

**BEFORE THE STATE OF NEW JERSEY
OFFICE OF ADMINISTRATIVE LAW
BOARD OF PUBLIC UTILITIES**

**I/M/O THE JOINT PETITION OF PUBLIC)
SERVICE ELECTRIC AND GAS COMPANY) BPU DKT. NO. EM05020106
AND EXELON CORPORATION FOR) OAL DKT. NO. PUC-1874-05
APPROVAL OF A CHANGE IN CONTROL)
OF PUBLIC SERVICE ELECTRIC AND GAS)
COMPANY AND RELATED AUTHORIZATIONS)**

**SURREBUTTAL TESTIMONY OF NANCY BROCKWAY
ON BEHALF OF THE
NEW JERSEY DIVISION OF THE RATEPAYER ADVOCATE
REGARDING OVERALL POLICY ISSUES**

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1 **I/M/O THE JOINT PETITION OF PUBLIC SERVICE ELECTRIC AND GAS COMPANY**
2 **AND EXELON CORPORATION FOR APPROVAL OF A CHANGE IN CONTROL OF**
3 **PUBLIC SERVICE ELECTRIC AND GAS COMPANY AND RELATED AUTHORIZATIONS**
4 **BPU DOCKET No. EM05020106**
5 **OAL DOCKET No. PUC-1874-05**
6
7

8 **SURREBUTTAL TESTIMONY OF NANCY BROCKWAY**
9 **ON BEHALF OF NEW JERSEY RATEPAYER ADVOCATE**
10

11 **Q. Please state your name, affiliation and address.**

12
13 A. My name is Nancy Brockway. I am the principal of NBrockway & Associates, 10
14 Allen Street, Boston, MA 02131.

15 **Q. On whose behalf are you testifying in this proceeding?**

16
17 A. I am testifying on behalf of the New Jersey Division of the Ratepayer Advocate
18 (Ratepayer Advocate).

19 **Q. Have you previously filed testimony in this proceeding?**

20
21 A. Yes. On November 14, 2005, I filed Direct Testimony on service quality and
22 reliability issues. On November 28, 2005, I filed Direct Testimony on overall
23 policy issues.

24 **Q. What is the purpose of this Surrebuttal testimony?**

25
26 A. In this testimony, I reply to the Rebuttal testimonies of John Rowe, James
27 Ferland, Ralph Izzo, Gregory Sidak, Bernard Anderson, Michael Schnitzer, and
28 William Arndt.

29 **Q. How is your testimony organized?**

30
31 A. I begin by setting out the two key and complementary issues at stake in this
32 proceeding for the Board of Public Utilities (Board or BPU) and for New Jersey.
33 First, Joint Petitioners claim their merger will create benefits, but they refuse to

1 share the benefits; and second, Joint Petitioners' merger would create risks for
2 New Jersey, but they offer neither protections nor offsetting rewards. The balance
3 of my Surrebuttal shows how the Joint Petitioners' extensive testimony
4 continually returns to one or both of these untenable positions.

5 I affirm the conclusion I reached in my Direct Testimony: the Joint
6 Petitioners have not shown that the proposed merger will bring positive benefits
7 to New Jersey. Therefore, the merger should not be approved. I also reaffirm the
8 recommendation that, if Your Honor and the Board are inclined to approve the
9 merger nonetheless, the closing should await the resolution of financial issues
10 facing Commonwealth Edison (ComEd), Exelon's flagship utility in Chicago.
11 Finally, I reaffirm the broad outlines of an alternative formulation for the merger
12 in the event that Your Honor and the Board are inclined to approve the merger.
13 This alternative is intended to assure that promised benefits are fairly shared, and
14 that New Jersey has some protection against the risks posed by the merger.

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WHAT IS AT STAKE IN THIS PROCEEDING

- 20 **Q. Please outline the two fundamental issues at stake in this proceeding for the**
21 **Board and for New Jersey.**
- 22
- 23 A. Underneath the pages of rhetoric and data, what this case comes down to in the
24 end is whether the claimed benefits of the merger will in fact be shared fairly with
25 New Jersey consumers, and whether New Jersey will be protected from the
26 potential risks of the merger. Joint Petitioners propose to do neither. At bottom,
27 on issue after issue, the Joint Petitioners' position is either a claim of merger

1 benefits with no assurance of sharing, or a denial of merger risks with no
2 protection in case the risks appear.

3 **Q. Please summarize the Joint Petitioners' "claimed benefit but no sharing"**
4 **posture with respect to their synergy testimony.**

5
6 A. Joint Petitioners go to great lengths to argue that the merger will bring operational
7 synergies, leading to cost savings. They claim to have great confidence that such
8 synergies are possible, at no cost to operational quality, in the amounts they
9 estimate. However, they offer no rate reductions to reflect any sharing of these
10 benefits. Either they are not as confident as they would have us believe, or they
11 merely want to hold open the chance that they will not in the future be forced to
12 share the benefits.

13 **Q. How does the recommendation you and David Peterson made in your**
14 **November 28, 2005 testimony for the Ratepayer Advocate supply the missing**
15 **assurance to consumers?**

16
17 A. Mr. Peterson and I propose that PSE&G's rates be reduced by the annual savings
18 that should be forthcoming in the early years, given Joint Petitioners' estimates of
19 the sources of synergy savings, corrected for policy errors in Joint Petitioners'
20 calculation of the amounts due ratepayers. In Rebuttal, Joint Petitioners quibble
21 at great lengths with Mr. Peterson's dollar amounts and what should or should not
22 be reflected in a merger synergy study. More importantly, however, they reject
23 the proposal to lock in *any* savings for PSE&G ratepayers. Mr. Rowe alludes to a
24 willingness to do so, but evidently he is only open to such a thought in the context
25 of a settlement. Joint Petitioners will not back up their claims with real money on
26 the public record of this docket. Your Honor and the Board are entitled to treat

1 the claimed benefits with skepticism, given the unwillingness of the Joint
2 Petitioners to stand behind them.

3 **Q. Mr. Rowe complains that reducing rates now to flow through merger**
4 **synergies will subject PSE&G to the risk that the savings will be returned to**
5 **customers not once, but twice. Rowe Rebuttal at 8. Is his concern valid?**

6
7 A. Mr. Rowe does not explain how ratepayers could double-dip at PSE&G's
8 expense. Application of ordinary ratemaking principles should protect PSE&G.
9 If rates are reduced to capture expected merger synergy savings, then in the next
10 rate case of PSE&G, revenues will be lower. Costs will be what they are. The
11 gap between revenues and revenue requirements will be greater by the amount of
12 savings flow-through already built into rates. PSE&G will be entitled to the
13 difference between costs and revenues. There will be no duplicate flow-through
14 of cost savings.

15 **Q. Please summarize the Joint Petitioners' "claimed benefit but no sharing"**
16 **posture with respect to the benefits of increased nuclear output.**

17
18 A. Here, as in the case of operational synergies, Joint Petitioners make a point of
19 claiming that New Jersey will benefit enormously from increased nuclear output
20 facilitated by the merger, but reject utterly any proposal to ensure that these
21 benefits will be realized by New Jersey consumers. They spend a great deal of
22 Rebuttal time and testimony debating settled cases, and almost no time grappling
23 with my proposal to ensure that their proposed nuclear benefits actually reach
24 consumers. As with synergies, Joint Petitioners want to have credit in the "net
25 benefit" analysis for the promise of such benefits, but do not want to be
26 responsible for ensuring that the benefits are enjoyed by New Jersey consumers.
27 Again, either they are not as confident of the extent of the benefit as they avow, or

1 they want to hold open the chance that they can keep the benefits and not have to
2 share them with New Jersey consumers.

3 **Q. How does your proposed nuclear benefit sharing proposal correct for this**
4 **failure to resolve the underlying issue of “claimed benefit but no sharing”**
5 **with respect to increased nuclear output?**
6

7 A. In my November 28, 2005 testimony, I argued that Joint Petitioners should share
8 the after-tax benefits of increased nuclear output 50/50 with New Jersey (p. 36).
9 Below, I expand on this concept, and show that it is possible to fashion a
10 straightforward mechanism for sharing the promised nuclear benefits that does no
11 violence to Joint Petitioners’ own avowed interests in the output of the nuclear
12 plants.

13 **Q. Dr. Lesser and Mr. Sidak assert that the ordinary workings of the**
14 **competitive marketplace will flow the benefits of increased nuclear output**
15 **through to consumers. Do their arguments obviate the need for your**
16 **proposal?**
17

18 A. No. As I explain in further detail below, there are reasons to be skeptical that the
19 wholesale electricity market will automatically flow the nuclear output benefits
20 through to consumers. In the event the merger is approved, my proposal would
21 provide a vehicle to ensure that the benefits reach consumers, while leaving
22 Exelon in the same place it would be if the marketplace functioned in practice as
23 described in theory in the testimonies of Dr. Lesser and Mr. Sidak.

24 **Q. Please summarize what you mean by Joint Petitioners’ merger proposal**
25 **creating risks that Joint Petitioners are unwilling to mitigate.**
26

27 A. Joint Petitioners seek to create a company that will dominate markets in the mid-
28 Atlantic region, including PJM, specifically PJM-East, and in particular Northern
29 New Jersey. Joint Petitioners’ Direct and Rebuttal testimonies argue at great

1 length that this hegemony will have no tendency to raise wholesale power or gas
2 rates. Their expert witnesses argue for many pages that Exelon's post-merger
3 dominance of gas and electricity markets will have no adverse impact on the price
4 of Basic Gas Supply Service (BGSS) and Basic Generation Service (BGS). Yet
5 Joint Petitioners will not put any protections in place in gas contracts, nor any real
6 resources in terms of electricity price reductions, to protect New Jersey electricity
7 and gas consumers against such risks.

8 Similarly, numerous Joint Petitioner Rebuttal witnesses repeat the same
9 formulaic assertions that New Jersey should have no worries about PSE&G being
10 subsumed into a much larger holding company structure, headquartered elsewhere
11 and focused less on the New Jersey utility than Public Service Enterprise Group
12 (PSEG) has been. But they offer no concrete or lasting protections against such
13 dilution of the Board's oversight ability.

14 Along the same lines, the Joint Petitioners agree that there will be job
15 losses in New Jersey, but they downplay the resulting impact on employees and
16 the New Jersey economy, and claim they bear no responsibility for any residual
17 employment effects.

18 Finally, Joint Petitioners deny that there are any risks to PSE&G's
19 operational performance or low-income efforts associated with the merger, but are
20 unwilling to stand behind their denial with any concrete assurances to the
21 contrary.

1 **Q. What do you conclude regarding the weight that the Administrative Law**
2 **Judge and the Board should put on the promises and reassurances of the**
3 **Joint Petitioners?**

4
5 A. I conclude that Your Honor and the Board should put little weight on the
6 unsupported promises and reassurances offered by Joint Petitioners. Accordingly,
7 even if a merger having the benefits (and not risking the detriments) of this
8 proposed merger could be found to satisfy the positive benefits test, there is not
9 sufficient support in this record for the proposition that this merger will have the
10 benefits that have been promised, or avoid the risks that have been identified.

11 **Q. How do the proposals of you and other witnesses for the Ratepayer Advocate**
12 **restore a better balance of risk and reward?**

13
14 A. With respect to potential risks of the merger, witnesses for the Ratepayer
15 Advocate have proposed tailored mitigation plans (to offset the risks of wholesale
16 power increases, and to ensure continuation of low-income efforts), as well as a
17 Service Quality Maintenance Plan. The Service Quality Maintenance Plan would
18 back up the Joint Petitioners' protestations that service quality and reliability are
19 not at risk with a countervailing risk to Joint Petitioners, and benefit to ratepayers,
20 if Joint Petitioners' assurances turn out not to have been well-founded. With
21 these mitigation proposals in place, Joint Petitioners' claims will be translated to
22 more concrete and assured protections for New Jersey.

23 **Q. Please summarize the benefit sharing and risk mitigation proposals you and**
24 **the other Ratepayer Advocate witnesses have offered for implementation in**
25 **the event the merger is approved.**

26
27 A. In addition to numerous technical and policy protections we have set out (and
28 which I summarize in Exhibit NB-4 of my November 28, 2005 testimony),
29 witnesses for the Ratepayer Advocate have estimated the dollar amounts that are

1 at stake in this proceeding. Exhibit NB-5 of my November 28, 2005 testimony
2 summarized these estimates, and showed that over \$300 million annually was
3 needed to restore the post-merger situation to a better balance of risk and reward,
4 with respect to the financial benefits and risks of the proposed merger. In Exhibit
5 NB-6, attached, I estimate that the amount at issue in this docket is \$1.6 to \$1.74
6 billion on a net present value basis over the next ten years.

7 This figure is a conservative estimate of the amount of dollar benefits Joint
8 Petitioners refuse to share with consumers, plus the dollar risks against which
9 Joint Petitioners refuse to protect consumers. This is what is at stake, behind the
10 Joint Petitioners' repeated assurances of merger benefits, and their adamant denial
11 of all responsibility for risks the proposed merger poses for New Jersey. New
12 Jersey should not accept the Joint Petitioners' proposal to leave the state and its
13 ratepayers with no concrete benefits, and significant unmitigated risks, as a result
14 of this proposed merger.

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19 **JOINT PETITIONERS URGE WRONG STANDARD OF REVIEW**

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21

22 **Q. What is the standard by which Joint Petitioners ask that their proposal be**
23 **measured?**

24
25

A. Mr. Rowe states the standard as follows in his Rebuttal Testimony at p. 7:

26
27

The question that should be asked is whether PSE&G's customers
are likely to be better off with the merger than without it.

28
29

Mr. O'Brien in his Rebuttal Testimony at 36, defines the standard in slightly
different language:

1 However, I believe that the question the BPU must ask itself is whether
2 the public, including principally our customers and our shareholders, will
3 be better off with the merger than without it in the long term.
4

5 Mr. Izzo uses yet a different formulation, at p. 3 of his Rebuttal:

6 I understand that the BPU is charged with assuring any utility operating
7 within this state, including one owned by a larger corporation that may be
8 headquartered elsewhere, will *provide safe, adequate and reliable service*
9 *to its customers*. In light of these duties, the BPU felt it necessary to assure
10 that this merger was reviewed under a standard that, upon approval, *would*
11 *enable the BPU to continue to meet its obligations under the statute*.
12 (emphasis supplied)
13

14 **Q. Are these the standards enunciated by the Board in its Order?**

15
16 A. No. Mr. Rowe’s formulation renders the Board’s standard practically
17 meaningless. Mr. O’Brien’s standard is even weaker. Mr. Izzo’s standard would
18 reduce the standard even further.

19 **Q. What is the standard announced by the Board?**

20
21 A. In its June 22, 2005 Order, the Board extensively discussed the circumstances of
22 the proposed merger, the Board precedents on merger review standards, and the
23 statutory framework within which the Board must make its decision. After
24 reviewing the arguments of the parties, the Board concluded that a “positive
25 benefits” standard should be used to evaluate the proposed Exelon/PSE&G
26 merger.

27 **Q. Isn’t a “better off with the merger than without it” standard the same thing**
28 **as a “positive benefit” standard?**

29
30 A. Mr. Rowe’s formulation is not the same as the Board’s formulation either in text
31 or in spirit. As to the specific standard enunciated by the Board, not only must
32 there be positive benefits, but the Joint Petitioners must show that no harm will
33 come to the interests identified in the statute: competition, employees, service

1 and rates. Harm to these protected statutory values may not be offset by benefits
2 in some other area:

3 Pursuant to the positive benefits standard, in order for the proposed
4 acquisition of control and transfer of stock to be approved by this Board,
5 the Joint Petitioners must show and the Board must be satisfied that
6 positive benefits will flow to customers and to the State as a result of the
7 proposed change in control, and, at a minimum, that there are no adverse
8 impacts on any of the criteria delineated in N.J.S.A. 48:2-51.1.
9

10 But there is a more fundamental problem with Mr. Rowe’s approach. Joint
11 Petitioners’ application of his formulation to the situation before Your Honor and
12 the Board essentially collapses the “positive benefits” standard into a standard of
13 “just enough benefit to pass the 50% mark.”

14 **Q. Why do you say Joint Petitioners’ approach to the Board’s merger standard**
15 **reduces it to one of “not much better than no net harm”?**

16
17 A. Mr. Rowe reduces the standard to a mere “likelihood” that New Jersey will be
18 better off with the merger than without. Such a test could be satisfied by a 51%
19 probability of net merger benefits. Especially given the ephemeral nature of the
20 Joint Petitioners’ evidence for their estimate of merger benefits and risks, such a
21 bare majority standard would permit approval of a merger in the absence of true
22 confidence that the positive benefits standard is met. Joint Petitioners ask Your
23 Honor and the Board to take their representations of positive benefits on faith.
24 They ask Your Honor and the Board to take their representations of no harm to
25 the criteria delineated in N.J.S.A. 48:2-51.1 on faith. Absent enforceable
26 conditions, and concrete benefits assured by verifiable mechanisms, Joint
27 Petitioners’ concept of the “positive benefits and no harm to statutory criteria”

1 standard, even if accepted at face value, would not meet the Board’s standard, and
2 the merger could not be approved.

3 **Q. Why is Mr. O’Brien’s formulation even weaker than Mr. Rowe’s?**

4
5 A. Mr. O’Brien includes PSE&G shareholders among the group whose positive
6 benefits may be counted in the merger analysis. Further, he would count benefits
7 that will be realized, if at all, in “the long run.” This formulation introduces
8 opportunities for even greater uncertainty and guesswork in determining net
9 benefits.

10 **Q. Why is Mr. Izzo’s formulation even weaker than that advanced by Mr. Rowe**
11 **and Mr. O’Brien?**

12
13 A. If Mr. Izzo’s interpretation of “positive benefits” were adopted, it would be
14 considered a “positive benefit” if the Board simply retained the legal power to
15 meet its obligations to ensure that PSE&G provided the legally minimum level of
16 safety, reliability and adequacy of service.

17 **Q. What standard should the Board use?**

18
19 A. I am not testifying as a lawyer in this case. I will say that the Board’s Order of
20 November 9, 2005 setting out the standard was clear and straightforward, and
21 provides suitable guidance to all the parties as to what needs to be shown in order
22 to justify this proposed merger.

23

1 **JOINT PETITIONERS DO NOT PROPOSE TO SHARE BENEFITS**
2 **OR PROTECT FROM RISKS ON THE REGULATED SIDE**
3

4 **Q. From the perspective of the regulated utility, is this merger justified under**
5 **the positive benefits test?**

6
7 A. No. The asserted benefits on the regulated side are described in conceptual terms
8 only and are modest at that. Operational and rate risks are real. Joint Petitioners
9 have failed to provide concrete assurances of utility benefits and have failed to
10 provide concrete protections against utility rate and operational risks.

11 **Q. Are Joint Petitioners willing to be held to their own representations of**
12 **merger benefits?**

13
14 A. No. In Rebuttal, Joint Petitioners argued essentially that Your Honor and the
15 Board should accept their representations of merger benefits on the basis of their
16 good faith in making the representations, and their behavior in situations that are
17 not analogous to this merger.

18 **Q. Please list the key areas where Joint Petitioners have been unwilling to stand**
19 **behind their representations regarding the impact of the merger on PSE&G**
20 **as a regulated utility.**

21
22 A. There are almost no areas of potential merger impact where Joint Petitioners have
23 been willing to put real resources and enforceable commitments behind their
24 assertions, and many areas where they have explicitly rejected proposals to do so.
25 I list a number here, focusing on Joint Petitioners' responses to proposals offered
26 by witnesses for the Ratepayer Advocate.

27 First and foremost, Joint Petitioners offer no specific rate reductions or
28 rate freezes designed to assure that merger synergies will be flowed through to
29 ratepayers. Rowe Rebuttal at 7-9, Stellwag Rebuttal beginning at 2. Mr. Rowe
30 says that immediate rate reductions are unnecessary and inappropriate. Rowe

1 Rebuttal at 8. He does say that Joint Petitioners “are perfectly willing to discuss,
2 in the context of an omnibus settlement, reasonable ways in which recognition of
3 the regulated savings calculated by Mr. Arndt can be accelerated to provide
4 customers some measure of current relief.” Rowe Rebuttal at 9. In other words,
5 Joint Petitioners are not willing to put any money on the table publicly. If a
6 sufficient number of parties do not agree to the merger on terms acceptable to
7 Exelon, Exelon will not offer any immediate benefits from synergy savings on the
8 regulated side.

9 **Q. Please continue with your listing of proposals to assure merger benefits are**
10 **enjoyed by PSE&G consumers that were rejected or ignored by Joint**
11 **Petitioners.**

12
13 A. Second, Joint Petitioners refuse to acknowledge Board precedent and sound cost
14 allocation and ratemaking principles in estimating their projected merger
15 synergies. Arndt Rebuttal at 25-36. Third, they reject a modest Service Quality
16 Maintenance Plan designed to ensure that current PSE&G service quality and
17 reliability standards are maintained. Izzo Rebuttal at 12, Reidy Rebuttal at 10,
18 Cistaro Rebuttal at 17. Fourth, they reject reasonable proposals to ensure that the
19 Utility Money Pool is not used as a financing tool for non-regulated ventures.
20 Young Rebuttal at 6. Fifth, they reject reasonable proposals to ensure that
21 affiliate transactions will not be abusive of the regulated utility, and will be
22 subject to meaningful Board oversight. See Gillis Rebuttal, at 19-20. Sixth, Joint
23 Petitioners brush aside proposals to strengthen the gas supply management and
24 procurement Requirements Contract, intended to ensure that PSE&G customers
25 have access to reasonably-priced gas resources post-merger. Morris Rebuttal at 9-

1 10, 69. Lark Rebuttal at 8-9. Seventh, they ignore or reject recommendations to
2 make modest commitments to improve protections for the most vulnerable of
3 PSE&G's customers. Reidy Rebuttal at 16-18, House Rebuttal at 9-12. Eighth,
4 they unreasonably condition their acceptance of proposals for explicit merger
5 conditions to ensure that they are held to their apparent agreements with regard to
6 financial restrictions on the merged entity. Young Rebuttal at pp. 7-10. Ninth,
7 they oppose any cost-of-capital "hold harmless" provision, thus leaving
8 consumers open to the risk of merger-induced cost of capital increases. Young
9 Rebuttal at 17. Tenth, they reject reasonable proposals for provisions to replace
10 protections in the Public Utility Holding Company Act, repealed effective
11 February 6, 2006. Houtsma Rebuttal, at 12-20, Young Rebuttal at 16-17.

12 **Q. Is this list of rejected proposals for ratepayer protection exhaustive?**

13
14 A. No. The list above sets out some of the key areas where Joint Petitioners decline
15 to stand behind their own rhetoric.

16 **Q. Please elaborate further on these points.**

17
18 A. Surrebuttal testimony of Ratepayer Advocate witnesses provides more detail on
19 the reasons why reasonable proposals for sharing synergy benefits with PSE&G
20 customers and protecting them from risks on the regulated side are appropriate,
21 despite the rejection of these proposals by Joint Petitioners.

22 **Q. Are there other concerns regarding the regulation of the New Jersey utility**
23 **that Joint Petitioners do not recognize?**

24
25 A. Yes. Joint Petitioners mischaracterize the concerns many have raised about the
26 dilution of the New Jersey focus if PSE&G is taken over by a large, out-of-state,
27 multi-state and multi-enterprise firm such as Exelon. Once they have mis-

1 described the issues, the Joint Petitioners then brush aside the concerns. To the
2 extent they acknowledge there is a problem, they ask Your Honor and the Board
3 to accept essentially cosmetic and short-term fixes for what is a structural and
4 long-term issue.

5 **Q. Please give some examples of Joint Petitioners’ mischaracterization of the**
6 **issues involved in greater remoteness and less regulatory oversight of**
7 **PSE&G post-merger.**
8

9 A. There are a number of instances of such misdirection. For example, Mr. LaRossa
10 claims I believe the merger will create a potential lack of interest in providing
11 quality service in New Jersey. LaRossa Rebuttal at 7. Also, Mr. O’Brien
12 misinterprets my testimony as contending that Exelon may attempt to “impose
13 changes in local regulatory policies.” O’Brien Rebuttal at 20. He dismisses
14 concerns raised by Mr. Colton, Mr. DiPalma and myself about loss of New Jersey
15 focus and diminution of attention to New Jersey concerns as “fear of the
16 unknown.” *Id.*, at 2. Mr. Izzo for his part twists my testimony into an assertion
17 that Exelon might intentionally “thwart ‘pro-New Jersey’” policies, as if
18 somehow I had accused Exelon of some animus towards New Jersey. Izzo
19 Supplemental Rebuttal at 22. Mr. Izzo also reads my concern about regulatory
20 authority to be somehow related to differences in the Board’s legal authority pre-
21 and post-merger. *Id.*, at 30. All these mischaracterizations merely serve to
22 trivialize an important issue in this docket, and an issue that was raised by the
23 Board itself in its Order setting out the standard of review in this docket.

24 **Q. But Joint Petitioners do point to a number of aspects of their management**
25 **structure and culture that they assert will ensure New Jersey concerns will**
26 **remain primary for PSE&G, and will enable the Board to fulfill its oversight**
27 **functions with no diminution in authority. Are these structures and cultural**

1 **qualities sufficient to overcome the problem you and other intervenor**
2 **witnesses have raised concerning New Jersey focus and Board authority?**

3
4 A. No. Joint Petitioners point to (a) shared values between Exelon affiliates and
5 PSE&G, (b) the selection of Ralph Izzo as Executive VP-Exelon Energy
6 Delivery, with offices located in Newark, and Ralph LaRossa as President of
7 PSE&G, with headquarters in New Jersey, (c) a corporate structure in which each
8 utility has local management in place, with responsibility for achieving standards
9 in each state, (d) a past pattern of responsiveness to local management, and (e) a
10 past commitment to maintaining quality, reliable service. See, e.g., Rebuttal
11 Testimony of Ralph Izzo at 3. However, taking Joint Petitioners' representations
12 at face value, they provide at best only a reason to *hope* that in the short-term
13 New Jersey will not see wholesale changes in PSE&G operations, and the Board
14 will not be faced with arguments for exceptions to allow PSE&G to go the Exelon
15 way.

16 **Q. Why do you say these assurances are at best a reason to hope in the short-**
17 **term?**

18
19 A. No management is in place forever, and corporate cultures change. But the
20 merger is a permanent grant of authority for Exelon to control PSE&G, regardless
21 of changes at Exelon in the future. Legally, Exelon will control PSE&G if the
22 merger is approved, and can set the direction for PSE&G as well as the other
23 utility subsidiaries.

24 **Q. Should the Board take comfort in the fact that such New Jersey executives as**
25 **Mr. LaRossa and Mr. Izzo will have prominent places in the post-merger**
26 **hierarchy at Exelon, and that a number of PSEG board members will be**
27 **placed on the Exelon Board of Directors for a time after the merger?**
28

1 A. The Board should not place excessive weight on these developments. These
2 executives and directors will become part of the Exelon family, and will literally
3 get their paychecks from Exelon. The current executives and PSEG directors do
4 not now have the additional conflicts that will inevitably arise over the dedication
5 of corporate resources to a multi-state utility operation. When the Exelon public
6 utilities of these three states compete for the same corporate resources, the
7 executives and PSEG directors will likely have to deny some of the requests,
8 including those of PSE&G. They have no current obligation to apply resources to
9 ComEd or PECO instead of PSE&G. If the merger occurs, they will have this
10 obligation, and PSE&G's customers may suffer as a result.

11 **Q. Exelon has pointed to the improvements brought about at ComEd and**
12 **PECO under Mr. Rowe's leadership. Mr. Rowe says Exelon will not be an**
13 **"absentee landlord" and PSE&G's high quality service will not deteriorate**
14 **because "I will not allow it to happen." Rowe Rebuttal at 3-4. Mr. Rowe is**
15 **widely recognized as one of today's pre-eminent utility CEOs. Shouldn't the**
16 **Board be reassured by the fact that PSE&G is being bought by a firm with**
17 **Mr. Rowe at its helm?**
18

19 A. It bears noting that despite certain operational improvements under Mr. Rowe's
20 leadership at PECO and ComEd, PSE&G's proposed merger partners have
21 electric reliability than PSE&G, relatively higher levels of customer complaints,
22 and worse service than PSE&G in other categories. It is also hard to see how
23 PECO could reasonably improve PSE&G's gas operations.

24 **Q. But Mr. Rowe states that PSE&G's success will be important to Exelon's**
25 **success. Rowe Rebuttal at 6. Doesn't this provide adequate assurance that**
26 **PSE&G's concerns and those of its customers will not be lost in the larger**
27 **corporate entity of Exelon?**
28

29 A. It may be true, as Mr. Rowe testifies, that PSE&G's success would be important
30 to Exelon's success. But PSE&G can succeed from Exelon's perspective while

1 still reducing PSE&G's service quality and reliability from current standards (at
2 least down to any minimums set by the Board), and by doing so improve the
3 Exelon bottom line. Joint Petitioners' interests are not identical to ratepayers' or
4 New Jersey's interests. If they were, there would be no need for regulation at all.

5 **Q. Joint Petitioners also respond to concerns about loss of New Jersey focus by**
6 **declaring repeatedly that centralized management and direction of utility**
7 **operating functions within the Exelon system is undertaken "to achieve**
8 **efficiencies and ensure the sharing and standardization of best practices."**
9 **Gillis Rebuttal at 7. See also Izzo Supplemental Rebuttal at 23, O'Brien**
10 **Rebuttal at 18. Assuming these are the reasons for centralized management**
11 **and direction, do the promised benefits of efficiencies and standardization of**
12 **best practices allay the concerns?**

13
14 A. No. This argument is an example of Joint Petitioners' missing the point. It is
15 precisely the drive to standardize across three utilities and three states that sets up
16 a circumstance in which New Jersey preferences can get lost or downplayed.
17 Joint Petitioners' Rebuttal witnesses also assume that in every case the Board (or
18 even PSE&G local management) will agree that the so-called efficiency or "best
19 practice" being standardized across the Exelon fleet of utilities is better than a
20 different practice or protocol in place at PSE&G and in New Jersey at the time.
21 This assumption in turn is based on the implicit assumption that there is only one
22 way to achieve efficiency, and only one "best practice." None of these
23 assumptions is valid. Reasonable people will disagree, and where the Board's
24 view is different from that of Exelon's executive direction or standardized
25 practice, Exelon will naturally push back to preserve its preferred approach. Of
26 course the Board will have the legal authority in many cases to insist on its view
27 of how the utility should be managed. But the Board should not be put in the
28 position of having to turn a greater number of issues into adversarial disputes,

1 where it may be called upon to determine the boundaries of its oversight authority
2 and exercise its regulatory muscle.

3 **Q. Is there an example you can cite from this merger petition proceeding of**
4 **Exelon’s efforts to define the dialogue with the regulator in such a way as to**
5 **leave little room for alternatives to its preferred outlook on an issue?**
6

7 A. Yes. Take the question of market power in this docket. Exelon devotes extensive
8 Direct and Rebuttal testimony to this issue. However, it completely ignores
9 mitigation proposals advanced by the Ratepayer Advocate. At the same time, it
10 suggests that intervenors and the Ratepayer Advocate are somehow disingenuous
11 in raising the market power issue before Your Honor and the Board. Despite the
12 Board’s Order on the standard of review, which explicitly called out the issue of
13 market dominance, Order on Standard of Review at 19-20, Mr. Rowe suggests
14 that market power issues have already been litigated and decided. Rowe Rebuttal
15 at 9. Mr. Rowe conflates the market power and nuclear synergy issues raised by
16 the merger with EDECA issues that have been decided and are not at issue in this
17 docket. *Id.* at 10. Mr. Rowe concludes by suggesting that parties raising the
18 issue here are merely putting forward a “wish list,” rather than a thoughtful
19 analysis of the real issues that need to be addressed. *Id.* It is rather Mr. Rowe and
20 the Joint Petitioners’ witnesses who avoid a thoughtful analysis of certain key
21 issues in the docket, while including extensive testimony on less important issues,
22 evidently hoping thereby to deflect attention from key points raised by intervenors
23 and Board Staff.

24

1 **JOINT PETITIONERS SHOULD BE REQUIRED TO ENSURE THAT**
2 **PROMISED NUCLEAR OUTPUT BENEFITS REACH NEW JERSEY CONSUMERS**
3
4
5

6 **Q. What was the reaction of Joint Petitioners to your proposal that some**
7 **reasonable sharing of the benefits estimated from increased nuclear output**
8 **be provided to consumers as a condition of merger approval?**
9

10 **A. Joint Petitioners devoted one paragraph in the Rebuttal testimony of Mr. Sidak to**
11 **dismissing the proposal out of hand.**

12 **Q. What were Mr. Sidak’s reasons for rejecting the nuclear output sharing**
13 **proposal?**
14

15 **A. Mr. Sidak argues that consumers will already benefit from increased nuclear**
16 **generation because of the increased supply of electricity, leading to increased**
17 **consumption and lower prices. He further assumes that I am proposing that**
18 **Exelon be required to “redistribute sale proceeds” from the increased nuclear**
19 **generation. Sidak Rebuttal at 35. Based on this assumption, he argues that**
20 **consumers would be doubly rewarded, once through the effect of the market and**
21 **again through the rate reduction he presumes I am proposing. He similarly argues**
22 **that such a pass-through of benefits in the form of lower PSE&G rates would sap**
23 **the incentive of firms like Exelon to improve the output, and would constitute**
24 **subsidization, thus artificially depressing prices. He further extends this logic to**
25 **the suggestion that my proposal would lead to shortages.**

26 **Q. Does Mr. Sidak accurately capture the mechanics of your proposal?**
27

28 **A. No. Mr. Sidak has interpreted my testimony to mean that I propose a**
29 **subsidization of prices by a transfer payment from Exelon. That was not my**
30 **intention.**

1 **Q. What was your proposal?**

2

3 A. In my direct testimony, I said that “New Jersey consumers should be assured a
4 share of the benefits from increased nuclear generation promised by Mr. Rowe.”
5 Brockway November 28, 2005 Direct Testimony at 36. The point I was
6 concentrating on in the November 28 testimony was that it is not reasonable to
7 leave the question of whether the benefits of additional output would accrue to
8 New Jersey consumers to chance or the workings of a hypothetical market
9 structure. Rather, if as Exelon stated, such benefits were a key reason the merger
10 should be considered a positive development, then Exelon should be willing to
11 assure that the benefits materialize.

12 **Q. Mr. Sidak assumed that you were proposing a rate reduction for PSE&G**
13 **customers. Is this the best way to assure consumers of these nuclear output**
14 **benefits promised by Exelon?**

15

16 A. No, it is not. If the benefits were assured via a rate reduction, or other transfer
17 payment, it could result in double-dipping in the event that the output did increase
18 and market prices did in fact come down as a result. Also, such an approach
19 would only benefit PSE&G customers, whereas the benefits Mr. Rowe promised
20 were to go to all New Jersey consumers.

21 **Q. What then would be a better mechanism to assure that New Jersey**
22 **consumers benefit from the promised increase in nuclear output and**
23 **associated price reductions?**

24

25 A. I propose that Exelon be required, as a condition of merger approval, to supply
26 tranches of reasonably-priced power, to be used as part of the BGS supply in New
27 Jersey which otherwise would be procured through the BGS auctions, in sufficient
28 amounts to assure that such lower-priced power as was promised will actually

1 show up in New Jersey customers' supply portfolios. The tranches could be
2 priced at the cost of nuclear output, including a return.

3 **Q. Can you give an example of how your proposed mechanism would work?**

4

5 A. Yes. Suppose hypothetically that New Jersey will need 20 tranches of power to
6 supply all BGS customers in the next auction. Say also that 3 tranches at a
7 reasonable price would provide benefits relative to the anticipated BGS market-
8 clearing price absent the tranches. Exelon would provide the 3 tranches to the
9 BGS customers at the price specified as a condition of the merger, and the
10 remaining 17 would be identified, priced and brought under contract through the
11 normal BGS auction process.

12 **Q. How would the amount of power to be provided in these tranches be**
13 **determined under your proposal?**

14

15 A. The first step would be to estimate a benefit per MWh of power provided. This
16 would be estimated as the difference between the price of the power to be
17 delivered and an estimate of the current market value of the power. Then this
18 difference would be spread across sufficient MWh of output to provide the share
19 of nuclear output benefit that is to be locked in for that period.

20 **Q. What impact would such a proposal have on Exelon's ability to garner the**
21 **benefits it reasonably expects from investing in nuclear output**
22 **improvements?**

23

24 A. Requiring Exelon to supply tranches at cost plus a reasonable return should not
25 deprive Exelon of the profits it reasonably anticipates from its effort and
26 investment in upgrading PSE&G's nuclear fleet and increasing output. It is true
27 that the price received will be less than what might be obtainable in the event the
28 market does not behave in the perfectly competitive fashion envisaged by Dr.

1 Lesser and Mr. Sidak. But it should be reasonably close to the price Exelon
2 would get if the market behaved as predicted by Dr. Lesser and Mr. Sidak, and
3 Exelon simply bid the increased output into the market.

4 **Q. Why should the outcome be the same from Exelon's perspective, under your**
5 **proposal or under its proposal to do nothing to assure that consumers receive**
6 **the benefits promised from the increased nuclear output?**

7
8 A. At first blush, one might think that requiring Exelon to provide tranches of power
9 at the nuclear generation cost would force it to price below market. After all,
10 most of the market prices today in the PJM single-price auction are set by the cost
11 of a gas turbine or other high-cost plant. However, Exelon assures Your Honor
12 and the Board that the effect of pouring more nuclear power into the market will
13 be to move the supply curve, so that the clearing price is reduced. Thus, they
14 argue that their profits will be driven down by market forces close to cost, and
15 that consumers will be the beneficiaries. My proposal merely provides for an
16 assurance that New Jersey consumers will definitely enjoy the result of such a
17 shift in the supply curve, without having to take the risk that the market does not
18 produce such a shift for whatever reason (or that the promised nuclear benefits
19 prove to be ephemeral).

20 **Q. Will the requirement that Exelon supply reasonably-priced tranches to the**
21 **BGS customers result in double-dipping by consumers?**

22
23 A. No. The power provided to New Jersey BGS customers will be sold once, at the
24 prices determined by the merger condition to result in a fair apportionment of the
25 purported benefits of this aspect of the merger. Once sold through this
26 mechanism, it will not be available to be purchased again in the market. Thus, the
27 tranche-provision proposal is quite different from a rate-reduction or other

1 transfer payment proposal to share these promised benefits. Consumers will not
2 get a rate reduction plus a lower power cost. They will get the promised benefit
3 once, but with assurance.

4 **Q. Will the tranche-provision requirement have the untoward impacts Mr.**
5 **Sidak pointed to with regard to transfer payments?**

6
7 A. No. Prices will not be artificially low, and will not promote excess consumption.
8 Rather, prices will be set based on the levels Exelon asserts they will drop to post-
9 merger. There will be no diminution of economic efficiency, because Exelon's
10 profits will not be lowered below what they would have been, assuming the price-
11 lowering impact of the extra power would have occurred.

12 **Q. Would your tranche-provision requirement undermine the BGS auction?**

13
14 A. No. The amount that would be provided directly to BGS ratepayers as a result of
15 the merger condition would in practice be a modest amount of power, leaving
16 almost all the BGS power to be procured by the BGS auction.

17 **Q. Is a tranche-provision requirement an attempt to relitigate divestiture and**
18 **stranded cost determinations made by the Board?**

19
20 A. No. The decisions on divestiture and stranded cost have nothing to do with the
21 need to share nuclear output benefits. Rather, my proposal is directed at assuring
22 that the benefits of the merger promised to New Jersey actually materialize for
23 New Jersey. Indeed, Mr. Rowe concludes his Rebuttal Testimony by stressing
24 again the benefits of greater nuclear plant output that Exelon promises to bring to
25 New Jersey. It is worth quoting his testimony here:

26 Q. Mr. Rowe, is there anything else you would like the Board
27 of Public Utilities to consider?

28 A. I would like to have the Board consider the considerable
29 expertise Exelon brings to the State of New Jersey in managing

1 nuclear plants...The benefits that expertise will bring to the public
2 in New Jersey are considerable. Those benefits are quantified in
3 Michael Schnitzer's testimony....I need not reiterate their
4 testimony in detail, but I do want to emphasize that *I believe the*
5 *public benefits to New Jersey are considerable and should be taken*
6 *into account by the Board when it evaluates this merger.*
7

8 Rowe Rebuttal at pp. 21-22 (emphasis supplied).

9
10 **Q. Mr. Rowe complains that various intervenors are asking the Board to “put**
11 **Exelon in a position where its non-regulated businesses are forced to**
12 **subsidize its regulated operations.” Rowe Rebuttal at 9. Does the tranche-**
13 **provision proposal seek to subsidize regulated operations with non-regulated**
14 **profits?**

15
16 A. No. My proposal is not an example of this type of request for subsidization,
17 whatever that might be. Exelon will receive the profits it claims that it expects in
18 the marketplace. Exelon will actually have a greater upside benefit on the non-
19 regulated side than it would otherwise receive, in that it will have a guaranteed
20 market for the tranches of power.

21 **Q. What level of benefits should be translated to the tranches provided under**
22 **your proposed merger condition?**

23
24 A. There are a number of estimates on the record of this proceeding concerning the
25 likely benefit to New Jersey consumers from the increased nuclear output. Based
26 on the Synapse Panel estimate, I recommended an annual benefit of \$62 million in
27 my Direct Testimony filed November 28, 2005. As can be seen from my Exhibit
28 NB-6, the net present value of this estimate is roughly \$464 million. Dr. Lesser
29 suggests that the benefit that should come from increased nuclear output would be
30 between \$24 and \$30 million a year, with a ten-year net present value of just
31 under \$200 million. Exh. JAL-8. Mr. Schnitzer, testifying for Joint Petitioners,
32 argues that all of these estimates are too low, and that the base case economic

1 benefit to New Jersey of increased nuclear output should start at \$111 million in
2 2006, and range from \$80 to \$100 million over the next decade, with a net present
3 value of \$681 million. Exh. MMS-2, p. 3 of 4. (Note that Mr. Schnitzer uses a
4 higher discount rate than I have used; using my 8.18% (the weighted average cost
5 of capital from the most recent PSE&G electric rate case), Mr. Schnitzer's base
6 case stream of nuclear output benefits discounts to \$606 million net present
7 value.)

8 **Q. Would it be necessary for the Board to choose an estimate of the most likely**
9 **or the maximum benefit anticipated from increased nuclear output to set the**
10 **level of the required tranches to be provided to BGS customers?**

11
12 A. No. All that is necessary is that New Jersey consumers be assured a reasonable
13 share of the promised benefits. For example, the Board could determine that only
14 half of the maximum estimated benefits would be pinned down via the tranche-
15 provision mechanism, leaving the balance to be realized, if at all, via the market
16 mechanism offered by Joint Petitioners. Other reasonable splits between assured
17 benefits and speculative benefits could be made as a condition of the merger, and
18 reflected in the size and pricing of the tranches.

19 **Q. How should the size and pricing of the tranches be determined?**

20
21 A. If the Board adopts this proposal for assuring that New Jersey consumers receive
22 a fair share of the promised merger-related benefit of additional nuclear output, it
23 could lay out the broad parameters of such a sharing, and require the Joint
24 Petitioners to make a compliance filing with a more specific proposal for
25 implementing the Board's requirement.

1 **Q. Please summarize your proposal concerning the assurance that the promised**
2 **benefits of increased nuclear output materialize.**

3
4 A. I recommend that Your Honor and the Board condition merger approval, if any
5 merger approval is contemplated, on presentation to the Board and approval by
6 the Board of an Exelon proposal for providing power in sufficient tranches at
7 sufficiently low prices to assure that the promised benefits will be enjoyed by
8 BGS customers.

9

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13

**THERE IS STILL A NEED TO PROTECT NEW JERSEY
FROM THE IMPACTS OF MERGER-RELATED JOB LOSS.**

14

15

16

17

18

**Q. How do Joint Petitioners respond to your proposal that they provide
financial mitigation of the impact on the New Jersey economy of the job loss
associated with the merger?**

19

20

21

22

A. Joint Petitioners offer the Rebuttal testimony of Dr. Bernard Anderson, who
23 argues that no such financial mitigation is necessary. Dr. Anderson asserts that
24 the State, customers and employees themselves all benefit from a properly-sized
25 workforce that efficiently and competitively delivers energy products and
26 transmission and distribution services. Anderson Rebuttal at 3-4.

27

Q. Is Dr. Anderson correct in his critique of your multiplier analysis?

28

29

30

31

32

A. No. Dr. Anderson makes one point with which I agree and which requires
clarification of my testimony. Otherwise, his observations are outside the
mainstream of standard textbook economic thought. Indeed, for all his testimony
that my economic analysis is incorrect, he does not substantively dispute essential

1 parts of my analysis, including the choice of the multiplier itself (1.5, a very
2 conservative figure) and the choice of a base salary and benefit level for the
3 purposes of estimation (\$95,000). Moreover, Dr. Anderson does not correctly
4 understand or apply New Jersey policy on the importance of job preservation in
5 the utility context, and his rigid application of neo-classical micro-economic
6 theory ignores other approaches to economic issues, including institutional
7 economics.

8 **Q. Please discuss the one issue where Dr. Anderson raises a point that prompts**
9 **clarification of your Direct Testimony on job losses.**

10
11 A. As Dr. Anderson points out, most employees who are dismissed, particularly in a
12 relatively strong economy, will eventually find jobs. In my Direct Testimony, I
13 did not discuss the persistence of job loss multiplier impacts on the economy, but
14 rather produced a snap-shot of the effects on the year after the merger. In my
15 Exhibit NB-6, I have provided a ten-year estimate of the various merger benefits
16 that should be shared, and merger risks for which New Jersey should receive
17 mitigation if the merger is to be approved. As can be seen by this analysis, I
18 agree with Dr. Anderson that job loss effects will not persist indefinitely.
19 Accordingly, I stop the job loss mitigation requirement after two years. Some
20 employees will still be out of work (or working in less remunerative jobs or
21 retired at lower pay) after that cut-off, but this reality is balanced by the fact that
22 some employees will find work earlier than the two-year cut-off I assume for this
23 analysis.

24 **Q. If, in recognition of Dr. Anderson's observations concerning various forms of**
25 **mitigation for individual separated employees and potential re-employment,**

1 **the cut-off were shortened to one year, what impact would that have on your**
2 **net present value analysis?**

3
4 A. It would reduce the net present value of financial sharing and mitigation required
5 by the merger by about \$145 million, or less than 10% of the total of sharing and
6 mitigation I recommend.

7 **Q. Please discuss Dr. Anderson’s claim that allowing unfettered workforce**
8 **adjustment on the part of management is the “polestar” of economic theory.**

9
10 A. Unfettered workplace adjustment is not the “polestar” of all economic thought.
11 Multiplier effects such as those I present in my Direct Testimony are standard
12 textbook analyses, and are routinely used in economic development work to
13 estimate the impact of the loss of jobs on a region. Nor is unfettered workforce
14 “rationalization” the “polestar” of public policy in New Jersey. New Jersey is
15 rightly concerned about the loss of jobs in this state, not the combined general
16 equilibrium of the world economy. Indeed, the presence of a statutory
17 requirement for the Board to consider whether a proposed merger will have an
18 adverse impact on the employees of the affected utility, N.J.S.A. 48:2-51.1,
19 reflects a judgment by the New Jersey Legislature that employers should not have
20 unfettered discretion to reduce their workforce in all circumstances.

21 **Q. Please respond to Dr. Anderson’s argument that I ignore the positive impacts**
22 **of job loss. Anderson Rebuttal at 14 ff.**

23
24 A. Dr. Anderson’s argument reduces to the proposition that there is no such thing as
25 a job loss multiplier effect, because there is an offsetting and equal positive
26 multiplier effect from reduced utility costs. Such a formulation ignores the reality
27 that jobs will be lost in New Jersey. If Exelon reduces New Jersey jobs by 1000,
28 there will be a reduced demand for goods and services in New Jersey, regardless

1 of whether the laid off workers manage to get other jobs. They may manage to
2 get other jobs because workers in other positions retire, leave the labor force or
3 leave the state, etc. But the reduction in PSEG positions is not automatically
4 made up by corresponding job increases elsewhere in New Jersey. At least in the
5 near term, New Jersey will have suffered a loss of 1000 jobs. Dr. Anderson
6 pretends that this job loss is irrelevant. He also ignores the fact that the Joint
7 Petitioners here must show a positive benefit from their proposed merger, not a
8 mere “wash” transaction with potentially adverse impacts on individuals who
9 have or will lose their current jobs.

10 **Q. Dr. Anderson says that you improperly include the impact of job losses on**
11 **the unregulated side of the business. How do you respond?**

12
13 A. To take Dr. Anderson’s argument to its logical conclusion, he would say the
14 Board could not consider the impact of job loss on the unregulated side even if
15 100% of the unregulated business were to be liquidated or moved out of New
16 Jersey, and the merger of the utility’s parent corporation was the vehicle by which
17 such an effect on New Jersey would be realized. Put another way, if Dr.
18 Anderson is correct, then there should be no credit given in the merger net benefit
19 analysis for the decision by Exelon to move the headquarters of Exelon
20 Generation Company LLC (“Exelon Generation”) from Pennsylvania to Newark.
21 Dr. Anderson’s argument on jobs is a minor example of the Joint Petitioners’
22 characteristic reliance on impacts from the unregulated side when it is to the
23 benefit of their pro-merger position, but denial of responsibility for those effects
24 when it does not help advance the merger.

1 **Q. Dr. Anderson says you improperly include the impact of the many jobs that**
2 **have been held open pending the merger. How do you respond?**

3
4 A. First, the jobs being held open pending the merger are not claimed by Dr.
5 Anderson to be unnecessary for PSE&G or PSEG today. In this case, it is fair to
6 ask whether it is imprudent for PSE&G (and its Service Company affiliate) to be
7 leaving such a large number of vacancies unfilled. According to the response to
8 S-OCI-SYN-257, as of the end of September 2005, there were 15 PSE&G
9 positions held open, and 176 positions held open at PSEG corporate and service
10 affiliates (plus another 226 at PSEG Power). If such staff are necessary to
11 PSE&G's work today, their absence will have an adverse effect on PSE&G's
12 ability to serve its customers well.

13 Second, the open positions are open precisely because of the merger, and
14 these open positions should be included in the assessment of employment
15 impacts. To argue otherwise is to pretend that a decision made in contemplation
16 of the merger (allowing positions to go unfilled) would have been made without
17 the merger, and is not causally related to the merger. But these jobs have been
18 left unfilled precisely because of the merger. In other words, the adverse impact
19 on the New Jersey economy has already begun, even before the Board has
20 considered and determined whether to approve the merger.

1 **Q. Overall, does Dr. Anderson’s critique cause you to withdraw your job loss**
2 **mitigation proposal?**

3
4 A. No. While I acknowledge Dr. Anderson’s observation that job loss impacts will
5 typically ease over time as displaced workers find other employment and the
6 economy grows, I do not agree that a conservative estimate of job loss multiplier
7 impacts on the New Jersey should be ignored.

8
9

10
11 **THERE IS STILL A NEED TO PROTECT NEW JERSEY CONSUMERS**
12 **FROM POST-MERGER MARKET POWER**

13
14
15

16 **Q. Do Joint Petitioners agree that the merger poses risks of market power, and**
17 **associated wholesale electric and gas price increases?**

18

19 A. No. Joint Petitioners offer extensive Rebuttal testimony in an effort to persuade
20 Your Honor and the Board that there is no market power problem associated with
21 the merger, which will create “an entity with the largest electric utility holdings in
22 the nation,” and which represents “an unprecedented consolidation of power
23 generation, including nuclear plants.” Order on Standard of Review at 19, 20. In
24 fact, Mr. Rowe accuses intervenors, and implicitly Board Staff, of seeking to
25 relitigate positions on market power that were lost before the Federal Energy
26 Regulatory Commission (FERC).

27 **Q. Are Joint Petitioners persuasive that there is no market power problem**
28 **presented by this merger?**

29

30 A. No. A number of intervenors, and the Board Staff, have presented evidence
31 showing that post-merger Exelon’s generation will be dominant in PJM, giving it
32 horizontal market power, notwithstanding its mitigation proposal. Witnesses have

1 also shown that Exelon will have control over natural gas supplies that would
2 afford it vertical market power. It has also been shown that Exelon's market
3 power would position it to exercise dominance in the BGS and BGSS markets. I
4 would direct the attention of Your Honor and the Board to the Direct and
5 Surrebuttal testimonies of the Synapse Panel and Mr. LeLash, for example. The
6 numerous market power concerns raised by the merger have not been allayed by
7 Joint Petitioners' rebuttal.

8 **Q. How have Joint Petitioners responded to your proposal in the November 28,**
9 **2005 Direct Testimony for a pass-through of \$64 million annually to offset**
10 **the potential for the increase in wholesale electricity prices in PJM as a result**
11 **of the exercise of post-merger market power?**

12
13 A. Joint Petitioners do not address this proposal. Their market power witnesses
14 concentrate on rebutting the market power analyses of intervenor and Board Staff
15 witnesses. Joint Petitioners do not discuss proposals for further mitigation of
16 market power, but rather conclude that there is no risk that Exelon could increase
17 prices through the exercise of market power. See, *e.g.*, Frame Rebuttal at 6. In
18 effect, Joint Petitioners deny the risk and therefore do not engage on the question
19 of means of mitigating the risk, beyond what they have proposed to the FERC.

20 **Q. Do Joint Petitioners critique your estimate of the amount of risk mitigation**
21 **that would be necessary given the extent to which Exelon could push up**
22 **wholesale electricity prices post-merger?**

23
24 A. Not directly. Because they deny there is any risk of Exelon pushing up prices
25 through the exercise of market power, they do not reach the question of how to
26 mitigate this risk.

27 **Q. Do Joint Petitioners' Rebuttal testimonies show that your market power**
28 **mitigation proposal is unnecessary?**
29

1 A. No. As I have stated, the Synapse Panel and other witnesses show that New
2 Jersey consumers are at risk of increased prices through the exercise of market
3 power. My proposal for mitigation of a potential 1% increase in electricity prices
4 constitutes a modest and reasonable means to help protect New Jersey consumers
5 against the risk of increased energy prices. I would note that Mr. Schnitzer's
6 calculation of nuclear power output synergies contains estimates of clearing prices
7 that confirm the inputs to the calculation of the impact of a 1% price increase,
8 albeit he uses the data for a completely different calculation in his Rebuttal.

9 **Q. What is the net present value of the risk of a 1% wholesale electricity price**
10 **increase brought about by the exercise of market power?**

11
12 A. As can be shown by my Exhibit NB-6, the net present value of ten years' worth of
13 such market power mitigation flows would be about \$480 million.

14
15
16
17

CONCLUSION

18
19 **Q. Considering the Rebuttal testimonies of the Joint Petitioners' witnesses, do**
20 **you have any reason to amend the recommendations you made in your Direct**
21 **Testimony?**

22
23 A. No. The Joint Petitioners have offered no reasons to amend the recommendations
24 that I and other Ratepayer Advocate witnesses have made. The Joint Petitioners
25 have conceded some minor points, and we have made some minor adjustments to
26 accommodate points made by Joint Petitioners in Rebuttal. Overall, however, the
27 posture of the case remains as it was after the filing of the direct testimonies. The
28 proposed merger should not be approved as filed. If Your Honor and the Board
29 are inclined to approve it, significant conditions are needed to assure that New

1 Jersey receives the claimed benefits of the merger, and reduce the extent to which
2 New Jersey is exposed to the risks of the merger.

3 **Q. Please summarize your analysis of the impacts of the proposed merger.**

4
5 A. Joint Petitioners propose a merger that would create the largest utility in the
6 industry. They claim the merger will bring operating synergies, but they refuse to
7 offer any concrete sharing of those synergies with New Jersey consumers, even
8 though the synergies will largely be generated by job losses in New Jersey. They
9 claim the merger will bring benefits to the electricity market through increased
10 nuclear power production, but they refuse to consider any mechanism to ensure
11 that these benefits are realized by New Jersey consumers. They claim the merger
12 will not lead to any deterioration in PSE&G's gas and electricity service quality
13 and reliability, but they refuse to accept any mechanism that could make their
14 claim enforceable, and protect New Jersey in the event their promise turns out to
15 have been unfounded. They claim that the creation of an entity that is the largest
16 generating company in the country, a leading energy marketer, the owner of
17 significant gas resources, and the operator of the largest string of nuclear power
18 plants, will have no market power and will not be in a position to increase energy
19 prices for New Jersey consumers, but they will not consider proposals to mitigate
20 the risk that they will indeed be able to dominate utility energy markets affecting
21 New Jersey. Finally, they claim that New Jersey's ability to oversee the
22 behemoth that emerges from this merger will not be affected in any way by the
23 merger, a claim that defies common sense and long regulatory experience.

1 The witnesses for the Ratepayer Advocate have put forward targeted and
2 responsible proposals to ensure that claimed benefits are fairly shared, and that
3 plausible risks are safely mitigated. In purely dollar terms, the amounts at stake
4 are over \$1.5 billion dollars. If Your Honor and the Board are inclined to approve
5 the merger, Joint Petitioners should not be permitted to conclude their proposed
6 merger without putting real resources behind their promises and assurances to
7 New Jersey.

8 **Q. Does this conclude your testimony?**

9

10 **A. Yes.**

**Net Present Value of Required
Merger \$ Benefits for Sharing and Merger \$ Risks for Mitigation**

(\$ Millions)	At 3%	At 3 %	Per Peterson	At 3%		Nuclear Yr. to Yr. per Schnitzer Exh. MMS-2, p. 3 (base)	
Year	Elec Mkt \$	Job Loss	Synergies	Nuclear			
2006	\$64	\$143	\$27	\$62		\$111	
2007	\$66	\$147	\$47	\$64		\$100	
2008	\$68		\$54	\$66		\$92	
2009	\$70		\$59	\$68		\$85	
2010	\$72		\$64	\$70		\$81	
2011	\$74		\$67	\$72		\$79	
2012	\$76		\$72	\$74		\$83	Total NPV
2013	\$79		\$77	\$76		\$86	w/Schnitzer
2014	\$81		\$82	\$79	Total	\$90	nuclear
2015	\$84		\$87	\$81	NPV	\$93	benefit
NPV @ 8.18 %	\$479	\$258	\$398	\$464	\$1,599	\$606	\$1,741

Assumptions: Go out 10 years for (a) wholesale electricity market price increases, (b) synergies, and (c) nuclear output benefits.
Go out 2 years on job loss impacts.
Escalate at 3% inflation (Synergies already adjusted)