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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INTRODUCTION

Q. Please state your name, affiliation and address.

A. My name is Nancy Brockway. I am the principal of NBrockway & Associates, a consulting practice located in Boston, Massachusetts.

Q. On whose behalf are you testifying today?

A. I am presenting testimony on behalf of the New Jersey Division of the Ratepayer Advocate.

Q. Please briefly describe your qualifications.

A. I have been in the field of utility regulation and policy for 22 years. I have served on the staff of two state commissions, and was a Commissioner in New Hampshire for five years. My tenure on the New Hampshire Public Utilities Commission coincided with the introduction of wholesale competition in the electric industry in New England and the Mid-Atlantic states, as well as the introduction of retail competition in the gas and electric industries in New Hampshire and many neighboring states.

As a Commissioner, I sat on a number of proposed mergers in New Hampshire involving issues similar to those in this docket.

A resume is attached as Exhibit NB-1.

Q. What is the subject of your testimony?

A. I present an overview of the testimony being presented in this docket by the witnesses for the Ratepayer Advocate, and a summary of the recommendations presented by these witnesses. After briefly describing the proposed merger, I begin with the standard for review adopted by the Board of Public Utilities (Board or BPU) for this docket. I continue with a review of the promises made by the Joint Petitioners for the outcomes of the merger. I follow with a discussion of the risks presented by the proposed acquisition of Public Service Electric & Gas Company (PSE&G)[1] by Exelon Corporation,[2] drawing on the testimonies of the other Ratepayer Advocate witnesses. I conclude with my recommendation that Your Honor and the Board deny the petition for approval of the takeover of PSE&G by Exelon Corporation. I also outline conditions for the Board to apply to the merging companies, in the event the Board determines to approve the merger.

Q. Please identify the witnesses who will testify on behalf of the Ratepayer Advocate, and the topics of their testimony.

A. Testifying for the Ratepayer Advocate in this docket are the following witnesses, followed by a short statement of the topics of their testimony:

- Bruce Biewald, Robert Fagan and David Schlissel of Synapse Energy Economics (Synapse Panel) testify regarding market power and electric price issues raised by the proposed merger. They discuss the flaws in the Joint Petitioners' market power analyses, the risk that the electric market power of the merged entity will lead to increases in wholesale and retail electricity prices if the merger is approved, the inadequacy of the Joint Petitioners' proposed market power mitigation, the additional unregulated profits Exelon will enjoy from additional sales of nuclear capacity if the merger is approved, and the risk that any merger synergy savings could be wiped out by very small wholesale electricity price increases.
- Richard W. LeLash testifies regarding the impact of the proposed merger on Exelon's ability to exert market power through its

[1] Through the acquisition of its parent company, Public Service Enterprise Group (PSEG).
[2] After the merger is complete, Exelon Corporation will be dissolved, and a new entity named Exelon Electric and Gas Corporation (EEG or Exelon) will be the surviving corporation.

control of gas capacity in the region, on regulatory oversight of gas operations and supply contracting, on the costs and benefits to PSE&G of its affiliate gas supply and capacity contracts, and on PSE&G's gas operations.

- Matthew Kahal testifies regarding capital structure and cost of capital implications of the proposed merger, including debt/equity ratios, credit rating impacts, the cost of capital for PSE&G, and the risks associated with the proposed Utility Money Pool. Mr. Kahal also addresses the corporate and financial structure proposed for the merged company, as well as certain implications of repeal of the Public Utility Holding Company Act (PUHCA) on regulation of the merged entity. Mr. Kahal sounds a cautionary note regarding the difficulties Exelon is having in Illinois concerning the post-transition procurement of power for default customers.
- David Peterson of Chesapeake Regulatory Consultants, Inc., analyzes the synergy claims of the Joint Petitioners, with particular focus on impact of the proposed merger on the rates of PSE&G. He also addresses items that are included in costs-to-achieve that should not be recovered in rates. Mr. Peterson also has reviewed the Joint Petitioners' requests for approval of a General Service Agreement and a Mutual Service Agreement. In addition, he addresses the impact of the proposed merger on employees, and on PSE&G representation on the merged company's Board of Directors.
- Robert Henkes, of Henkes Consulting, discusses the proposed accounting for the establishment of various regulatory asset and liability accounts associated with the impact of the purchase accounting method on (1) PSE&G's pension and other post-employment benefit (OPEB) expenses, (2) PSE&G's third-party debt, and (3) PSE&G's Basic Generation Service (BGS) and Basic Gas Supply Service (BGSS) contracts. Mr. Henkes also addresses the allocation of net merger savings to PSE&G's electric and gas operations.
- Roger Colton, of Fisher, Sheehan and Colton, describes the impact of the proposed merger on low-income consumers.
- In a separate piece of testimony, I testify on the potentially adverse impact of the proposed merger on PSE&G service quality, safety, and reliability.

Q. How is your testimony organized?

A. My testimony is in 5 sections:

1) A summary of the Joint Petitioners' case for the proposed merger.

2) Impacts of the proposed merger on the regulated side.

3) Impacts of the proposed merger from the non-regulated side.

4) Impacts on employment.

5) Recommendations.

SECTION I

THE JOINT PETITIONERS' CASE IN FAVOR OF MERGER APPROVAL

Q. What have the Joint Petitioners told the Board about the impacts of the proposed merger?

A. The Joint Petitioners have testified that the merger would produce no net harm for New Jersey and PSE&G customers, and that the merger would produce benefits for the State and the affected customers.

Q. Please summarize the Joint Petitioners' claims concerning the likely impact of the merger.

A. In his testimony, the CEO of Exelon, John Rowe, described the impacts of the proposed merger as follows:

> We expect the Merger to produce substantial benefits in several important ways. We will increase value for our shareholders through cost synergies and new competitive opportunities. We will continue to improve our service to our customers through best practices and economies of scale. We will also maintain our substantial presence in the cities and communities we serve, and create opportunities for our employees. We have a strong culture and a strong vision for our new company. It is underpinned by one main tenet – to live up to our commitments.

Q. What specific impacts does Mr. Rowe anticipate the proposed merger will bring?

A. Mr. Rowe stated that the proposed merger would bring Exelon increased scale, scope and operational diversity, as well as financial strength and flexibility. He stated that Exelon has a commitment to high quality service, and to the sharing of best practices. He further testified that the proposed merger would produce synergies. Finally, he testified that Exelon and PSE&G have a commitment to competition in the electricity and natural gas wholesale markets. His specific representations on these points are collected in Exhibit NB-2.

Q. Has PSEG management made any press statements concerning their view of the impacts of the proposed merger?

A. Yes. Mr. E. James Ferland, Chairman of the PSEG Board, issued a press release on July 19, 2005, on the occasion of the approval of the proposed merger by PSEG shareholders. In that press release, Mr. Ferland repeated many of the same claims Mr. Rowe has made for the proposed merger. Mr. Ferland summarized the benefits of the merger as follows:

- Substantial cost savings – shared between customers and shareholders
- Combined experience and resources to achieve ongoing improvements in safe reliable and low-cost customer service;
- Improved nuclear operations;
- Better balance and risk diversification;
- Greater financial strength and flexibility;
- Greater opportunities for employees.

A copy of the PSEG press release is attached as Exhibit NB-3.

Q. How would you characterize the statements made by Mr. Rowe and Mr. Ferland concerning the proposed merger?

A. Mr. Rowe and Mr. Ferland speak in lofty, but abstract, terms about the Exelon objectives for this merger. To hear them say it, the merger will produce wonderful results. Any problems to which Mr. Rowe alludes, such as the issue of Exelon market power on the non-regulated side, are easily fixed in his opinion, and according to Mr. Rowe they have been fixed by virtue of the commitments made to the Federal Energy Regulatory Commission (FERC). Messrs. Rowe and Ferland provide almost no details to back up their claims, and they provide no guarantees that the New Jersey consumers will benefit as claimed.

Q. Do other Joint Petitioner witnesses supply the needed support to back up the claims of Messrs. Rowe and Ferland?

A. No. For example, as the Synapse testimony shows, the Joint Petitioners' evidence on market power is flawed, and does not demonstrate that Exelon will not have market power following the merger. Also, as Mr. LeLash shows, the Joint Petitioners not only practically ignore the issue of gas market power, to the extent the market power testimony addresses gas issues, they fail to analyze the issue thoroughly and properly. In my customer service and reliability testimony, I explain that the Joint Petitioners merely assert the merger will not create risks, without a real (or credible) effort to demonstrate the lack of risk, much less the likelihood of benefits. Mr. Kahal explains how the merger proposal leaves open the possibility that PSE&G's corporate and financial structure could be compromised by its new parent post-merger. Similar observations are made in the analyses of the other Ratepayer Advocate witnesses.

Q. Given the vagueness of the claims and the unwillingness or failure of Exelon to stand behind its claims, have the Joint Petitioners made out a sufficient basis to approve the proposed merger?

A. No.

SECTION 2

IMPACTS OF THE PROPOSED MERGER ON THE REGULATED SIDE OF PSEG

Q. Please summarize your analysis of the impacts of the proposed merger on the regulated side of PSEG.

A. The net merger savings calculated by the Joint Petitioners on the regulated side of PSEG (PSE&G) are small relative to the size of the proposed merger. Even so, the Joint Petitioners fail to assure that consumers will receive these net savings. In addition, there is reason to believe that the merger as proposed poses significant risks to the ability of the Board to oversee PSE&G and to PSE&G's provision of safe, adequate and reliable service, at just and reasonable rates. The merger poses risks of increased wholesale and retail gas prices as a result of the exercise of market power by the merged entity. I note that claims made to the Board and to other regulatory commissions in the past by other merging utilities have not been borne out by experience, further supporting the view that Your Honor and the Board should look with skepticism on vague and unsubstantiated merger claims. I further note that Exelon is facing a fluid regulatory situation in its home state of Illinois, which puts the prospects of the merger and the analysis of its impact in doubt.

Q. What do the Joint Petitioners claim will be the benefits of the merger for the regulated rates paid by PSE&G customers?

A. Joint Petitioners argue that over time, regulated rates will reflect the impact of cost reductions brought about by merger synergies. In statements to the press, Mr. Rowe also stated that the synergy benefits on the regulated side amount to only 30% of the overall benefits of the merger, regulated and unregulated. RAR-CS-25, p. 25 (December 20, 2004 Press Call, 2:30 P.M., p. 10). He asserted that ratepayers would benefit from claimed reductions in wholesale power costs brought about by the Joint Petitioners' anticipated increases in PSEG nuclear plant output. I will discuss this claimed benefit in the section on impacts of the merger from the unregulated side, below.

Q. What are the net merger synergy savings estimated by the Joint Petitioners allocable to New Jersey consumers?

A. In response to RAR-RR-91, Joint Petitioners' witness Mr. William D. Arndt identified net regulated synergy savings allocable to PSE&G of about $504 million in nominal dollars over ten years, an average of $50 million annually over this period. Given his proposal for the timing of recognizing costs-to-achieve, Mr. Arndt calculates the average savings allocable to PSE&G over the first 4 years at only $16.4 million. Exhibit JP-5, WDA Exhibit 6.

Q. Have the Joint Petitioners included in their synergy savings analysis all the net benefits attributable to the regulated side of the merged firm?

A. No. As Mr. Kahal explains, the Joint Petitioners neglect to reflect the reduction to cost of capital that they claim the merger will provide for PSE&G. He estimates that effect as a reduction in revenue requirements of approximately $11 million per year. Thus, the annual savings should be increased by $11 million.

Also, Mr. Peterson, testifying for the Ratepayer Advocate, notes that certain items have been included in the calculation of costs to achieve that are contrary to New Jersey merger precedent. Excluding these cost offsets, and reflecting the purported benefit of lower capital costs, increases the net benefit of the merger to $635 million over ten years. Even with the corrected synergy estimate, then, the net savings that would be allocated to PSE&G and its customers amounts to an average of only about $64 million a year.

Q. How do the estimated merger savings compare to PSE&G's revenues?

A. Savings of $64 million per year would be less than one percent of PSE&G's annual revenues. The Joint Petitioners' claimed synergy savings of $16 million per year in the early years would amount to only 1/5 of one percent of revenues.

Q. How would you characterize this level of merger savings allocated to the regulated side of the business?

A. If Exelon guaranteed PSE&G consumers a revenue savings of $64 million a year every year for ten years, flowed directly through to ratepayers, it would produce a small effect on annual revenue requirements and associated rates. Considering the size of the proposed merger, the synergy savings estimated by the Joint Petitioners are negligible. If PSE&G were a stand-alone utility, it would not undertake a merger of this size merely to produce the synergy savings anticipated by Mr. Arndt for the regulated side of PSEG. The synergy savings allocable to PSE&G are small even if the size of the estimate is corrected as recommended by

Messrs. Kahal and Peterson to take into account the promised reduction in cost of capital, and corrections to the recoverable costs-to-achieve. Given the risks posed by the merger and the failure of the Joint Petitioners to assure these savings will be passed through, the net allocable synergy savings represent an exceedingly modest entry on the "benefit" side of the merger analysis.

Q. Turning to the impact of the proposed change in ownership and control, if the merger is approved, will PSE&G continue to be focused on New Jersey priorities?

A. No. If this merger is allowed to go through, it will create a gigantic firm of which PSE&G's New Jersey operations will be a small piece. PSE&G will become a minority holding in a much larger enterprise. PSE&G's annual revenues of $6.9 billion would comprise only 25% percent of the entire firm, compared to the 63% share it now represents of PSEG's annual revenues.[3] PSE&G would go from representing 100% of PSEG's gas and electric retail customers to 78% of Exelon's gas customers and only 28% of Exelon's electric customers. PSE&G now holds almost 50% of PSEG's assets; after the merger, its assets will be only 19% of Exelon's.

PSE&G will go from seeing itself as the biggest New Jersey energy utility, to being just one of many parts of a Chicago-based conglomerate. PSE&G will have to fight for resources within the holding company structure, and will lose its autonomy to chart policy directions under the oversight of the Board. The locus of management would shift to Chicago. As a lesser piece of the conglomerate, it

[3] $6.9 billion utility operating revenues divided by $11 billion. Sources: "Creating the Utility Company of Tomorrow," Merger Press Announcement materials, December 20, 2004, slide 10 ("The Nation's Premier Utility Company") and PSEG SEC Form 10K for 2004.

will be harder for PSE&G to get attention from senior management and the Exelon Board of Directors than from the PSEG management and Board of Directors.

Q. Please briefly compare the magnitude of the merged entity to PSE&G and its place in the PSEG system.

A. The acquisition of PSE&G by Exelon Corporation would create the largest electric and gas utility in the United States. Through its subsidiaries, EEG would be the distribution utility for 7 million electricity customers in three states (Illinois, Pennsylvania and New Jersey), and 2 million gas customers in Pennsylvania and New Jersey.[4] New Jersey electric customers would represent fewer than one third of all Exelon's retail electric customers.

Exelon would have approximately $70 billion in assets, a market capitalization of approximately $40 billion, and annual revenues of approximately $26.9 billion.[5] EEG's annual revenues would be equal to over 6% of the annual New Jersey gross state product.[6]

As the Synapse Panel witnesses explain in their Direct Testimony at pp. 16-17, EEG would own approximately 40,475 MW of capacity in Expanded PJM upon the merger, and would still control 34,000 MW (or about 19.2 percent) of capacity in Expanded PJM even if the Joint Petitioners' mitigation plan is approved. Further, post-merger EEG would own more than 11,900 MW, or

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[4] Joint Petition, p. 7.
[5] "Creating the Utility Company of Tomorrow," Merger Press Announcement materials, December 20, 2004, slide 10 ("The Nation's Premier Utility Company").
[6] ($415,891,000,000 per http://www.wnjpin.net/OneStopCareerCenter/LaborMarketInformation/lmi09/gspall04c.xls, last viewed 7/26/05).

approximately 28.7 percent, of the capacity in PJM East, even if the Joint Petitioners' mitigation plan is approved. Exelon would control all four of New Jersey's nuclear power plants. Exelon would also have the second largest power marketing business in the United States.[7]

In addition, presently the PSE&G retail service area is entirely located within New Jersey, and all of its distribution utility revenues come from New Jersey operations subject to Board oversight. PSE&G's 2.1 million electric customers and 1.6 million gas customers have the undivided attention of the New Jersey-based management. PSE&G would be a small part of the Exelon family. PSE&G has 2 million retail electric customers to Exelon's 5.2 million. PSE&G has $700 million in net utility operating revenues, compared to $1.9 billion for Exelon's two utility operating companies. According to the press release announcing the merger, the annual revenue for EEG as a whole, post-merger, would be $27 billion.

Q. What are the consequences of the proposed merger on the ability of the Board to exercise reasonable oversight of PSE&G?

A. The proposed merger would, as a practical matter, hamper the Board's effective control over PSE&G. Exelon will be too big and too remote to make New Jersey concerns a priority, and regulation is a crude tool, often ineffective in forcing an unwilling management to behave as desired. In this case, regulation will have to make up for the dilution of structural focus on New Jersey priorities. Further, regulation will have less leverage over a subsidiary of a huge out-of-state holding

[7] http://www.platts.com/ElectricPower/Resources/NewsFeatures/powerrank/index.xml.

company system than it has had over a firm whose regulated holdings are all in New Jersey.

Q. Please explain further why you believe PSE&G under Exelon will be more difficult to regulate than PSE&G under PSEG.

A. Exelon has acknowledged its intention to centralize regulatory policy development within the firm. Ruth Ann Gillis, President of Exelon Services Company, adopting the prefiled testimony of her immediate predecessor, Pamela S. Strobel, testified that after the merger, the Exelon Business Services Company will supply managerial oversight for a number of functions within the operating utilities. Exhibit JP-7 at 7. In response to RAR-SQ-67, Ms. Strobel explained that, while the responsibility for developing proposed changes to existing legal and regulatory requirements will reside at the local utility level, it will be subject to executive oversight and direction by the EDSS [Energy Delivery Shared Services Group of the Exelon Business Services Company], "to ensure quality and consistency with system-wide operational and functional goals." While this answer was in the context of customer service decisions, there is no reason to think that Exelon will not similarly move managerial control away from local management in other aspects of operations, and centralize it in the service company and holding company.

In addition, from a regulatory standpoint, it is just more difficult to understand, much less regulate, a multi-state holding company. Even in a state like New Jersey, whose regulatory agency has substantial staff resources to devote to analyzing the merger documents, and identifying problems once they arise, the

Board will have difficulty assessing every detail of the transaction. The enormous complexity of the legal arrangements being proposed, where the merger proponents have drafted the documents to suit their own interests, means there can be no certainty that all changes to current arrangements have been identified and dealt with in a suitable manner. Surprises are likely.

Q. Please characterize the claimed benefits of the proposed merger aside from the merger synergies.

A. In light of the size of the merger, the claimed benefits of the proposed merger are ephemeral and as insignificant as the estimated merger synergies.

Q. Are some of the benefits described by the Joint Petitioners not fairly attributed to the merger?

A. Yes. Many of the representations made by Mr. Rowe and elaborated on by the other witnesses for the merger proponents describe benefits that would accrue to shareholders of PSEG or the combined companies, rather than to consumers. For example, a more diverse customer base may lessen the risks to the seller of gas or power, but it does not necessarily reduce costs or risks to New Jersey or to PSE&G consumers. At least, none of the Joint Petitioners' witnesses have suggested that rates to consumers would go down, nor that the required return on equity of the combined firms would go down, as a result of Exelon obtaining a more diverse customer base.

Also, PSE&G was careful in its response to data requests to dispel the idea that its current configuration, assets, customer base and the like would result in substandard operations or unduly high rates if the merger were denied. That is, PSE&G at least will not go so far as to claim that the merger is necessary in order to achieve the benefits of a supposedly stronger balance sheet, or to share best practices, or to improve customer service and reliability, or to provide sound utility management. The merger is not, in fact, necessary to continued financial health and good operating record of PSE&G, or just and reasonable distribution rates.

Most importantly, the lion's share of the merger benefits, as Mr. Rowe admits, are expected to come from the ability to earn margins on the unregulated generation side.

Q. Please provide examples of regulated-side benefits that the Joint Petitioners have overstated.

A. One oft-stated claim made by the Joint Petitioners is that they will be able to share best practices and thus continually improve operations. Putting aside the question of whether this knowledge transfer could have just as readily been accomplished without resorting to a merger, it bears noting that in a number of areas of operations, such as call center performance and service reliability, PSE&G already has a better record than either of the two operating utilities with which it will be expected to share best practices. Indeed, Mr. Rowe acknowledged to financial reporters in December 2004 that "there are many areas in T&D that PSE&G does better than we do. And we will seek to learn from this." RAR-CS-25, p. 5 (transcript of December 20, 2004, 2:30 P.M. Press Call).

In my companion testimony, I explain in greater detail the risk that standardizing service quality, safety and reliability will result in "regression to the mean," and PSE&G's performance will be undermined by its connection to its proposed merger partners. In his testimony, Mr. Colton describes similar risks of the merger-created consolidation, standardization and downsizing on the most vulnerable PSE&G constituents, the low-income customers.

Thus, the centralization of managerial initiative and control not only makes regulatory oversight more difficult, it carries the risk that the pursuit of standardization and cost reduction for the firm as a whole will trump the effort of PSE&G to maintain its current levels of performance. There is a tendency for groups to settle on the lowest common denominator; it takes considerably less management commitment to achieve the lowest standard, than to move all the operating units up to the level of PSE&G, where the New Jersey firm is typically the best performer.

Q. Do you have other reasons to suggest the claim of shared best practices is overstated?

A. Yes. The loss of institutional knowledge as a result of downsizing means the loss of PSE&G employees who could explain to their new management the reasons for various existing practices, and the risks of changing them for Exelon practices.

Q. Has the Board observed the kinds of problems you describe above?

A. Yes. The Board has seen merger promises made by Joint 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.[8]

Despite these promises, JCP&L customers continued to have problems with reliability:

> 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…[9]

Thus, the Board has had to use behavioral tools and aggressive regulatory intervention to promote improvements in service quality and reliability,

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[8] 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. EM000110870, September 26, 2001, at 9-10.

[9] 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.

notwithstanding the representations made by the Joint Petitioners that the merger would take care of these problems.

Q. In your experience, have these problems been a concern in other mergers?

A. Yes. As a regulator, I have seen the loss of regulatory control when a once-significant utility became a small part of a large and remote utility. I have observed the failure of merger promises to be realized.

Q. Please provide some examples of the loss of regulatory control upon a merger of a local utility into a larger entity, and instances of the failure of merger promises to be realized.

A. When Keyspan took over Energy North gas company, it took the New Hampshire Commission a number of years of intense regulatory oversight to get the Keyspan employees to file their gas cost recovery tariff with the proper information and back-up. Mistakes by distracted and understaffed out-of-state regulatory accountants caused huge underrecoveries, which threw off the timing of gas costs incurrence and recovery.

In addition, 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, parent of several New England utilities, NEES became expert in charting its own course, relying delicately but firmly on the implicit threat of preemption by the 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 ratesetting and procurement of non-utility generation.

Again in the Keyspan case, the documentation of the merger was so complex that we missed the fact that Keyspan had changed the method for allocating pipeline capacity, a change that increased New Hampshire rates sufficiently to wipe out the gains achieved from Keyspan's access to lower commodity costs.

In the case of the acquisition of Bay State Gas (the parent of Northern Utilities) by NiSource, when NiSource later ran into financial difficulties after its acquisition of Columbia Gas, its firm-wide hiring freeze squeezed the staffing in its New England call center. Call answering rates plummeted. The New Hampshire Commission had to fine Northern Utilities five months in a row, the Maine Commission conducted a management audit, and the Massachusetts commission opened an investigation. Finally, after all three New England commissions took regulatory action, the staffing at the call center gradually was increased, and call center performance started coming up again. Similarly, when National Grid took over Massachusetts Electric, and Keyspan took over Boston Gas, management responsiveness to the Massachusetts regulators dropped.

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 firm wanted, understandably from its perspective, to eliminate differences in how each branch carried out the same functions, and to install one IT 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, we 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 operating subsidiaries.

Q. Are there other problems that witnesses for the Ratepayer Advocate have identified with regard to impacts on the regulated side?

A. Yes. Each Ratepayer Advocate witness describes the problems posed by the proposed merger for the regulated side in different areas of operations. Thus, Mr. Henkes explains that the Joint Petitioners have not followed New Jersey Board precedent regarding the use of the purchase method of accounting. Mr. Henkes outlines the proper accounting. Mr. Henkes also corrects the Joint Petitioners' allocation of net synergy benefits to the gas and electric sides of PSE&G, respectively.

Mr. LeLash discusses how the change of ownership changes the incentives and dynamics in the gas supply management and procurement contract between PSE&G and its unregulated affiliate, PSEG Energy Resources & Trade LLC (ER&T). As Mr. LeLash explains, lack of specificity in ER&T's obligations to PSE&G, in PSE&G's control over key decisions in gas management, and in the Board's jurisdiction over ER&T now and post-merger will open PSE&G customers to the risk that Exelon will manage the ER&T contract contrary to the interests of PSE&G's customers, and that the Board will be unable to correct for such abuses. Mr. LeLash lists clarifications to the ER&T gas supply management and procurement contract, and commitments on the part of Exelon, that would be necessary in the event the merger is approved. Mr. LeLash also explains that the Joint Petitioners have not described how gas operations would be conducted post-merger. He describes the risk that the merger poses to PSE&G gas operations employees, and to the continuation of PSE&G's gas service quality, operations and reliability.

Mr. Kahal discusses the impact of the proposed merger on PSE&G's cost of capital. The Joint Petitioners have argued that the combined entity will be stronger financially than PSE&G, and that the merger will lower PSE&G's risk through diversification. However, as Mr. Kahal observes, they do not propose to reflect this increased financial strength in lower capital costs. Nor do they propose to hold PSE&G customers harmless in the event the merger increases PSE&G's cost of capital. Mr. Kahal discusses the issues raised by the repeal of the Public Utility Holding Company Act in the context of this proposed merger between a non-exempt holding company (Exelon) and an exempt holding company (PSEG). Mr. Kahal also points out various other financial risks of the merger, including the proposal to allow an unregulated affiliate of Exelon (Exelon Generation) to participate in the Utility Money Pool, and the risk of Exelon imposing an unnecessarily expensive capital structure on ratepayers.

Mr. Peterson analyzes the potential for adverse consequences to PSE&G from approval of an unacceptable General Services Agreement and Mutual Services Agreement to govern transactions between PSE&G and the Exelon Business Services Company and between PSE&G and other Exelon affiliates, respectively. He also explains why amortization of the goodwill premium should not be allowed in rates.

Mr. Colton describes the potential impact of the merger on low-income customers. He outlines differences in the level of effort devoted by PSE&G and its proposed merger partners to the responsibility of ensuring that service is affordable and accessible to low-income customers. He makes a number of recommendations designed to ensure that low-income and other disadvantaged consumers would see positive benefits from the merger, in the event the merger is approved.

Also, as I have mentioned, in my November 14, 2005 Direct Testimony, I lay out the risks of degradation in PSE&G's service quality, and electric and gas reliability and safety, as a result of the merger. I set out conditions that I recommend the Board adopt to prevent such back-sliding if it determines to approve the merger.

Q. Please summarize the impacts of the merger you and other Ratepayer Advocate witnesses have observed on the regulated side.

A. The merger will provide (a) only modest net synergy benefits in light of the size of the firms combining, even as corrected by adjustments proposed by Messrs. Kahal and Peterson. The merger will (b) threaten to erode the quality of PSE&G's retail gas and electric services, with (c) particular impacts on low-income consumers. The merger will pose risks of retail price increases associated with (d) changes in the capital structure of PSE&G, (e) inadequate protection of the regulated subsidiaries in the Utility Money Pool, (f) inadequate protections for

PSE&G (and its customers) in its affiliate agreements, (g) inadequate protections for PSE&G (and its customers) in the gas supply management and procurement contract, (h) incorrect application of purchase accounting, and (i) incorrect allocation of net merger benefits between the gas and electric units of PSE&G. The merger will also bring (j) the risk that Exelon will seek to recover goodwill from PSE&G ratepayers. Looking at the merger from the perspective of impacts associated with regulated operations, the merger risks outweigh the benefits.

SECTION 3

IMPACTS FROM THE NON-REGULATED SIDE

Q. What claims have the Joint Petitioners made concerning the benefits of the proposed merger flowing from the non-regulated side of the firm?

A. Mr. Rowe of Exelon, speaking to the financial press on the day the merger proposal was announced, asserted that the greatest benefit of the merger to New Jersey consumers would come from the non-regulated side of the firm:

> While I anticipate that we will make some agreement [to share synergies with New Jersey consumers] or be required to – being required to make an agreement always makes you do it faster – *I wish everybody to understand that the biggest benefit to New Jersey consumers [will] come from what it can mean to long-term wholesale prices to have the [nuclear plants] operating more effectively.*

RAR-CS-25, at 25 (emphasis supplied).

Q. As the merger is structured, who will capture any benefits that might occur as a result of increasing the output of PSEG's nuclear plants?

A. If Exelon improves the performance of the nuclear plants, it alone will capture the benefits of such improvement. There is no reason to believe that competition will force Exelon to share these benefits in the market. Nowhere in the filing do the Joint Petitioners repeat the assertion Mr. Rowe made in the press call to the effect that greater nuclear output would lower wholesale electricity prices. Neither Mr. Rowe nor any other witness for Joint Petitioners has suggested to Your Honor or the Board that they will assure New Jersey customers enjoy the asserted benefits of the combined generation operations. Indeed, the Joint Petitioners' filed comments on the wholesale electricity market are limited to asserting that the merger will not allow Exelon to raise wholesale electricity prices through the exercise of market power.

Q. What are the risks to New Jersey utility consumers associated with the changes the proposed merger will bring to the non-regulated side of the businesses of Exelon and PSEG?

Q. Contrary to the public claim that better nuclear operations will result in lower wholesale prices, the proposed merger would pose significant risks of higher wholesale rates, affecting all New Jersey electric and gas customers. Mr. LeLash will discuss the extent to which PSE&G's pipeline and storage capacity is key to the operations of the wholesale gas markets in the eastern Mid-Atlantic, and how Exelon could make use of PSE&G's position to gain a commanding position in gas markets, driving up gas prices.[10] The Synapse Panel discusses the potential for Exelon to exert market power in the wholesale electric markets. The result, as Synapse will explain, is that electric prices for New Jersey consumers could be

[10] Mr. LeLash points out that the Joint Petitioners, and the Federal Energy Regulatory Commission, have glossed over issues regarding gas markets. He recommends that the Board consider the analysis of Philadelphia Gas Works witness Paul Carpenter, in order to understand the impact of the merger on market power in the gas industry, and on gas prices for unaffiliated electric generators.

pushed up by the proposed merger, rather than down, as suggested by the Joint Petitioners.

Q. Are there also risks posed by the merger to the wholesale gas markets?

A. Yes, both Mr. LeLash, testifying for the Ratepayer Advocate, and Paul Carpenter, testifying for Philadelphia Gas Works, have identified significant risks that Exelon would gain sufficient control over the relevant gas markets to have an adverse impact on gas prices, and particularly on access by Exelon's competitors in the wholesale electricity markets to reasonably-priced natural gas.

Q. Have Joint Petitioners shown that the merger will not lead to the risk of higher wholesale electric rates through the exercise of market power?

A. No. As shown by the Synapse Panel, Joint Petitioners have not produced a satisfactory market power analysis by the Joint Petitioners. Also, as noted, Mr. LeLash identifies risks of gas price market manipulation, and Mr. Carpenter identifies vertical market power in the electric industry and horizontal concentration in the gas industry.

Taken together, these witnesses identify a significant risk that Exelon could dominate the wholesale electricity market. The single-price structure of the PJM energy market rewards generating firms like post-merger Exelon, who can sell low-cost power from baseload plants into the spot market (and into bilateral markets affected by the alternative, spot market prices) at gas-fired-generator clearing prices. Moreover, as explained by the Synapse Panel, the merger poses risks of increased electricity prices from the exercise of market power. The

Synapse Panel also shows that the market power mitigation proposal put forward by the Joint Petitioners is inadequate to prevent the exercise of market power.

Q. The Joint Petitioners claim that their respective track records as advocates of retail competition should be considered in their favor when analyzing the impact of the merger. Do you agree?

A. No. Past actions and current representations do not always foretell future behavior. As the Synapse Panel explains, the market power that EEG will possess if the merger is approved as proposed could translate into higher prices bid into the BGS auction (Synapse Direct Testimony at 81). Mr. LeLash discusses the potential adverse impact of the proposed merger on the prices enjoyed by New Jersey consumers for BGSS service (LeLash Direct Testimony starting at 22). The possibility that the merged entity will be in a position to have an undue impact on the BGSS and BGS prices should raise a caution as to whether the merger will be a positive for New Jersey's retail competition model.

Q. If wholesale electric rates were pushed up, but all the estimated synergies of the merger were actually realized by New Jersey consumers, what would be the net impact on New Jersey?

A. A 1% percent increase in wholesale prices would eliminate the entire benefit of the claimed merger savings. The Synapse Panel estimates that a 1% wholesale electricity price increase on retail electricity costs in New Jersey would raise electricity costs by $64 million annually. Such a cost increase would effectively eliminate the $64 million annual synergy benefits of the merger.

Q. Please summarize your analysis of the impacts on PSE&G and New Jersey from the unregulated side of the merger.

A. The merger will not lower wholesale electricity prices in PJM, and the Joint Petitioners have made no offer to share with consumers any benefits they claim publicly would follow from increasing the output of PSEG's nuclear plants. Rather, the merger poses the risk that Exelon would be able to exercise market power in both the gas and electric markets, and raise gas and electricity prices for all New Jersey consumers, not merely for PSE&G. The Joint Petitioners' market power mitigation proposal is inadequate to prevent the exercise of market power in wholesale electricity markets out of which New Jersey consumers receive their electricity. It would only take a very small wholesale electricity price increase to eliminate all the benefits the Joint Petitioners claim the merger will provide in allocated synergy savings to the regulated side.

SECTION IV

IMPACT OF PROPOSED MERGER ON EMPLOYMENT

Q. Please describe the impact of the loss of employment on New Jersey.

A. The Joint Petitioners have stated that they expect about 950 jobs to be eliminated in New Jersey if the merger goes through. The loss of so many jobs is a clear hardship for the employees who are let go, and for their families. With respect to call center staff, for example, it is likely that at least some who will lose their jobs are the sole support of their families, and they are unlikely to have the generous severance packages available to high-level managers and executives who leave PSEG companies upon the merger. Mr. Peterson testifies that many PSEG corporate and shared services employees may not be willing, able, or even asked to move to Chicago, where corporate headquarter operations will likely remain. These are high-paying jobs that will be lost. Mr. Peterson also explains in his testimony that, despite Joint Petitioners' repeated assurances that field level positions will not be cut, Joint Petitioners have not provided guarantees that there will not be cut-backs in field level positions following the merger.

Q. Are there other impacts of the job losses likely in New Jersey that you wish to bring to attention of the Administrative Law Judge and the Board?

A. Yes. The loss of 950 well-paying jobs, with benefits, will ripple through the economy. As these jobs are eliminated, the multiplier effect will cause the impact to be larger than simply the loss of income and benefits.

Q. What is the multiplier effect and how will it magnify the impact on New Jersey of the elimination of 950 jobs?

A. The multiplier effect is the phenomenon observed by economists whereby income from employment is spent in a community, in turn generating more jobs, the income from which is spent, and so on, as the money circulates through the local economy. It works in both directions. The loss of jobs and related income reduces the money spent in the local economy, thus reducing jobs for those who provided goods and services, and tending to depress the economy. The effect is stated in terms of a multiple of the income associated with the jobs in question.

Q. How big will the impact of the loss of 950 jobs be?

A. In terms of income loss to the employees, the impact on New Jersey will be almost twice the supposed synergy savings of the proposed merger. The average income, including benefits, of the white-collar employees whose jobs are at risk under the merger plan, can be estimated at $100,000 per year. The total loss of wages and benefits associated with the loss of these jobs would then be as much as $95,000,000 per year. This is almost twice the $64 million estimate of corrected net annual merger synergy savings.

Q. What is the impact of the income loss once the multiplier effect is taken into account?

A. Once the multiplier effect is taken into account, the hit to the New Jersey economy of the loss of 950 jobs is almost three times as great as the estimated synergy savings of the proposed merger. A conservative estimate of multiplier effects for loss of the jobs is 1.5. Thus, the total loss to the New Jersey economy from the loss of jobs could be $143 million per year. Such an adverse economic impact swamps the estimated net benefit the Joint Petitioners say would eventually come to PSE&G customers from merger-related savings. If the merger is approved, the New Jersey economy could be in the hole to the tune of about $80 million a year,[11] *even if* the Company were to guarantee consumers get every penny of identified merger savings, and *even if* Exelon gained no ability to increase gas and electric prices.

[11] $143 million annual multiplier effect less $64 million corrected ten-year synergy savings average annual benefit.

Q. Is the loss of jobs that would be caused by the proposed merger similar to the kind of cost-cutting that justifies revenue requirement decreases in rate cases?

A. No. The effect of the job losses proposed in this merger petition is different from the effect of job reductions in a rate case setting. In a rate case, the revenue requirements are reduced pro rata by the employment savings. There is an immediate rate impact that benefits consumers. In addition, consumers can put the associated savings to work in the economy. Here, by contrast, the Joint Petitioners have not offered to reduce rates, or even to freeze rates, in recognition of their reduced costs. Thus, consumers continue to pay inflated prices, and the income loss ripples through the economy. The economy gets a triple hit – high rates, income loss, and multiplier effects.

SECTION V

SUMMARY AND RECOMMENDATIONS

Q. Given the problems you have summarized with this merger, what do you recommend?

A. I recommend that Your Honor and the Board not approve the proposed merger. The risks of the proposed merger outweigh the asserted benefits.

Q. Should the Board move forward to consider the merits of the merger at the present time?

A. If Your Honor and the Board conclude that the merger does ***not*** merit approval, there is every reason to proceed to decide the question, so that Exelon, PSE&G,

their shareholders and their stakeholders can move on. On the other hand, if Your Honor and the Board are otherwise favorably inclined to the merger, there is a reason to suspend the New Jersey proceedings and await developments elsewhere before making a final decision.

Q. Why should the Administrative Law Judge and the Board not move forward to consider the merger if they believe there is merit to the proposal?

A. At the time my direct testimony is filed, Exelon has still not settled its difficulties in Illinois concerning the future of power procurement for its retail subsidiary Commonwealth Edison (ComEd). Mr. Kahal describes the situation in Illinois: rate caps established as the result of the Illinois restructuring law are about to come off on January 1, 2007. ComEd has proposed a New Jersey style auction to procure the Illinois equivalent of BGS from the wholesale market to supply customers who do not shop. The Governor and the Attorney General oppose this proposal, and argue that it would subject Illinois consumers to high rates that do not meet the statutory requirement that they be just and reasonable. Exelon announced in its Form 8K filed September 6, 2005, that if ComEd must buy power on the open market to sell to customers at capped rates, it risks bankruptcy. Your Honor and the Board should not proceed to consider the proposed merger while this dispute with the State of Illinois is unresolved.

Q. Please summarize the problems you have identified with the proposal of Exelon to take over PSE&G.

A. This merger would create a monolithic company whose management and control is remote from New Jersey, less susceptible to effective oversight by the Board. The proponents of this merger claim only insignificant or ephemeral benefits for the regulated side from the merger. Operational benefits on the regulated side will flow from PSE&G to Exelon, not the other way around. The merger will put PSE&G's historic service and reliability performance at risk. The Joint Petitioners fail to offer persuasive evidence that the merger would lower wholesale electric rates. Worse, the merger would bring the risk of increased electric and gas prices in the region. A less than one percent wholesale electric price increase made possible by merger-related market power would wipe out all of the synergies claimed for the merger. On top of that, the impact on the New Jersey economy from the job losses would leave the State $143 million worse off each year, if the merger were approved.

As a result of the proposed merger, PSEG shareholders are already enjoying a premium of approximately 22%. Meanwhile, the Joint Petitioners do not propose to flow any of the synergy or other benefits of the merger through to PSE&G ratepayers. The proposed merger will not bring net benefits, and is likely to create harm to New Jersey.

Q. Have the Joint Petitioners made a convincing case that this merger is in the public interest and will bring positive benefits to New Jersey?

A. No. As the witnesses for the Ratepayer Advocate show, the merger brings risks to New Jersey and to PSE&G ratepayers that are not outweighed by the benefits asserted by the Joint Petitioners. Further, even Joint Petitioners acknowledge that the purpose of the merger from the shareholders' perspective is to enhance shareholder value by reaping benefits from the unregulated side of the businesses. The acquisition of PSE&G's parent and the merger of PSE&G into the Exelon family is necessary in order for the shareholders to reap the unregulated benefits, but it is not being pursued in order to benefit the regulated side of the businesses. Thus, the merger proposes risks to the customers of PSE&G largely in order to produce benefits for the shareholders on the unregulated side.

Q. Do any of the witnesses for the Ratepayer Advocate recommend that the proposed merger be approved?

A. No. The recommendations of witnesses for the Ratepayer Advocate that Your Honor and the Board adopt amendments and conditions to the merger are offered in the event Your Honor and the Board are otherwise disposed to approve the proposed merger.

Q. Do the witnesses for the Ratepayer Advocate recommend that the merger be conditioned in any way, in the event the Board determines to approve it?

A. Yes. My Exhibit NB-4 summarizes my understanding of the recommendations made by witnesses for the Ratepayer Advocate that we recommend Your Honor and the Board adopt in the event of a determination to proceed with consideration of the merger. These recommendations fall generally into two categories: those related to the regulated side of the enterprise (including oversight of affiliate transactions), and those associated with impacts from the unregulated side and from the multiplier effect of job losses.

Q. Please summarize the recommendations of the Ratepayer Advocate witnesses concerning synergies and merger accounting.

A. If the merger is to be approved, the rate benefits of the merger synergies should be fully captured by consumers and should begin to flow through immediately upon consummation of the merger. To this end, as Mr. LeLash proposes, I first recommend that the Board defer consideration of the pending gas rate case until the merger docket is concluded. Also, as recommended by Mr. Peterson and Mr. LeLash, any merger approval should be conditioned on the requirement that goodwill associated with the merger not be recovered in retail rates. Further, as Mr. Peterson shows, the synergy study should be corrected to remove certain costs-to-achieve that should be borne by the shareholders, and to amortize recoverable costs-to-achieve over ten years. In addition, as recommended by Mr. Peterson and Mr. Kahal, the synergy estimate should be increased to reflect the Joint Petitioners' claim that the merger will lower PSE&G's cost of capital. Mr. Kahal estimates this effect at $11 million annually. As corrected by these adjustments, the ten-year average annual synergy savings expected to accrue to PSE&G from the merger would amount to an average of $64 million per year.

Q. Do you recommend that PSE&G ratepayers see immediate rate reductions to reflect synergy savings if the merger is approved?

A. Yes. If the merger is approved, I recommend that Your Honor and the Board adopt Mr. Peterson's recommendation to reduce PSE&G's retail rates forthwith by an annual amount of $43 million.

Q. Why do you and Mr. Peterson not propose that rates be reduced by the corrected ten-year average reduction of approximately $64 million?

A. It is reasonable to expect that PSE&G will return for a rate adjustment at some time before the end of the first ten years after the merger. It will be possible for the Board to reflect any updated cost impacts of the merger at that time.

Q. How do you propose that the $43 million synergy-based rate reduction be allocated between gas and electric customers?

A. I recommend that the $43 million synergy-related immediate rate reduction be allocated between gas and electric customers as set out by Mr. Henkes in his testimony.

Q. Do you recommend further cost reductions as a condition of the merger?

A. Yes. I recommend that, in addition to the immediate reduction of PSE&G rates by the $43 million three-year average synergy savings, the Joint Petitioners also be required to lower costs for New Jersey homes and businesses by about $269 million annually. This amount is intended to provide for an equitable share of the benefits of additional nuclear generation from PSEG's plants, to offset the multiplier impact on the state economy from the loss of 950 jobs, and to hold New Jersey electricity customers harmless from potential abuse of market power.

Q. What is the total annual dollar benefit you recommend His Honor and the Board should require as a condition of any merger approval?

A. When the $269 million amount for New Jersey statewide benefit-sharing and loss-mitigation is added to the synergy savings that should come to PSE&G customers, New Jersey households and businesses should receive an annual financial benefit totaling $312 million as a condition of merger approval. The components of my recommendation for monetary benefits are shown on my Exhibit NB-5.

Q. What is the basis for your recommendation that the Joint Petitioners provide $269 million in benefits, in addition to the immediate pass-through of $43

million in net synergy savings, for a total dollar cost reduction of $312 million?

A. My $269 million annual benefit consists of three parts. First, New Jersey consumers should be assured a share of the benefits from increased nuclear generation promised by Mr. Rowe. The Synapse Panel estimates that Exelon will receive $200 million in additional pre-tax revenues from increased sales from the output of PSEG's nuclear plants. Assuming a roughly 38% tax impact, the after-tax revenues should be approximately $124 million. If that benefit were shared 50/50 with New Jersey consumers, the consumer share would be $62 million. Second, New Jersey should be compensated for the economic harm to the state from the anticipated job losses. I have estimated this to be as much as $143 million, once the multiplier effect is taken into account. Finally, New Jersey consumers should be held harmless from the risk that Exelon's post-merger market power would enable it to raise wholesale electric prices. The Synapse Panel has shown that an increase no larger than 1% would increase costs for power in New Jersey by $64 million annually. This estimate of harm from potential exercise of market power is conservative, because it does not reflect potential increases in natural gas prices flowed through to the retail level.

Q. Please summarize the proposed monetary contribution you recommend Joint Petitioners make as a condition of merger approval, between the synergy savings, the nuclear output benefit sharing, the job loss compensation, and the offset to potential wholesale electric price increase risk?

A. Summing up, I recommend that the Joint Petitioners should be required to make a total annual monetary contribution of approximately $312 million annually, in the event the merger is approved. This represents the sum of $43 million in early-years synergy-related rate reductions that should be flowed immediately through to PSE&G customers, and a total of $269 million in nuclear output benefit sharing, job loss economic impact compensation, and protection against wholesale electricity price increases that could be made available to New Jersey consumers generally. I estimate that this $312 million in annual cost reductions is necessary in order to share the benefits of the merger equitably, offset economic impacts, and make New Jersey utility customers indifferent to the potential risks of the merger for cost increases on the unregulated side.

Q. The Synapse Panel has made a number of recommendations for how to improve the Joint Petitioners' electricity market power mitigation plan. If these are adopted by the Board, would that change your recommendation concerning a reduction in BGS costs by $64 million to protect against wholesale electric market power?

A. Yes. If the Synapse Panel recommendations were adopted, that would substantially reduce the risk of market power and associated price increases post-merger. As a result, if the Synapse Panel recommendations are adopted, I would recommend reducing the overall dollar benefit provided to New Jersey by the $64 million estimated as the potential impact of a 1% electricity price increase.

Q. Do the witnesses for the Ratepayer Advocate have other proposals for conditions in the event His Honor and the Board determine that the merger should be approved?

A. Yes. The Joint Petitioners have left a number of issues undetermined in their proposal, and have in other areas made proposals that would work to the detriment of ratepayers or the State. Accordingly, if the merger is to be approved, extensive conditions must be imposed to protect ratepayers and the State of New Jersey. Among us, the 9 Ratepayer Advocate witnesses offer a number of recommendations. These additional recommendations concern merger accounting, gas supply management and procurement, capital structure, PUHCA and affiliate transactions, protection of low-income customers, service quality, and gas and electric safety and reliability. With minor exceptions, these recommendations do not impose additional costs on PSE&G or the Joint Petitioners, but rather put in place requirements that would prevent backsliding in service quality and reliability, prevent abuse of affiliate transactions, maintain PSE&G's existing capital structure, and hold PSE&G customers harmless from actions by its new owners that would adversely affect its operations and costs. In the balance of my testimony, I describe these proposed conditions in general terms. For the detailed explanation of the conditions and the reasons they are needed, I refer Your Honor and the Board to the testimonies of the witnesses for the Ratepayer Advocate.

Q. First, with regard to the merger's impact on PSE&G as a regulated entity, should the Joint Petitioners' proposed accounting for Regulatory Assets and Regulatory Liability accounts be adopted?

A. No. Rather, if the merger is approved, Mr. Henkes' recommendations concerning application of regulatory accounting should be adopted.

Q. Turning to gas supply management and procurement, what do you recommend in the event the merger is approved?

A. If the merger is approved, the recommendations of Mr. LeLash concerning continued jurisdiction to oversee PSE&G affiliates in their dealings with the gas unit should be adopted. This includes requiring the modifications Mr. LeLash proposes to the existing requirements contract, in order to provide for Board approval before certain material modifications are made to the contract, to specify the terms and benefits of transactions relating to PSE&G's capacity, and to ensure that BGSS customers continue to enjoy reasonable cost-based rates and reliable supplies. I also recommend that, as Mr. LeLash proposes, gas management operations and trading remain in Newark, unless otherwise authorized by the Board.

Q. Do the Ratepayer Advocate witnesses have recommendations to offer concerning a post-merger capital structure, and affiliate transactions?

A. Yes. I recommend that if the merger is to be approved, Your Honor and the Board adopt the proposals of Mr. Kahal and Mr. Peterson to protect PSE&G ratepayers from adverse changes to the current capital structure, and from abusive affiliate transactions. These include the requirement that no merger-related increase in capital costs be reflected in PSE&G retail rates, that Joint Petitioners agree not to change PSE&G's current corporate financial structure without obtaining prior Board approval, that PSE&G not be permitted to participate in the Exelon Utility Money Pool unless important protections are in place, that financial practice restrictions formerly required under PUHCA to protect utility operations be continued, that the merger approval not be finalized until the Board has reviewed and approved a complete GSA and MSA for the merged companies, and that Joint Petitioners agree to certain affiliate transaction rules, and reporting and approval requirements going forward.

Q. Please describe the recommendations you make concerning protection of low-income customers.

A. In the event the merger is approved, I recommend that the Board adopt the requirements proposed by Mr. Colton. These include requirements that PSE&G maintain its walk-in centers for at least ten years, that by January 1, 2007 it maintain a fully-functioning Customer Service Center in Elizabeth, New Jersey, that the Company take a number of steps to maintain and enhance its customer payment centers as a viable payment option for PSE&G customers, that it submit to the Board a detailed explanation of and justification for its current risk assessment methodology, that it file an action plan with the Board within 90 days of consummation of the merger in which it commits to taking the action steps necessary to ensure that its commitment to New Jersey SHARES remains meaningfully funded and adequately available, that PSE&G commit to spending $1.2 million for additional outreach for the Federal Earned Income Tax Credit, that the Company file with the Board a plan outlining in detail its procedure for negotiating deferred payment plans and notifying all customers of this option, and that the Company be required to make specified reports of low-income collections practices and results for the ten years following the merger.

Q. What do you recommend concerning service quality generally, and regarding electric and gas safety and reliability?

A. As set out in my companion testimony, I recommend that if the Board approves the merger, it require a service quality and reliability commitment on the part of PSE&G, 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. My proposal includes the following recommendations:

- A requirement to continue to meet existing internal PSE&G service quality, safety and reliability standards, enforced by reporting requirements and requirements to restore high standards in the event of substandard performance, with penalties spelled out for key performance indicators, including CAIDI, SAIFI, Percent Emergency Calls Answered Within 30 Seconds, Percent Emergency Calls Responded to Within One Hour;

- Required quarterly and annual reports to the Board and the Ratepayer Advocate on the Company's performance on its service quality and gas and electric safety and reliability metrics, from its so-called "Balanced Scorecard," showing the Company's performance against the standards to which it has held itself before the merger, with plans for remediation in the event performance slips below these standards;

- Requirements to maintain and fully staff its two New Jersey call centers with trained New Jersey customer service representatives for at least four years, and to seek Board approval before moving call centers out of state.

- A requirement to keep the Board and Ratepayer Advocate informed of the progress in any migration to a new billing system, 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.

In addition, I recommend that, as Mr. Peterson proposes, the Company be prohibited from reducing field staff for merger-related reasons for at least 36 months post-merger.

Q. If all these conditions were imposed, would your objections to the merger be satisfied?

A. If the Joint Petitioners made available the $312 million benefit sharing and loss mitigation I recommend, and if each of the conditions recommended by the witnesses for the Ratepayer Advocate were approved by the Board, the concrete risks of the merger would be allayed, and all that would remain is the generalized concern about the absorption of PSE&G into a much larger, out-of-state utility.

Q. Does this complete your testimony?

A. Yes.

Exhibit NB-1

Resume of
Nancy Brockway
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617-645-4018

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

Exhibit NB-1

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, <u>Tenants' Rights to Utility Service</u> (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)

Exhibit NB-1

NANCY BROCKWAY: TESTIMONY

Case name	Client Name	Topic	Juris. & Docket No.	Date
I/M/O Joint Petitioner of PSE&G and Exelon [for merger approval]	New Jersey Division of Ratepayer Advocate	Service quality and reliability in event of merger approval	NJ BPU, Docket No. EM05020106 (OAL Docket No. PUC-1874-05)	11/05
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

Exhibit NB-1

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
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

Exhibit NB-1

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

I/M/O PSE&G/Exelon Merger Petition
Exhibit NB-2

Excerpts of Direct Testimony of John Rowe, Exelon CEO,
Summarizing Asserted Benefits of Proposed Merger

Increased Scale, Scope and Operational Diversity. The Merger of Exelon and PSEG will increase the scale and scope of the combined entity's energy delivery and generation businesses. For retail utility operations, this means a larger geographic "footprint" and, as a result, a more diverse customer base. In addition, Exelon's overall operations will be more balanced, with approximately half its earnings and cash flow coming from its three regulated utilities and approximately half from the generation business. The greater scale, scope and diversification of the combined company's operations should provide more stable cash flows and greater earnings predictability, which, in turn, should strengthen the financial profile of PSE&G…

Financial Strength and Flexibility. The Merger will provide greater financial strength and flexibility by creating a company with a stronger balance sheet. Thus, following the Merger, EEG will have approximately $70 billion in assets, a market capitalization of approximately $40 billion, annual revenues of approximately $26 billion and annual net income of approximately $2.6 billion. These benefits and their direct consequences, in terms of enhancing access to capital at reasonable rates…

Commitment to High Quality Service; Sharing of Best Practices. We are committed to maintaining the high quality service currently furnished by PSE&G. The Merger will allow our regulated energy distribution utilities to share best practices in transmission and distribution operations and customer service. Ralph Izzo will continue to serve as President and Chief Operating Officer of PSE&G after the Merger, helping to ensure the adoption of best practices in New Jersey and the continued provision of high quality service. In addition, the Merger will increase our ability to meet that commitment by ensuring that Exelon has the financial strength and flexibility to make the investments PSE&G, PECO and ComEd need to meet their service obligations.

Synergies. The Merger will create the opportunity to achieve meaningful cost savings not only through the sharing of best practices but also through the elimination of duplicative functions, improved operating efficiencies and supply chain benefits from improved sourcing….

Commitment to Competition. Exelon and PSE&G have been advocates of competition in retail and wholesale markets for both electricity and natural gas. The shared vision of Exelon and PSE&G is to continue to promote competitive retail and wholesale markets within New Jersey and throughout PJM. In addition, we anticipate that the knowledge and experience of each company will enhance the merged company's ability to promote competitive retail and wholesale markets, which in turn will continue to provide benefits for customers.

Exhibit NB-3
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PSEG SHAREHOLDERS APPROVE MERGER WITH EXELON

At Annual Meeting, PSEG chairman outlines "real and substantial" merger benefits

E. James Ferland also reaffirms PSE&G's ongoing presence and commitment to providing low-cost, reliable energy to its New Jersey customers

(July 19, 2005 – Newark, NJ) – PSEG announced today that its shareholders have overwhelmingly approved merging the company with Exelon Corporation. The announcement of the vote tally came at PSEG's annual meeting held at the New Jersey Performing Arts Center in Newark, NJ. Ninety-seven percent of the votes cast – totaling 157 million shares (out of 161.6 million shares cast) – were in favor of the merger. Exelon's shareholders will take action on the merger at its annual meeting this Friday in Philadelphia.

At the meeting, E. James Ferland, chairman and CEO of PSEG, outlined the benefits the merger would bring for customers, shareholders, employees and New Jersey communities and delineated the common vision of excellence the two companies share.

"The values of these companies are very similar. Exelon is a company with a similar view of the industry, a service territory very much like ours and comparable operational and community values and commitments. They share our longstanding commitment to employees and their safety, dedication to providing low-cost reliable energy for our customers and continuing their strong industry-leading environmental stewardship."

Ferland added: "I have no doubt that PSEG could have continued to provide its great service to our customers on its own, but we now have the opportunity – an outstanding opportunity – to create an even stronger business through our planned merger with Exelon. The new company's commitments to customers and communities will remain as strong as ever – in Newark, across the state of New Jersey and in other locations where we operate."

(more)

Exhibit NB-3
p. 2 of 3

He continued: “I want to emphasize that PSE&G – our New Jersey utility – is not going away. It will maintain the same strong presence in the Garden State it always has – with the same dedication to caring, responsive service for our customers and support for the people and neighborhoods we serve.”

Ferland said PSEG evaluated the merger on its ability to deliver benefits to all its stakeholders – including its customers. He said these broad benefits include:

- Substantial cost savings – shared between customers and shareholders
- Combined experience and resources to achieve ongoing improvements in safe reliable and low-cost customer service;
- Improved nuclear operations;
- Better balance and risk diversification;
- Greater financial strength and flexibility;
- Greater opportunities for employees.

In his remarks, Ferland expanded on these benefits. “Utility customers, as well as shareholders, stand to benefit from the substantial cost savings achieved as a result of the merger. We will create savings by combining administrative functions and operations areas, sharing technology and applying best practices. This will help keep utility service safe and reliable and as low-cost as possible, and contribute more generally to improved operations.”

Ferland also emphasized that he expects many areas of the company will benefit from the deeper combined experience and resources of the merged company. “Blending strengths will enable us to operate more efficiently. It will provide a stronger base for continued investments in energy infrastructure – including our ongoing major investments right here in New Jersey.”

Ferland also reiterated that the skills that PSEG has in such areas as transmission and distribution operations and energy auctions, make for a particularly good complementary match with Exelon’s nuclear capabilities. “Exelon has an excellent record as the nation’s largest operator of nuclear power plants.” Through an operating services agreement, Exelon has begun to apply its well-regarded management model at PSEG’s Hope Creek and Salem nuclear stations in southern New Jersey. “As the stations continue to improve, they will make a greater contribution to earnings. Consumers in this region will also benefit from more abundant, clean and low-cost nuclear energy,” added Ferland.

Exhibit NB-3
p. 3 of 3

Ferland pointed out that shareholders – including tens of thousands of New Jersey shareholders -- have already benefited by the appreciation in market value of PSEG common stock since the merger was announced. PSEG stock has recently achieved new highs and has gained more than 40 percent since the merger announcement. Exelon's stock price has also improved substantially, a sign of investors' favorable view of the merger, he noted.

In addition to the PSEG shareholder action received today, the merger has been approved by the Federal Energy Regulatory Commission (FERC) and is currently being reviewed by various other regulatory agencies including the New Jersey Board of Public Utilities. "Based on the current regulatory schedule, we hope to complete the merger in the first or second quarter of 2006. There is also the possibility that these proceedings could be settled earlier, allowing for an earlier close. While it is impossible to predict exactly how long it will take, we are confident of a positive outcome."

Earnings expectations of $3.15 to $3.35 per share from continuing operations for the year were reaffirmed. Ferland indicated that costs associated with the merger could reduce 2005 results by as much as 10-15 cents per share and are not reflected in the current guidance. "We didn't anticipate these costs when we developed our guidance last fall, but we're committed to providing the necessary resources to ensure the proposed merger with Exelon is achieved in a timely manner," Ferland said.

Exelon Electric & Gas will be the largest electric company in the United States with more than 7 million electric customers in Pennsylvania, Illinois and New Jersey, as well as more than 2 million gas customers in Pennsylvania and New Jersey.

A complete text of Ferland's remarks and additional information on the merger and PSEG can be found on the company's website pseg.com.

Corporate Profiles

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

Exelon is one of the nation's largest electric utilities with approximately 5.2 million customers and more than $14 billion in annual revenues. The company has one of the industry's largest portfolios of electricity generation capacity, with a nationwide reach and strong positions in the Midwest and Mid-Atlantic. Exelon distributes electricity to approximately 5.2 million customers in Illinois and Pennsylvania and gas to more than 460,000 customers in the Philadelphia area. Exelon is headquartered in Chicago and trades on the NYSE under the ticker EXC. For more information, visit the company's website at www.exeloncorp.com.

http://investor.pseg.com/seccapsule/seccapsule.asp?m=f&c=99807&fid=3593930&dc=, last viewed 7/29/05.

Exhibit NB-4

SUMMARY OF MERGER RECOMMENDATIONS OF
WITNESSES FOR THE RATEPAYER ADVOCATE
In the Event the Board Decides to Approve the Merger
(Arranged by Topic)

RECOMMENDATIONS RELATED TO REGULATED OPERATIONS

Synergies and Merger Accounting

1. Defer consideration of the Company's recently filed gas base rate application until after it has decided the merger proposal.

2. Require that rate recovery for goodwill will not be sought from utility ratepayers.

3. Require that, if the merger is shown to increase PSE&G's cost of capital, the authorized rate of return for New Jersey retail ratemaking shall not reflect that premium cost.

4. Require that the following adjustments be made to the synergy study:

    - Eliminate $52.6 million for transactions costs to secure the approvals of the boards of directors and of the stockholders of the two companies through independent valuations, market analyses and fairness opinions to protect stockholder interests. Eliminating transaction costs from recoverable costs to achieve reduces the recommended rate allowance for PSE&G's costs to achieve by $8,046,000.[12]

    - Eliminate any ratemaking recognition for "golden parachute" severance payments to corporate executives who lose their position as a result of the merger. Mr. Arndt's study includes $70.7 million in severance payments for the 35 senior level positions that are assumed to be eliminated.[13] Remove the $10.181 million in golden parachute costs that have been allocated to PSE&G in Mr. Arndt's synergies study.

[12] Response to RAR-SQ-34, Section O, page 042.
[13] Response to RAR-SQ-34, Section M, page M5. Mr. Arndt's synergies study assumes 15 executive positions eliminated from Exelon and 20 executive positions eliminated from PSEG.

- Eliminate the costs of signage changes that have been allocated to PSE&G. This change reduces Mr. Arndt's claimed cost to achieve for PSE&G by approximately $700,000.

- Any cost of capital reductions should be flowed through to customers as a merger benefit. Include $11 million annually as the estimated synergy benefit of claimed reductions to the cost of capital.

- Amortize PSE&G's costs to achieve, as adjusted for ratemaking purposes, over ten years.

5. Reduce PSE&G's rates forthwith by an amount that reflects anticipated annual average net savings over the first three years post-merger, or $42.694 million annually.

6. Use the historic non-fuel O&M allocator to allocate the regulated PSE&G's net merger savings to the electric and gas business units at ratios of 58.5%/41.5%, rather than the Company's proposed ratios of 62%/38%.

7. Allocate PSE&G's total regulated labor-related CTA (severance, retention and relocation costs) to the Company's electric and gas business units at the same electric/gas allocation ratios used for the allocation of the labor-related gross merger savings.

8. Reject the Company's proposed Regulatory Asset and Regulatory Liability accounts.

   - Instead order the same accounting and regulatory treatment to deal with the one-time merger related adjustment of the assets and liabilities associated with PSE&G's pension/OPEB, third-party debt, and BGS/BGSS costs as the Board ordered for the one-time merger related adjustment of NUI's (ETG's) pension/OPEB assets in the recently concluded AGL/NUI merger that was completed on November 17, 2004.

Gas Supply Management and Procurement

1. Require that the post-merger Exelon Electric & Gas entities be subject to the Board's oversight relative to their activities and transactions with the New Jersey regulated utility.

2. With respect to the existing requirements Contract, the Board should:

- Require that the contract be modified to include a provision requiring Board approval for any material modification to the level or cost of the gas supply required by PSE&G. Such material modifications would include Contract termination, capacity enhancements or substitutions, and any changes to the nature or scope of operations of ER&T or its successor.
- Require that the Contract be revised to specify all transactions related to the PSE&G capacity, the determination of margins and credits, and the allocation of such margins to gas ratepayers. The revision should incorporate all relevant margin provisions as set forth in various applicable Board Orders, and both Exelon and ER&T should expressly agree to all revisions.
- Require that residential gas customers continue to have the right to receive cost-based gas supply subject to annual reconciliation. This modification should expressly prohibit PSE&G from adopting any monthly indexed price procedure for its residential gas service.
- Require that the Contract specify that only PSE&G has the authority to control service interruptions.
- Require that the Force Majeure provisions of the Contract be clarified to limit weather-related claims to instances where the average daily mean temperature is below the level incorporated into the Company's latest design day requirements determination.
- Require that all third-party supplier transportation or storage capacity release provisions currently in effect be terminated. Subsequently, PSE&G could propose prospective release programs subject to Board approval.

3. Require that ER&T's (or any successor in interest) gas management operations or trading should continue to be based in Newark unless otherwise expressly authorized by the Board.

Capital structure and affiliate transactions generally

1. Require that any increase in PSE&G's cost of capital due to capital structure changes attributable to the merger (and merger-related accounting) should not be reflected in PSE&G retail rates.

2. Require that Joint Petitioners may not change PSE&G's current corporate financial structure without obtaining prior Board approval, and that the Joint Petitioners agree to the same.

3. PSE&G should not be permitted to participate in the Exelon Utility Money Pool as proposed:

- Joint Petitioners should not be permitted to include in the Utility Money Pool the unregulated generation subsidiary of Exelon absent further justification for that arrangement.
- PSE&G should be permitted to participate in the Utility Money Pool only if the unregulated generation subsidiary is excluded.
- In addition, there are various other conditions and clarifications that are appropriate and should accompany any Board approval to participate in the Utility Money Pool:
    - The standards established in the Board's decision in BPU Docket No. EF02030185 regarding Jersey Central Power & Light Company (most recently in the Board's 2005 renewal, Amendment No. 3) are appropriate for PSE&G in this case.
    - PSE&G has indicated in its discovery responses that shareholders, not ratepayers, should be responsible for any losses (or foregone earnings) that it experiences on Utility Money Pool loans. This concurrence should be made explicit as part of any Board approval.

4. Require that PUHCA financial practice restrictions that protect utility operations be continued and adhered to as part of any merger approval. This would include:
    - maintaining a minimum level of equity capitalization and
    - prohibiting PSE&G from loaning funds or extending credit to its corporate affiliates other than through the Exelon Utility Money Pool, if PSE&G's participation is approved by the Board.
    - Prohibiting PSE&G from guaranteeing the debt or credit instrument of any corporate affiliate.
    - Prohibiting PSE&G from allowing its assets to be pledged as security or collateral for an affiliate. (The term "affiliate" would include both Exelon Energy Delivery and Exelon Corporation).

5. The merger approval should not be granted by the Board unless and until the Board has approved an acceptable GSA.

- Direct the Joint Petitioners to present to the parties a detailed operating plan for Exelon BSC post-merger, along with Exelon BSC's detailed proposal for billing client companies for the services it will provide post-merger. A revised GSA reflecting those services and allocation methods should be included in that presentation. The MSA should be held to the same requirements.
- The following pre-conditions to merger approval relating to the service company should also be adopted by the Board and required of the Joint Petitioners:

    1) Exelon BSC costs shall be directly charged whenever practicable and possible and affirmative steps shall be taken to increase direct billings

relative to current billings. PSE&G shall report about direct and indirect charges by function quarterly and respond to questions concerning such reports. In its next base rate proceeding, PSE&G shall file testimony addressing Exelon BSC charges and the bases for such charges, as well as the modifications to procedures and systems that are being made to increase direct billings.

2) No later than the end of the second calendar quarter of each year ("Reporting Year"), PSE&G shall provide the Board, Board Staff and the Ratepayer Advocate with the following reports:

   a. The equivalent of the SEC Form U-13-60 Report that describes Exelon BSC direct billings versus allocated costs for each operating utility company in the Exelon system. In addition, Exelon BSC shall provide a further breakdown for PSE&G, which identifies the total amounts charged, separately stating direct and indirect charges to PSE&G for each service function.

   b. The cost allocation percentages and supporting work papers for the Reporting Year based on the estimated plan factors for the Reporting Year. Such report shall compare these estimated plan factors and cost allocation percentages for the Reporting Year to those actual allocation factors and percentages used in the previous year and highlight all modifications and specifically identify those that occurred during the course of the year due to significant events based on the prior year's actual results of Exelon BSC's charges for each allocation factor for each Exelon affiliate. PSE&G shall explain any change to allocation factors to PSE&G that are more than five percentage points. PSE&G shall also make available on request any prior months' variance reports regarding Exelon BSC's billings to PSE&G.

3) PSE&G shall also provide copies to Board Staff and the Ratepayer Advocate of the portions of any internal or external audit reports (including any currently pending) performed by or for Exelon BSC, pertaining directly or indirectly to Exelon's determinations of direct billings and cost allocations to its affiliates, but only after the audit is complete and the report is final. Such material shall be provided no later than 30 days after the final report is completed. If after review of such material, Board Staff or the Ratepayer Advocate determines that review of the remainder of such audit report is warranted, PSE&G shall make the complete report available for review in PSE&G's Newark office or at the Board.

4) PSE&G and Exelon BSC shall promptly notify the Board, Board Staff and the Ratepayer Advocate when it has received notice that the SEC, the FERC, or the state regulatory commissions in Illinois or Pennsylvania preparing to perform an audit of Exelon BSC. Exelon BSC shall provide copies of the portions of all audits highlighting the findings and recommendations and ordered changes to the GSA pertaining directly or indirectly to Exelon BSC's determinations of direct billings and cost allocations to its affiliates, as well as any sections addressing PSE&G. If after review of such material, Board Staff or the Ratepayer Advocate determines that review of the remainder of such audit report is warranted, PSE&G shall make the complete report available for review in PSE&G's Newark office or at the Board.

5) PSE&G shall promptly notify the Board, Board Staff and the Ratepayer Advocate when it has received notice that the SEC, the FERC, or the state regulatory commissions in Illinois or Pennsylvania is rendering a specific decision affecting Exelon BSC, including any generic rulemakings.

6) For assets that Exelon BSC acquires for use by PSE&G, the same capitalization/expense policies shall apply to those assets that are applicable under the Board's standards for assets acquired directly by PSE&G.

7) For depreciable assets that Exelon BSC acquires for use by PSE&G, the depreciation expense charged to PSE&G by Exelon BSC shall reflect the same depreciable lives and methods required by the Board for similar assets acquired directly by PSE&G. In no event shall depreciable lives on plant acquired for PSE&G by Exelon BSC be shorter than those approved by the Board for similar property acquired directly by PSE&G.

Page 6

8) For assets that Exelon BSC acquires for use by PSE&G, the rate of return shall be based on PSE&G's authorized rate of return, unless Exelon BSC is able to finance the asset at a lower cost than PSE&G. In such cases, the lower cost financing shall be reflected in Exelon BSC's billings to PSE&G, and the resulting benefit shall be passed on to ratepayers.

9) Board Staff and the Ratepayer Advocate shall be assured reasonable and convenient access to the books and records of Exelon BSC and other Exelon companies that transact business with PSE&G, and supporting documentation thereof, but only to the extent relevant to transactions with PSE&G.

10) The Board and the Ratepayer Advocate shall be sent copies of any and all "60-day" letters, and supporting documentation, sent by Exelon BSC to the SEC concerning proposed change in the GSA.

11) PSE&G shall be subject to and shall submit to the Board's jurisdiction on issues regarding the New Jersey ratemaking treatment of Exelon BSC's costs that are assigned or otherwise allocated to PSE&G and borne by PSE&G customers. PSE&G shall not raise a Federal preemption defense when challenging the appropriateness of a Board ruling on a cost allocation issue concerning the GSA.

12) PSE&G shall file petitions for approval of any modifications to the GSA, including changes in methods or formulae used to allocate costs, with the Board at the same time it makes a filing with the SEC for the FERC.

13) Board Staff and the Ratepayer Advocate shall have the right to review the GSA and related cost allocations in PSE&G's future base rate cases, in conjunction with future competitive service audits, in response to any changes in the Board's affiliate relations standards, and for other good cause shown.

14) PSE&G shall have the right to opt out of any Exelon BSC service that it determines can be procured in a more economical manner, is not of a desired quality level, or for any other valid reason, including Board Orders, after having failed to first resolve the issue with Exelon BSC, and PSE&G shall not be penalized for any such decision to opt out.

15) The Board under its authority pursuant to the Electric Discount and Energy Competition Act ("EDECA") may review the allocation of costs in sufficient detail to analyze their reasonableness, the type and scope of services that Exelon BSC provides to PSE&G and the basis for inclusion of new participants in Exelon BSC's allocation formula. PSE&G and Exelon BSC shall record costs and cost allocation procedures in sufficient detail to allow the Board to analyze, evaluate, and render a determination as to their reasonableness for ratemaking purposes.

16) Exelon BSC shall reflect in allocation factors new participants to the GSA in a timely manner so that new participants begin paying a fair share of Exelon BSC costs within a reasonable time after becoming participants and that existing participants' share of Exelon BSC costs are promptly adjusted accordingly after new participants become

participants to the GSA. Allocation factors shall also be adjusted in a timely manner to reflect the departure of participants.

Service Quality: Low-Income Customers

1. PSE&G shall maintain its 16 walk-in customer service centers for a period of at least ten years.

2. PSE&G shall, by January 1, 2007, maintain a fully-functioning Customer Service Center in Elizabeth. In the absence of a fully-functioning Customer Service Center by January 1, 2007, the Board should impose a monthly sanction of $20,000 for each month such a Center is not in operation, the proceeds of the sanction to be used for low-income energy assistance in the Elizabeth community.

3. The Board should seek to ensure that the Company maintain and enhance its customer payment centers as a viable payment option for PSE&G customers. This should be accomplished through a three-part condition.

- First, the Board should direct PSE&G to file an annual report (with monthly data) with the Board containing information on the use of walk-in payment locations for purposes of making payments. The walk-in locations shall include not only the Company's 16 field offices, but shall include each of the authorized Western Union payment centers as well. The annual report, with monthly data, shall report both the number of payments received and the dollar amount of payments received at each location.
- Second, the Board should require eliminate the fees imposed to make a payment at one of its Western Union payment centers.
- Third, the Board should prohibit the imposition of any potential fee to make an in-person payment at a PSE&G customer service center.

4. PSE&G shall submit a Board filing that provides a detailed explanation of, and justification for, its current risk assessment methodology.

- The filing shall be simultaneously submitted to the Division of Ratepayer Advocate and shall be subject to hearing either upon complaint or on the Board's own motion.
- Because of the consequences of the use of these "risk assessment" measures, the filing (including the justification of the "risk assessment" measurements) shall satisfy the following criteria to be approved:
    - The data used to develop the system must constitute an appropriate sample of the customer base;
    - The system should predict customer creditworthiness with respect to explicitly articulated legitimate business interests of the Company;

- The "risk assessment" measures should be developed and validated using accepted statistical principles and methodology; and
- The "risk assessment" measures should be periodically reviewed and revalidated as to their predictive ability and adjusted accordingly.

5. The Board should direct the Company to file with the Board, within 90 days of the consummation of this merger, an action plan in which the Company commits to taking those action steps necessary to ensure that New Jersey SHARES remains meaningfully funded and adequately available.

- PSE&G shall increase its New Jersey SHARES shareholder contribution to mirror the shareholder contributions of PECO.
- For both customer contributions and investor contributions, PSE&G efforts shall mirror those of PECO.
- These fuel fund efforts shall include two distinct components:
  - First, PSE&G shall match PECO's commitments as agreed to in connection with the PECO-Unicom merger and in the pending Joint Petition for Settlement in the pending proceedings before the Pennsylvania Public Utility Commission for approval of the PSE&G-Exelon merger. Thus, PSE&G shall provide a total of $5 million in Energy Assistance Funds over a period of five years. (PECO-Unicom merger Settlement, paragraph 29; PSE&G-Exelon merger Settlement, paragraph 33). These contributions shall be in addition to any contributions to grant assistance or administrative dollars currently provided by the Company.
  - Second, PSE&G shall implement a check-off box on customer bills for contributions to a low-income crisis assistance fund and include a check-off option for electronic bill-payment customers, unless the inclusion of such an option is technically infeasible or substantially uneconomical. As part of this check-off program, PSE&G shall provide five fuel fund bill inserts in the first year subsequent to this proceeding, and four such bill inserts annually thereafter until such time as the monthly check-off box is included on customer bills. Like PECO, PSE&G shall provide bill inserts twice a year explaining the fuel fund and the check-off box option.
- PSE&G shall index its ***current*** investor contributions so that they increase annually to reflect changes in the Consumer Price Index (Urban consumers) (CPI-U) for energy prices.

6. PSE&G shall commit to spending $1.2 million ($300,000 per year in each of the years 2007, 2008, 2009 and 2010) on additional outreach for the federal Earned Income Tax Credit (EITC).

7. PSE&G shall file with the Board a plan through which it will outline in detail its procedure for negotiating deferred payment plans.

- PSE&G shall file a plan with the Board documenting how it intends to inform *all* customers seeking to negotiate a deferred payment arrangement of their right to pay less than the full noticed amount in response to a notice of disconnection or other collection activity.

8. The Board should impose specified low-income collections reporting requirements upon PSE&G to continue for the ten years following consummation of the merger.

- The reporting requirements should build on the reporting requirements incorporated into the New Jersey Universal Service Fund (USF) program.
- These reports shall cover all "confirmed low-income customers."
- A "confirmed low-income customer" shall include not only USF participants, but shall include all customers with a "Pay Assist Code" used for purposes of determining eligibility for the Winter Termination Program (WTP) (whether or not the customer actually applies for protections under the WTP) as follows:
  - Lifeline, a means-tested energy assistance program;
  - LIHEAP, the federal home energy assistance program for low-income customers (Low-Income Home Energy Assistance Program);
  - Temporary Assistance to Needy Families (TANF), the program formerly known as AFDC (Aid to Families with Dependent Children);
  - General Assistance;
  - Pharmaceutical Assistance to the Aged and Disabled (PAAD), a means-tested medical assistance program.
- Additional mechanisms to use in identifying "confirmed low-income customer" can be added either at PSE&G's own initiative or upon application by other parties to the Board.
- The low-income collections report shall include those data elements that are currently collected for purposes of USF reporting as approved by the Board in its June 30, 2004 order in Docket No. EX00020091.
- The recommended data elements to be included in the low-income collections report include those set forth in Schedule RDC-8.
- Should a deterioration in collection outcomes become evident subsequent to the merger, appropriate remedies, which may differ depending on the nature and magnitude of the identified deterioration, can then be crafted.

Service Quality and Reliability

1. Establish service benchmarks as part of the merger approval process in order to ensure that there is no deterioration in the level of service received by ratepayers after the merger. Require 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.

2. Require a Service Quality Maintenance Program:

    a. Under the Service Quality Maintenance Program, PSE&G shall be required to meet customer service, safety and reliability standards pegged to the same standards it now uses to assess performance.
    b. Failure to maintain performance in the First Quartile on the following immediate physical safety and reliability 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:
        i. SAIFI.
        ii. CAIDI.
        iii. Percent emergency calls answered in 30 seconds.
        iv. Percent emergency calls responded to in one hour or less.
    c. PSE&G shall continue to compare itself with the same panel of regional utilities as it presently does, 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.
    d. 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.
    e. In the event the Company fails to meet key service, safety and reliability standards, require PSE&G 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.
        i. The amount of such penalty reduction would be capped at an appropriate percentage of the firm's transmission and distribution revenues.
        ii. The maximum penalty should be at a level sufficient to get and keep management's attention (e.g. ranging from less than ½ percent to as high as 2 percent of revenues).
        iii. The designated percentage would be the annual cap for penalties that could be awarded under my recommendation.
        iv. The specific amount up to that cap that 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.
        v. 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 no event would the firm be exposed to higher than the maximum penalty.

- vi. 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.

f. Under the proposed Service Quality Maintenance Plan, PSE&G shall submit reports to the Board and Ratepayer Advocate quarterly as to performance on these four key metrics in each of the three months of the quarter, and explaining what steps it is taking to improve performance.

g. Annually, PSE&G shall submit a report summarizing its performance for the previous year on all metrics and other service quality and reliability conditions of the merger.

h. The quarterly and annual reports shall include performance on the operational and customer service metrics that it includes in its "Balanced Scorecard:"
   - i. Customer Care, People (Safe, Motivated Productive), Operations (Reliable, Low Cost), and Financial Performance, including but not limited to:
     1. The four key metrics, plus
     2. Gas Leak Reports Per Mile,
     3. Damages Per 1000 Locate Requests,
     4. Appointments Kept,
     5. Transmission Availability Index,
     6. Percent Meters Read,
     7. Percent Bills Adjusted, and
     8. Telephone Service Level Index.

i. In the case of all operational metrics the Company shall maintain the same standard as it has targeted internally pre-merger.

j. If any of the indices fall below acceptable levels as determined by the Board, the Board should take action to protect consumer interests.
   - i. Such actions could range from requiring a remediation plan all the way to reflecting the substandard performance in the equity return allowed the utility.

3. Require PSE&G to maintain and fully staff its two New Jersey call centers with trained New Jersey customer service representatives, and not permit PSE&G to reduce staff, make additional use of out-of-state representatives, or move call centers out of state. If after four years it wants 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.

4. Require PSE&G to report to the Board and Ratepayer Advocate on the plans for, and execution of, the migration of PECO to the ComEd billing platform.
   a. Such reports shall 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.

b. Require similar reports from PSE&G if and when PSE&G transitions to the ComEd billing platform.
c. Further, if a PSE&G customer is subject to a billing error during and after the migration to the ComEd billing platform, PSE&G shall afford the customer affected by the error an affordable payment arrangement, and shall credit the customer's account by $10 for each such incident.

5. Require PSE&G 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 the Newark and Roseland Districts, together with its plans for further remedial work if needed at that time.

6. Require PSE&G 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.

7. Require PSE&G 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.

8. Require PSE&G to maintain its markout function in-house, using its own staff.

9. Require PSE&G to refrain from merger-related field staff reductions for 36 months post-merger.

RECOMMENDATIONS REGARDING
<u>IMPACTS FROM UNREGULATED SIDE and JOB LOSS IMPACTS</u>

1. Require Exelon to provide total benefit to New Jersey of $312 million per year (including the $43 million annual flow-through of average annual synergy savings from the first three years). The $312 million annual benefit is constituted as follows. To the $43 million in early-years corrected net synergy savings, add the following:

    - A fair share of the approximately $200 million in pre-tax benefits ($124 million after tax) from additional nuclear power generation in PJM wholesale electricity market. Using a 50/50 split, the proposed share equals $62 million.
    - $143 million to offset the impact on New Jersey economy of anticipated merger-related job loss and associated multiplier effect.

- $64 million to protect New Jersey electricity consumers from potential wholesale electricity rate increase associated with market power risk.[14]
- The subtotal of these three items is $269 million.

2. Require effective electricity market power mitigation as follows:

- There should be no virtual divestiture. All divestiture should involve the actual sale of ownership of capacity and energy.
- The amount of capacity that would have to be divested as part of the merger should be based on Synapse input assumptions and a strategic bidding analysis.
- The amount of capacity that would have to be divested also should be based on the actual units to be divested.
- The BPU should set limits on the parties that could purchase the divested capacity.
- The PJM Market Monitoring Unit's suggestions about expanding the application of bid capping and/or bidding at marginal cost should be adopted.
- The Petitioners should agree that after the merger is closed, the BPU would retain the same jurisdiction to address market power issues as it has before the merger.
- The BPU should conduct more detailed oversight of the BGS auction process in order to permit a meaningful investigation of whether any post-merger bidders, including EEG, exercise market power in the annual BGS auctions.

[14] If specific Synapse Panel market power mitigation proposals are not adopted.

Exhibit NB-5

Development of Proposed Annual Dollar-Flow-Through
To PSE&G Customers
And to New Jersey BGS Customers
As a Condition of Any Merger Approval

Item		**Subtotals ($M)**	**Totals ($M)**
1. First 3 years of net synergy savings		**$43**	
Subtotal - Net Synergy Savings			**$43**
2a. Job loss multiplier effect		$143	
2b. Nuclear output effect:			
Pretax revenue increase	$200		
Less tax impact at 38%	-$76		
After-tax revenues	=$124		
Split 50/50	= $62	$62	
2c. Wholesale Price Increase Protection[15]		$64	
Subtotal: Benefit sharing and loss-mitigation			**$269**
TOTAL NEW JERSEY DOLLAR FLOW-THROUGH			**$312**

[15] Assumes Synapse Panel market power mitigation is not adopted