its registered office at Hormuz Building, 5th Floor, Ruwi Roundabout, Ruwi, Muscat,

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<sup>200</sup> *Id.*

<sup>201</sup> *CP&L Energy, Inc. Holding Co. Act Release No. 27284 (Nov. 27, 2000) (allowing retention of intermediate entities holding interests in retainable non-utility businesses).*

<sup>202</sup> *Id.*

<sup>203</sup> *Id.*

<sup>204</sup> *CP&L Energy, Inc. Holding Co. Act Release No. 27284 (Nov. 27, 2000) (allowing retention of intermediate entities holding interests in retainable non-utility businesses).*

<sup>205</sup> *Id.*

Oman, was formed for the purpose of investing in power facilities in Oman. Dhofar Power is 81% owned by Salalah Power Holdings, Ltd. Dhofar Power owns a 99.99% interest in Dhofar Generating Company S.A.O.C. (“Dhofar Generating”). Dhofar Power is a FUCO.

**1.3.B.3.(a)(xxi)(A)(i)(a) Dhofar Generating Company S.A.O.C.** (“Dhofar Generating”), an Oman company, with its registered office at Hormuz Building, 5th Floor, Ruwi Roundabout, Ruwi, Muscat, Oman, was formed for the purpose of investing in power facilities in Oman. <sup>206</sup> Dhofar Generating is an EWG.

**1.3.B.3.(a)(xxii) PSEG Argentina Holding Company LLC**, a Delaware limited liability company, with its registered office at 1209 Orange Street, Wilmington, Delaware 19801, was formed for the purpose of investing in Latin America. <sup>207</sup>

**1.3.B.3.(a)(xxiii) PSEG Cayman Americas I Company**, a Cayman Islands company, with its registered office at Ugland House, South Church Street, George Town, Grand Cayman, Cayman Islands, British West Indies, has one 99.99% subsidiary as described below. <sup>208</sup> PSEG Cayman Americas II Company owns the remaining 0.01%.

**1.3.B.3.(a)(xxiv) PSEG Cayman Americas II Company**, a Cayman Islands company, with its registered office at Ugland House, South Church Street, George Town, Grand Cayman, Cayman Islands, British West Indies, owns 0.01% of PSEG Operadora S.R.L. <sup>209</sup>

**1.3.B.3.(a)(xxv) PSEG Edeersa Company**, a Cayman Islands company, with its registered office at Ugland House, South Church Street, George Town, Grand Cayman, Cayman Islands, British West Indies is wholly owned by PSEG Americas Ltd. and is inactive.

**1.3.B.3.(a)(xxvi) PSEG Chile Generation Ltd.**, a Bermuda company, with principal executive offices at Clarendon House, 2 Church Street, Hamilton, Bermuda, is being used for the purpose of investing in power facilities in Chile and has one direct subsidiary, as described below. <sup>210</sup>

**1.3.B.3.(a)(xxvi)(A) Compania de Generacion del Sur S.A.**, a Chilean sociedad anonima, with its registered office at Miraflores 222, Piso 24, Santiago, Chile, was formed for the purpose of investing in Latin America.<sup>211</sup> Compania de Generacion del Sur S.A. is 99% owned by PSEG Chile Generation Ltd. and 1% owned by PSEG Brazil II Company.

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<sup>206</sup> *New Century Energies, Inc.*, Holding Co. Act Release No. 26748 (Aug. 1, 1997) (authorizing retention of subsidiary engaged in marketing, developing, financing, constructing, managing and operating foreign exempt projects).

<sup>207</sup> *Id.*

<sup>208</sup> *CP&L Energy, Inc.* Holding Co. Act Release No. 27284 (Nov. 27, 2000) (allowing retention of intermediate entities holding interests in retainable non-utility businesses).

<sup>209</sup> *Id.*

<sup>210</sup> *New Century Energies, Inc.*, Holding Co. Act Release No. 26748 (Aug. 1, 1997) (authorizing retention of subsidiary engaged in marketing, developing, financing, constructing, managing and operating foreign exempt projects).

<sup>211</sup> *Id.*

**1.3.B.3.(a)(xxvii) PSEG Uruguay Sociedad de Responsabilidad Limitada**, an Uruguayan limited liability company, with its registered office at Avenida 18 de julio 984, 4. Piso, Palacio Brasil, Montevideo, 11100, Uruguay, is inactive. PSEG Americas Ltd. owns 99% of PSEG Uruguay S.R.L. and Andina Mendoza Company owns the remaining 1%. PSEG Uruguay Sociedad de Responsabilidad Limitada has the following, wholly owned subsidiaries:

**1.3.B.3.(a)(xxvii)(A) PSEG Spain S.L.**, a Spanish limited liability company, with its registered office at Plaza de Pablo Ruiz Picasso, Sin Numero, Torre Picasso, Planta 5a, Madrid, 28020, Spain, is inactive.

**1.3.B.3.(a)(xxvii)(B) PSEG Uruguay Finance Company**, a Cayman Islands company, with its registered office at Ugland House, South Church Street, George Town, Grand Cayman, Cayman Islands, British West Indies, is inactive.

**1.3.B.4. PSEG India Company**, a Cayman Islands company, with its registered office at Ugland House, South Church Street, George Town, Grand Cayman, Cayman Islands, British West Indies, has one direct wholly owned subsidiary and several indirect wholly owned and partially owned subsidiaries, as described below.<sup>212</sup>

**1.3.B.4.(a) PSEG EAMS Ltd.**, a Mauritius company, with its registered office at 608 St. James Court, St. Denis Street, Port Louis, Mauritius, is a wholly owned subsidiary of PSEG India Company and has two direct wholly owned subsidiaries, one indirect partially owned subsidiary, and one indirect wholly owned subsidiary, as described below.<sup>213</sup>

**1.3.B.4.(a)(i) PSEG Operations Ltd.**, a Mauritius company, with its registered office at 608 St. James Court, St. Denis Street, Port Louis, Mauritius, has the following direct partially owned subsidiary:<sup>214</sup>

**1.3.B.4.(a)(i)(A) PSEG PPN Operations Private Limited** (“PPN Operations”), an Indian company, with its registered office at Prince Towers’, Floor 9, 25-26, College Road, Chennai, India 600 006, was formed for the purpose of operation and maintenance of power facilities in India.<sup>215</sup> PSEG Ambalamugal Energy Company Ltd. owns one share of PPN Operations. PPN Operations is an EWG.

**1.3.B.4.(a)(ii) PSEG PPN Energy Company Ltd.** (“PPN Energy”), a Mauritius company, with its registered office at 608 St. James Court, St. Denis Street, Port Louis, Mauritius, was formed for the purpose of investing in power facilities in India.<sup>216</sup> PPN Energy has a 20% ownership

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<sup>212</sup> *CP&L Energy, Inc.*, Holding Co. Act Release No. 27284 (Nov. 27, 2000) (allowing retention of intermediate entities holding interests in retainable non-utility businesses).

<sup>213</sup> *Id.*

<sup>214</sup> *Id.*

<sup>215</sup> *New Century Energies, Inc.*, Holding Co. Act Release No. 26748 (Aug. 1, 1997) (authorizing retention of subsidiary engaged in marketing, developing, financing, constructing, managing and operating foreign exempt projects).

<sup>216</sup> *Id.*

interest in PPN Power Generating Company Limited (“PPN PGC”), as described below. PPN Energy is an EWG.

**1.3.B.4.(a)(ii)(A) PPN Power Generating Company Limited (“PPN PGC”)**, an Indian company, with its registered office at Jhaver Plaza III Floor, I A Nungambakkam High Road, Nungambakkam, Chennai, India 600034, was formed for the purpose of owning and operating power facilities in India.<sup>217</sup>

**1.3.B.5. PSEG Europe (Delaware) LLC (“PEDLLC”)**, a Delaware limited liability company, with its registered office at 1209 Orange Street, Wilmington, Delaware 19801, has the following direct and indirect wholly owned and partially owned subsidiaries:<sup>218</sup>

**1.3.B.5.(a) PSEG Europe B.V.**, a Dutch company, with principal executive offices at Weena 340, 3012 NJ Rotterdam, The Netherlands, is a direct wholly owned subsidiary of PEDLLC and has the following direct wholly owned subsidiaries, 99% owned subsidiaries, and indirect subsidiaries:<sup>219</sup>

**1.3.B.5.(a)(i) PSEG Investments B.V.**, a Dutch company, with principal executive offices at Weena 340, 3012 NJ Rotterdam, The Netherlands, was formed for the purpose of investing in power facilities in Turkey.<sup>220</sup> PSEG Europe B.V. owns 99% of PSEG Investments B.V. and PEDLLC owns 1%.

**1.3.B.5.(a)(i)(A) Konya Ilgin Elektrik Uretim ve Ticaret Ltd. Sti.**, a Turkish company, with registered address at Piyade Sk. 18 C Blok Flat No. 9, Cankaya, Akara, Turkey, was formed for the purpose of investing in Turkey.<sup>221</sup> PSEG Investments B.V. owns 99% of Konya Ilgin Elektrik Uretim ve Ticaret Ltd. Sti., and PSEG Turkey B.V. owns 1%.

**1.3.B.5.(a)(ii) PSEG Silesia B.V.**, a Dutch company, with principal executive offices at Weena 340, 3012 NJ Rotterdam, The Netherlands, has the following two wholly owned and one partially owned subsidiaries:<sup>222</sup>

**1.3.B.5.(a)(ii)(A) PSEG Chorzow B.V.**, a Dutch company and an EWG, with principal executive offices at Weena 340, 3012 NJ Rotterdam, The Netherlands, has a 75.196% interest in Elektrocieplownia Chorzow ELCHO Sp. z o.o.

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<sup>217</sup> *Id.*

<sup>218</sup> *CP&L Energy, Inc. Holding Co. Act Release No. 27284 (Nov. 27, 2000) (allowing retention of intermediate entities holding interests in retainable non-utility businesses).*

<sup>219</sup> *Id.*

<sup>220</sup> *New Century Energies, Inc., Holding Co. Act Release No. 26748 (Aug. 1, 1997) (authorizing retention of subsidiary engaged in marketing, developing, financing, constructing, managing and operating foreign exempt projects).*

<sup>221</sup> *Id.*

<sup>222</sup> *CP&L Energy, Inc. Holding Co. Act Release No. 27284 (Nov. 27, 2000) (allowing retention of intermediate entities holding interests in retainable non-utility businesses).*



**1.3.B.5.(a)(ii)(A)(i) Elektrociepłownia Chorzow ELCHO Sp. z o.o.**, a Polish company, with principal executive offices at ul. Kosciuszki 6, 41-500 Chorzow, Poland, is developing a coal-fired power station in Chorzow, Poland, and upon completion of the facility is expected to qualify as an EWG.

**1.3.B.5.(a)(iii) PSEG Turkey B.V.**, formerly Konya Ilgin Electric Production B.V., a Netherlands company, with principal, executive offices at Weena 340, 3012 NJ Rotterdam, The Netherlands, was formed for the purpose of investing in power facilities in Turkey.<sup>223</sup> PSEG Europe B.V. owns 99% of PSEG Turkey B.V. and PEDLLC own 1%.

**1.3.B.5.(a)(iv) PSEG Italia B.V.**, a Dutch company, with principal executive offices at Weena 340, 3012 NJ Rotterdam, The Netherlands, was formed for the purpose of investing in power facilities in Italy.<sup>224</sup> PSEG Italia B.V. owns a 50% interest in Prisma 2000 S.p.A. (Prisma) and an indirect interest in the following subsidiaries of Prisma.

**1.3.B.5.(a)(iv)(A) Prisma 2000 S.p.A.** (“Prisma”), an Italian company, with its registered office at Via G. de Castro, 4-20144 Milan, Italy, was formed for the purpose of construction, operation and maintenance of investing in power projects in Italy.<sup>225</sup> Prisma has the following direct wholly owned and partially owned subsidiaries:

**1.3.B.5.(a)(iv)(A)(i) Cellulosa Calabria S.p.A.**, an Italian company, with its registered office at Strada Statale 106, Zona Industriale 88900 Crotona, Italy, procures fuel for Biomasse Italia S.p.A., and is 50% owned by Prisma.<sup>226</sup>

**1.3.B.5.(a)(iv)(A)(ii) Energ S.p.A.**, an Italian company, with its registered office at Piazzetta Duca d’Aosta, n. 265, Napoli, Italy, currently holds a contract to sell power in Italy and is 50% owned by Prisma.<sup>227</sup>

**1.3.B.5.(a)(iv)(A)(iii) San Marco Bioenergia S.p.A.** (“San Marco”), an Italian company, with its registered office at Via G. de Castro, 4-20144 Milan, Italy, was formed for the purpose of investing in power facilities in Italy and is 99.8% owned by Prisma. San Marco is an EWG.

**1.3.B.5.(a)(iv)(A)(iv) Idrogest S.p.A.**, an Italian company, with its registered office at Via Piemonte 117, Roma, Italy, is inactive.

**1.3.B.5.(a)(iv)(A)(v) Elettrica Centro Nord S.r.l.**, an Italian company, with its registered office at Viale Lunigiana, n. 46, Milano, Italy, is inactive.

**1.3.B.5.(a)(iv)(A)(vi) Sicob Energia S.r.l.**, an Italian company, with its registered office at Viale Lunigiana, n. 46, Milano, Italy, is inactive.

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<sup>223</sup> *New Century Energies, Inc.*, Holding Co. Act Release No. 26748 (Aug. 1, 1997) (authorizing retention of subsidiary engaged in marketing, developing, financing, constructing, managing and operating foreign exempt projects).

<sup>224</sup> *Id.*

<sup>225</sup> *Id.*

<sup>226</sup> *Id.*

<sup>227</sup> *Id.*

**1.3.B.5.(a)(iv)(A)(vii) Ecogen S.p.A.**, an Italian company, with registered address at Strada Cipata 118, 46100, Mantova, Italy, is inactive.

**1.3.B.5.(a)(iv)(A)(viii) Biomasse Italia S.p.A.**, (“Biomasse Italia”), an Italian company and an EWG, with its registered office at Strada Statale 106, Zona Industriale, 88900-Crotone, Italy, was formed for the purpose of investing in power facilities in Italy.<sup>228</sup> Prisma owns a 50% interest in Biomasse Italia S.p.A. Biomasse Italia has a wholly owned subsidiary as described below. Biomasse Italia is an EWG.

**1.3.B.5.(a)(iv)(A)(viii)(a) Pontedera Energia S.p.A.**, an Italian company, with its registered office at Via Carducci 8, Empoli (FI), Firenze, Italy, is inactive.

**1.3.B.5.(a)(iv)(A)(ix) Monteleone Energia S.r.l.**, with its registered office at Via Bernardo Dovizi 40/D, Arezzo, 52100, Italy, is inactive.

**1.3.B.5.(a)(v) PSEG Poland Distribution B.V.** (“PSEG Poland”), a Dutch company, with principal executive offices at Weena 340, 3012 NJ Rotterdam, The Netherlands, owns approximately 75% of Elektrownia Skawina, S.A. (“Skawina”). PSEG Poland is an EWG.

**1.3.B.5.(a)(v)(A) Elektrownia Skawina, S.A.**, (“Skawina”), a Polish company, with its registered offices at ul. Pilsudskiego 10, Skawina, 32-050, Skawina, Poland, owns and operates a coal-fired power station at Skawina, Poland, and has the following partially owned subsidiaries.

**1.3.B.5.(a)(v)(A)(i) Bank Inicjatyw Społeczno-Ekonomicznych S.A.**, a Polish company that owns and operates a bank, with its registered office at ul. Dubois 5A, Warszawa, 00-184, Poland, is 0.29% owned by Skawina.

**1.3.B.5.(a)(v)(A)(ii) Przedsiębiorstwo Produkcji Usług i Handlu “PREVAR” Sp. z o.o.** (“PREVAR”), a Polish company, with its registered office at ul. Energetykow 1, Skawina, 32-050, Poland, is 28.77% owned by Skawina. PREVAR receives waste ash from Skawina’s generation facility and uses this waste ash to manufacture construction blocks, which it sells to third parties.

**1.3.B.5.(a)(v)(A)(iii) Concorde Investissement S.A.**, a Polish insurance company that also owns real estate, with its registered office at ul. Modzelewskiego 27, Warszawa, 02-679, Poland, is 0.11% owned by Skawina.

**1.3.B.5.(a)(vi) PSEG Europe V B.V.** a Dutch company, with principal, executive offices at Weena 340, 3012 NJ Rotterdam, The Netherlands, is inactive.

**1.3.C. Enterprise Group Development Corporation** (“EGDC”), a New Jersey corporation, with principal executive offices at 80 Park Plaza, Newark, New Jersey 07102, a nonresidential real-estate property-management business. EGDC holds an 11-acre parcel of land in PSE&G’s service territory in New Jersey which has been approved for development for office or hotel space. EGDC is actively seeking purchasers for the land and related development rights. EGDC will not itself pursue development of this property nor will it manage development activities pursued by others.<sup>229</sup> EGDC holds a \$5 million promissory note from the sale of a commercial

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<sup>228</sup> *Id.*

<sup>229</sup> Applicants undertake to divest ownership of the referenced parcel within three years of the date of the order in this matter.

development land parcel formerly owned by EGDC.<sup>230</sup> Otherwise, EGDC operates solely as a holding company for its nine direct subsidiaries, all of which are wholly owned by EGDC unless otherwise indicated.

**1.3.C.1. EGDC - Concourse, Incorporated** (“Concourse”), a Florida corporation, with principal executive offices at 80 Park Plaza, Newark, New Jersey 07102, is inactive.

**1.3.C.2. EGDC – Fairfax, Incorporated** (“Fairfax”), a Virginia corporation, has principal executive offices at 80 Park Plaza, Newark, New Jersey 07102. Fairfax is inactive.

**1.3.C.3. State Street Square Urban Renewal Partners** (“SSSURPI”), a New Jersey general partnership, with principal executive offices at 50 West State Street, Trenton, New Jersey 08608, owns land and improvements comprising one phase of a commercial-office complex in Trenton, New Jersey. EGDC is an 80% general partner in this partnership. State Street Square is an urban renewal development undertaking in Trenton, New Jersey, the state capital and a major city in PSE&G’s service territory. The State of New Jersey is the major tenant in the two buildings and undeveloped land is included which is currently used for surface parking. Possible development of further office space has received local zoning and other approvals. Ownership of the State Street Square land and buildings is held by SSURPI and the three other partnerships identified in items 1.3.C.4, 1.3.C.5 and 1.3.C.6. EGDC’s involvement in State Street Square is an ongoing and important commitment to community and civic development in Trenton, New Jersey. Further development activities at the State Street Square are not currently under active consideration by EGDC.<sup>231</sup>

**1.3.C.4. State Street Square Urban Renewal Partners II** (“SSSURPII”), a New Jersey general partnership, with principal executive offices at 50 West State Street, Trenton, New Jersey 08608, owns vacant land currently used for surface parking comprising one phase of a commercial-office complex in Trenton, New Jersey.<sup>232</sup> EGDC is an 80% general partner in this partnership. See item 1.3.C.3 for additional information.

**1.3.C.5. State Street Square Partners III** (“SSSIII”), a New Jersey general partnership, with principal executive offices at 50 West State Street, Trenton, New Jersey 08608, owns land in Trenton, New Jersey. EGDC is an 80% general partner in this partnership.<sup>233</sup> See item 1.3.C.3 for additional information.

**1.3.C.6. State Street Square NSB Partners** (“SSSNSB”), a New Jersey general partnership, with principal executive offices at 50 West State Street, Trenton, New Jersey 08608, owns the former National State Bank Building in Trenton, New Jersey.<sup>234</sup> EGDC is an 80% general partner in this partnership. See item 1.3.C.3 for additional information.

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<sup>230</sup> See Rule 40(a)(3).

<sup>231</sup> These interests are retainable as a community and civic development investment in PSE&G’s service territory under the 1997 Ameren Order and the Exelon Merger Order.

<sup>232</sup> *Id.*

<sup>233</sup> *Id.*

<sup>234</sup> *Id.*

**1.3.C.7. State Street Square 36 West Partners** (“SSS36W”), a New Jersey general partnership, with principal executive offices at 50 West State Street, Trenton, New Jersey 08608, is inactive. EGDC is an 80% general partner in this partnership.

**1.3.C.8. EGDC – Largo Incorporated** (“Largo”), a Maryland corporation, with principal executive offices at 80 Park Plaza, Newark, New Jersey 07102, owns land in Maryland which has been approved for commercial and/or residential development. One parcel is under contract of sale to a developer for residential development. Largo is actively seeking purchasers for the remaining parcel. Largo will not itself pursue development of these parcels nor will it manage development activities pursued by others.<sup>235</sup>

**1.3.C.9. EGDC – Largo Management Incorporated** (“Largo Management”), a Maryland corporation, with principal executive offices at 80 Park Plaza, Newark, New Jersey 07102, is inactive.

**1.3.D. PSEG Energy Technologies Asset Management Company LLC** (“PETAMC”), a New Jersey limited liability company, has its principal executive office at 80 Park Plaza Newark, New Jersey 07102. PETAMC is a single member limited liability company with the sole member being Energy Holdings. PETAMC has the following direct subsidiaries, all of which were formed to hold assets of a former subsidiary of PSEG Energy Holdings, PSEG Energy Technologies, Inc. All are inactive.

**1.3.D.1. PSEG Energy Technologies Asset Service Company LLC**, with principal, executive office at 80 Park Plaza Newark, New Jersey 07102.

**1.3.D.2. PSEG Energy Technologies Demand Management Assets Company LLC**, with principal, executive office at 80 Park Plaza Newark, New Jersey 07102.

**1.3.D.3. The Dowling Group, Inc.**, with principal executive office at 80 Park Plaza Newark, New Jersey 07102.

**1.3.D.4. McBride Energy Service Company, LLC**, with principal executive office at 80 Park Plaza Newark, New Jersey 07102.

**1.3.D.5. PSEG ET 211 S. Broad Street Company, LLC**, with principal executive office at 80 Park Plaza Newark, New Jersey 07102.

**1.3.D.6. PSEG ET One NFL Plaza Company LLC**, with principal executive office at 80 Park Plaza Newark, New Jersey 07102.

**1.3.D.7. KHS Holding Corp.**, with principal executive office at 80 Park Plaza Newark, New Jersey 07102.

**1.3.E. PSEG Capital Corporation** (“Capital”), a New Jersey corporation, with principal executive offices at 80 Park Plaza, Newark, New Jersey 07102, is a wholly owned, financing subsidiary of PSEG Energy Holdings, is inactive and is in the process of being dissolved.

**1.3.F. Enterprise Capital Funding Corporation** (“Funding”), a New Jersey corporation, with principal executive offices at 80 Park Plaza, Newark, New Jersey 07102, is a wholly owned

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<sup>235</sup> Applicants undertake to divest ownership of the referenced parcel within three years of the order in this matter.

subsidiary of PSEG Energy Holdings and formerly served as a capital financing vehicle for PSEG Energy Holdings. Funding is inactive and is in the process of being dissolved.

**1.4. PSEG Services**, a New Jersey corporation with principal executive offices at 80 Park Plaza, Newark, New Jersey 07102, is a wholly owned subsidiary of PSEG. As noted previously, it is contemplated that PSEG Services will sell all of its assets to Exelon BSC, change its name, and remain as an inactive subsidiary.

**1.5. Enterprise Capital Trust I**, a Delaware Trust has its principal executive offices at 80 Park Plaza, Newark, New Jersey 07102, was formed for financing purposes and is currently active.<sup>236</sup>

**1.6. Enterprise Capital Trust II**, a Delaware Trust has its principal executive offices at 80 Park Plaza, Newark, New Jersey 07102, was formed for financing purposes and is currently active.<sup>237</sup>

**1.7. Enterprise Capital Trust III**, a Delaware Trust has its principal executive offices at 80 Park Plaza, Newark, New Jersey 07102, was formed for financing purposes and is currently active.<sup>238</sup>

**1.8. Enterprise Capital Trust IV**, a Delaware Trust has its principal executive offices at 80 Park Plaza, Newark, New Jersey 07102, was formed for financing purposes and is inactive.<sup>239</sup>

**1.9. Enterprise Capital Trust V**, a Delaware Trust has its principal executive offices at 80 Park Plaza, Newark, New Jersey 07102, was formed for financing purposes and is inactive.

**1.10. PSEG Funding Trust I**, a Delaware Trust has its principal executive offices at 80 Park Plaza, Newark, New Jersey 07102, was formed for financing purposes and is currently active.<sup>240</sup>

**1.11. PSEG Funding Trust II**, a Delaware Trust, has its principal executive offices at 80 Park Plaza, Newark, New Jersey 07102, was formed for financing purposes and is currently active.<sup>241</sup>

**1.12. PSEG Funding Trust III**, a Delaware Trust, has its principal executive offices at 80 Park Plaza, Newark, New Jersey 07102, was formed for financing purposes and is inactive.

**1.13. PSEG Funding Trust IV**, a Delaware Trust, has its principal executive offices at 80 Park Plaza, Newark, New Jersey 07102, was formed for financing purposes and is inactive.

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<sup>236</sup> See *CenterPoint Energy, Inc.*, Holding Co. Act Release No. 27548 (July 5, 2002) (authorizing the retention of financing subsidiaries).

<sup>237</sup> *Id.*

<sup>238</sup> *Id.*

<sup>239</sup> *Id.*

<sup>240</sup> *Id.*

<sup>241</sup> *Id.*

Filings Under the Public Utility Holding Company Act of 1935, as amended (“Act”)

SECURITIES AND EXCHANGE COMMISSION

March \_\_, 2005

Notice is hereby given that the following filing(s) has/have been made with the Securities and Exchange Commission (the “Commission”) pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments is/are available for public inspection through the Commission’s Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by \_\_\_\_\_, 2005, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549-0609 and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After \_\_\_\_\_, 2005, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Exelon Corporation, a registered holding company under the Act (“Exelon”), and Public Service Enterprise Group Incorporated (“PSEG”), an electric and gas utility holding company that claims exemption from registration pursuant to Rule 2 under Section 3(a)(1) of the Act, on behalf of certain of their respective subsidiaries (collectively, the “Applicants”), have filed an application/declaration (the “Application”) for the purpose of obtaining approval to engage in various transactions related to the merger of Exelon and PSEG.

On December 20, 2004, Exelon and PSEG entered into an Agreement and Plan of Merger (the “Merger Agreement”). Pursuant to the terms of the Merger Agreement, 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 cash in lieu of any fraction of an Exelon share that a PSEG shareholder would have otherwise been entitled to receive. Exelon common stock will be unaffected by the Merger, with each issued and outstanding share remaining outstanding following the Merger as a share in the surviving company. Upon completion of the Merger, Exelon will change its name to Exelon Electric & Gas Corporation.<sup>1</sup>

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<sup>1</sup> As appropriate in the context, the term “Exelon” refers variously to Exelon Corporation pre-Merger and to Exelon Electric & Gas Corporation post-Merger.

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As the surviving company in the Merger, Exelon will remain the ultimate corporate parent of PECO Energy Company (“PECO”) and Commonwealth Edison Company (“ComEd”) and the other Exelon subsidiaries and become the ultimate corporate parent of Public Service Electric and Gas Company (“PSE&G”), a public-utility company under the Act, and the other PSEG subsidiaries.

Exelon will continue to be a registered public utility holding company under the Act, and ComEd, PECO and PSE&G will continue to be operating franchised utility companies. Exelon 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.

The Merger is subject to a number of usual and customary conditions precedent, including receipt by the parties of required state and federal regulatory approvals and filing of pre-merger notification statements under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, and the expiration or termination of the statutory waiting period thereunder. The boards of directors of Exelon and PSEG have approved the proposed Merger, which will also require approval of the issuance of shares of common stock by Exelon required by the Merger Agreement by the shareholders of Exelon and approval of the Merger by the shareholders of PSEG. In a separate application in File No. 70-10291, Exelon is seeking approval for solicitation of proxies in connection with the Merger and certain employee and director plan changes and to amend its Amended and Restated Articles of Incorporation to increase its shares of authorized common stock to 2,000,000,000.

In addition to the changes resulting from the Merger Agreement, the Applicants intend to revise their corporate structure (the “Exelon Generation Restructuring”). Although their plans are not yet completely finalized, the Applicants currently propose to implement the following changes, subject to approval, as required, by the Commission. After obtaining necessary approvals and third party consents, PSEG Power LLC and its direct subsidiaries, PSEG Nuclear LLC, PSEG Fossil LLC and PSEG Energy Resources & Trade LLC, will all cease to exist as separate entities and will become part of Exelon Generation Company, LLC (“Exelon Generation”). The business functions of each of these former PSEG entities will become a part of the respective Exelon Generation business unit. It is anticipated that the subsidiaries owned by these PSEG entities will be retained as direct subsidiaries of Exelon Generation.

Also in connection with the Merger, PSE&G will become a direct subsidiary of Exelon Energy Delivery Company, LLC. The current subsidiaries of PSE&G will remain intact. PSEG Energy Holdings LLC (“PSEG Holdings”) will become a subsidiary of Exelon, as the successor to PSEG. The current subsidiaries of PSEG Holdings will remain intact. PSEG Services Corporation 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 Exelon.

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Exelon and PSEG have proposed a plan to mitigate any generation market concentration concerns resulting from the Merger, which calls for Exelon to divest certain generation capacity. The sale of this generating capacity will occur as soon as possible within 18 months following close of the Merger. Approval of the Commission will be required for the disposition of this generation capacity because, as a result of the Exelon Generation Restructuring, this generation capacity will be owned by Exelon Generation, a public utility under the Act. The disposition of generation capacity owed by Exelon Generation is referred to as the "Generation Divestiture."

In addition to authorization of the Merger, the Exelon Generation Restructuring, and the Generation Divestiture, Applicants are requesting certain related approvals, including:

1. Authorizations related to service company and other affiliate transactions.
2. Issuance by Exelon of common stock in connection with the Merger and employee and director compensation plans.
3. Authorization to the extent required of the consolidation (or replacement in lieu of consolidation) of existing indebtedness and obligations of PSEG and its subsidiaries as obligations of Exelon or its subsidiaries as a result of the Merger.
4. Necessary modifications to Exelon's existing omnibus financing authority granted by order of April 1, 2004 in Holding Company Act Release No. 27830.

The filing and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by \_\_\_\_, 2005 to the Secretary, Securities and Exchange Commission, 450 Fifth St., N.W., Washington, D.C. 20549.