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March 11, 2003

BY HAND

Lawrence Norton, Esq.
General Counsel
Office of the General Counsel
Federal Election Commission
999 E Street, N.W.
Washington D.C. 20463

Re: Advisory Opinion Request

Dear Mr. Norton:

On behalf of our client, Public Service Enterprise Group, Inc. ("PSEG"), and pursuant to 2 U.S.C. § 437(f)(a)(1) and 11 C.F.R. § 112.1, we hereby request a Federal Election Commission advisory opinion on the following question:

In the absence of a payroll consolidation resulting from a merger or acquisition, may a restricted class employee's authorization of payroll deduction contributions to a separate segregated fund be transferred to an affiliated separate segregated fund, without obtaining a new payroll deduction authorization from the employee, if the employee is informed in advance of the payroll deduction transfer, receives the required notices concerning the voluntariness and political purpose of all contributions, and is offered an opportunity to "opt-out" of the transfer?

Background

PSEG is a public utility holding company with four, 100 percent wholly-owned subsidiaries: PSEG Power, PSEG Services Corporation, PSEG Energy Holdings, and PSE&G.¹

¹ PSEG Services Corporation handles the payroll administration for all of the PSEG affiliates. This arrangement would not be altered in any way by the transfer of payroll deduction authorizations proposed in this advisory opinion.

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PSE&G registered a separate segregated fund, PSE&G PAC ("PEGPAC"), with the Commission in 1987. For some time, PEGPAC has solicited authorization from restricted class employees of PSE&G and its affiliates to make regular deductions from their paychecks for contributions to PEGPAC. The Commission has long authorized such payroll deduction programs, so long as employees are informed of their right to revoke their payroll deduction authorizations at any time. See 11 C.F.R. § 114.5(k)(1); Advisory Opinion No. 1991-19. Currently, restricted class employees from each of PSEG's subsidiaries make regular contributions to PEGPAC by way of payroll deduction. At the time that their payroll deduction authorizations were solicited, these employees were advised that deductions would continue until such time as the employees expressly revoked their payroll deduction authorizations.

On November 21, 2002, PSEG registered its own separate segregated fund, Public Service Enterprise Group PAC ("PSEG PAC"). An amended Statement of Organization for PSEG PAC filed on January 10, 2003 listed PEGPAC as an affiliated committee of PSEG PAC. PSEG and PSE&G anticipate that at some future point in time, PEGPAC may be terminated, leaving PSEG PAC as the sole remaining separate segregated fund operated by PSEG and its affiliates. In light of the anticipated termination of PEGPAC, PSEG and PSE&G propose to transfer the existing payroll deduction authorizations from PEGPAC to PSEG PAC.

In advance of this transfer, a letter will be sent to each individual employee who currently contributes to PEGPAC by means of payroll deduction. The letter will contain all appropriate notices pursuant to 11 C.F.R. §114.5(a)(1)-(5), including disclosing the political purpose of PSEG PAC, 11 C.F.R. §114.5(a)(3). Employees receiving the notice will be informed that their payroll deduction contributions will cease to be directed to PEGPAC as of a specified future date and will instead be directed to PSEG PAC after that date, unless the employee provides notice that he or she prefers to terminate the payroll deduction authorization.

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If an employee provides notice that he or she prefers to "opt out" of the transfer of payroll deduction authorization to PSEG PAC, the employee's payroll deduction will be discontinued. To ensure that employees are readily able to opt out, the letter providing notice of the transfer of payroll deduction authorization will be accompanied by a form that employees may use to indicate their desire to opt out or, alternatively, to alter the amount of their payroll deduction. If, however, an employee does not provide notice of a desire to discontinue or alter the amount of the payroll deduction, the payroll deduction will be transferred to PSEG PAC without requiring that the employee complete a new payroll deduction authorization form expressly authorizing that deductions be directed to PSEG PAC.

Analysis

The Commission has previously approved transfers of payroll deduction authorizations, without requiring that employees complete new payroll deduction authorization forms. *See, e.g.,* Advisory Opinion Nos. 1991-19, 1994-23. Those advisory opinions stressed the need to provide appropriate notice that employees are free to opt out of the transfer. Although those and other advisory opinions addressing transfers of payroll deduction authorizations concerned mergers and acquisitions in which the payrolls of multiple corporate entities were consolidated, the Commission's approval of the transfers appears to have turned upon the fact that the transfers would be made among *affiliated* committees. Indeed, the Commission has required that new payroll deduction authorizations be obtained before transferring payroll deductions only when there was *no affiliation* between the separate segregated fund that originally received the payroll deduction contributions and the separate segregated fund to which the contributions would be transferred. *See* Advisory Opinion Nos. 1989-16, 1996-42, 1997-25. In the circumstances presented here, the transfer of payroll deduction authorization would take place among affiliated committees (PEGPAC and PSEG PAC) and affiliated connected organizations (PSE&G and PSEG). Because PSE&G is a 100 percent wholly-owned subsidiary of PSEG, it is *per se* affiliated with PSEG. *See* 11 C.F.R. §100.3(a)(2)(i). PEGPAC and PSEG PAC are therefore likewise affiliated committees *per se*.

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The status of PSEG PAC and PEGPAC most closely resembles the status of the two separate segregated funds described in Advisory Opinion No. 1997-25 (HACF PAC and Delco/Delphi PAC), for which the Commission approved the transfer of payroll deductions without requiring new authorizations. In Advisory Opinion No. 1997-25, the Commission noted that

former HE employees who contributed by payroll deduction to HACF and who are now Delco/Delphi employees do not need to execute new authorizations for contributions to Delco/Delphi PAC. The latter PAC is an affiliate of HACF. In view of the Act's treatment of affiliated SSF's as one committee for the purposes of contribution limits and the ability of corporations to solicit SSF contributions from the eligible employees of its affiliated companies, the former HE employees are not making the type of significant change in their authorizations that occurs for [non-affiliated] employees.

Because PSEG PAC is affiliated with PEGPAC, re-directing payroll deduction authorizations from PEGPAC to PSEG PAC is likewise not a "significant change" in employees' authorizations. Moreover, currently PEGPAC may make unlimited transfers of the funds acquired through payroll deductions to its affiliated committee, PSEG PAC. *See* 11 C.F.R. §102.6(a)(i). No notice is required in connection with such transfers. The notice procedure proposed in this advisory opinion request represents a more transparent process for directing funds to PSEG PAC than the alternative of maintaining PEGPAC solely for the purpose of transferring payroll deduction proceeds to PSEG PAC. We respectfully submit that the Commission should therefore determine that the existing payroll deduction authorizations of PEGPAC may be transferred to PSEG PAC, so long as the employees whose payroll deduction authorizations are to be transferred are notified in advance that they may opt out of the transfer and are provided with the notices required by 11 C.F.R. §114.5(a)(1)-(5).

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We look forward to your response to our request. If we may provide additional information, please let us know.

Sincerely,

A handwritten signature in black ink, appearing to read "Bobby R. Burchfield". The signature is written in a cursive style with a large initial "B" and a long, sweeping underline.

Bobby R. Burchfield
Robert K. Kelner
Nicole Jo Moss