FEDERAL ELECTION COMMISSION

Washington, DC 20463

May 9, 2003

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 2003-06

Bobby R. Burchfield
Covington & Burling
1201 Pennsylvania Avenue, N.W.
Washington, DC 20004-2401

Dear Mr. Burchfield:

This responds to your letter of March 11, 2003, requesting an advisory opinion on behalf of Public Service Enterprise Group, Inc., ("PSEG") on the application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to the proposed transfer of payroll deduction authorizations by restricted class employees to an affiliated separate segregated fund.

You state that last year, PSEG, a public utility holding company, established a separate segregated fund, Public Service Enterprise Group PAC ("PSEG PAC"). PSEG PAC's Statement of Organization lists as an affiliated committee another separate segregated fund, PSE&G PAC ("PEGPAC"). PEGPAC is the separate segregated fund of PSE&G, one of four wholly-owned subsidiaries of PSEG.[1] For some time, PEGPAC has solicited contributions from the restricted class employees of each of PSEG's four subsidiaries and has facilitated these voluntary contributions through payroll deductions.

You state that PSEG and PSE&G anticipate that PEGPAC may be terminated at some future date leaving PSEG PAC as the sole remaining separate segregated fund operated by PSEG and its subsidiaries. In light of the anticipated termination of PEGPAC, PSEG and PSE&G propose to transfer from PEGPAC to PSEG PAC the existing payroll deductions authorized by restricted class employees.

[1] PSEG's other three wholly-owned subsidiaries are: PSEG Services Corporation, PSEG Power, and PSEG Energy Holdings.

Before implementing the payroll deduction transfer, you propose to send a letter to each restricted class employee who currently contributes to PEGPAC through a payroll deduction plan. You state that the letter will contain all appropriate notices pursuant to 11 CFR 114.5(a)(1) through (5), the regulations ensuring the voluntary nature of contributions to separate segregated funds. The letter will notify employees that their payroll deductions 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 wishes to terminate his or her payroll deduction authorization. To facilitate an employee's ability to terminate contributions made through payroll deductions, the notification letter will be accompanied by a form that an employee may use to "opt out" of the payroll deduction plan and terminate their contribution or, alternatively, to alter the amount of the payroll deduction. If an employee provides notification that he or she prefers to "opt out," the employee's payroll deduction will be discontinued. If an employee does not terminate or alter the amount of the payroll deduction, the employee's payroll deduction will be transferred to PSEG PAC without requiring an employee to complete a new authorization form expressly authorizing contributions via payroll deduction to PSEG PAC.

You cite to advisory opinions in which the Commission has approved transfers of payroll deduction authorizations without requiring an employee to complete a new payroll deduction form where the transfers were among affiliated committees. *See* Advisory Opinions 1991-19 and 1994-23. These opinions addressed instances where the payrolls of related corporate entities were being consolidated due to corporate merger or acquisition.

You ask whether, in the absence of a payroll consolidation, the payroll deduction contributions authorized by restricted class employees to PEGPAC may be transferred to PSEG PAC without obtaining new payroll deduction authorizations from each employee, provided that each employee is given the above-described advance notice and opportunity to opt out of the payroll deduction plan. The Commission answers your question in the affirmative.

Analysis

Commission regulations permit the use of a payroll deduction plan for soliciting and collecting voluntary contributions to a corporation's separate segregated fund. *See* 11 CFR 114.5(k)(1). Commission regulations also permit a corporation to solicit contributions to its separate segregated fund from the administrative and executive personnel of its subsidiaries, branches, divisions and affiliates, and the corporation may administer a payroll deduction plan to facilitate such contributions. 11 CFR 114.5(g)(1) and Advisory Opinion 1991-19. All separate segregated funds established, financed, maintained, or controlled by the same corporation, including its subsidiaries, are affiliated, and consequently, share a single contribution limit. 11 CFR 100.5(g)(2) and (3). Given their affiliated status, either a parent company or its subsidiary can establish and finance a payroll deduction plan to facilitate contributions to an affiliated separate segregated fund. Advisory Opinions 1987-34 and 1982-34.

Solicitations to a separate segregated fund, including those made in connection with a payroll deduction plan, must comply with the standards of voluntariness set forth in 11 CFR 114.5(a)(1) through (5). Written solicitations for contributions to a separate segregated fund must specifically inform a restricted class employee of the political purpose of the fund and of

the employee's right to refuse to contribute without reprisal. If a contribution guideline is suggested, the written solicitation must inform employees that the guidelines are only suggestions, that the employee may contribute more or less than the amount suggested, and that the corporation will not favor or disadvantage anyone based on the amount contributed or the decision not to contribute. 11 CFR 114.5(a)(5).

In past advisory opinions, the Commission has permitted payroll deduction authorizations to be transferred from one separate segregated fund to another without requiring new authorizations from employees where the transfer was between affiliated committees, provided that employees were given advance notice containing the requisite voluntariness statements and explicit notification of their right to revoke the authorization without reprisal. Advisory Opinions 1991-19, 1994-23 and 1997-25. In distinguishing circumstances where payroll deduction authorization transfers were permitted with those where they were not, the Commission concluded in Advisory Opinion 1997-25 that because affiliated separate segregated funds are viewed as a single committee for purposes of contribution limits and corporations may solicit separate segregated fund contributions from the restricted class employees of its affiliated companies, those employees are not making a significant change in their payroll deduction authorizations when the authorization is transferred from one affiliated committee to another.

Since PSE&G is a wholly-owned subsidiary of PSEG, PEGPAC and PSEG PAC are affiliated committees. *See* 11 CFR 100.5(g)(2). The absence of a payroll consolidation between the parent company and its subsidiary does not change the underlying analysis on the transfer of payroll deduction authorizations of eligible employees between the affiliated separate segregated funds established, financed, maintained or controlled by these two companies. Because PEGPAC and PSEG PAC are affiliated committees, the transfer of payroll deduction authorizations from PEGPAC to PSEG PAC would not constitute a significant change in authorization. *See* Advisory Opinion 1997-25. Thus, the restricted class employees who currently make contributions to PEGPAC via payroll deduction need not execute new payroll deduction authorizations for contributions to PSEG PAC provided that each employee receives advance notice of the transfer of his or her payroll deduction from PEGPAC to PSEG PAC and has the opportunity to terminate his or her payroll deduction authorization or alter his or her contribution amount.

The notice must meet the requirements of 11 CFR 114.5(a)(1) through (5). In addition to disclosing the political purpose of PSEG PAC as stated in your advisory opinion request, the notice must explicitly notify the restricted class employee contributors of the continuing right to revoke the authorization without reprisal. *See* 11 CFR 114.5(a)(4) and Advisory Opinions 1991-19, 1994-23 and 1997-25. To the extent that the notice contains a guideline for contributions, it must also comply with 11 CFR 114.5(a)(2). Finally, in order to provide current restricted class employee contributors with sufficient time to exercise their right to revoke their payroll deduction authorizations, the effective date of the transfer specified in the notice should be at least 30 days after the notice is given to the affected employees. *See, e.g.*, Advisory Opinion 1997-25.

This response constitutes an advisory opinion concerning the application of the Act and Commission regulations to the specific transaction or activity set forth in your request. *See* 2 U.S.C. 437f. The Commission emphasizes that, if there is a change in any of the facts or assumptions presented, and such facts or assumptions are material to a conclusion presented in this opinion, then the requestor may not rely on that conclusion as support for it's proposed activity.

Sincerely,

(signed)

Ellen L. Weintraub
Chair

Enclosures: AOs 1997-25, 1994-23, 1991-19, 1987-34 and 1982-34