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**Tate, Michele****From:** Benjamin.Henry@exeloncorp.com**Sent:** Monday, April 05, 2010 12:47 PM**To:** EP, RegComments**Cc:** halfred.ryan@exeloncorp.com**Subject:** Comments to Administration of the Uniform Environmental Covenants Act - 25 PA. CODE CH. 253

The following are PECO Energy Company Comments on the Proposed Uniform Environmental Covenants Act Regulations Published at 40 Pa.B. 1379, March 6, 2010:

Section 253.10(b) places on the current owner of the property subject to an environmental covenant the obligation of converting an existing instrument, such as a deed with restrictions, to an environmental covenant under the UEC Act.

The regulation is silent with respect to the failure of the current owner to convert an existing instrument. It would follow the sense of the Act and the regulatory proposal as a whole to assume that any existing liability protections accorded under the Land Recycling Act would continue with respect to persons holding such protection. Since subsection (c) allows a waiver of the current owner's obligation to convert, it would be patently unfair for others enjoying the liability protection to lose that status if the current owner fails to convert or obtain a waiver of conversion.

Although PECO believes that these are the most reasonable interpretations under these regulations of circumstances in which the current owner fails to convert an existing instrument or obtain a waiver from the requirement to do so, there are other interpretations the Department could embrace that we believe are inimical to the purposes of the UEC Act. We feel that the Department should clarify that liability protections accorded others under Act 2 will not be affected under such circumstances.

Section 253.2(b)(3) continues a practice by the Agency that is not required by the UEC Act—namely, the Department's requiring access to the property on its own terms and conditions. The Department's custom in this regard poses serious safety and security concerns as applied to governmental monitoring and enforcement of environmental covenants. PECO maintains electric substations, gas facilities and other properties where unregulated access can pose extreme safety and security concerns. In our experience, neither of these concerns has been adequately addressed in the current administration of the UEC Act.

PECO believes the regulations should not make mandatory what the Legislature has specifically determined should be a permissive condition, inclusion of which is discretionary with the Grantors of the covenant. At the very least, if the Department is to continue requiring permissive actions, the regulations should specifically provide for notice prior to access and in the case of regulated facilities, compliance with safety and security requirements.

Section 253.5(c) requires the person submitting the covenant to the Agency shall also provide the name and current address of each occupier of the property and each person owning a recorded interest in that property. This section provides no guidance as to the scope of the investigation that must be made to determine owners, occupiers and persons with recorded interests. Nor does the regulation give guidance as to which type of recorded interests need to be reported to the Department. Are water, mineral or airspace rights or easements covered by the proposed regulation. The nature and extent of title or other record searches could be substantial and the regulated community is entitled to much more certainty on what the Department expects with this type of requirement. Inasmuch as PECO is the likely remediator at sites in which it is involved, and therefore the one

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submitting an environmental covenant under the proposed regulations, we are keenly interested in the Department specifying the extent of the occupancy and ownership search, as well as the scope of coverage of any search for recorded interests in the property.

Thank you for your consideration of these comments. If you have any questions or concerns pertaining to the comments contained in this e-mail, please respond in the manner most convenient at the following;

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