

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

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

**SURREBUTTAL TESTIMONY OF RICHARD W. LELASH
ON BEHALF OF THE
NEW JERSEY DIVISION OF THE RATEPAYER ADVOCATE**

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1 Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS FOR THE RECORD.

2 A. My name is Richard W. LeLash and my business address is 18 Seventy Acre Road,
3 Redding, Connecticut.

4 Q. HAVE YOU PREVIOUSLY SUBMITTED TESTIMONY IN THIS PROCEEDING?

5 A. Yes, I have previously filed direct testimony on behalf of the New Jersey Division of
6 the Ratepayer Advocate.

7 Q. WHAT IS THE SCOPE AND PURPOSE OF YOUR SURREBUTTAL
8 TESTIMONY IN THIS MATTER?

9 A. My surrebuttal testimony responds to the rebuttal testimony filed by witnesses Mr.
10 Frederick Lark and Dr. John Morris. Specifically, the testimony will address the
11 positions of these witnesses concerning my recommended modifications to the
12 Requirements Contract, concern over post-merger regulatory oversight, and the on-
13 going provision of safe and adequate service at just and reasonable rates.

14 Q. WOULD YOU BEGIN BY ADDRESSING THE REBUTTAL TESTIMONY OF
15 MR. LARK?

16 A. Yes. Mr. Lark's rebuttal testimony addresses what he refers to as gas supply issues
17 (Lark Rebuttal at 8-9). He contends that matters related to the operation of Basic Gas

1 Supply Service (“BGSS”) and PSE&G’s Requirements Contract with its affiliate
2 ER&T are not appropriate for review in this proceeding. His position is novel since
3 the operation of BGSS and the Requirements Contract affect and ultimately determine
4 the majority of costs paid for by ratepayers.

5 As stated in my direct testimony, the Board’s standards for review of any
6 proposed merger include its impact on the rates of utility ratepayers and the utility’s
7 ability to provide safe and adequate service at just and reasonable rates (LeLash
8 Direct at 7-8). As such, a change in ownership with the potential to alter contractual
9 obligations, modify operational procedures, and diminish the Board’s regulatory
10 oversight over New Jersey utility operations is very germane to the current
11 proceeding.

12 Q. MR. LARK CONTENDS THAT ANNUAL BGSS PROCEEDINGS ARE THE
13 APPROPRIATE VENUE FOR THE ISSUES YOU HAVE RAISED. WHY IS HE
14 NOT CORRECT?

15 A. Were the merger to go forward, the next BGSS proceeding would not address the
16 kinds of ratepayer protections that are sought in my testimony. Indeed, it is worth
17 noting that within the Petitioners’ testimony there are no statements concerning the
18 relevancy of the issues raised, nor are there any commitments concerning the
19 ratepayer protections that were proposed. For example, in my direct testimony there

1 was a recommendation that Exelon Electric and Gas entities be subject to the Board's
2 oversight relative to their activities and transactions with the New Jersey regulated
3 utility (LeLash Direct at 33). Absent such a commitment by the Petitioners in this
4 proceeding, it is doubtful that such ratepayer protection would or could be obtained
5 in a BGSS proceeding.

6 Although the Board "reviews gas supply and capacity costs in PSE&G's
7 annual filing" (Lark Rebuttal at 9), the extent of the Board's authority over ER&T's,
8 or any successor's, performance or related costs is not known. The Petitioners may
9 claim that all ER&T responsibilities and charges have been set forth in the
10 Requirements Contract, and the Board may be powerless to obtain any necessary
11 modifications. For this reason it is essential that all terms and conditions of the
12 Requirements Contract between PSE&G and ER&T be made explicit.

13 It is instructive to reference a discovery request (RAR-10) from the current
14 BGSS annual filing which sought copies of all data, reports, or other workproduct
15 received by the Company from ER&T on a monthly or periodic basis. The Company
16 only provided ER&T's monthly invoices for two months. It is difficult to envision
17 effective regulatory oversight based solely on ER&T's monthly invoices.

18 Q. MR. LARK ALSO CITED AN AUDIT CONDUCTED BY THE BOARD'S AUDIT
19 STAFF COVERING A FIVE YEAR PERIOD IN WHICH EVERY AREA

1 RELATED TO THE BGSS WAS REVIEWED. DO SUCH AUDITS ADDRESS
2 YOUR CONCERNS RELATIVE TO REGULATORY OVERSIGHT?

3 A. No, they do not. First, an audit every five years does not provide adequate on-going
4 review of ER&T or any successor. Second, such audits typically involve only
5 verification of costs and revenues and do not address policy related matters. Third,
6 although the Board's Audit Staff can participate in the annual BGSS reviews, they
7 typically do not. And fourth, the audits do not review every area related to BGSS. For
8 example, such audits do not address hedging, the matching of supply resources to
9 demand requirements, the effectiveness and maximization of off-system capacity
10 credit or margins, or the effectiveness of ER&T's storage utilization.

11 Q. TURNING TO THE REBUTTAL TESTIMONY OF DR. JOHN MORRIS, WHAT
12 ARE YOUR CONCERNS WITH HIS COMMENTS ON YOUR TESTIMONY?

13 A. As an initial matter, Dr. Morris begins by misrepresenting my direct testimony. He
14 states that, "Mr. LeLash merely reviews the testimony of witnesses in other
15 proceedings related to this merger, and concludes (page 6) from this review that
16 EE&G will have undue market power in the natural gas market" (Morris Rebuttal at
17 9). My actual testimony stated in full that, "Material submitted to the FERC and to
18 the Pennsylvania Public Utilities Commission ("PaPUC") in Docket No. A-
19 110550F0160 indicates that the merged entity will have undue market power in the

1 natural gas market in the defined PJM East market area” (LeLash Direct at 6). The
2 material that was referenced was Dr. Carpenter’s testimony as discussed later in my
3 testimony at pages 20-21.

4 In my direct testimony, as in this rebuttal, no specific conclusion is made
5 concerning whether the merged entity would or would not have market power as
6 measured by an HHI analysis. In the alternative, it is recommended that the Board
7 base its market power determination on the evidence submitted in this docket.

8 Q. DR. MORRIS’ TESTIMONY ALSO STATES THAT MR. LELASH ARGUES
9 (PAGE 10) THAT MR. FRAME’S CONCLUSIONS ON VERTICAL MARKET
10 POWER ARE DEFICIENT BECAUSE HE DID NOT ASSESS ASSET
11 MANAGEMENT DEALS. IS THAT CORRECT?

12 A. No. My direct testimony does not make the statement or argument claimed in Mr.
13 Morris’ testimony.

14 Q. AND FINALLY, DR. MORRIS CLAIMS THAT YOUR PROPOSALS ARE
15 ENTIRELY UNRELATED TO THE MERGER, AND THUS IT WOULD NOT BE
16 APPROPRIATE TO ADOPT ANY OF YOUR SUGGESTIONS IN RESPONSE TO
17 A CONCERN OVER VERTICAL MARKET POWER. DO YOU HAVE ANY
18 COMMENTS ON HIS STATEMENTS?

1 A. Yes. None of my proposals put forth in my direct testimony are predicated upon any
2 vertical market power finding, and no such nexus was claimed. As to whether my
3 proposals are related to the merger, Dr. Morris is incorrect based on my statements in
4 my direct and in this surrebuttal testimony. If he had no comment on the substance
5 of my suggestions, as he states, he should have refrained from making incorrect
6 statements.

7 Q. MR. LELASH, DOES THIS COMPLETE YOUR SURREBUTTAL TESTIMONY
8 IN THIS MATTER?

9 A. Yes, it does.