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	**)**

TESTIMONY OF NANCY BROCKWAY
ON BEHALF OF THE
NEW JERSEY DIVISION OF THE RATEPAYER ADVOCATE

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REDACTED VERSION

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BPU DOCKET NO. EM05020106
OAL DOCKET NO. PUC-1874-05

DIRECT TESTIMONY OF NANCY BROCKWAY

ON BEHALF OF NEW JERSEY RATEPAYER ADVOCATE

Q. Please state your name, affiliation and address.

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

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

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

Q. Please describe your qualifications.

A. Since 1983, my professional focus has been the energy and utility industries, with particular attention to the role of regulation in the protection of consumers and the environment. I was for several years a hearing officer and advisor to the Maine Public Utilities Commission and the Massachusetts Department of Public Utilities, including two years as General Counsel of the Massachusetts commission. I was an expert witness on consumer and low-income utility issues for nine years, with the National Consumer Law Center. I was a Commissioner on the New Hampshire Public Utilities Commission from 1998 to 2003, and since

then have been a consultant on regulatory utility issues to state commissions, ratepayer advocates, and unions. My resume is attached as Exhibit NB-SQ-1.

Q. What is the purpose of your testimony?

A. The purpose of my testimony is to address the impact of the proposed merger of Public Service Electric and Gas Company (PSE&G or the Company) and Exelon (Petitioners) on PSE&G's service quality, safety and reliability.

Q. How is your testimony organized?

A. My testimony is organized as follows:

- I first state my understanding of the standard to be applied to the merger, and its application to the questions of service quality, safety and reliability.
    - I note the representations made by the Petitioners as to these issues.
    - I summarize the risks that the merger poses to the fulfillment of utility obligations in the areas of service quality, reliability and safety.
    - I summarize my recommendations to Your Honor and the Board of Public Utilities (BPU or Board).
- I next examine the impact of the proposed merger on (a) customer service quality, (b) electric reliability, and (c) gas safety and reliability, respectively:

- I identify the standards that PSE&G and the Board currently apply to the Company's performance in each area.

- I describe and analyze the respective track records of PSE&G and the two operating utilities with which it is proposed to be merged.

- I identify the risks to New Jersey and PSE&G's customers in these aspects of utility operations that are posed by the proposed merger.

- The risks include:

  - Reducing PSE&G's performance standard to the least common denominator of PECO and ComEd performance;
  - Pressure on quality from staffing reductions;
  - Dilution of New Jersey focus and control;
  - Disruptions relating to Information Technology ("IT") changes; and
  - Outsourcing the markout function.

- Finally, I make detailed recommendations to the Board for merger conditions necessary to protect and advance service quality, safety and reliability, in the event the Board allows the merger to proceed. These include:

  - A service quality and reliability commitment to prevent backsliding in four key gas and electric safety and reliability metrics, backed by penalties in the form of overall rate reductions for failure to maintain PSE&G's standards;

  - A requirement to continue to meet existing PSE&G service quality, safety and reliability standards, enforced by reporting requirements and requirements to restore high standards in the event of substandard performance for key performance indicators;

  - A customer service guarantee, backed by payments to individual customers for failure to provide accurate and timely bills;

  - A requirement to bring meter reading standards for the Newark and Roseland Districts up to the standard PSE&G has met for meter reading on a total Company basis;

- A requirement to continue the existing program of hiring and training skilled personnel, e.g., new linemen and gas operations personnel- as needed, to ensure sufficient staffing over time; and

- A requirement to continue to use PSE&G staff to mark out underground facilities under the One-Call program.

Q. Are there any service quality topics you will not be addressing in this testimony?

A. I will not be addressing issues related to payment centers, and to deposit and disconnection policies and practices, and the like. While all residential customers are affected by poor management of these areas, the impacts fall especially hard on low-income consumers, so these issues will be addressed by Roger Colton on behalf of the Ratepayer Advocate.

Q. Please summarize your testimony on service quality, safety and reliability.

A. Pursuant to a recent determination of the Board, the Petitioners must show positive net benefits to justify the proposed merger.[1] In the area of customer service, safety and reliability they have not done so. They represent that there will be no net harm to these aspects of operations from the merger, and make vague allusions to possible improvements. These representations are insufficient to protect New Jersey interests and fail to satisfy the positive benefits standard mandated by the Board.

1 See Transcript from June 22, 2005 Board Agenda Meeting (" Based on our discussions, the Commissioners believe that Exelon must provide evidence that…the proposed acquisition is in the best interest of the public and that Public Service customers will receive some positive benefits.")

Mergers often produce results that are unanticipated at the time of the merger. More specifically, Petitioners here do not account for the risks to New Jersey from the fact that the locus of management, revenues and assets will shift away from New Jersey if the merger is approved. Nor do they account for the fact that PSE&G's track record in customer service, safety and reliability may well be undermined by the proposed standardization of practices with those of Exelon utility affiliates ComEd and PECO, whose performance has generally been worse than that of PSE&G.

To protect New Jersey, and to hold the Petitioners to their promises regarding service quality, safety and reliability, I recommend that, should the Board approve the merger, it condition such approval on the Petitioners' meeting a set of service quality guarantees, and service quality, safety and reliability standards accompanied by penalties for sub-par performance.

UTILITY MERGERS: STANDARD, PETITIONER REPRESENTATIONS, AND RISKS GENERALLY

Q. Please describe the standard adopted by the Board for review of this merger, as you understand it.

A. It is my understanding that the Board will require the merger proponents to demonstrate positive benefits from the merger. In addition, N.J.S.A. 48:2-51.1 requires that "in considering a request for approval of an acquisition of control,

the [B]oard shall evaluate the impact of the acquisition on … the provision of safe and adequate utility service at just and reasonable rates."

Q. What representations do the Petitioners make regarding customer service post-merger?

A. The Petitioners state that customer service levels will, at a minimum, remain at current levels. John Rowe, CEO of Exelon, states that Exelon is committed to maintaining and enhancing what he describes as PSE&G's outstanding record of performance in customer service. Rowe Direct Testimony at p. 11, Exhibit JP-2 . Specifically, Exelon "anticipates further that modifications to the call center and customer service operations likely will result in improved revenue collection, lower costs, and through the sharing of best practices, improved response to customer concerns." S-DCA-15.

Q. What further representations do the petitioners make regarding customer service, safety and reliability?

A. Ralph Izzo, President and Chief Operating Officer of PSE&G, testifying for the Petitioners, states that "there will be no adverse impact on utility reliability, customer service, or safety." Izzo Direct Testimony at 7-8. He also testifies that the proposed merger should "enhance PSE&G's ability to render safe and reliable service." *Id.* at 3. He testifies that, in fact, "our goal is to provide additional benefits to customers by implementing additional best practices that will result in system improvements." *Id.* at 8.

Mr. Izzo also states that "we will strive to remain among the very best electric and gas delivery companies from a safety perspective." *Id.* at 4. Mr. Izzo testifies that PSE&G's goal post-merger is to continue to achieve reliability indices that rank in the first and second quartile of regional utilities. *Id.* at 5. Mr. Izzo states that Exelon is committed to ensuring that sufficient financial and workforce resources are provided "to maintain high service standards." *Id.*

Mr. Izzo also testifies that access to the greater resources of the merged entity should result in increased customer satisfaction and be particularly helpful in the areas of "enhanced …customer care." *Id.* at 5-6. Mr. Izzo further states that sharing of best practices in the metering and new technologies arena will bring new opportunities to PSE&G's customers. *Id.* at 6. Mr. Izzo testifies that "investments will continue to be made in order to improve the long term performance of our electric and gas infrastructure." *Id.* He concludes that the incentives to maintain high levels of service will only increase following consummation of the proposed merger. *Id.* at 8.

Q. Are these representations sufficient to meet the Petitioners' obligations with respect to the merger standard?

A. No. There are two problems with these representations. First, they do not actually constitute promises to provide net benefits to New Jersey, and second, they are not reliable promises.

Q. Please explain further why the representations of the Petitioners are insufficient to satisfy their burden with respect to service quality, system safety and reliability.

A. Details of how service quality, safety and reliability will be improved, much less maintained, are strikingly lacking from the filing. Improving revenue collections and lowering costs are not the same as providing net benefits in terms of customer service, safety or reliability. Indeed, the emphasis on lowering costs in order to achieve synergy benefits may not only threaten any improvements in such performance areas, but may threaten to undermine current levels of performance. Further, keeping customer service and reliability performance at current levels does not represent a net benefit to New Jersey customers. Also, the mere anticipation of the sharing of best practices among the three operating utilities involved in this merger does not provide a solid basis for concluding that there will be improved response to customer concerns. Finally, requiring that PSE&G attain only the second quartile of results for comparable utilities, which is the extent of Mr. Izzo's declared goal for the Company (Izzo Direct Testimony at 5), would set the bar lower than PSE&G sets it at present, and in any event much too low.

Q. Are there further reasons to conclude that the Petitioners have not proven their commitments are reliable?

A. Yes. The Petitioners acknowledge that many key decisions in these and other areas of the combined companies have yet to be made, and state that they cannot

and will not be made until the merger is consummated. See, for example, RAR-SQ-37, -45, -54, -110(UPDATE), -111; S-OCI-SYN-132; S-DCA-7, S-DCA-29; LOCAL 601-II-12 [customer service and related staffing issues]; S-ENE-REL-22 [management organization post-merger]; S-ENE-REL-3 [organization of capital improvement planning process]; S-JAC-REL-109 [identification of engineering positions to be eliminated]; RAR-RR-89 [no detailed plans for employment levels]; S-ENE-REL-2 (UPDATE) [identification of electric reliability best practices]; S-JAC-REL-9 [review of gas distribution functions and best practices]; S-JAC-REL-140 [there is no current list of best practices; identification of best practices will take place over an extended period]. Thus, the validity of the claims cannot be evaluated on the current record.

Further, Exelon cannot even demonstrate that it achieved any savings for ComEd or PECO as a result of the Unicom/PECO merger. Exelon did not track merger savings and costs-to-achieve in that merger. Nor did Exelon track the extent to which ComEd and PECO in fact shared resources and "best practices," much less that they benefited from the sharing. RAR-SQ-60, S-ENE-REL-1. There is no way to assess whether Exelon fulfilled the promises it made to regulators when it sought to buy PECO, and there is no reason to place more confidence in the present estimates of continued operating quality for PSE&G post-merger, much less the stated expectations of net operating benefits from the instant proposal.

In addition, the Petitioners have not even attempted to show that the asserted "best practices" can only be identified and implemented in the context of a merged entity. The electric and gas utility industries have numerous conferences and training sessions where best practices are identified and shared. There is a large and vibrant consulting industry that collects information about best practices and helps utilities incorporate it into their own practice. The industry, through organizations such as EPRI and the GTI, sponsors research into best practices that is available to their members. While PSE&G may gain detailed access to ComEd and PECO's way of doing business, the Petitioners do not show that this way is a good model to follow, among the many models available in the industry.

Q. In general, what are the risks to customer service, safety and reliability posed by the proposed merger?

A. There are three key risks to utility operations posed by the proposed merger. First, the merger will shift the locus of utility management, budgeting, policy formation, and attention away from New Jersey. Second, in the particular case of customer service, safety and reliability, Petitioners propose to merge PSE&G with two operating utilities, ComEd and PECO, whose track record in these areas is generally worse than that of PSE&G. Exelon intends to standardize operations across all three utilities. This plan poses a risk that PSE&G's operating practices will be standardized to those of the Exelon utilities, to the detriment of its performance. Third, Exelon proposes to change billing systems, cut call center

and other customer service staff, and make other changes in order to achieve cost reductions ("synergies") needed to make the proposed merger economic. These changes and reductions would threaten existing service quality.

Q. Please explain your concern that the proposed merger will shift the focus of utility management, budgeting, policy formation, and attention away from New Jersey?

A. The proposed merger would hamper the Board's effective control over PSE&G. The locus of management would shift to Chicago. According to Mr. Rowe, local management would be allowed to make day to day decisions. However the prefiled testimony of Ruth Ann M. Gillis, Senior Vice President of Exelon Corporation and President of Exelon Services Company, as well as that of Mr. Izzo, coupled with responses to data requests, show that the parent company will exercise executive control so as to promote "consistency with system-wide operational and financial goals." RAR-SQ-67. See also S-ENE-REL-22 (UPDATE), and RAR-SQ-57, RAR-SQ-66. We may anticipate that the parent will accordingly oppose or attempt to thwart contrary policies that are initiated in New Jersey for New Jersey concerns.

Q. Why do you say that the ability of the Board to set regulatory policy for PSE&G will be compromised if Exelon is permitted to buy PSE&G? The New Jersey Board of Public Utilities will still have jurisdiction over retail distribution functions, will it not?

A. The Board will continue to have legal jurisdiction, but as the Board knows, the ability to control utility action has practical limits. The submersion of PSE&G into the much larger Exelon unit will have impacts on the Board's exercise of its jurisdiction in many ways. Today PSE&G management has no reason to look outside New Jersey for direction as to policy positions to advance before the Board. If the proposed merger goes through, executives in Chicago will ultimately dictate the position New Jersey management should promote before the Board. It would be difficult to imagine a case where PSE&G's management would submit a position to the BPU that was opposed by Exelon executives in Chicago. In this way, it is clear to see that PSE&G management will not really have effective authority to do what is right for New Jersey customers.

Also, unlike present PSE&G management, post-merger PSE&G management will need to consider Chicago's concerns before deciding whether to acquiesce in a Board-initiated policy decision. The potential is for more instances of conflict, with the attendant drain on regulatory resources. Further, PSE&G will have a built-in reason for promoting an alternative more consistent with overall Exelon policy, and it will be difficult to overcome this objection: PSE&G will always be able to say that it will be more expensive for it to perform a regulated function in the Board-preferred way, if that is not the way Exelon prefers. The Board can insist on its policy choices when the issue is important, but will have to think twice before insisting that PSE&G deviate from the Exelon way in less critical areas.

Obviously, not every docket before the Board involves a critical policy decision. In cases involving less critical areas, the Board will have to consider whether to press the policy when PSE&G claims it is not cost-effective to change because the utility now does it differently due to the merger. This consideration would not be needed if there were no merger. Essentially, over time, in such a multi-state holding company situation, state regulation is diluted.

Q. Are these concerns hypothetical only, or can you provide examples of this merger impact?

A. The dilution of a state's oversight ability is not a hypothetical concern. The Board has seen merger promises made by petitioners seeking Board approval, only to see those promises unfulfilled once the approval is given. In one recent case, JCP&L and FirstEnergy made glowing promises that sounded much like those made here by PSE&G and Exelon. For example, as the Board stated in its Order approving the merger:

> First Energy asserts that it is committed to the provision of safe and reliable service…and will assure that there are sufficient operating/line personnel and managerial staff within JCP&L's service territory to fulfill that commitment… The Joint Petitioners assert that the proposed transaction will have no adverse impact on JCP&L's continued ability to provide safe, adequate and proper utility service to its customers in New Jersey, nor will it affect the Board's continuing jurisdiction over the adequacy and reliability of customer service.[2]

2 I/M/O Joint Petition of FirstEnergy Corporation and Jersey Central Power & Light Company For Approval of a Change in Ownership, etc., Order of Approval, BPU Docket No. EM00110870, September 26, 2001, at 9-10.

Despite these promises, JCP&L customers have had problems with reliability as the Board noted in JCP&L's last base rate case order:

> During the course of litigating and deliberating on this case, the Board was compelled to deal with a number of operating problems directly attributable to JCP&L's failure to appropriately maintain system reliability. … The Board cannot ignore these recurring reliability problems, and determined to take immediate action to construct an interim remedial regulatory incentive mechanism….The Board will use the allowed return on equity as the most direct and powerful signal that they can send to the company to improve their system reliability and do it as soon as practicable. The Board ORDERS that the Company's return on equity be reduced … 25 basis points…[3]

Thus, the Board has had to use a reduction in the return on equity and aggressive regulatory intervention to promote improvements in service quality and reliability. Such aggressive techniques by the Board, absent the merger, may not have been necessary to achieve the same result.

Q. In your experience, have you seen instances of the erosion of regulatory control and diminution in management attention to local concerns, as the result of a merger?

A. Yes. As a regulator, I have seen the lack of regulatory control experienced when a utility is a small part of a large and remote utility. Mr. Rowe of Exelon is personally familiar with how successful a strategy of benign indifference to regulatory initiatives can be. When he took over as CEO of New England Electric System (NEES) (parent of Massachusetts Electric and New Hampshire-

3 I/M/O Verified Petition of Jersey Central Power & Light Company For Review and Approval of an Increase in and Adjustments to Its Unbundled Rates, etc., Final Order, Docket Nos. ER02080506 et al, July 25, 2003, p. 38.

based Granite State Electric, since bought by National Grid), NEES became expert in charting its own course, relying on the implicit threat of litigation, including preemption by FERC, to persuade Massachusetts regulators to allow the Massachusetts utility to take a different path from that required of other Massachusetts utilities, in such areas as rate design and non-utility generation. If the Massachusetts Commissioners desired a different policy path for Massachusetts Electric, they knew it would come at the price of a contested proceeding if utility management was not inclined to agree.

As a Commissioner in New Hampshire I experienced the impact that such a shift in the locus of control and revenues has on the attention span of senior management. When a large out-of-state utility bought up a New Hampshire-based utility, too often the result was that New Hampshire regulatory concerns became secondary to management. The corporate parent wanted, understandably from its perspective, to eliminate differences in how each subsidiary carried out the same functions, and to install one IT or billing system for all the utilities in the holding company, whether or not the existing system was better-tailored to New Hampshire issues. As a result, the Commission got much stiffer push-back from management than before the merger, if we sought a solution to a New Hampshire problem that required a different process or different software from that imposed uniformly on the subsidiaries regardless of state.

When British-based National Grid took over NEES, management responsiveness to the concerns of New England regulators dropped. Key staff

knowledgeable about long-standing local practices were moved or removed, and management became less desirous of accommodating regulatory directions, absent litigated proceedings. National Grid began introducing billing and collection practices out of line with the historic emphasis in Massachusetts on consumer and low-income protections.

Another example is the case of the acquisition by NiSource of Bay State Gas, the parent of Northern Utilities. After the merger, NiSource got into financial difficulties through its acquisition of another large utility, Columbia Gas. Dealing with the resulting debt load became the paramount issue to management. NiSource imposed a firm-wide hiring freeze that squeezed the staffing in its New England call center (which serviced gas customers in Massachusetts, New Hampshire and Maine). As shown by the reports filed with the New Hampshire Public Utilities Commission, call answering rates plummeted. Several meetings with the Company by New England regulatory staff produced no responses and no improvements.

All three state commissions had to initiate formal enforcement actions to get management's attention to the problem. The Maine Public Utilities Commission (Maine PUC) conducted a management audit, AOrder Initiating Management Audit and Investigation of Service Quality Incentive Plan,@ Me. PUC 2002-140 (May 16, 2002). As a result of this investigation, the Maine PUC approved a Service Quality Plan for Northern Utilities, Inc., in which the Maine Commission imposed a maximum penalty of $300,000 for failure to meet eleven

performance targets.[4] In 2003, the Massachusetts commission opened an investigation, docketed as D.T.E. 03-10.

In response to the post-merger customer service problems experienced by New Hampshire customers, the Director of the New Hampshire Public Utilities Commission Consumer Affairs Division filed testimony in the rate case of Bay State's affiliate, Northern Utilities, NH PUC Docket No. DG 01-182, in which she recommended the imposition of service quality standards with penalties for failure to comply. We adopted the standards as part of a settlement of the case. Subsequently, we fined Bay State's New Hampshire subsidiary, Northern Utilities, Inc., five times in the first half of 2003, for failure to meet call center performance requirements established by the Order approving Bay State's acquisition of Northern Utilities. As a result of New Hampshire's repeated application of the penalty provisions, the company dedicated certain call center staff to responding to New Hampshire calls.

Finally, after the Maine, Massachusetts and New Hampshire commissions took regulatory action, the staffing at the call center gradually was increased, and call center performance began to improve. This sequence of events can be seen by a review of the Company's reports to the New Hampshire Commission.

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[4] "Maine PUC Orders Service Quality Plan for Northern Utilities, Inc." (March 29, 2004), available at: http://www.state.me.us/mpuc/staying_informed/news/news_releases/prNUIMgtAudit.htm

It should not be necessary to undertake formal litigation of such problems, but NiSource placed a lower priority on the service quality of its New England subsidiary utilities than it should have, and by its inaction forced regulators to choose between allowing poor service and initiating formal proceedings.

Q. Are there other risks to utility operations that may arise as a result of the proposed merger?

A. Yes. Once a merger is consummated, events can overtake even the most compelling forecasts of what was likely to occur. Also, the effort to achieve predicted synergies can put pressure on achievement of service and operational goals.

Q. Given these risks, how much confidence can the Board have in the representations of Exelon regarding improvements in customer service areas, and why?

A. The Board should not put significant weight on the representation that, if the merger is approved, there will be no adverse impact on utility reliability, safety or customer service. Nor should the Board rely on the Petitioners' representations to the effect that the proposed merger would lead to increased customer satisfaction, enhanced customer care, and enhanced ability to render safe and reliable gas and electric service.

Q. Are there further reasons to question the idea that this merger will enable PSE&G to maintain high standards of service, safety and reliability?

A. Yes. In response to questions exploring the implications of the Petitioners' claims for improved capacities resulting from the merger, PSE&G protests that it has in the past and continues to have the financial strength and flexibility to meet its service obligations without the merger. RAR-SQ-18. Similarly, PSE&G denies that it now has sub-optimal problem-solving capabilities and operations absent the merger. RAR-SQ-25. In other words, PSE&G does not and could not assert that only by virtue of the merger could it maintain or improve its quality of service, safety, and reliability.

Q. Are there still other reasons to be skeptical that this merger will improve PSE&G's customer service, safety or reliability?

A Yes. It is as likely that ComEd and PECO will learn from PSE&G as it is that PSE&G will learn from either of them. For example, Petitioners acknowledge that ComEd and PECO plan to take advantage of PSE&G's superior track record in achieving good CAIDI and SAIFI electric reliability results. S-ENE-REL-2 (Update). Similarly, at an interview conducted in September by the Board's consultants with representatives of PSE&G, a PSE&G representative responsible for electric reliability stated that it would be difficult to get better results for CAIDI and SAIFI than PSE&G now provides, under any circumstances. Even these PSE&G managers do not expect significant positive impacts on electric reliability coming from the proposed merger.

CUSTOMER SERVICE QUALITY

Q. Please explain what you mean by customer service, and why quality customer service is important.

A. By customer service, I am referring to the interactions the Company has with its customers, including but not limited to signing customers up for service, answering billing and service questions, making payment arrangements. I also include the metering and billing functions in my discussion of customer service. Utilities communicate in a variety of ways with their customers. Maintaining a call center and answering calls in a timely fashion are key elements of a quality customer service function. Customer service is a core part of utility service.

Q. What metrics have you examined to evaluate the customer service performance of PSE&G and its proposed merger partners?

A. I have looked at call centers, meter reading (percent meters read on time), billing accuracy, service appointments met, and complaint levels. I discuss the issue of emergency call handling below as part of my discussion of gas safety and reliability.

Q. Please describe PSE&G's record in call center performance.

A. Over the last three years, PSE&G's average percent of calls answered within 30 seconds has been over 80%. In the last two years, PSE&G's average call answering time and call abandonment rates for non-emergency calls have worsened. The attached table in Exhibit NB-SQ-2 provides PSE&G's statistics

for call center performance over the last three years, including the percent of non-emergency calls answered within 30 seconds.

Q. Please compare the percent of calls answered at the call centers of the three operating utilities within 30 seconds.

A. As can be shown by the comparisons provided in Exhibit NB-SQ-3, PSE&G answers a higher percentage of calls within 30 seconds than either of its proposed merger partners, and a higher percentage than the combined Exelon system. In particular, PSE&G answers about 10% more calls within 30 seconds than ComEd, the original utility in the Exelon system.

Thus, PSE&G has a far better record of timely call-answering than either of the two utility operating companies with which it proposes to merge, and a better record as well than the record for Exelon as a whole.

Q. With respect to improved response to customer concerns, what call center changes does Exelon have in mind for New Jersey consumers?

A. The Petitioners assert that by aligning the call centers of all three operating utilities post-merger, call center performance can be improved. Exelon appears to anticipate that it will be possible to staff the call centers of the three operating utilities with fewer total staff, by taking advantage of the difference in time zones, so that customer service representatives can help handle high call periods during times when their own center is not experiencing high call volumes. This is what the Company means when it talks of “aligning” the call centers.

Q. Do you agree with the suggestion that the proposed call center "alignment" will improve call center performance?

A. No. The Company's suggestion is a cost-saving measure, not a customer service improvement.

Q. Why do you say that the proposed call center alignment is a cost-saving measure, not a customer service improvement?

A. The proposal would allow Exelon to shift work out of New Jersey at peak times. Exelon does not assert that it will be able to answer calls from PSE&G customers more quickly. Rather, at best the same performance will be achieved as before, but by making use of non-PSE&G staff at some peak times.

Q. What impact could use of ComEd and PECO call center representatives have on the quality of service experienced by PSE&G customers?

A. Bringing on non-PSE&G service representatives, especially at peak hours, could worsen the quality of the customer/representative interaction. Shifting calls to representatives whose main work involves different states and different utilities poses risks that customers will experience worse call center performance, not better. Customers need to be able to talk to a customer service representative who is not only trained regarding the New Jersey tariff and regulations, but is fully conversant with them and with their interpretation. In addition, customer service representatives should be knowledgeable about the geography, the economy, the culture and even the speech patterns of the utility's service area. Having PECO

and ComEd call center staff pick up calls from New Jersey customers creates a risk of lower quality call-handling and lower customer satisfaction.

Q. Please discuss PSE&G's meter reading performance.

A. Although PSE&G does not use Automatic Meter Reading extensively, it has maintained a level of around 90% of meters read within the billing period, with the exception of 2003, when it only read 83.1% of meters within the billing period. In recent years, PSE&G has improved its meter reading performance. The percent of all meters that remained unread for six or more months has come down from 4.2% in 2002 to 3.2% in 2004. RAR-SQ-13, SQ-87.

Q. Is PSE&G's meter reading performance acceptable in the case of residential customers?

A. PSE&G's meter reading for residential customers could be improved. Performance in the case of residential meters is not as good as the overall rate. PSE&G has averaged a little over 83% of residential meters read on time in the last three years. S-DCA-4. Average performance is brought down by persistent problems in a couple of districts, particularly District 11 (Newark) and District 12 (Roseland). These two districts experience actual read rates that are consistently at or below 80%. S-DCA-52.

Q. Does Exelon have plans for PSE&G relative to its billing system?

A. Yes, Exelon proposes to migrate PSE&G to the ComEd "CIS" billing platform by 2008, after migrating PECO to that platform first. S-DCA-23.

Q. What does Exelon say will be the benefits of migrating PSE&G to the ComEd billing platform?

A. Exelon states that the benefits of a combined billing platform arise from "the elimination of disparate individual company billing processes and systems." The standardization of these processes and billing platforms, according to Exelon, "will result in the elimination of duplicate activities and reduced complexity from managing multiple platforms." RAR-SQ-37. Further, a combined billing platform will, according to Exelon, "provide the merged company earlier access to potential delinquent accounts and allow the combined entity the ability to initiate its collection processes earlier, resulting in lower overall bad debt expense." *Id.* It should be noted, however, that Exelon has not performed an analysis of which customer classes will be affected by the asserted acceleration of collection processes. *Id.*

Q. Are these claimed benefits improvements in customer service?

A. No. The benefits claimed for the combined billing platform are benefits to Exelon management of a far-flung holding company system, and possibly to the utilities in the form of reduced uncollectibles.

Q. What impact will the proposed migration of PSE&G's billing system to the Exelon platform have on customer service?

A. The change in PSE&G's billing system could put PSE&G customers at risk for inaccurate bills, late bills, and other errors in billing during the transition to the new billing system.

Q. Can you give an example of problems with the change-over by a utility to a new billing system?

A. Yes. When Conectiv, parent of Atlantic City Electric and Delmarva Power & Light, moved to a new billing system in December 1999, it experienced numerous problems, leading to errors in billing that persisted for some time. Eventually, Atlantic City Electric had to suspend use of disconnections to collect bills for over a year, and Delmarva Power & Light had to provide a credit of approximately $2.5 million to customers to compensate for billing errors as a result of the change to the new billing system. See the Conectiv 2000 10-K filing to the SEC, filed March 31, 2001.

Q. Does PSE&G need a new billing system?

A. Not at present. PSE&G states that there are no known technical or functional limitations of its current billing platform that would preclude PSE&G from retaining it for the next 3 to 5 years, absent the merger and the desire of Exelon to consolidate all billing systems on the same platform. S-OCI-SYN-81.

Q. Please discuss the performance of PSE&G and its proposed merger partners on keeping appointments.

A. PSE&G reports that it has consistently met over 97 % of the service appointments it has made with its customers since 2000. RAR-SQ-71. Neither PECO nor ComEd have maintained such a high level over the last four years. In all but one year, PSE&G had the highest rate of on-time responses to service appointments.

In none of the last four years has PSE&G had the worst record among the three. Exhibit NB-SQ-4 compares the service appointment rates of the three utilities.

Q. Turning to the topic of customer satisfaction with service, how does PSE&G compare to other New Jersey utilities in terms of the level of complaints to the Board?

A. For internal management purposes, PSE&G gathers data on the number of complaints to the Board per 1000 customers for itself and for other New Jersey energy utilities. It then derives a ratio of its complaints per 1000 customers to the complaints per 1000 customers of each of the rest of New Jersey's electric and gas utilities.[5] PSE&G's so-called BPU Complaint Ratio was 56.4% in 2002, 64.6% in 2003, and 66.2% for 2004. RAR-SQ-106.

Q. How can we understand the implications of the BPU Complaint Ratio derived by PSE&G?

A. The lower the BPU Complaint Ratio, the better PSE&G's performance is relative to other New Jersey energy utilities, insofar as complaints per 1000 customers is concerned. On average, PSE&G has less than 2/3 the number of complaints per 1000 customers as its New Jersey peers.

Q. Please compare the level of complaints to the regulatory agencies concerning the three operating utilities.

[5] As an example, if PSE&G has 30 complaints per 1000 customers, and the other electric and gas utilities have 50 complaints per 1000, the PSE&G "BPU Complaint Ratio" would be 30/50, or 60%.

A. PSE&G and ComEd have roughly comparable levels of complaints per 1000 customers (between 1 and 1.5 per 1000 over the last four years). However, PECO's number of complaints per 1000 was as much as 4 times higher than that of PSE&G. RAR-SQ-122, 26, 28, 75, 106.

Q. Please summarize your review of PSE&G's customer service performance, and the Petitioners' plans for customer service if the merger is approved.

A. The PSE&G service quality is generally better than that of its proposed merger partners, PECO and ComEd. In some cases, the differences in PSE&G's favor are quite large. The only area where PECO and ComEd consistently perform better than PSE&G is that of meter reading. The PSE&G meter-reading performance has improved recently, except in certain districts. There is no basis to conclude that a merger with Exelon will lead to improvement in PSE&G's performance in any of these areas. The Petitioners have not offered any genuine improvements to customer service. The use of out-of-state call center representatives at peak times may save Exelon money, but poses risks of substandard customer service. The introduction of a new Exelon-wide billing system to accommodate the need for system-wide management poses risks of confusion and billing errors during the transition. Customers should not be required to bear these risks.

ELECTRIC SYSTEM RELIABILITY

Q. Please explain what you mean by electric system reliability, and why electric service reliability is important.

A. Electric service is reliable when it is characterized by a low frequency of outages, outages that are short in duration, speedy response to outages, steady voltage levels, and a low incidence of momentary outages (outages that last a very short time, but may interrupt the functioning of electronic equipment, such as clocks). Increasingly, modern society is dependent on a reliable supply of electricity. Most outages are caused by problems at the distribution level, so distribution service quality is an important driver of overall electric system reliability.

Q. What topics will you cover in this section?

A. I will discuss PSE&G's electric system reliability metrics. I will not discuss PSE&G's markout of its underground electric facilities. I will discuss that topic in the next section, along with markout of underground gas facilities.

Q. Please describe the CAIDI and SAIFI metrics.

A. CAIDI is the acronym for Customer Average Interruption Duration Index. It is the ratio of the sum of the durations of sustained customer interruptions to the total number of sustained customer interruptions in the reporting period. It provides a measure of the average length of sustained outages:

$$\text{CAIDI} = \frac{\text{S [sustained customer interruption durations per reporting period]}}{\text{total number of sustained customer interruptions per reporting period}}$$

SAIFI is the acronym for System Average Interruption Frequency Index. It is computed as the ratio of the total number of sustained interruptions per reporting period to the total number of customers served per reporting period:

$$\text{SAIFI} = \frac{\text{total number of sustained customer interruptions per reporting period}}{\text{total number of customers served per reporting period}}$$

SAIFI provides a measure of the average frequency with which customers experience sustained outages.

Q. How should CAIDI and SAIFI results be interpreted?

A. As can be seen by looking at these equations, the lower the CAIDI and SAIFI, the shorter and fewer the interruptions. In other words, lower is better for CAIDI and SAIFI.

Q. How does PSE&G's electric service reliability compare to that of other New Jersey utilities?

A. PSE&G has consistently had the best CAIDI and SAIFI results among New Jersey electric utilities, by a comfortable margin.

Q. How does PSE&G's electric service reliability compare to that of other utilities in the region?

A. According to the PSE&G Vice President for electric operations, the PSE&G electric service reliability is in the top quartile of utilities in the region, and for outage duration its performance is close to the top ten percent of the region. Jacobs Consultancy Interview with Ralph LaRossa, September 8, 2005.

Q. How has the Board measured electric system reliability in its Interim Regulations?

A. In 2002, the Board on an interim level promulgated detailed regulations setting out standards for measuring and enforcing electric system reliability, using the CAIDI and SAIFI metrics. These regulations defined minimum reliability levels for the years 2001 and 2002 for all New Jersey electric utilities. N.J.A.C. 14.5:7-10.

Q. Does the Company still use the benchmarks and minimum reliability levels as calculated using the methodology set out in the Interim Regulations?

A. Only for the four divisions. In the Corporate Overview sections its annual System Performance Reports for years from 2001 forward, the Company states that minimum reliability standards or benchmarks are not applicable for the system as a whole. RAR-SQ-9.

Q. What standard does PSE&G use to determine satisfactory CAIDI and SAIFI performance?

A. PSE&G in recent years has set a goal of placing in the First Quartile of electric reliability performance, including CAIDI and SAIFI, among regional utilities. RAR-SQ-122.

Q. How does PSE&G determine where it stands relative to regional utilities on these electric reliability metrics?

A. PSE&G and other utilities in the region hire an independent contractor to conduct an in-depth survey of each of the utilities along a wide variety of metrics. The results are compiled and ranked. The utilities can then be identified as having their performance sorted by quartiles. The top quartile represents the performance of that quarter of the utilities with the best performance for the year in question. The utilities that participate are major electric utilities[6] in the Mid-Atlantic and neighboring areas. Exhibit NB-SQ-5 lists the utilities that are included in this annual survey.

Q. How does PSE&G's SAIFI performance compare to the First Quartile performance of regional utilities?

A. According to the Company, SAIFI results since 2000 demonstrate first quartile performance. RAR-SQ-22.

Q. How does the Company's CAIDI performance compare to the First Quartile of regional utilities?

A. According to PSE&G, the Company's CAIDI was within the first quartile of the performance of regional utilities in 2003 and 2004.

[6] PSE&G participates in a similar exercise for gas utilities. The list of gas participants is somewhat different, see Exhibit NB-SQ-9, as not all participants are combination gas/electric utilities like PSE&G.

Q. How does PSE&G's electric service reliability compare to that of PECO and ComEd, its proposed merger partners, focusing first on the duration of outages?

A. As can be seen by the table attached as Exhibit NB-SQ-6, with the exception of 2002, a year of a number of storms, PSE&G has consistently had better (lower) CAIDI results than either ComEd or PECO. In none of the four years did PSE&G have the highest (worst) CAIDI.

Customers of PSE&G who suffer outages experience outages on average 24 or more minutes shorter than those experienced by PECO and ComEd customers. In 2004, the outages experienced by PSE&G customers lasted on average only about two thirds the length of those experienced by PECO customers, and just over half the length of outages experienced by ComEd customers.

Q. Please compare the three operating companies' frequency of interruptions.

A. PSE&G's SAIFI results are also better (lower) than those of its proposed merger partners, by even more significant margins than in the case of CAIDI, as can be seen by the comparison presented in Exhibit NB-SQ-7. Except for 2002, PSE&G customers experienced outages on average only about half as frequently as customers of ComEd and PECO. Even in 2002, PSE&G customers experienced far fewer interruptions, on average, than either of its proposed utility merger partners.

Q. Could the introduction of best practices across the three operating utilities improve PSE&G's reliability results?

A. It is not likely. PSE&G performs better than its proposed merger counterparts on CAIDI and SAIFI. Indeed, Ralph LaRossa, Vice President – Electric Delivery, PSE&G, stated that PSE&G's CAIDI is so low that it would be hard to lower it further, and he was unwilling to say that PSE&G will definitely do a much better job if it merges. Among other things, PSE&G representatives at that interview noted that some of the different distribution practices at Exelon (use of relatively few distribution divisions, thus centralizing more operational control) have been considered by PSE&G in the past, and PSE&G managers feel they have already found the appropriate balance between competing considerations (in this case, between cross-division consistency and having decision-making capability close to the problem). September 9 Jacobs Consultancy Interview.

Q. Are the Petitioners willing to offer a guarantee that PSE&G's reliability of electric service, as measured by metrics such as SAIFI and CAIDI, will remain the same or improve after the merger?

A. No. In response to RAR-SQ-21, in which the Company was asked this question, the response was as follows: "No utility can guarantee that the reliability of electric service will always achieve a specific level…What can be guaranteed is that PSE&G will continue to target being among the most reliable utilities in the region (top quartile)…" Thus, when directly questioned about their commitments, Petitioners will not stand behind a guarantee of specific

performance, and merely repeat a self-serving description of their own business goals.

Q. Is there any reason to be concerned about whether PSE&G can maintain its level of CAIDI and SAIFI performance, even if it does not merge into Exelon?

A. Yes. All electric utilities today are facing the need to replace an aging workforce of linemen. If this challenge is not met, over time the Company will have fewer linemen, or less experienced linemen, or both. In such a case, reliability could suffer.

Q. Does PSE&G need to merge with Exelon in order to bring new, qualified linemen into its workforce?

A. No. PSE&G can meet its goals for recruitment and training without the proposed merger. PSE&G is pursuing the recruitment and training of new linemen, to replace those who retire or move on for other reasons. PSE&G consistently holds line schools, and operates ongoing feeder programs in the high schools. Jacobs Consultancy Interview, September 8, 2005. The continuation of PSE&G's commitment to maintain its field staff is not dependent on consummation of the merger.

Q. Please summarize your observations concerning PSE&G's electric reliability.

A. PSE&G has consistently performed in or very near the top quartile of regional utilities with respect to minimizing outage frequency and duration. Its outage duration is relatively low. In addition, PSE&G has consistently performed better

in providing reliable electric service than the two operating utilities with which it proposes to merge. It is unlikely that any improvements to PSE&G's outage performance would be forthcoming as a result of the proposed merger. Rather, there is a risk that PSE&G's electric reliability will suffer if PSE&G is merged with PECO and ComEd.

GAS SAFETY AND RELIABILITY

Q. Please discuss what you mean by gas safety and reliability, and discuss its importance.

A. Gas safety and reliability refer to the construction, operation and maintenance of the gas distribution network in a safe manner, such that the system has few leaks, leaks are expeditiously identified and repaired, that corrosion is prevented, that at-risk facilities (pipes, pumps, services) are replaced, and the system is properly marked out before any digging near the facilities is done. Gas safety also includes the speed with which leak reports and other emergencies are received by the utility, and the speed with which the utility gets to the scene of a potential leak, to assess and correct any safety problems. Gas safety and reliability is crucial, because natural gas is a volatile and combustible material. Failure to maintain

high safety and reliability standards can cause property damage, injuries, and even fatalities.

Q. What topics will you cover in this section?

A. I will cover gas safety and reliability, as well as the manner in which PSE&G and its proposed merger partners handle underground facility markout responsibilities, including markout of underground electric facilities.

Q. What measures provide information on the level of natural gas safety and reliability?

A. There are a number of gas safety and reliability metrics. Key metrics include emergency call answering rate, emergency response rate, gas leak repair rate (open gas leaks), and damages per 1000 mark-out requests.

Q. Please discuss PSE&G's emergency call answer rates.

A. PSE&G has answered 99.5% or more of all emergency calls within thirty seconds in the last seven years. RAR-SQ-72 and RAR-GAS-6. In the last three years, PSE&G has answered 99.86% of all emergency calls. Correspondingly, only a tiny number of callers to the PSE&G emergency lines abandon their efforts to get through.

Q. How does PSE&G's emergency call response time compare to that of its proposed utility partner?

A. Of the two operating utilities in the Exelon family, only PECO has a natural gas operation. The percent of emergency calls responded to in one hour for PSE&G

and PECO is shown in Exhibit NB-SQ-8. PECO's emergency call response time is comparable to PSE&G's.

Q. What has been PSE&G's leak repair performance?

A. PSE&G has met federal requirements for leak repair. Leaks are classified under federal rules by their severity, and the corresponding speed with which they must be repaired or the mains in question replaced. Class 1 leaks require the most urgent response. In the last several years PSE&G has consistently cleared all but 1% of the Class 1 leaks identified. As would be expected, the clearance rate for Class 2 and Class 3 leaks is somewhat lower. However, in the last three years, the clearance rate for such lower-priority leaks appears to have slipped. PSE&G states that notwithstanding the reduced clearance rate for these lower-priority leaks, it has met all federal standards.

.Q. Has PSE&G met its goals for One-Call performance?

A. Yes. For example, PSE&G's target limit of damages per 1000 markout requests was 2.92 in 2004. Its performance year to date as of December 2003 was 2.92. RAR-GAS-45(b).

Q. Are there differences between PSE&G and its proposed merger partners regarding their respective approaches to marking out underground facilities?

A. Yes. PECO outsources its markouts since before 2000. NJLEUC/RESA-PSEG-161, p. 2; RAR-GAS-62 (UPDATE). ComEd outsources markouts for its service areas outside Chicago city limits. NJLEUC/RESA-PSEG-161, p. 2. PSE&G

uses its own staff to mark out its underground facilities in response to a One-Call request. RAR-GAS-62.

Q. Are there risks to safety if a utility contracts out its markout duties?

A. Yes. Contractors may be less familiar with the utilities' system than utility staff, particularly where maps may not contain references to 100% of underground facilities. Contractors may also not have the same pride in performance in the name of the utility that staff would have. A utility using contractors also has less direct control over markout quality assurance.

Q. Can you give an example of where a utility decided to outsource underground facility markout, with adverse consequences?

A. Yes. In 1998, Bay State Gas Company, a Massachusetts utility, decided to outsource its line location function. This task is an essential function, because excavators rely on utilities to mark the location of their facilities accurately, in order to be able to avoid accidentally damaging the facilities during excavation. This is a particularly important function in the case of gas utilities. Shortly after Bay State outsourced its line location function, the line location contractor made a mistake in response to a Dig-Safe request for marking, and failed to identify a gas service feeding a home in Attleboro. The excavator ruptured the line, allowing gas to leak into the home, which was subsequently blown up by explosion of the gas. Two people lost their lives, seven people were injured, and 68 other houses were damaged.

Q. How did Bay State Gas react to the incident caused by its outsourced line location?

A. Soon after the failure to mark properly led to the explosion, Bay State took the line location function back in-house.

Q. Has PSE&G considered outsourcing its markout function, and if so, what did it conclude?

A. <<< **BEGIN CONFIDENTIAL**

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Q. What do you conclude about PSE&G's choice to use its own staff to mark out its underground facilities?

A. I believe that PSE&G should continue to use its own staff to mark out underground facilities, and I am concerned that a merger with ComEd and PECO might result eventually in the decision to outsource this crucial safety function. Accordingly, I recommend that, should the Board approve the merger, it condition the approval on PSE&G retaining the markout function in-house.

Q. Please summarize your observations concerning PSE&G's gas safety and reliability performance.

A. PSE&G appears to take its gas safety and reliability responsibilities with appropriate seriousness, and performs as well as PECO overall on the metrics analyzed.

Q. What impact would a merger of PSE&G with Exelon have on PSE&G's gas safety and reliability?

A. There is no reason to believe that partnering with PECO will improve PSE&G's gas safety and reliability. In fact there is a risk that PSE&G's gas safety and reliability will be eroded as a result of this merger. PSE&G's gas operations are four times as big as PECO's. Exelon plans to have PECO and PSE&G continue to conduct their gas distribution operations through their respective corporate entities. S-OCI-SYN-142. This is an indication that even Exelon does not believe that bringing PSE&G gas operations under PECO or some gas service company in an Exelon holding company structure would improve PSE&G's gas operations. The risk is that PSE&G's record of gas safety and reliability will be eroded by the takeover of this operation by an out-of-state holding company where gas operations have been and would continue to be a small part of the business. There is a specific risk that Exelon would outsource PSE&G's markout function, with potentially dangerous consequences.

REMEDIES:

PROTECTING CUSTOMERS AND THE STATE FROM MERGER-RELATED RISKS

Q. Are the Petitioners' representations and stated intentions satisfactory to protect New Jersey consumers from the potential risks to customer service, safety and reliability attendant upon the proposed merger?

A. No. Unless the Petitioners are willing to stand behind their assertions, and assume the risk that these assertions prove groundless, the Board should not give any weight to the Petitioners' representations concerning merger consequences regarding customer service, safety or reliability.

Q. Please summarize the risks posed by the proposed merger to quality service and service reliability that you identified above.

A. Any merger upsets the existing relationships between utility and customer, and between utility and regulator. It means new, and often unfamiliar approaches to utility service will be imported by the new ownership. When the largest electric and gas utility in a state is taken over by a huge out-of-state holding company, the merger hinders the regulators' effective control and oversight of the utility on many issues. The search for "best practices," promised by merger proponents, can become a search for the lowest cost, a mere common denominator, or company-wide consistency regardless of the specific policies and practices that are sought by New Jersey constituents. In this particular case, PSE&G stands to

lose, and PECO and ComEd stand to gain, in most areas. Indeed, in a discovery response provided to parties in the merger review docket before the Pennsylvania Public Utilities Commission, the President of PECO Energy, Denis P. O'Brien, pointed himself to SAIFI, CAIDI, customer satisfaction and gas odor response rates as areas where PECO will benefit from being able to learn from PSE&G. PA PUC Docket No. A-1100550F0160, OCA Set I, Question 5. Further, acquiring firms must find synergies to absorb the premium they pay to buy other firms, and this drive for synergies can put pressure on the resources needed to keep standards high. Exelon has claimed that none of these untoward results will occur, but it has failed to offer any form of protection for PSE&G's consumers and the State, in the event it does not or cannot fulfill this claim.

Q. In light of the risks you have discussed, what do you recommend concerning customer service, safety and reliability, in the event the Board approves the merger?

A. I recommend that, should the Board otherwise determine to approve the merger, the Board should condition the merger on a Service Quality Maintenance Program. While it would be appropriate under the Board's merger standard for this docket to seek service quality improvement, I recommend that the Board hold PSE&G to maintain current levels of customer service, safety and reliability, while requiring improved results in other sectors, such as, for example, rates and revenue requirements.

Q. Please describe the elements of your proposed Service Quality Maintenance Program for PSE&G post-merger.

A. Under the Service Quality Maintenance Program, PSE&G would be required to meet customer service, safety and reliability standards pegged to the same standards it now uses to assess performance. For the most part, these standards are derived by taking comparisons of PSE&G's performance against the performance of other similar utilities in the region, and requiring performance to be maintained in the First Quartile. PSE&G should continue to compare itself with the same panel of regional utilities as it presently does, listed in Exhibits NB-SQ-5 and 9, and in the event that this comparison group changes, the Board should require PSE&G to notify the Board and explain the reason for the change. Under the Service Quality Maintenance Program, the Board would not require superior performance, but would expect PSE&G to live up to its announced commitment to maintain service quality within the first quartile of performance of regional utilities. Such a Board-imposed precondition to the merger would be especially necessary in light of the uncertain status of the Board's interim reliability regulations.

Q. What consequences do you recommend should follow in the event PSE&G fails to maintain First Quartile performance?

A. The consequences for slippage in service quality performance should depend on the severity of the impact on the State and PSE&G customers in the event standards slide. In the event PSE&G fails to meet certain key standards relating

to immediate reliability and safety, penalties should be assessed. For other metrics, PSE&G should be required to make an annual report to the Board and the Ratepayer Advocate, outlining the results of its performance along those measures, and explaining what steps it is taking to improve performance. The Board may also wish to institute, as a condition of the merger, penalties for failure to meet other indices and/or publicize the results of PSE&G's poor performance, so as to provide customers with greater information regarding PSE&G's service quality.

Q. What consequences, if any, should the Company face if it fails to meet one or more of the standards included by the Board in the Service Quality Maintenance Plan?

A. In the case of service quality, safety and reliability metrics that reflect the Company's performance in keeping the lights on, the gas flowing, and neighborhoods safe, failure to maintain first quartile should result in the assessment of a penalty in an amount sufficient to impress upon management the significance of the failure to maintain sufficiently high levels of quality, safety and reliability. In addition, penalties should be assessed for failure to meet key quality of service metrics, that are critical to customer satisfaction.

Q. For failure to meet such key service, safety and reliability standards, what penalty level would be appropriate?

A. I recommend that, in the event the Company fails to meet key service, safety and reliability standards, that the Company be required to reduce rates by an amount

sufficient to ensure that management will continue to make service, safety and reliability high priorities, and maintain funding, staffing and oversight sufficient to continue PSE&G's performance in the top quartiles of regional utilities. The amount of such penalty reduction would be capped at an appropriate percentage of the firm's transmission and distribution revenues.

Q. What is the range of appropriate penalty caps?

A. The maximum penalty should be at a level sufficient to get and keep management's attention. Other state commissions have adopted service quality and reliability plans with penalties ranging from less than ½ percent to as high as 2 percent of revenues, a reasonable range to consider. Central Maine Power Company is subject to penalties as high as .6% of revenues,[7] Rhode Island recently adopted a 1% penalty cap,[8] Consolidated Edison is exposed to a penalty of 1.5% of transmission and distribution revenues,[9] and Massachusetts by statute sets the penalty cap at 2 percent.[10]

Q. How would the penalty be assessed under your proposal?

A. The designated percentage would be the annual cap for penalties that could be awarded under my recommendation. The specific amount up to that cap that

[7] CMP, Request for Approval of Alternate Rate Plan (Post-Merger), Order Approving Stipulation, Docket No. 99-666, November 16, 2000.

[8] In Re Narragansett Electric Company Service Quality Plan, Docket No. 3628, Report and Order, January 1, 2005.

[9] Proceeding on the Motion of the Commission as to the Rates…of Consolidated Edison, Case No. 04-E-0572, Order Adopting Three-Year Plan, March 24, 2005.

[10] G.L. c. 164, § 1E(c) authorizes the DTE to levy a penalty against any distribution, transmission, or gas company that fails to meet the SQ standards established under G.L. c. 164, § 1E(a), up to and including the equivalent of two percent of the utility's transmission and distribution service revenues for the previous calendar year.

could be awarded for failure to perform to standard on any given key metric should be determined by the relative importance of the metric to service, safety and reliability. In no event would the firm be exposed to higher than the maximum penalty.

Q. What key metrics do you recommend should be safeguarded with the imposition of such penalties?

A. Most critical are the immediate physical safety and reliability metrics. Failure to maintain performance in the First Quartile on these metrics should draw a penalty, even if a penalty plan were not put into effect for any other metrics. These key safety and reliability metrics are as follows:

1. SAIFI.
2. CAIDI.
3. Percent emergency calls answered in 30 seconds.
4. Percent emergency calls responded to in one hour or less.

Q. How would you propose to allocate the penalties to place the proper weight on Company performance?

A. In principle there are any number of ways to allocate the overall penalty cap to account for the difference in importance to consumers and the State of maintaining PSE&G's historic standards of performance post-merger. One straightforward approach would be to give each of these immediate safety and reliability metrics equal weight. The annual cap on penalties for failure to maintain First Quartile performance in any one of the four safety and reliability metrics would then be ¼ of the maximum penalty allowed by the BPU.

Q. How would the recommended penalties be assessed under your proposal?

A. Under the proposed Service Quality Maintenance Plan, PSE&G would submit its report to the Board and Ratepayer Advocate annually as to performance on these four key metrics, and other conditions of the merger. If PSE&G fails to maintain First Quartile performance for any of the four key safety and reliability measures, the Board would then assess a penalty, up to the cap for each metric, to be paid to PSE&G customers in the form of credits to customers' bills. Some commissions subdivide the potential penalty, such that decreasing levels of performance (down to a floor below which the maximum penalty would be assessed) are penalized by increasing percentages of revenue, up to the cap for the metric. It would make sense to adopt such a pro-rata allocation of the potential penalty and to set a reasonable floor. For example, for metrics where relative performance compared to regional utilities is the standard, anything below First Quartile would draw a penalty, and anything below Second Quartile would draw the maximum penalty. Of course, the Board could take into account special conditions out of the utilities' control in determining the level of the penalty to assess, up to the cap for that standard.

Q. Is it fair to exact a penalty from PSE&G for failure to achieve the recommended level of performance on these 4 metrics post-merger?

A. Yes, for a number of reasons. First, it is fair to insist that the Petitioners protect New Jersey and PSE&G customers from the risk that existing standards are allowed to slip after the merger. If, as they represent, the merger poses no risk of

erosion in the areas of service quality, safety and reliability, then conditioning the merger on a penalty scheme that kicks in only in the event of such erosion places no additional risk on the Petitioners. Further, the Petitioners claim that they will not only maintain existing performance levels, they will even improve on current levels of service at PSE&G in some areas. And under the Board's "positive benefit" test for reviewing this merger, it would be fair to demand improvement across the range of PSE&G operations. Additional benefits may be sought in other areas. However, in these service quality proposals, I am merely recommending that the Company be held to the standards it has applied to itself.

Q. Are there other reasons to believe that PSE&G should have no trouble avoiding the penalties you propose?

A. Yes. In fact, the Company has been meeting or exceeding these metrics. And with respect to the measures that will subject the firm to potential penalties, such as CAIDI and SAIFI, PSE&G will be scored "on the curve" against utilities facing similar operating challenges in any given year. PSE&G post-merger will have more than a fair opportunity to meet the standard required by the Board.

Q. For other measures of service quality, reliability, and safety, do you propose that the Board include any conditions for merger approval ?

A. Yes. The need for significant penalties for the key metrics above does not obviate the need to protect New Jersey and PSE&G customers from the risks of backsliding in other aspects of service as a result of the proposed merger. Accordingly, I propose that if the Board determines to approve the merger, it

require that PSE&G maintain its current level of service quality, safety and reliability on all important performance indicators, not merely on the four key safety and reliability metrics discussed earlier. To help assure that PSE&G does not slip in its performance, PSE&G should be required to include the results of these measures, as well as the results for the four key metrics above, in quarterly reports to the Board, providing monthly data for the last quarter, along with its plans for restoration back to pre-merger levels in the event of slippage.

Q. What other performance metrics should be included in the Company's quarterly reports?

A. The Company should be required to report on the operational and customer service metrics that it includes in its "Balanced Scorecard." The Company assesses employee and manager performance using a set of metrics in the four areas of Customer Care, People (Safe, Motivated Productive), Operations (Reliable, Low Cost), and Financial Performance. For each operational division, such as Customer Operations (e.g. call centers, billing), Electric Delivery (T&D operations and maintenance), and so forth, the Operations quadrant of the "Balanced Scorecard" contains metrics that, taken together, provide a good picture of how the Company is serving its customers in that area of operations. The Company should continue to gather these data, and report to the Board and Ratepayer Advocate on how well it is maintaining its pre-merger levels of service. Operational metrics from the "Balanced Scorecard" which the Company should be required to maintain at pre-merger levels, include Gas Leak Reports Per Mile,

Damages Per 1000 Locate Requests, Appointments Kept, Transmission Availability Index, Percent Meters Read, Percent Bills Adjusted, and Telephone Service Level Index.

Q. What standard should be used to assess adequate performance in these other operational metrics?

A. I recommend that the Company be required to maintain the same standard as it has targeted internally. In some cases, this means the Company would have to have performance that ranks in the first quartile of comparable utilities, as shown in the annual survey conducted for a number of gas and electric utilities by an independent consultant. In other cases, the Company's standard has been based on historical performance. If any of the other indices fall below acceptable levels as determined by the Board, the Board should take action to protect consumer interests. Such actions could range from requiring a remediation plan all the way to reflecting the substandard performance in the equity return allowed the utility.

Q. Do you recommend any further merger conditions in the area of customer service?

A. Yes. The Company should be required to maintain and fully staff its two New Jersey call centers with trained New Jersey customer service representatives, and should not be permitted to reduce staff, make additional use of out-of-state representatives, or move call centers out of state. If after four years they want to move call centers out of state, PSE&G would have to demonstrate to the Board that customer service would be improved with such a move.

Q, Why do you propose that the Company agree to maintain its New Jersey call centers?

A. As I discussed at the beginning of my testimony, the call center interaction with customers is a key form of communication between Company and customer. Service representatives from sister companies and from out of state will not be as alert to or knowledgeable about New Jersey-specific factors at issue in a New Jersey customer's case. The Company has already warned that it proposes to use staff from other states to fill in at various times of day. This practice should not be permitted. While the impact will be to reduce the ability to achieve cost reductions, the price of such cost reductions in terms of reduced quality of call center service is too high.

Q. Do you propose further conditions related to the proposed move to the Exelon billing system?

A. Yes. If the merger is approved, PSE&G should be required to report to the Board and Ratepayer Advocate on the plans for, and execution of, the migration of PECO to the ComEd billing platform. Such reports should include the presentations and notices to be given to Pennsylvania parties concerning the conversion according to Paragraph 31 of the proposed Settlement of the PECO merger docket now pending before the Pennsylvania Commission. The Board should require similar reports from PSE&G if and when PSE&G transitions to the ComEd billing platform. Further, if a PSE&G customer is subject to a billing error during and after the migration to the ComEd billing platform, PSE&G

should afford the customer affected by the error an affordable payment arrangement, and should credit the customer's account by $10 for each such incident.

Q. Why do you propose that PSE&G should be required to give customers a credit if they suffer billing errors or delays during the transition to a new billing system?

A. The decision to move to a new billing system on a definite schedule is a by-product of the desire of Exelon to merge, and to systematize its operations across the holding company. It is not being done for the benefit of the consumer. The consumer should not take the risk. If, as Exelon has asserted in the Pennsylvania proceeding, the risks of billing error and delay are insignificant and the conversion will be managed to prevent them, then Exelon is in no danger of having to pay out any such penalties. My proposal here merely asks Exelon to back up its assertions with protections for the consumers, who otherwise would be at risk.

Q. Do you propose further conditions relating to service quality?

A. Yes. The review of metering conducted for this merger proceeding has revealed that timely meter reading has been a particular problem for the Company in the Newark and Roseland Districts. The Company should be required to report to the Board within a year from the consummation of the proposed merger as to its progress in reducing the level of unread meters in these Districts, together with its plans for further remedial work if needed at that time.

Q. Do you propose further conditions related to reliability?

A. Yes. Given the importance of meeting the emerging need for new linemen, I propose that PSE&G be required to continue its efforts to recruit and train new linemen, and that it be required to report to the Board and the Ratepayer Advocate its progress in maintaining an adequate staff of experienced linemen.

Q. Do you propose further conditions relating to system safety?

A. Yes. I propose that as a condition of the merger, PSE&G be required to maintain its markout function in-house, using its own staff. I also propose that, given the critical need to maintain system safety, PSE&G be required to continue its efforts to recruit and train new gas operations personnel, and that it be required to report to the Board and the Ratepayer Advocate its progress in maintaining an adequate gas operations staff.

Q. Why should the Board insist on a service, reliability and safety program that includes penalties, as you have suggested here?

A. New Jersey and PSE&G customers should be able to rely on the Petitioners' assurances, especially where immediate physical safety and reliable operations are concerned. The Petitioners should be willing to back up their lofty assertions of no net harm or positive benefit with monetary commitments.

Q. Does this conclude your testimony?

A. Yes.

Resume of

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Education

B.A. with honors, 1970, Smith College, Northampton, MA
J.D., 1973, Yale Law School, New Haven, CT
Coursework in statistics, Northeastern University, Boston, MA

Employment

Commissioner, New Hampshire Public Utilities Commission (1998-2003)
Member, New Hampshire Site Evaluation Committee (1998-2003)
Utilities consultant and attorney, National Consumer Law Center (1991-1998)
General Counsel, Massachusetts Public Utilities Commission (1989-1991)
Staff Attorney, Assistant General Counsel, Massachusetts Commission (1986-1989)
Hearings Officer, Senior Staff Attorney, Maine Public Utilities Commission (1983-1986)
Executive Director, Maine Legal Services for the Elderly, Inc. (1981-1983)
Staff Attorney, Directing Attorney, Pine Tree Legal Assistance, Inc. (1979-1981)
Staff Attorney, UMass Student Legal Services (1977-1979)
Staff Attorney, Western Massachusetts Legal Assistance, Inc. (1976-1977)
Staff Attorney, Legal Aid Society of New York (1974-1976)

NARUC and related Committee Memberships and Public Service (1998-2003)

NARUC Consumer Affairs Committee (Vice-Chair)
Consumer Affairs Committee, New England Conference of Public Utility Commissioners (Chair)
Steering Committee, National Council on Competition in the Electric Industry
ISO-NE Advisory Committee
NEPOOL Review Board Advisory Committee NARUC Ad Hoc Committee on Competition in the Electric Industry
NARUC Ad Hoc Committee on Committee Structure, NARUC
NARUC Committee on Communications
FCC Joint Conference on Accounting
North American Numbering Council
NBANC Board of Directors

FCC Joint Conference on Accounting
North American Numbering Council
NBANC Board of Directors

Other Activities:
Chair, Board of Directors, PAYS America, Inc.

Other Appointments and Professional Activities (1991-1998)

Independent Conservation & Load Management Expert, Commonwealth Electric Co.
President's Council on Sustainable Development, Energy & Transportation Task Force
California Low Income Governing Board (Advisory Bd. To CPUC on low-income issues)
Massachusetts Energy Facilities Siting Board
Massachusetts Board of Registration of Allied Mental Health Professionals

Papers and Publications (partial list)

Primary author (with Oppenheim), *AARP Model Statute for Consumer Protection in Electric Industry Restructuring*, Washington, D.C.: AARP (1999).
Contributing author (with Saunders, Spade, Kimmel), *Water Affordability Programs*, American Water Works Association (1998).
Co-editor and author, *Access to Utility Services* (manual for consumer advocates on consumer protection issues and access to utility services), National Consumer Law Center (1997).
Regulatory Jurisdiction to Enforce Consumer Protections Against Competitive Electricity Suppliers: The Case of New England, in Barbara R. Alexander and NCLC, "Consumer Protection Proposals for Retail Electric Competition: Model Legislation and Regulations." The Regulatory Assistance Project (October 1996).
Primary author, *Stranded Benefits in Electric Industry Restructuring*, National Council on Competition and the Electric Industry (1996).
"Intervenor Funding in Public Utility Rate Cases," *Clearinghouse Review*, June 1995, Chicago, Illinois.
A Low-Income Advocate's Introduction To Electric Industry Restructuring And Retail Wheeling. Rev. Boston, MA : National Consumer Law Center (1994).
Contributing author, Tenants' Rights to Utility Service (with Margot F. Saunders and Roger D. Colton). National Consumer Law Center (1994).
How Rates are Set for the Regulated Utility: A Quick Overview. National Consumer Law Center (1994).

Bar Memberships

New York State and Massachusetts
Maine (inactive)

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NANCY BROCKWAY: TESTIMONY				
Case name	Client Name	Topic	Juris. & Docket No.	Date
Nova Scotia Power, Inc.	NS UARB Consumer Advocate	Proposed Forest Products discount rate	Nova Scotia Utility and Review Board, P-882	October 2005
Nova Scotia Power, Inc.	NS UARB Consumer Advocate	Revenue Requirements, Cost Allocation, Rate Design	Nova Scotia Utility and Review Board, P-882	October 2005
Bay State Gas Company	Local 273	Customer Service, Reliability, Low-Income Protections, Revenue Requirements	Massachusetts DTE, Docket No. 05-27	July 2005
Nova Scotia Power, Inc.	Nova Scotia Utility and Review Board	Domestic Consumer Perspective on Proposed Rate Case Settlement Agreement	Nova Scotia Utility and Review Board, P-881	1/05
Cincinnati Bell Alt Reg	Communities United for Action	Universal Service and alternative regulation of telephone service	PUCO, Case No. 96-899-TP-ALT	12/97
UGI-Electric Utilities, Inc.	Pennsylvania OCC	Universal Service issues in electric industry restructuring plans	PA PUC, No. R-00973975	1997
West Penn Power Co.	“	“	PA PUC, No. R-00973981	1997
Duquesne Light Co.	“	“	PA PUC, No. R-00974101	997
PECO, Inc.,	“		PA PUC, No. R-00973953	1997
PP&L	“	“	PA PUC, No. R-00973954	1997
Met Ed.	“	“	PA PUC, No. R-00974008	9/97
Penelec	“	“	PA PUC, No. R-00974009	9/97
In the Matter of the Electric Industry Restructuring Plan	New Hampshire Legal Services	Low-income rates and DSM, impacts of restructuring on low-income consumers	New Hampshire Public Utilities Commission, D.R. 96-150	Nov., Dec. 1996

NANCY BROCKWAY: TESTIMONY				
Notice of Inquiry/ Rulemaking establishing the procedures to be followed in electric industry restructuring...	Mass. CAP Directors Association, Mass. Energy Directors Association, Low-Income Intervenors	Electric industry restructuring	Massachusetts Department of Public Utilities, D.P.U. 96-100.	to 10/98
Universal Service Docket	Pennsylvania Office of Consumer Advocate	Rate rebalancing, universal service, telephone penetration.	Pennsylvania Public Utilities Commission Docket No. I-00940035	1996
Massachusetts Electric Company Proposed Increase in Rates and Incentive Ratemaking Plan	Named Low-Income Intervenors	Incentive ratemaking plan, low-income discount rates and fees, low income DSM.	Massachusetts Department of Public Utilities, No. 95-40	1995
In Re: Electric Industry Restructuring	Named Low-Income Consumers	Electric industry restructuring	Massachusetts D.P.U. Docket No. 95-30	to 10/98
In Re: Complaint of Kenneth D. Williams v. Houston Lighting and Power Co.	Named Low-Income Consumers	Customer service, rate design, demand-side management, revenue requirements	Texas Public Utilities Docket No. 12065	1994-5
Bath Water District, Proposed Increase in Rates	Maine Office of Public Advocate	Water district cost allocation, rate design, low-income water affordability	Maine Public Utilities Commission, Docket. No. 94-034	12/94, 3/95
Application of Ohio Bell Telephone Co. for Approval of Alternative Form of Regulation	Legal Aid Society of Cleveland and Dayton	Definition of universal telecommunications service, proposal for Universal Service Access program (USA).	Public Utilities Commission of Ohio, Case No. 93-487-TP-ALT	5/4/94
Pennsylvania PUC vs. Bell Telephone of Pennsylvania	Pennsylvania Public Utility Law Project	Definition of "universal telecommunications service"	Pennsylvania PUC No. P-930715	filed 12/93

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Joint Application for Approval of Demand-Side Management Programs, etc.	LG&E; Legal Aid Society of Louisville, other Joint Applicants	Cost-effective DSM programs for low-income customers; collaborative process to design DSM programs; cost allocation and cost recovery.	Kentucky PSC No. 93-150	11/8/93
Texas Utilities Electric Company	Texas Legal Services Center	Costs and benefits of DSM targeted to low-income customers	Texas PUC No. 11735	1993
Texas Utilities Electric Company	Texas Legal Services Center	Proposed Maintenance of Effort Rate for low-income customers	Texas PUC No. 11735	1993
Philadelphia Water Department	Philadelphia Public Advocate	Costs of Unrepaired System Leaks	Philadelphia Water Comm'r.	1992
New England Telephone	Rhode Island Legal Services	DNP for non-basic service	Rhode Island PUC, No. 1997	1991
Kentucky Power Co.	Kentucky Legal Services	Low Income Rate	Kentucky PSC No. 91-066	1991
Investigation into Modernization	Invited by Commission	Impact of modernization costs on low income telephone users	New York PSC	1991

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Exhibit NB-SQ-2

Call Center Performance, PSE&G, 2002-2004

Year	A	B	C	D
**2002	87.4	4.5	50	0.8
2003	82.3	20.1	187	3.1
2004	86.0	11.0	125	2.1

** For 2002, only April - December data available
Source: RAR-SQ-71, 73, 13

A. Percent non-emergency calls answered within 30 seconds
B. Percent of all calls abandoned by customer
C. Average speed of answer (seconds)
D. Average speed of answer (minutes)

Exhibit NB-SQ-3

Call Center Performance, PSE&G, PECO and ComEd, 2000-2004
Percent Calls Answered Within 30 Seconds

Year	PSE&G**	PECO	ComEd*	Combined Exelon
2000		72.3	82.6	80.5
2001		75.0	84.3	82.4
2002	87.4	80.0	78.8	78.9
2003	82.3	78.0	73.5	73.8
2004	86.0	77.0	73.3	74.1

Source: RAR-SQ-71, 73

** For 2002, only April - December data available

Exhibit NB-SQ-4

Percent service appointments met
By PSE&G, ComEd and PECO
2000-2004

Source: RAR-SQ-71

	PSE&G		ComEd		PECO	
Year	Percent Met	Percent Not Met	Percent Met	Percent Not Met	Percent Met	Percent Not Met
2000	97.3%	2.7%	99.4%	0.6%		
2001	97.7%	2.3%	97.1%	2.9%	96.0%	4.0%
2002	97.3%	2.7%	94.2%	5.8%	97.0%	3.0%
2003	97.1%	2.9%	95.9%	4.1%	96.0%	4.0%
2004	97.6%	2.4%	98.0%	2.0%	95.8%	4.2%

Exhibit NB-SQ-5

UTILITIES INCLUDED IN REGIONAL ELECTRIC UTILITY SURVEY TO DETERMINE FIRST QUARTILE CAIDI AND SAIFI PERFORMANCE

Source: RAR-SQ-106

1. Alleghany Power
2. Atlantic City Electric
3. Baltimore Gas & Electric Company
4. Consolidated Edison
5. Delmarva Power & Light Co.
6. Dominion Resources
7. FirstEnergy
8. Long Island Power Authority
9. Massachusetts Electric Co (National Grid)
10. Narragansett Electric Co (National Grid)
11. NSTAR Electric and Gas Corporation
12. Orange & Rockland Utilities
13. PECO Energy Company
14. Potomac Electric Power Company
15. PPL Electric Utilities
16. PSE&G
17. The United Illuminating Company
18. UGI Utilities, Inc.
19. Virginia Power

Exhibit NB-SQ-6

CAIDI for PSE&G, PECO and ComEd, 2001-2004

Year	**PSEG CAIDI**	**PECO CAIDI**	**ComEd CAIDI**
2001	85	119	106
2002	100	106	98
2003	80	106	127
2004	69	107	126

Sources:
RAR-SQ-3 (PSE&G); S-ENE-REL-16 (ComEd, PECO)

Exhibit NB-SQ-7

SAIFI for PSE&G, PECO and ComEd, 2001-2004

	PSE&G SAIFI	PECO SAIFI	ComEd SAIFI
2001	0.55	1.18	1.29
2002	0.81	1.09	1.01
2003	0.63	0.97	1.14
2004	0.64	0.97	1.16

SOURCES:

RAR-SQ-3 (PSE&G); S-ENE-REL-16 (ComEd and PECO)

Exhibit NB-SQ-8

PECO and PSE&G Emergency Call Response in One Hour
(Percent)

YEAR	PSE&G	PECO
1999	99.5	99.81
2000	99.71	99.87
2001	99.87	99.95
2002	99.83	99.95
2003	99.86	99.93
2004	99.88	99.93
YTD 05*	99.90	n/a

Sources: RAR-SQ-72, RAR-SQ-106, S-RS-REL-16 (UPDATE)

Exhibit NB-SQ-9

REGIONAL GAS UTILITIES IN SAMPLE:

Alleghany Power
Baltimore Gas & Electric
Columbia Gas – Virginia
Columbia Gas – Pennsylvania & Maryland
Dominion
Keyspan Energy Delivery – New England
NSTAR Gas
Orange & Rockland
PECO Energy Company
Public Service Electric & Gas
South Jersey Industries
UGI Utilities, Inc.

Source: RAR-SQ-106