

**UNITED STATES OF AMERICA
SECURITIES AND EXCHANGE COMMISSION**

In re Exelon Corporation, et al. (70-10294)

**Comments and Request for Hearing
Of
The City of Philadelphia and Philadelphia Gas Works**

Pursuant to the Public Utility Holding Company Act of 1935, as amended, 15 U.S.C. §§ 79, *et seq.* ("Act"), and the notice issued herein on December 30, 2005 (Release No. 35-28079), The City of Philadelphia ("City") and Philadelphia Gas Works ("PGW")(together sometimes jointly referred to as "Philadelphia"), through the undersigned counsel, submit the following comments and request for hearing with respect to the above-referenced matter.

1. The City of Philadelphia is a corporation and body politic organized and existing under its Home Rule Charter and under the laws of the Commonwealth of Pennsylvania. The City is a governmental entity and does not issue or own stock. The City is the owner of the Philadelphia Gas Works, and has entered into a Management Agreement pursuant to which the Philadelphia Facilities Management Corporation manages the Philadelphia Gas Works for the City. The City issues commercial paper and gas revenue bonds on PGW's behalf.

2. PGW, acting through Philadelphia Facilities Management Corporation, a nonprofit Pennsylvania corporation, in its sole capacity as operator and manager of the municipally-owned natural gas distribution facility, pursuant to an agreement with the City of Philadelphia dated December 29, 1972, as amended, with its business in Philadelphia, Pennsylvania, *inter alia*, distributes and sells natural gas to residential,

commercial, industrial, governmental, and institutional customers within the City of Philadelphia.

3. The City, a political subdivision of the Commonwealth of Pennsylvania, is the governmental entity most directly concerned with the well being of those who live, work, or do business in Philadelphia. Almost all, and the City itself, take electricity from PECO Energy Company, and Exelon Company. The City and also all within its boundaries take gas from PGW, although some have oil heat and some have electric heat from PECO, which also provides gas service to surrounding counties within Pennsylvania. PSE&G provides gas and electricity to surrounding New Jersey communities. The City has a disproportionately high number of citizens who live in and near poverty, and who require additional funds and services from the City and others through the social safety net when they become unable to pay utility bills.

4. The City and PGW have been involved in other federal and state regulatory proceedings regarding the proposed merger between Exelon and PSEG ("Applicants"); specifically, Federal Energy Regulatory Commission ("FERC") Docket No. EC05-43-000, Pennsylvania Public Utility Commission ("PPUC") Docket No. A-110550F0160, and New Jersey Board of Public Utilities ("NJBPU") Docket No. EM05020106.

5. In each of those proceedings, Philadelphia has urged that, absent practicable and efficient mitigation and/or ongoing restrictions the regulatory authorities should deny their consent to the proposed merger on the ground that the merged entity resulting from the proposed acquisition will have vertical market power in mid-Atlantic gas markets, and have the ability and incentive to use that market power to adversely affect competition in electricity and gas markets.

6. To support their assertion, PGW and City have submitted the following testimony and exhibits to the agency(ies) indicated:

- a) Direct Testimony of Dr. Paul R. Carpenter, submitted by Philadelphia to the PPUC on June 27, 2005;¹
- b) Surrebuttal Testimony of Joseph P. Kalt, Ph.D., before the PPUC dated August 26, 2005, submitted by Philadelphia to FERC on September 9, 2005.²
- c) Surrebuttal Testimony of Dr. Paul R. Carpenter before the PPUC dated August 26, 2005, submitted by Philadelphia to FERC on September 9, 2005.³
- d) Direct Testimony of Dr. Paul R. Carpenter, submitted by Philadelphia to the NJBPU on November 14, 2005.⁴
- e) Surrebuttal Testimony of Dr. Paul R. Carpenter, submitted by Philadelphia to the NJBPU on December 27, 2005.⁵

7. Additional testimony concerning the ability of the merged entity to use vertical

¹ Attached hereto as Exhibit 1. Because the evidence on which this testimony was based was not available until after the deadline for protests in the FERC proceeding, Philadelphia filed a motion for leave to file additional evidence in that proceeding on June 27, 2005. FERC denied the motion. *See Exelon Corporation and Public Service Enterprise Corporation, Inc.*, 112 FERC ¶ 61,011 (issued July 1, 2005) and 113 FERC ¶ 61,299 (issued Dec. 21, 2005). As a consequence, FERC has never considered the substantive issues raised in that testimony.

² Attached hereto as Exhibit 2. Philadelphia filed a motion for leave to file this additional evidence with FERC on August 1, 2005. FERC denied the motion. *See Exelon Corporation and Public Service Enterprise Corporation, Inc.*, 112 FERC ¶ 61,011 (issued July 1, 2005) and 113 FERC ¶ 61,299 (issued Dec. 21, 2005). As a consequence, FERC has never considered the substantive issues raised in that testimony.

³ Attached hereto as Exhibit 3. Philadelphia filed a motion for leave to file this additional evidence with FERC on August 1, 2005. FERC denied the motion. *See Exelon Corporation and Public Service Enterprise Corporation, Inc.*, 112 FERC ¶ 61,011 (issued July 1, 2005) and 113 FERC ¶ 61,299 (issued Dec. 21, 2005). As a consequence, FERC has never considered the substantive issues raised in that testimony.

⁴ Attached hereto as Exhibit 4.

⁵ Attached hereto as Exhibit 5.

market power to adversely affect competition in electricity and natural gas markets was obtained during the cross-examination of expert witnesses before both the PPUC and the NJBPU.⁶

8. FERC has concluded that it lacks jurisdiction to consider the ability of the merged entity to use vertical market power to adversely affect competition in natural gas markets.⁷

9. As a result of FERC's determination that it lacks jurisdiction to consider the ability of the merged entity to use vertical market power to adversely affect competition in natural gas markets and the inability of affected states to exercise jurisdiction over electric or natural gas wholesale transactions or markets, there is a lack of effective Federal regulation with respect to the merged entity's vertical market power in mid-Atlantic natural gas markets.

10. The existence of such market power as a result of the proposed acquisition and merger and the ability of the merged entity to exercise such market power directly and materially affects and burdens interstate commerce, is detrimental to the proper functioning of the merged entities, and adversely affects the consumers of both electricity and natural gas. The proposed acquisition and merger will tend towards the concentration of control of public utility companies, of a kind and to an extent, detrimental to the public interest and the interests of investors and consumers.

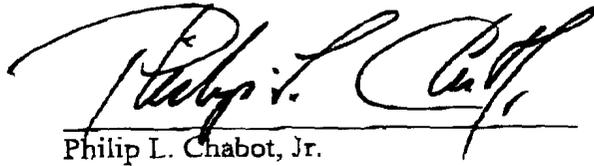
11. Whether the merged entity will, as a result of the proposed acquisition and

⁶ Transcripts of relevant cross-examination are attached hereto as Exhibit 6.

⁷ See *Exelon Corporation and Public Service Enterprise Corporation, Inc.*, 112 FERC ¶ 61,011 (2005) and 113 FERC ¶ 61,299 at P22 (2005).

merger, have vertical market power in mid-Atlantic gas markets and have the ability and incentive to use that market power to adversely affect competition in electricity and natural gas markets, is a disputed issue of material fact for which a hearing is required by law.

Respectfully Submitted,

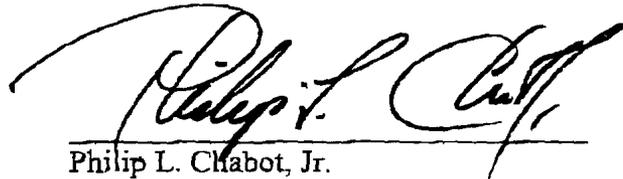


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January 23, 2006

CERTIFICATE OF SERVICE

I do hereby certify that a copy of the foregoing was caused by me to be served upon Applicants by placing the same in the U.S. Mail, first class postage pre-paid, this 23rd day of January, 2006.



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