

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

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

**NEW JERSEY DIVISION OF THE RATEPAYER ADVOCATE’S COMMENTS
AND REQUEST FOR EVIDENTIARY HEARINGS OR, IN THE
ALTERNATIVE, AN EXTENSION OF TIME, DISCOVERY, ASSIGNMENT OF
AN ADMINISTRATIVE LAW JUDGE, AND SUPPLEMENTAL COMMENTS**

Pursuant to the Comment Schedule set forth in the Notice of Filing and Rule 211 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“Commission”), 18 C.F.R. 385.211, the New Jersey Division of the Ratepayer Advocate (“NJ Ratepayer Advocate”) hereby submits its Request as well as its Comments on the application filed by Exelon Corporation (“Exelon”) and Public Service Enterprise Group Incorporated (“PSEG”) (collectively, “the Petitioners” or “the Applicants”).¹

Accompanying these Comments and the NJ Ratepayer Advocate’s Requests are the joint affidavit (“Synapse Affidavit”) of Bruce E. Biewald, president of Synapse Energy Economics (“Synapse”) and David A. Schlissel, Senior Consultant of Synapse, and the

¹ Presently before the Commission is a Motion for Intervention filed by the NJ Ratepayer Advocate on March 3, 2005.

affidavit of Richard W. LeLash (“LeLash Affidavit”), prepared on behalf of the NJ Ratepayer Advocate.

INTRODUCTION

On February 4, 2005, as supplemented on February 9, 2005, Exelon and PSEG and their subsidiaries that are subject to the Commission’s jurisdiction submitted a filing requesting Commission approval of a transaction that includes *inter alia*: (1) Exelon’s acquisition of PSEG and the resulting indirect merger of Exelon’s and PSEG’s regulated public utilities; and (2) the consolidation of Exelon’s and PSEG’s unregulated generation companies and corporate restructuring of the subsidiaries of their unregulated generation companies. PSEG’s utility service territory is wholly within the State of New Jersey, with approximately 2.0 million electric customers and 1.6 million gas customers in the State. The relevant New Jersey service territory is within PJM’s control area. The proposed transaction will affect the structure of PSEG and the ownership of jurisdictional assets in the PJM control area. In sum, the proposed transaction will have a direct impact on PSEG’s electric and gas customers in New Jersey. The NJ Ratepayer Advocate is the administrative agency charged under New Jersey Law with the general protection of the interests of utility ratepayers and hereby submits its Comments and Request for the Commission’s consideration. *N.J.S.A. 52:27E-50 et seq.*

As set forth below in the NJ Ratepayer Advocate’s Comments and the attached affidavits, without further analysis it cannot be said that the Applicants have conclusively demonstrated that the proposed transaction will not have an adverse impact on the relevant markets and, therefore, further analysis is needed in order to determine whether the proposed transaction is in the public interest. The NJ Ratepayer Advocate’s concerns

about the proposed transaction are set forth more fully below in its Comments and the attached affidavits.

The NJ Ratepayer Advocate also respectfully requests that the Commission: (A) initiate evidentiary hearings to determine whether the proposed merger is in the public interest; or, in the alternative, (B) (i) extend the comment period by 120 days, (ii) permit discovery during the extension period, (iii) assign an Administrative Law Judge for the limited purpose of managing discovery and resolving any discovery disputes during the extended time period, and (iv) permit the commenting parties to supplement their comments. The relief sought and the basis for the NJ Ratepayer Advocate's Request is set forth in more detail in the Request section below.

I. REQUEST ON BEHALF OF THE NJ RATEPAYER ADVOCATE FOR EVIDENTIARY HEARINGS OR, IN THE ALTERNATIVE, AN EXTENSION OF TIME, DISCOVERY, ASSIGNMENT OF AN ADMINISTRATIVE LAW JUDGE, AND SUPPLEMENTAL COMMENTS.

A. Request for Evidentiary Hearings.

The NJ Ratepayer Advocate respectfully requests that the Commission initiate Evidentiary Hearings. The proposed merger is enormous in scope, accompanied by a complex market power analysis and a novel mitigation proposal. The Applicants' filing fails to adequately address key market power issues associated with the proposed merger. Furthermore, certain fact-based challenges to the Applicants' market analyses have been identified. The NJ Ratepayer Advocate respectfully submits that these elements support initiating evidentiary hearings in this matter.

According to Exelon's witness, Exelon and PSEG own 26,341 MW and 13,963 MW, respectively, in PJM. Direct Testimony of Dr. William H. Hieronymus, p. 32, Exh. J-1.

This amount of capacity represents 15.2% and 8.1%, respectively, of the total capacity in PJM. *See* Exh. J-9. Post-merger, the combined capacity of the merged companies will total approximately 40,304 MW, putting the post-merger capacity market share at about 23.3%. In the Eastern portion of PJM the capacity shares are higher, at 18.0% and 25.4%, putting the post-merger capacity market share at 43.4%. Exh. J-9. The Applicants' analysis of Economic Capacity and Available Economic Capacity shows post-merger market shares in PJM East in excess of 40% and 30%, respectively.² The size of the combined post-merger entity merits a careful examination of the impact of the proposed merger on the affected markets, such as the careful review that only an evidentiary hearing will permit.

The Applicants' witnesses' market power analyses and the assumptions and data which form the basis of the analyses need to be subjected to the scrutiny of an evidentiary hearing. For example, Exelon's witness, Dr. William Hieronymus, utilized Charles River Associates' CASm model. *See* Exh. J-5, p. 1. The CASm model requires literally thousands of data inputs to represent each generating unit in the study area (i.e., capacity, operating costs, ownership, and location), loads and competitive market prices by destination market, and transmission constraints within the system. It then solves the system as a linear programming optimization problem, with some additional procedures for prorating the use of limited transmission capability. The real possibility of errors in the CASm model input data assumptions can only be assessed with adequate opportunity to review the development of the input assumptions, such as that provided by an evidentiary hearing with provisions for discovery.

² Exh. J-1, pp. 47, 52.

The input assumptions underlying Dr. Hieronymus' model also should be subject to the scrutiny that evidentiary hearings provide. While some of the input assumptions are obviously key drivers in the results (e.g., the transmission limit into PJM East), without a full examination of the modeling it is difficult or impossible to determine how sensitive the reported results are to changes in various other inputs assumptions. For example, the specific mitigation-eligible generating units are identified based upon details of the CASm analysis (see Exh. J-12), but there are no sensitivity analyses presented that would allow the Commission or other parties to examine whether and to what extent the specific mitigation depends upon particular input assumptions that may be subject to uncertainty or debate. For example, the set of destination market prices used by Dr. Hieronymus in CASm are one set of input assumptions that have important implications for the analysis of market power and the recommended mitigation plan but are not adequately explained and are inconsistent with recent PJM prices. *See* Exh. J-1, pp. 36-37.

Additionally, the Applicants' filing includes a proposed mitigation plan. *See* Exh. J-1, pp. 65-69. The Applicants' proposed mitigation plan has a provision for actual divestiture of coal, mid-merit, and peaking capacity, and the "virtual divestiture" of nuclear capacity. The mitigation proposal and the underlying assumptions need to be tested through evidentiary hearings.

Several aspects of the mitigation plan bear further scrutiny. For example, the mitigation plan also has provisions for subsequent "MW for MW" adjustments to the ongoing mitigation requirement, and so appears to have the potential to keep levels of market concentration at the upper limits indefinitely. Included in the Application are detailed rules spelled out in the mitigation plan for which companies' would be eligible to

purchase the divested generating capacity, based upon those companies' existing situation in the market. However, the basis for the Applicants' proposed purchase rules is not provided. Furthermore, although a list of eligible generating plants is provided with the Applicants' filing, the specific generating units to be divested are not identified. And no alternatives to the proposed mitigation are discussed or evaluated in order to determine whether they would be preferable. Moreover, the proposed virtual divestiture is novel and unprecedented. Exh. J-1, p. 8. The issues identified above and in the Comments below support the need for evidentiary hearings in this matter. The NJ Ratepayer Advocate respectfully requests that the Commission initiate evidentiary hearings.

B. Alternative Request for an Extension of the Comment Period, Discovery, Assignment of an Administrative Law Judge, and Supplemental Comments.

As set forth above, in the Comments below, and in the attached affidavits, the Applicants' merger proposal, market power analysis, and mitigation plan are complex and require careful study and analysis. The parties have not had an opportunity for any meaningful discovery. The Notice of Filing set a 60-day comment period, with comments due on April 11, 2005.

The NJ Ratepayer Advocate respectfully submits that it is important to permit sufficient time to develop an understanding of all aspects of the proposed transaction and mitigation plan in order to determine whether the proposed plan effectively mitigates any market power concerns. Recently, the New Jersey Board of Public Utilities ("NJ BPU") requested that the PJM Market Monitor initiate a study of the proposed merger on the state of competition in the PJM markets and sub-markets and submit a report on the study

to the NJ BPU.³ To the best of the Ratepayer Advocate's knowledge, the NJ BPU's request is now pending at the PJM. In sum, adequate time is required to complete an analysis of whether the proposed merger is in the public interest. Therefore, if the Commission decides not to initiate evidentiary hearings, the Ratepayer Advocate respectfully submits that the Comment period be extended by 120 days and the commenting parties should be permitted to supplement their initial comments as outlined below.

Additionally, the NJ Ratepayer Advocate respectfully requests that the Commission permit discovery in this proceeding. Although the Applicants have provided certain material associated with the analysis by Exelon's market power witness, Dr. Hieronymus, the Applicants' testimony and proposal have not been subjected to any meaningful discovery. Counsel for the Applicants has advised the NJ Ratepayer Advocate that the Applicants will not respond to discovery requests propounded earlier by the NJ Ratepayer Advocate unless there is an evidentiary proceeding or the Commission authorizes discovery.

Furthermore, in the interests of administrative efficiency and so as not to burden the Commission with procedural matters, the NJ Ratepayer Advocate also respectfully requests that the Commission assign an Administrative Law Judge for the limited purposes of managing discovery and resolving any disputes arising from the discovery process. In sum, if the Commission decides not to initiate evidentiary hearings, the NJ Ratepayer Advocate respectfully requests that the Commission extend the comment period, permit discovery, and assign an Administrative Law Judge.

³ Letter from the NJ BPU to the PJM Market Monitor, dated March 29, 2005.

II. COMMENTS

Pursuant to the Federal Power Act, Section 203, the Commission must first find that the proposed transaction is in the “public interest” before it approves the transaction. 16 USC 824(b). The Commission’s Rules state that the Commission considers, among other factors, in determining whether a proposed transaction is in the public interest, the effect of the transaction on competition, rates, and regulation. *See* 18 CFR Sec 2.26(b) (2004). The Commission’s Rules also set forth the filing requirements for applications under Section 203 of the Federal Power Act. *See* 18 CFR Sec. 33 (2004). Among the Commission’s filing requirements is the submittal of a horizontal Competitive Analysis Screen, otherwise referred to as an Appendix A analysis. 18 CFR Sec. 33.3 (2004).

Here, the proposed combined entity will control a significant amount of generating capacity in the PJM control area. The Applicants acknowledge that, unmitigated, the Appendix A analysis of their proposed transaction submitted by Dr. Hieronymus yields screen failures for the Economic Capacity measurement of generation ownership during the off-peak, peak and superpeak load conditions in the PJM East, PJM Pre-2004 and Expanded PJM energy markets during all three seasons studied (Summer, Winter, and Shoulder). Application, p. 19. Furthermore, Dr. Hieronymus’ analysis showed screen failures for Available Economic Capacity in the PJM East and PJM Pre-2004 energy markets. Application, p. 19. Dr. Hieronymus also found screen failures in his evaluations of the PJM capacity markets. Exh. J-1, p. 59. The Applicants themselves further acknowledge that mitigation of the screen failures identified by Dr. Hieronymus is “complicated”, noting that the screen violations “take place during all load conditions, including superpeak conditions when peaking units with high fuel costs are running, peak

conditions when the most expensive peaking units are not running, and off-peak conditions when the only units running are baseload units with low fuel costs.”

Application, pp. 19-20.

The Applicants claim that their proposed mitigation measures will mitigate the screen failures identified by Dr. Hieronymus. Application, p. 20. The mitigation measures proposed by the Applicants, along with interim measures, include the planned actual divestiture of 2,900 MW of peaking and mid-merit generating capacity to address the peak and superpeak load screen failures, and the “virtual divestiture” of 2,600 MW of baseload capacity to address off-peak screen failures. *See* Application, pp. 20-25.

On February 28, 2005, PSEG submitted for the record in this proceeding before the Commission the testimony of Rodney Frame that was also filed at the NJ BPU. Therein, Mr. Frame presented the results of his assessment of the competitive effects of the proposed merger.

Although the Applicants submitted Dr. Hieronymus’ study, which they identify as an Appendix A analysis, and Mr. Frame’s analysis, as discussed in more detail below and in the attached affidavits, the NJ Ratepayer Advocate has several significant concerns about the market power analyses and the proposed mitigation measures. In fact, the Commission’s Merger Policy Statement recognizes that the Appendix A analytic screen is not infallible.⁴ For example, the Merger Policy Statement recognizes that “the screen might not detect certain market power problems.”⁵ Furthermore the MPS recognizes that

⁴ FERC Order No. 592, 77 FERC 61,263 (1996) (“Merger Policy Statement”), p. 26.

⁵ Merger Policy Statement, p. 26.

there may be “disputes over data” or “the way the applicants have conducted the screen analysis.”⁶

As set forth below in the Synapse Affidavit, the screen analyses performed by Dr. Hieronymus and Mr. Frame are subject to questions. For example, data published by the PJM shows that the PJM East energy and capacity markets are substantially more concentrated than Dr. Hieronymus and Mr. Frame suggest in their analyses. Furthermore, the methodologies underlying the screen analyses submitted by the Applicants might not detect certain market power problems, such as the strategic bidding concerns discussed below and in the attached Synapse Affidavit. Finally, the mitigation measures proposed by the Applicants inadequately address the market power problems created by the proposed merger. Each of the aforementioned concerns is set forth in more detail below and in the attached affidavits.

In addition, the NJ Ratepayer Advocate’s natural gas commodity and transportation concerns are set forth below in the section immediately following the discussion of electric markets, and in the attached Lelash Affidavit.

A. ELECTRIC

1. Dr. Hieronymus and Mr. Frame Understate Concentration in the PJM East Energy Market.

As set forth in the attached Synapse Affidavit, there are significant differences between historical PJM data on pre-merger market concentration in the PJM East energy market and certain Herfindahl-Hirschman Indices (“HHI”) measures from both Dr. Hieronymus’ and Mr. Frame’s analyses. Synapse Affidavit, pp. 6-7. Compared to the PJM data, both Dr. Hieronymus and Mr. Frame underestimate the pre-merger HHI

⁶ Merger Policy Statement, pp. 26-27.

scores. For example, published PJM market data showed that the high HHI figures for PJM East energy market for the years 2003 and 2004 were 2,500 and 1,980 respectively, as compared to Dr. Hieronymus' high HHI of 1,477 and Mr. Frame's high HHI of 1,464. Synapse Affidavit, p. 7, Table 1. In fact, the average HHI figures for the PJM East Energy market for the years 2003 and 2004 were at or above the high ends of the HHI ranges produced by Dr. Hieronymus and Mr. Frame. Synapse Affidavit, p. 7, Table 1. Notwithstanding the fact that the PJM data dates from 2003 and 2004, and Dr. Hieronymus' and Mr. Frame's projections are for 2006, Messrs. Biewald and Schlissel found that the differences in the energy market HHIs were "significant" and call into question Dr. Hieronymus' and Mr. Frame's market analyses. Synapse Affidavit, p. 7. Thus, the models presented by Dr. Hieronymus and Mr. Frame are suspect and cannot be relied upon without further analysis.

2. Dr. Hieronymus and Mr. Frame Understate Concentration in the PJM East and Expanded Capacity Market.

Much like what Messrs. Biewald and Schlissel found in their review of Dr. Hieronymus' and Mr. Frame's PJM East energy market analyses, Messrs. Biewald and Schlissel found that the historical PJM data suggests that the pre-merger PJM Expanded capacity markets are more concentrated than indicated by Dr. Hieronymus' and Mr. Frame's market analyses. Synapse Affidavit, pp. 8-10. They found that Dr. Hieronymus' and Mr. Frame's analyses of PJM's capacity market daily and monthly and multi-monthly HHIs are understated when compared to historical PJM data. Synapse Affidavit, pp. 8-9, Tables 2 and 3.

Moreover, Messrs. Biewald and Schlissel conclude that it is reasonable to assume that the pre-merger PJM East capacity market would be more concentrated than the PJM

Expanded capacity market, given the “substantial” amount of capacity owned by Exelon and PSEG in the PJM East area. Synapse Affidavit, p. 9.

Furthermore, Messrs. Biewald and Schlissel also found that both Dr. Hieronymus and Mr. Frame’s models incorporated unreasonable assumptions regarding imports into the relevant area. Dr. Hieronymus assumed that imports into the relevant area were supplied by four equal-sized firms, none of which were Exelon, PSEG or the combined company created by the proposed merger. Synapse Affidavit, p. 10. Mr. Frame similarly assumed that imports into the relevant area were supplied by four firms that do not currently own generating units in PJM East. Synapse Affidavit, p. 10. This also excluded the Applicants or the combined company created by the merger. These are unrealistic assumptions. Synapse Affidavit, p. 10. As a result, both witnesses’ capacity market analyses understate the levels of market concentration and the amounts of capacity that would have to be divested. Synapse Affidavit, p. 10.

The disparities between the results of Dr. Hieronymus and Mr. Frame’s analyses and historical PJM data and the unreasonable assumptions underlying their analyses noted by Messrs. Biewald and Schlissel call into question the capacity market analyses submitted by Dr. Hieronymus and Mr. Frame. This presents further evidence that the models presented by Dr. Hieronymus and Mr. Frame are suspect and cannot be relied upon without further analysis.

3. Dr. Hieronymus’ Model Incorporates Unreasonable Assumptions.

As set forth in the Synapse Affidavit, the model used by Dr. Hieronymus incorporates unrealistic assumptions which cause it not to “accurately and realistically” reflect the relevant markets. Dr. Hieronymus uses the CASm model to calculate pre-

merger and post-merger HHIs for his Appendix A analysis. One example of an unrealistic assumption incorporated in the CASm model is that plant maintenance outages only occur during the non-peak (shoulder) seasons and forced outages are assumed to occur uniformly throughout the year. Synapse Affidavit, p. 11. In the CASm model all generating units are represented as running at a slightly lower than maximum capacity in all hours to reflect planned and forced outages and are never off-line completely. Synapse Affidavit, p.11. As noted by Messrs. Biewald and Schlissel, these assumptions are unrealistic because generating units fail and go off-line entirely, and sometimes outages occur in bunches at different times and locations. Furthermore, the CASm model uses generic outage rates, rather than plant-specific outage rates. Synapse Affidavit, p. 12.

Additionally, the CASm model does not reflect transmission system outages or deratings. Synapse Affidavit, p. 12. Also, the CASM model does not accurately reflect conditions where firm generating units might be committed to serve other load or diverted to other areas for economic reasons. Synapse Affidavit, p. 12.

Messrs. Biewald and Schlissel conclude that because of these unrealistic assumptions, the CASm model “does not accurately and realistically reflect conditions of the system being modeled, and, therefore, the HHIs that it produces should not be the sole or even the primary evidence relied upon to show that a merger will not create significant market power concerns.” Synapse Affidavit, p. 12.

4. Dr. Hieronymus’ Analysis Utilizes Unsupported Destination Market Prices.

As set forth in the attached Synapse Affidavit, the range of market prices used in his analysis is unsupported. Synapse Affidavit, pp. 12-13. Messrs. Biewald and Schlissel

found that the destination market prices used by Dr. Hieronymus in his analysis were inconsistent with recent historical PJM prices. Synapse Affidavit, pp. 12-13. The absence of support for the destination prices used in Dr. Hieronymus' analysis limits its usefulness in assessing market power.

5. The Applicants' Mitigation Plan is Inadequate.

Messrs. Biewald and Schlissel identified several significant flaws in the Applicants' mitigation plan. First, the Applicants' mitigation plan incorporates an unconventional "virtual divestiture" of baseload nuclear capacity which might not be sufficient to exclude it from a screen analysis. As Messrs. Biewald and Schlissel noted, the buyer of the firm energy in the proposed virtual auction would not have operational control of the generating units underlying the purchase. Synapse Affidavit, p. 15.

Another aspect of the mitigation plan also merits concern. Although the Applicants propose to divest 2,900 MW of peak and mid-merit generating units, the Applicants have not identified specifically which units they plan to divest. As Dr. Hieronymus and Mr. Frame have acknowledged, the selection of units to be divested would affect the HHI, depending on whether the units are bid-capped or not. Synapse Affidavit, p. 16.

Depending on which units are divested, the HHI changes between the pre-merger and post-mitigation HHIs might not satisfy the Commission's Appendix A guidelines.

Finally, if the Commission decides to approve the virtual divestiture plan, the NJ Ratepayer Advocate respectfully submits that the Commission should place conditions on the plan to ensure that the virtual mitigation plan is symmetrical, as explained in the Synapse Affidavit. Synapse Affidavit, pp. 15-16. The virtual divestiture requirement

should be increased “MW for MW” in the extent the Applicants’ PJM East nuclear capacity is increased. Synapse Affidavit, pp. 15-16.

6. Dr Hieronymus’ and Mr. Frame’s Analyses Do Not Address the Problem of Strategic Bidding.

Messrs. Biewald and Schlissel also set forth the limitations of using HHI scores in an assessment of market power, specifically with respect to recognizing the problems of strategic bidding and withholding of capacity in order to increase market clearing prices. Synapse Affidavit, pp. 4-6. Messrs. Biewald and Schlissel, in turn, identified the types of analyses that should be performed using simulation models that should be utilized to address the weakness of idealized HHI-based analyses. *See* Synapse Affidavit, pp. 5-6. The NJ Ratepayer Advocate respectfully submits that the Commission should consider requiring such analyses as part of its review of the proposed transaction.

B. NATURAL GAS

In their Application, the Applicants discuss extensively electric market power and their proposed mitigation plan; however, the Applicants provide scant information and devote little analytical efforts to the issue of combined gas capacity resources. The Application states that “[t]he combined company also will have a large gas distribution portfolio to complement its electric distribution business,” but provides no direct analysis or discussion concerning the merger’s impact on the Mid-Atlantic gas market. *See* Application, p. 14. The Applicants focus on gas issues only insofar as these issues affect electric generation, stating, “[t]he concern is that when the ownership of natural gas assets serving electric generation facilities is combined with the ownership of electric generation facilities, the potential is created for the resultant merged company to use control over the natural gas facilities to disadvantage the competing owners of the electric

generation facilities.” Application, p. 46. Furthermore, the Application does not address potential horizontal market power issues that may result from the merger of PECO’s and PSEG’s gas capacity assets, the potential for aggregating additional power by providing asset management services for third parties, and the effect of such activities on various markets. *See Lelash Affidavit, p.2.*

The merged company would control 35.6 % of gas transportation capacity serving the PJM East area. Heironymus Testimony, Exhibit J-16. In the ir Application, the Applicants do not fully discuss related market power in the gas supply market, merely concluding, “[i]n short, none of the vertical concerns that the Commission focused upon in prior vertical mergers exists in this merger and the Transaction does not create or enhance vertical market power [in the gas market].” Application, p. 47. The availability of interstate gas pipeline transportation and storage capacity is limited, particularly during peak winter periods in the Mid-Atlantic markets where pipeline operational flow orders and excessive day-ahead gas prices have become on-going concerns. *See Lelash Affidavit, p. 2.* With the Applicants holding 35.6% of available capacity in the PJM East market area, any additional control of gas capacity resources (for example, through asset management agreements) would place the Applicants in a position where they could exert market power through various actions. *See Lelash Affidavit, p. 2.*

A full evaluation of this filing should not solely address market power issues in the upstream market as they relate to potential adverse effects in the downstream electric market. Horizontal market power concerns for the gas supply market may exist, separate and apart from the vertical market power issues addressed in the Application.

The short Comment time set forth in the Notice of Filing, the Applicants' emphasis on electric versus gas market power, and the increased capacity constraints in the Mid-Atlantic gas market, support the initiation of evidentiary hearings on the Application in order to determine whether Exelon and PSEG will have undue market power within the gas market (in addition to the electric market), and whether constraints should be placed on the combined company to ensure that its market share of gas capacity does not become materially greater and that it does not use its gas capacity to negatively affect the Mid-Atlantic gas market.

CONCLUSION

WHEREFORE, for the foregoing reasons, the NJ Ratepayer Advocate respectfully requests that the Commission consider the NJ Ratepayer Advocate's Comments and Request. As set forth in its Comments and the attached affidavits, the NJ Ratepayer Advocate respectfully submits that without further analysis it cannot be said that the Applicants have conclusively demonstrated that the proposed transaction will not have an adverse impact on the relevant markets and, therefore, further analysis is needed in order to determine whether the proposed transaction is in the public interest.

The NJ Ratepayer Advocate respectfully requests that the Commission grant its Request that the Commission: (A) initiate evidentiary hearings to determine whether the proposed merger is in the public interest; or, in the alternative, (B) (i) extend the comment period by 120 days, (ii) permit discovery during the extension period, (iii) assign an Administrative Law Judge for the limited purpose of managing discovery and resolving any discovery disputes during the extension period, and (iv) permit the commenting parties to supplement their comments. In addition, the NJ Ratepayer

Advocate respectfully requests that the Commission grant its Request for Intervention, filed on March 3, 2005, for the reasons set forth therein.

Respectfully submitted,

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