

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF DELAWARE**

IN THE MATTER OF THE APPLICATION OF
DELMARVA POWER & LIGHT COMPANY, EXELON
CORPORATION, PEPCO HOLDINGS, INC., PURPLE
ACQUISITION CORPORATION, EXELON ENERGY
DELIVERY COMPANY, LLC AND NEW SPECIAL
PURPOSE ENTITY FOR APPROVALS UNDER THE
PROVISIONS OF 26 DEL. C. §§ 215 AND 1016 (FILED
JUNE 18, 2014)

PSC Docket No. 14-193

**IBEW LOCAL 614'S
INTERLOCUTORY APPEAL TO
THE COMMISSION**

Pursuant to 26 *Del. Admin. C.* §1001.2.16, Local Union 614 of the International Brotherhood of Electrical Workers, AFL-CIO ("IBEW Local 614"), by and through undersigned counsel, respectfully requests the Commission to reverse the Hearing Examiner's Order No. 8613, dated Monday, August 11, 2014, and, in so doing, permit IBEW Local 614 to intervene in this Docket pursuant to 26 *Del. Admin. C.* §1001.2.9. As will be shown below, extraordinary circumstances necessitate a prompt decision by the Commission to prevent substantial injustice or detriment to the public interest.

I. STATEMENT OF THE CASE.

On June 18, 2014, Delmarva Power & Light Company ("DP&L") filed an application seeking approval of a proposed merger between Exelon Corporation ("Exelon"), Pepco Holdings, Inc., and Purple Acquisition Corporation. This interlocutory appeal to the Commission is meant to address whether the Hearing Examiner erred in denying IBEW Local 614 intervenor status in this case on the basis that "IBEW Local 614's workers work in Pennsylvania, not Delaware." *See* Order No. 8613, p. 7, ¶ 12.c.

II. SUMMARY OF IBEW LOCAL 614'S POSITION.

In their Response to IBEW Local 614's Petition for Leave to Intervene dated August 7, 2014 (p. 1), the Joint Applicants premised their opposition to the Petition on the grounds that

“[f]irst, and most importantly, the workers IBEW Local 614 represents do not work in Delaware.” As will be shown below, the Joint Applicants should have done some simple fact checking. Members of IBEW Local 614 do, in fact, work and reside¹ in Delaware.

III. GROUNDS SUPPORTING THE INTERLOCUTORY APPEAL.

On July 28, 2014 - the deadline to seek timely intervention in this matter - the principal officer of IBEW Local 614, Emil J. Meyer, hand-delivered the union’s petition to intervene to the Joint Applicants’ Counsel’s office and the Public Advocate’s office. *See* Order No. 8613, pp. 2-3, ¶¶ 2-3. IBEW Local 614, by and through undersigned counsel, actually filed the Petition for Leave to Intervene on Thursday, August 7, 2014. The untimeliness of the filing notwithstanding, the Hearing Examiner found, correctly so, that “good cause” exists to treat IBEW Local 614’s Petition as timely filed. *Id.* at p. 5, ¶ 9.

In its Petition, and as later pointed out by the Hearing Examiner in his Order, p. 7 n. 2, IBEW Local 614 claims that it should be granted intervention in this matter because, *inter alia*, it has “portions of its franchised territory that currently extend into the State of Delaware[.]” In response to this argument, the Joint Applicants both denied the accuracy of the assertion as a factual matter (p. 1) and then, later in a footnote (p. 3), equivocated about its accuracy.² Whatever their argument actually is, however, it is indisputable that IBEW Local 614 represents workers of PECO Energy Company (“PECO”) who perform work in, *inter alia*, DP&L’s service

¹ According to the IBEW Local 614’s membership records, it has fifty-five (55) members living in Delaware, forty-eight (48) of whom work for PECO.

² The Hearing Examiner erred in having accepted DP&L’s equivocation on its face while, at the same time, requiring IBEW Local 614 to provide actual proof. *See, e.g., In re Interstate Gen. Media Holdings, LLC*, 2014 Del. Ch. LEXIS 49 at *8, 2014 WL 1364938 (Del. Ch. Apr. 7, 2014) (“A potential intervenor need only claim, rather than prove, an interest in the subject of the litigation; the validity of that claimed interest is assessed by reference to the allegations accompanying the motion to intervene, and such allegations are accepted as true.”).

territory within the state of Delaware.

In particular, there are a number of PECO customers in New Castle County that DP&L provides power to while PECO, through the labor of the members of IBEW Local 614, maintains the distribution circuit. By way of example, Exhibits A and B, attached hereto, are scans from portions of electric power distribution circuits that show physical commingling of DP&L and PECO service territory and facilities to serve customers in franchised areas that cross physical state boundaries.³

Exhibit A shows an advisory, printed on the PECO Landenburg DP&L circuit, advising the PECO dispatcher to verify with his counterpart at DP&L that its feed is energized and viable before dispatching a PECO trouble man to investigate an outage on the portion PECO maintains as it is directly fed by a DP&L line. Exhibit B contains examples of portions of PECO circuits that follow the physical Delaware-Pennsylvania border and provide electric power to DP&L customers located in Wilmington, Delaware. Presumably, DP&L meters and bills these Delaware customers and it then, in turn, remits some amount of money to PECO for energy delivered. Whatever the financial arrangements between the utilities may be, it is undisputed that contrary to the representation made by the Joint Applicants in their Response - page 1 in particular - ***IBEW Local 614 represents workers who are performing work in Delaware.***

Indeed, if and when IBEW Local 614 is permitted to file its pre-filed testimony in this case it is going to include a discussion by Mr. Meyer regarding how he personally engaged in commingled circuit restoration with DP&L personnel both in his capacity as a service dispatcher in the control

³ In advance of the Joint Applicants' pointing out that IBEW Local 614 did not provide these Exhibits to the Hearing Examiner in conjunction with its previously filed Petition to Intervene, IBEW Local 614 would like to point out that they were not required to do so under the plain language of Commission Rule 21(a)(ii). *See also* footnote 2 *supra*.

center and out in the field as a trouble man on numerous occasions throughout his more than forty (40) year career. Moreover, IBEW Local 614 will be in a position to share with the Commission the exact addresses of a number of the homes in Delaware for which PECO, through the labor of the members of IBEW Local 614, maintains electrical distribution.

Glossing over the fact that IBEW Local 614 represents hundreds of workers for Exelon Corporation - one of the Joint Applicants in this case - it is obvious that IBEW Local 614 not only has a direct interest in the outcome of this proceeding, but what is more, there is a substantial risk that this case may - we believe "will" - impair *its* interests absent being permitted to intervene into the above-captioned matter.

The word *its* in the preceding sentence is an important one. In their Response to IBEW Local 614's Petition for Leave to Intervene dated August 7, 2014, the Joint Applicants correctly pointed out that two of IBEW Local 614's sister locals, *to wit*, 1238 and 1307, did not intervene in this case and that they support the merger. The Hearing Examiner also found this fact to be somehow probative as to whether and to what extent IBEW Local 614 ought to be permitted to intervene in this case. The Joint Applicants and, in turn, the Hearing Examiner miss the larger point however, *to wit*, the IBEW and its various constituent Locals, including 614, 1238 and 1307, are legally autonomous entities representing unique constituencies. *Cf. NLRB v. Sheet Metal Workers' Int'l Ass'n, Local Union No. 19*, 154 F.3d 137, 143 (3rd Cir. 1998); *Moore v. IBEW Local 569*, 989 F.2d 1534, 1543 (9th Cir. 1993), *cert. denied*, 510 U.S. 1117 (1994) [*citing, Carbon Fuel Co. v. United Mine Workers*, 444 U.S. 212, 217-18 (1979)]. It is not at all uncommon for local unions to express differing views *vis-à-vis* issues such as this. After all, these various locals represent employees working for different companies and, at the moment at least, none of them are parties in this case.

In Order No. 8613, p. 7, ¶ 11, the Hearing Examiner accurately quoted Commission Rule 21(a)(iii) but, in our estimation, he somewhat misplaced the emphasis that he attached to the provision, *to wit*, a petition to intervene “shall set forth... a concise statement of why the petitioner’s interests will not be adequately represented by the parties to the proceeding *or* why participation in the proceeding would be in the public interest.” (Emphasis added). In focusing his decision on the “public interest” portion of the rule - which IBEW Local 614 firmly believes it has met in this case - the Hearing Examiner never really addressed how, if at all, IBEW Local 614’s interest in this case will be adequately represented if it is not permitted to intervene in the matter. It should be clear to this Commission that IBEW Local 614’s well-founded interest in this case will almost certainly be ignored if it is not permitted to intervene in this matter.

Lastly, and to be candid, IBEW Local 614 believes that whether and to what extent its members physically work in Delaware - which they clearly do - is hardly as important a consideration favoring its intervention in this matter as the fact that their employer, PECO, is now going to be legally tied to the hip of all of these other companies, including DP&L. *See* attached Exhibit C (which is contained within APPENDIX C to the Joint Application). It is puzzling that the Hearing Examiner would essentially adopt the position that the “public interest” ends at the Delaware-Pennsylvania border. In the year 2014, in a world where the Joint Applicants’ systems are so interconnected, and regulators, public utilities, and their labor unions are all closely watching what the rating agencies are all saying about this proposed transaction, that is certainly not the case.

WHEREFORE, IBEW Local 614 respectfully requests that the Commission issue an order reversing Order No. 8613 and, in so doing, permit it to intervene in this matter and according it full rights as any other party of record.

RESPECTFULLY SUBMITTED this 14th day of August, 2014.

LUBIN & ENOCH, P.C.

/s/ Nicholas J. Enoch

Nicholas J. Enoch, Esq.

Arizona State Bar No. 016473, motion for *pro hac vice* admission forthcoming

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Attorneys for Intervenor-Applicant IBEW Local 614

CERTIFICATE OF SERVICE

I hereby certify that on the 14th day of August 2014, I electronically transmitted the attached Appeal to the Office of the Secretary using the DelaFile System for filing. I further certify that, on this same date, I e-mailed a copy of the same Appeal to all of the recipients identified on the Service List.

/s/ Cristina Gallardo-Sanidad

F:\Law Offices\client directory\IBEW L 614\002\Pleadings\2014-8-14 (1974-002) Interlocutory Appeal to Commission.wpd

EXHIBIT A

DELMARVA SERVED DEVELOPMENTS

The PECO Energy Company (PECO) presently serves and services three developments in which the Delmarva Power and Light Company (DP&L) provides the primary electrical source. All of these developments are detailed on the Landenberg DPL Circuit print

In the event of an interruption in any of these developments, the EEMG will show a circuit designation "Landenberg (DPL)". The supply designation will either be "Delmarva 6.9/2.4 Interposing" or "6.9kv Hot Sticks Only". This should immediately key the ESD of the unique feed and that special action should be taken.

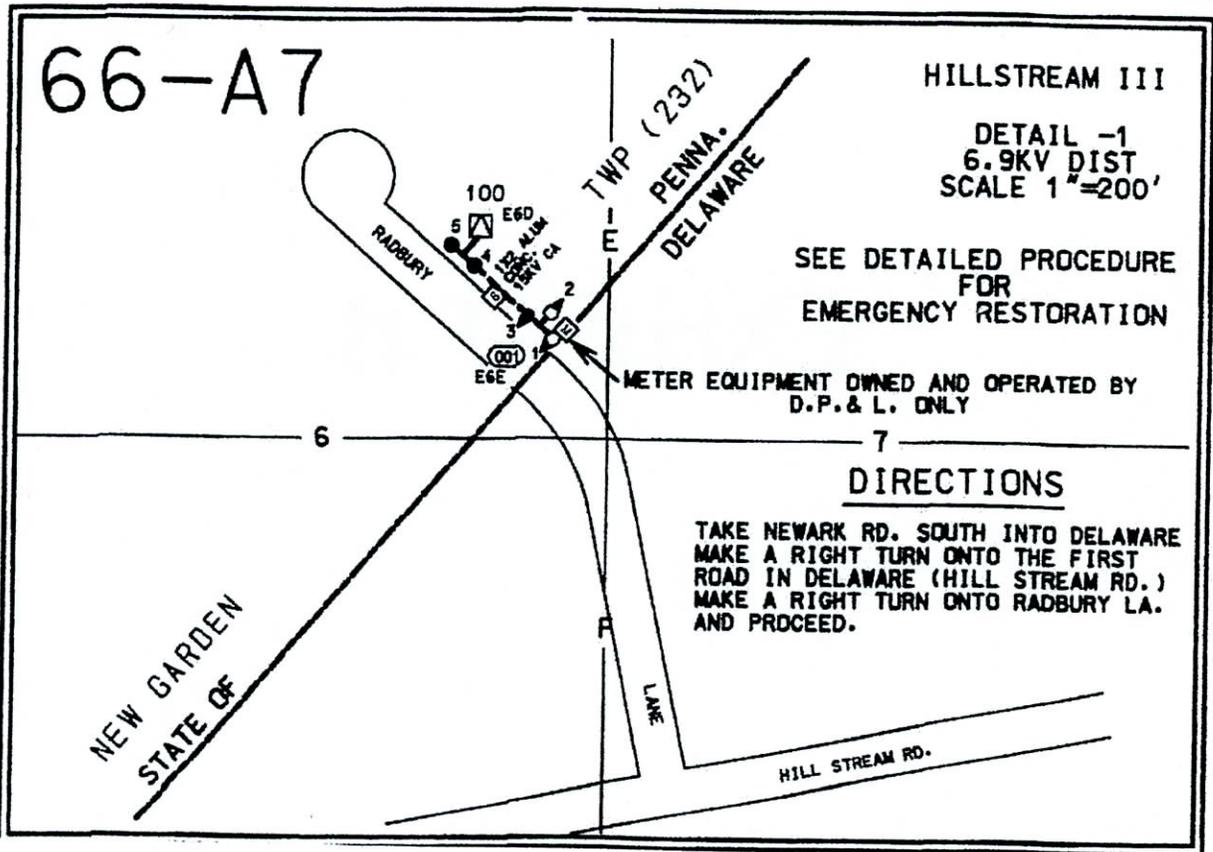
Once a NLAD call is received the ESD should take the following action regardless of which development is affected.

1. Call the Delmarva System Operations Office (302-454-4581) to determine if circuit 291 is off. Report the nature of the customer call and the location.
2. If the Delmarva Operator states they have an interruption, ask him to call as soon as it is restored. Depending on the circumstances, the ESD may decide to send a Troublemaker into the area.
3. If the Delmarva Operator does not state he has, or knows of, an interruption then a Troublemaker should be dispatched to investigate the nature of the service interruption.

The troubleshooting techniques which the Troublemakers should use will be determined by the primary voltage level of the development.

FEEDER LINE: DELMARVA P&L			TABLE OF ADDITIONS & CHANGES USE ONLY PRINTS SHOWING LATEST DATE				CIRCUIT MAP			
PATROLLED DATE: 01-28-97			NO.	DATE	DESCRIPTION	REV'D	CHK'D	APP'D	4KV CHESCO DIVISION	
TMS CHECKED:		RATING				R C	L	PECO ENERGY COMPANY		
CAP KVAR	CIRCUIT MILEAGE	S- W-	05	07	EC# 137004				SCALE: 1" = 200'	
AERIAL UNDR.		VOLTAGE	10							

EXHIBIT B



Landenberg DP+L

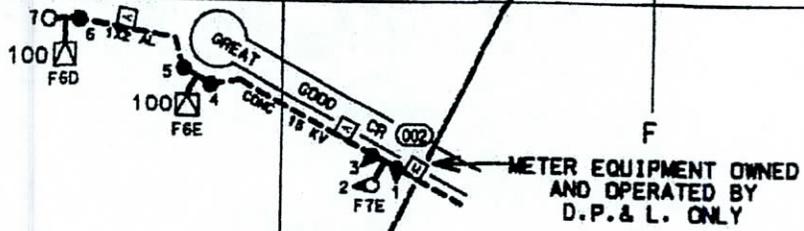
66-C6

GREAT GOOD PLACE

DETAIL -2
6.9KV DIST
SCALE: NONE

SEE DETAILED PROCEDURE
FOR
EMERGENCY RESTORATION

STATE OF PENNA.
STATE OF DELAWARE



DIRECTIONS

TAKE NEWARK RD. SOUTH INTO DELAWARE
MAKE A RIGHT TURN DNTO THE SECOND
ROAD IN DELAWARE (DOE RUN RD.)
PROCEED ON DOE RUN RD. TO THE
INTERSECTION WITH CORNER KETCH RD.
MAKE A RIGHT TURN ONTO CORNER KETCH RD.
AND PROCEED TO GREAT GOOD CIRCLE.
MAKE A RIGHT TURN & PROCEED.

Landenberg DP+L

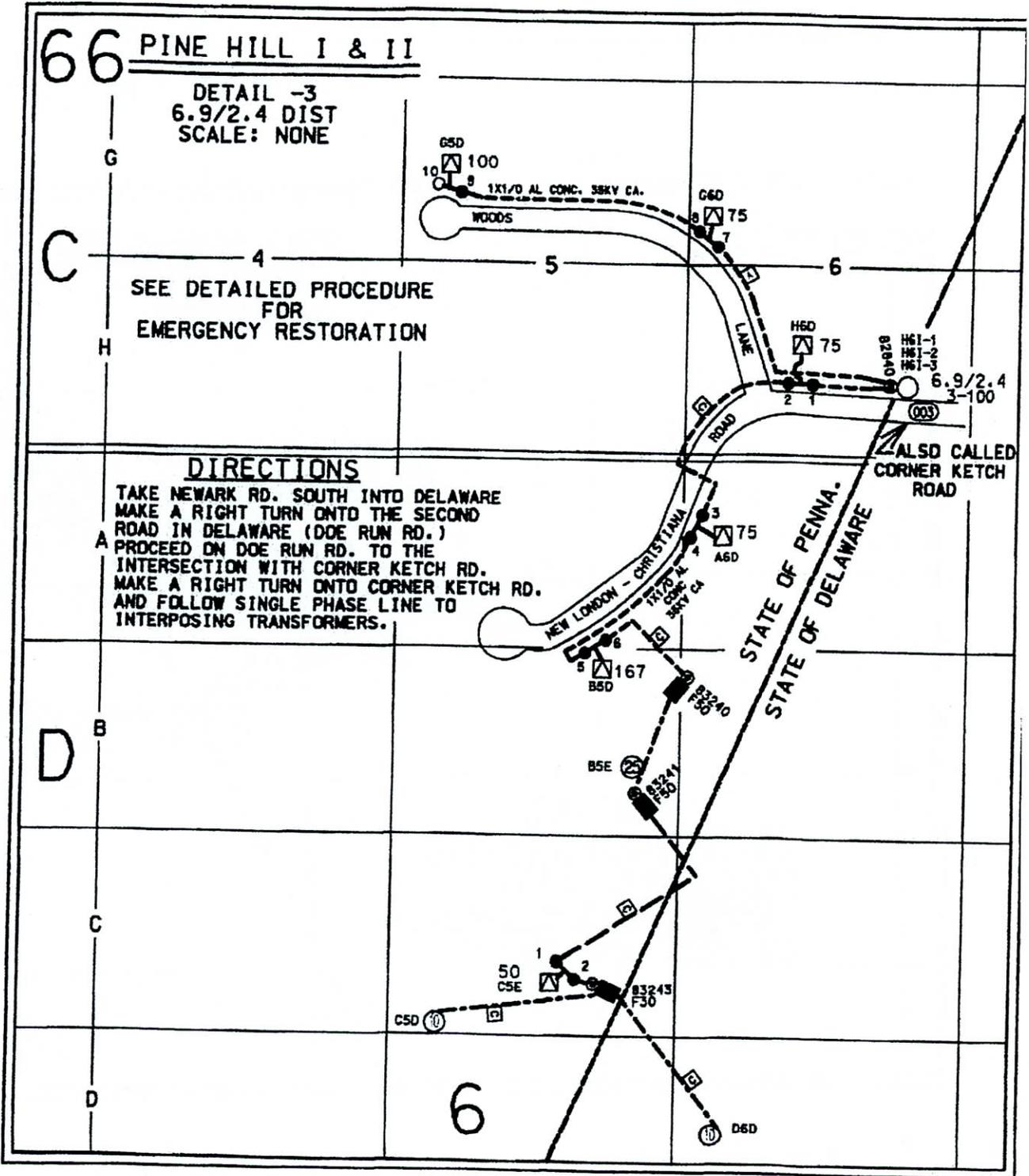
66 PINE HILL I & II

DETAIL -3
6.9/2.4 DIST
SCALE: NONE

SEE DETAILED PROCEDURE
FOR
EMERGENCY RESTORATION

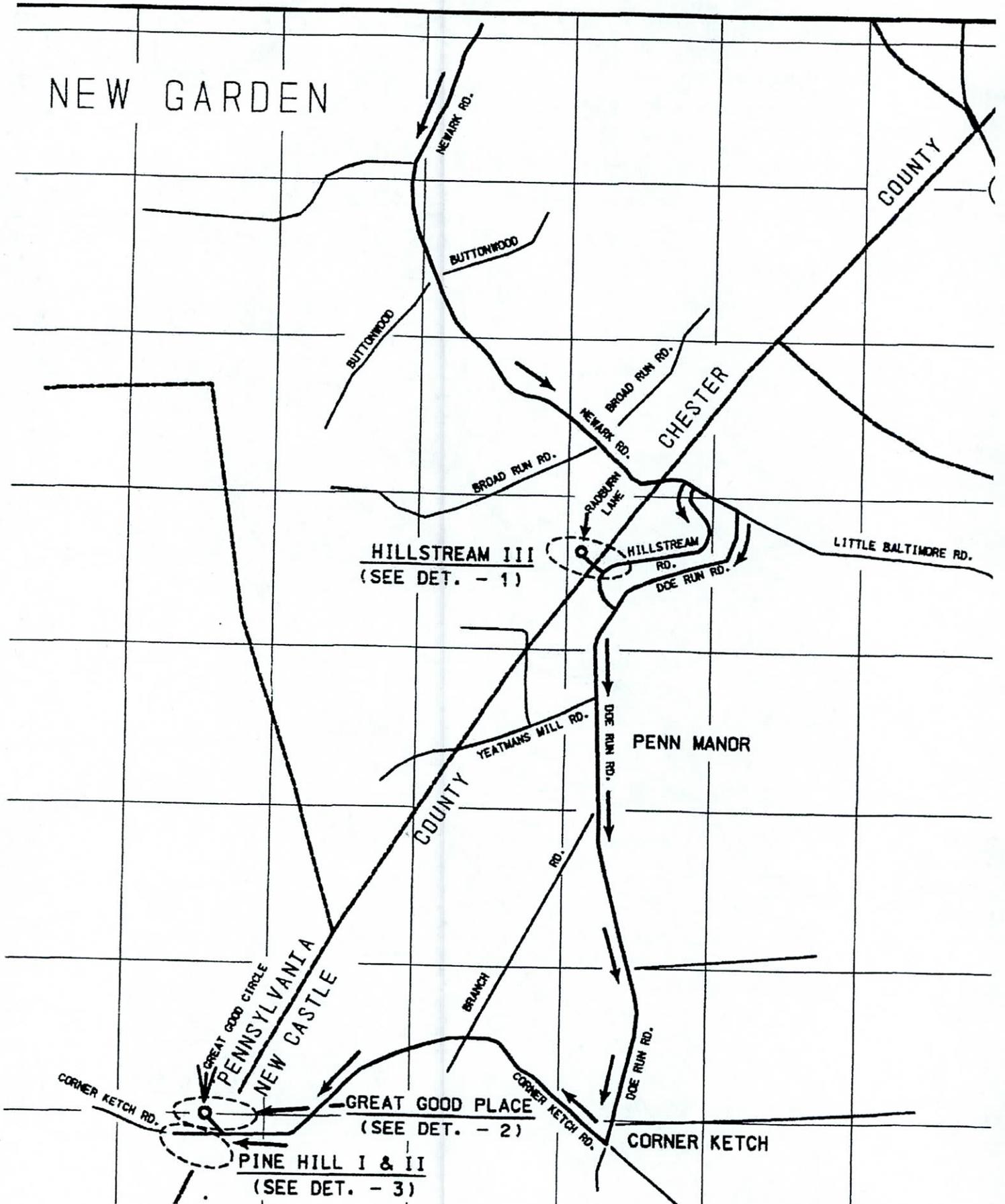
DIRECTIONS

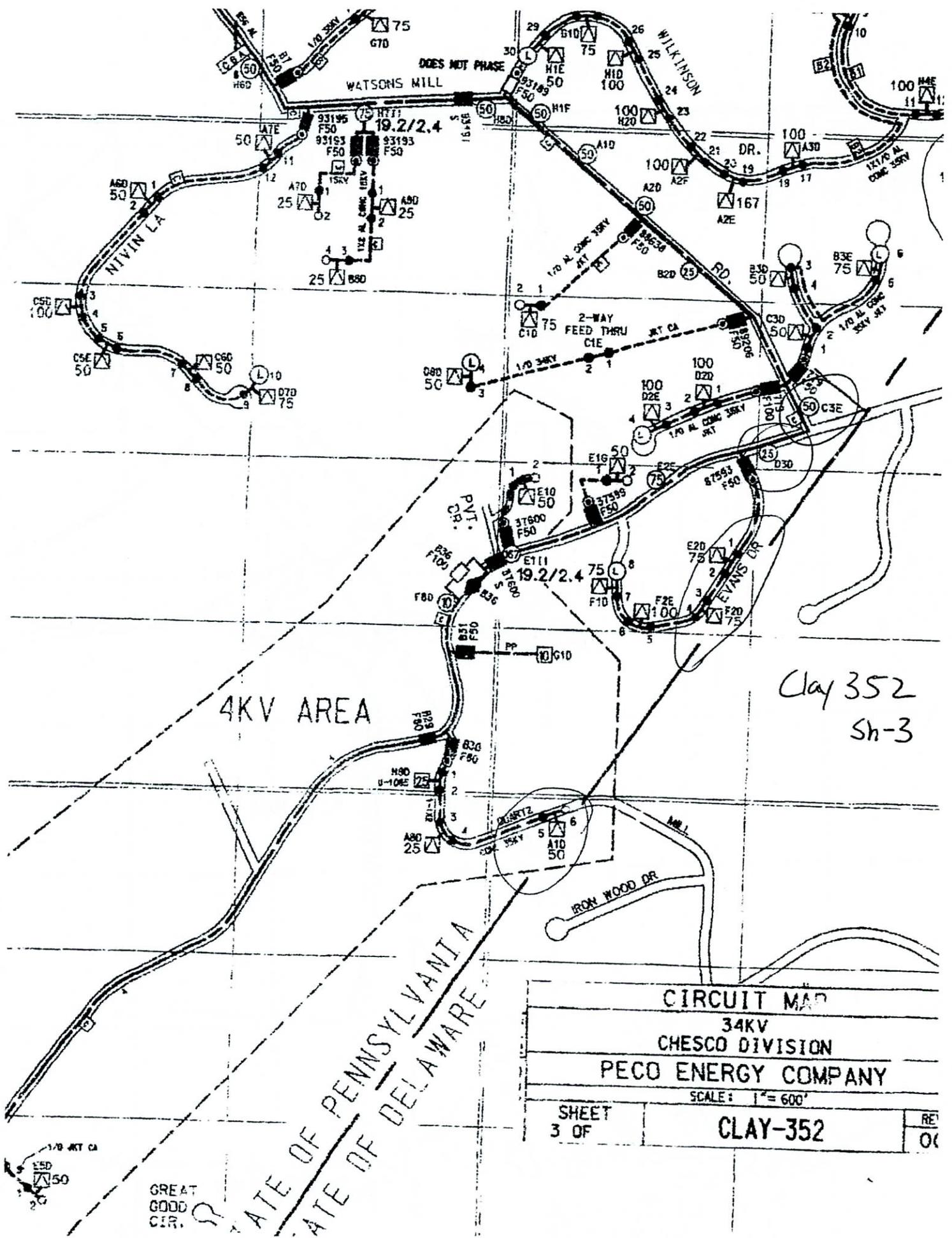
TAKE NEWARK RD. SOUTH INTO DELAWARE
MAKE A RIGHT TURN ONTO THE SECOND
ROAD IN DELAWARE (DOE RUN RD.)
PROCEED ON DOE RUN RD. TO THE
INTERSECTION WITH CORNER KETCH RD.
MAKE A RIGHT TURN ONTO CORNER KETCH RD.
AND FOLLOW SINGLE PHASE LINE TO
INTERPOSING TRANSFORMERS.



Landenberg DP+L

Landenberg DP+L





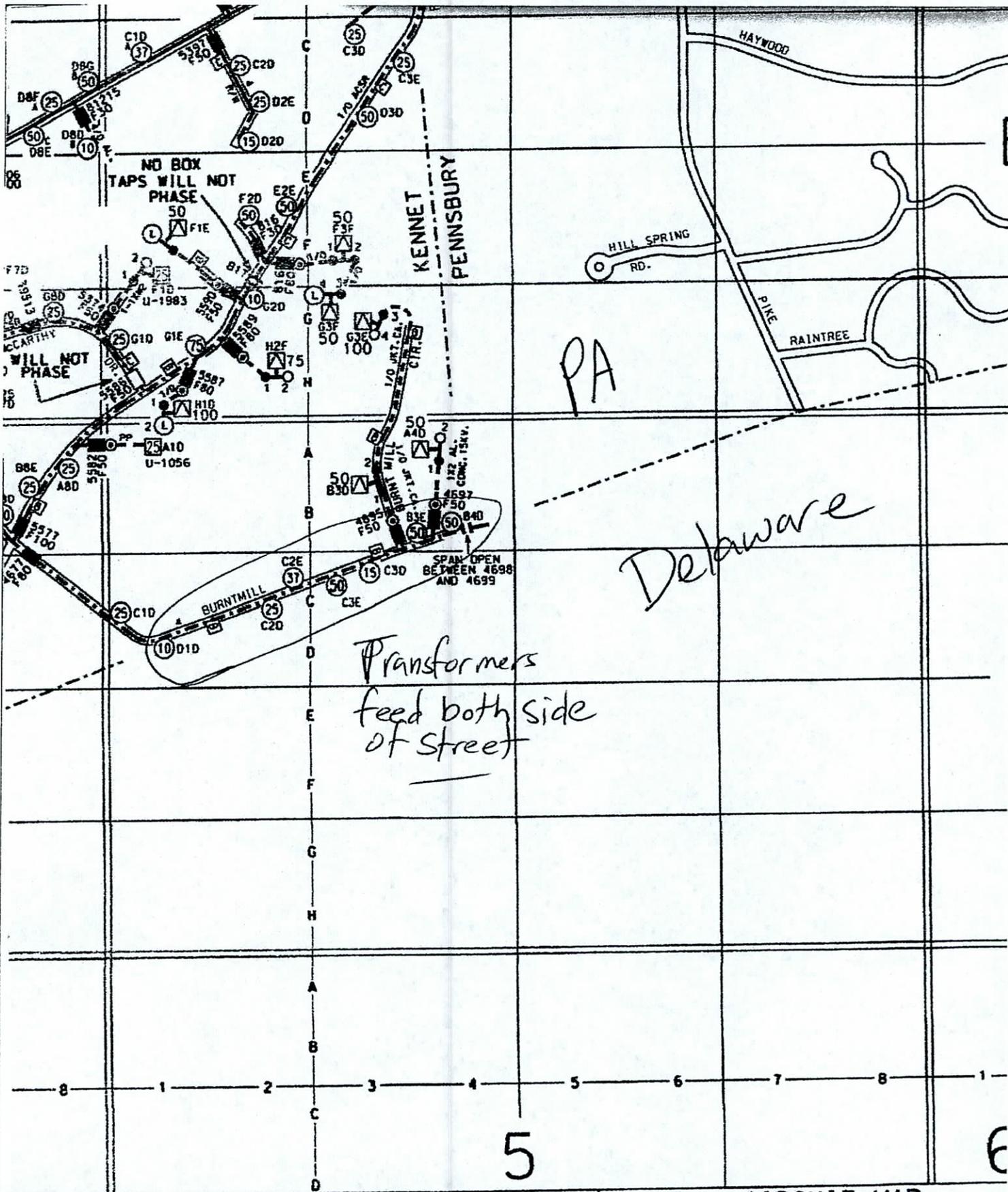
Clay 352
Sh-3

4KV AREA

STATE OF PENNSYLVANIA
STATE OF DELAWARE

CIRCUIT MAP	
34KV	
CHESCO DIVISION	
PECO ENERGY COMPANY	
SCALE: 1" = 600'	
SHEET 3 OF	CLAY-352
	RE OK

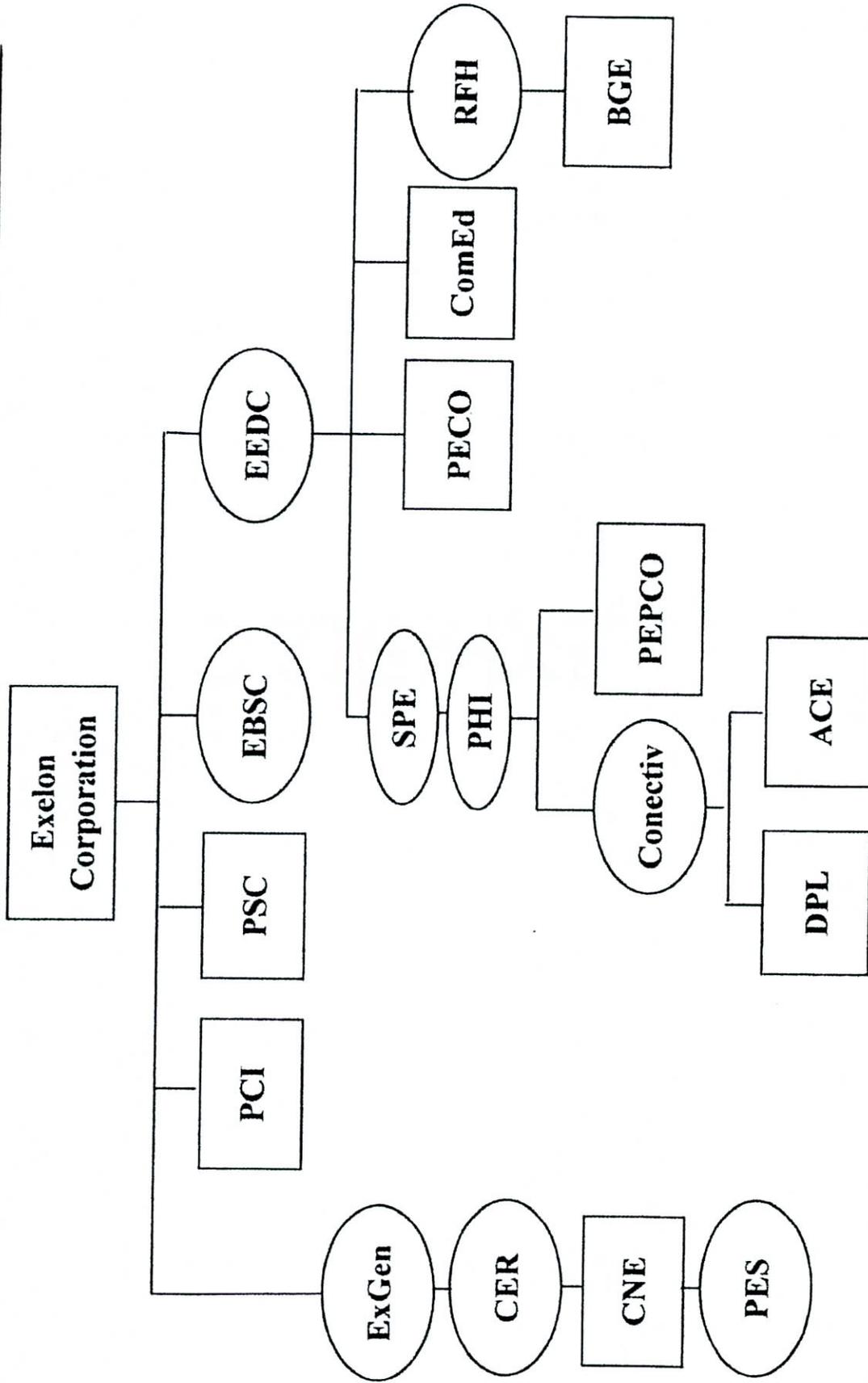
GREAT
GOOD
CIR.



FEEDER LINE:			TABLE OF ADDITIONS & CHANGES USE ONLY PRINTS SHOWING LATEST DATE				CIRCUIT MAP		
PATROLLED DATE:			NO.	DATE	DESCRIPTION	REV'D	CHK'D	APP'D	34 KV
TMS CHECKED:									4007
CAP	CIRCUIT	RATING	21			P	A		PECO ENERGY COMPANY
KVAR	MILEAGE	S- W-							SCALE: 1" = 800'
AFRIAL	INVR.	VOLTAGE							

EXHIBIT C

Post-Merger Organization



Former subsidiaries of PHI are shown in red