

# EXHIBIT 12

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Case No. 3-2001-055

Exhibit 12

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December 21, 2001

Mr. Konrad Batog  
Investigator  
Equal Employment Opportunity Commission  
500 West Madison Street  
Suite 2800  
Chicago, IL 60661-2511

Re: Oscar Shirani v. Exelon Corporation  
EEOC Charge No. 210A20477

Dear Mr. Batog:

This constitutes the position statement of the Respondent, Exelon Corporation ("Exelon" or the "Company") in the above-referenced charge of employment discrimination. Mr. Shirani complains that the Company has discriminated against him on the bases of his age, religion and national origin, and that it retaliated against him for voicing concerns about unjust treatment of Asian employees, when it notified him that he had not been selected for a position following a reorganization of his department. Shirani's allegations are baseless. Shirani was not selected for a position because he did not possess the skills and experience that department managers had identified as necessary for success in the reorganized department. Shirani was offered the opportunity to seek other positions within the Company, with the understanding that if he failed to obtain a position at the same or a higher level, he would have access to a generous severance package.

#### **FACTUAL BACKGROUND**

##### **Unicom Corporation's Merger with PECO Energy and the Related Reorganizations**

In the fall of 1999, Unicom Corporation, the parent company of Commonwealth Edison Corporation ("ComEd"), announced that it would be merging with Pennsylvania-based PECO Energy Corporation ("PECO") to create Exelon Corporation. Immediately prior to the merger, Unicom was engaged in the generation of electrical power at its five nuclear generating stations and the distribution of that power to residential and commercial customers in Northern Illinois. PECO was engaged in similar activities in the Philadelphia, Pennsylvania area.

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As the October 20, 2000 merger date approached, the two companies worked to create an organization that management believed would best enable it to achieve operational synergies and eliminate redundancies wherever possible. In connection with the merger, the two companies that would become Exelon undertook a reorganization of their business operations. The electrical generation assets of Unicom and PECO would be consolidated within Exelon Generation Company, LLC without regard for geography. The transmission and distribution arms of the Company, ComEd Energy Delivery and PECO Energy Delivery, would become solely energy delivery companies. In recognition that some functions could most effectively be handled centrally, Exelon Business Services Company ("BSC") would be created with the intention that those services that were truly "shared" by all the Exelon businesses would remain centrally located. These shared services include the administration of employee benefits, certain finance functions, the legal department and some information technology functions. These organizational changes became effective upon the date of the merger.

Once the basic structures of the respective organizations had been determined, Unicom and PECO undertook a reorganization of most of their management ranks. In the course of this reorganization, numerous positions, and indeed, entire departments, were eliminated. The remaining positions within the reorganized corporation were divided into six tiers, with Tier I, the highest tier occupied by Exelon's senior officers, Co-CEO's John Rowe and Corbin McNeill, and Exelon's Senior Vice Presidents. Tier II was reserved for vice-presidents reporting directly to the Tier I officials. Tier III positions, also referred to as "key management" positions, in turn report to the Tier II personnel. Tiers IV through VI are lower level non-bargaining unit (called "management") positions. The selection process for all tiers of management was phased so that the higher level selectees would be able to play a meaningful role in the selection of their subordinates. With some exceptions, this original staffing effort was completing by the merger effective date. The reorganization of certain departments whose leadership was not identified at the time of the original reorganization has continued since that time.

#### Shirani's Employment with Exelon Corporation

Shirani is an [REDACTED] Shirani was born on [REDACTED] According to his employment records, Shirani [REDACTED] Shirani obtained his Bachelors and Graduate Degrees in this country and has remained in the United States to pursue his career. Shirani began his Exelon career in May 1990 as a Principal Engineer in ComEd's Nuclear Engineering and Construction Department. In May, 1994, Shirani was promoted to Senior Engineer. Shirani received another promotion in May 1996 to Quality Audit Administrator within the Nuclear Oversight Department. He held this position in the summer of 2000, when he was nominated for several key management positions both within and without the Nuclear organization in both the Tier II

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and Tier III selection phases. He was [redacted] years old at the time. Subsequently, on January 1, 2001, Shirani was promoted to a salary grade E4 Principal Auditor position within the Supplier Evaluation Services Department. Throughout this time period, Shirani continued to be a candidate for the salary grade E-5 Manager of Diversity Programs position within Exelon Generation Company.

In December 2000, however [redacted] Shirani a level E4 position as a Principal Auditor, reporting to the Manager of Financial Planning and Analysis within the Corporation's Finance group. This would be a lateral move for Shirani, albeit accompanied by a [redacted] who knew Shirani through Exelon's Asian American Community for Exelon Success ("AACES"). AACES is an employee resource group for Asian employees with which Shirani has associated himself for several years and of which he was elected president in 2001. [redacted] is the [redacted] of AACES, and has informally assumed the role of [redacted] including Shirani. After consideration, Shirani decided to accept the Finance position, and withdrew himself from consideration for the Manager of Diversity Programs job.

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Shirani assumed his Finance duties effective January 29, 2001. In April 2001, Shirani began reporting to [redacted] who had been newly hired by the Company as its [redacted] salary grade 6 position. The Internal Audit Department had not been included within the original 2000 reorganization because the [redacted] position remained open. Thus, when [redacted] took over, [redacted] was responsible for a the [redacted] which consisted of [redacted] and Shirani and which relied almost completely upon outside accounting firms for the audit work, as well as the Philadelphia internal audit group, which at its peak numbered close to twenty employees but the ranks of which had decreased considerably due to uncertainty over the group's future. [redacted] primary directive was to develop and implement a model for the Internal Audit Services Department in both the east and west. In doing this, [redacted] spent several months getting to know the skills and abilities of the existing internal audit employees and understanding the functions that they performed and talking to the customers of the group to develop a better understanding of their needs and expectations from the group.

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Shortly after [redacted] began with Exelon, [redacted] passed along information about an intern program for economically disadvantaged college students. [redacted] suggested that [redacted] consider whether the Audit Department could utilize a summer intern and if so, to contact College Bound to determine whether College Bound might be able to refer suitable candidates. [redacted] contacted the program and received three resumes. In evaluating the resumes, [redacted] looked to see if the student possessed relevant skills or degrees, had performed previous internships, and had good communications skills. Two of the three candidates had degrees that were unrelated to business,

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finance or accounting. The third candidate was a business major who had completed an internship in a related industry.

asked Shirani if he could take the lead in interviewing the candidate and, if he were acceptable, to serve as the intern's primary supervisor during the summer. shared the three résumés, explaining that believed only one candidate might be a good fit in the Department. Shirani did not voice any concerns about reasoning at that time. Because of scheduling issues in the Department, the proposed internship never came to pass.

#### The Reorganization of the Internal Audit Group

By the summer of 2001 had had an opportunity to settle upon a model for the reorganized Internal Audit Services Group. would directly supervise an IT Manager and two Directors (one in Philadelphia and one in Chicago). The Philadelphia-based Director would directly supervise a staff of five auditors, while the Chicago-based Director would directly supervise two Managers, each of whom would lead a team of five to six Auditors. sought to have the Director positions classified at the E6 level, which was the same level as. Based upon market surveys and the need to achieve some degree of parity with other groups within the Finance Organization, however, Exelon's Compensation Department insisted that the Director positions be placed at salary grade 5. This in turn necessitated that the Manager positions that would report to the Director be classified as a salary grade 4.

The Internal Audit Managers would be expected to supervise the staff of auditors reporting to them as well to serve as a technical resource for those individuals to go to for assistance with complex audit issues. Accordingly, determined that the successful candidates needed to have a strong technical accounting background, including either a C.P.A. or a C.I.A. license, as well as prior supervisory experience. These requirements were listed on the position postings.

On October 11, 2001, Shirani contacted Human Resources Manager Martha Garza. He informed Garza that he had reviewed the position qualifications posted for the Internal Audit positions and expressed concern that he did not meet the requirements of the manager position, specifically, the requirement that the successful candidate possess a CPA license. Garza counseled Shirani to apply for the position if he believed that he was qualified even without those qualifications. Shirani did not express any interest in any of the other available positions to Garza and did not thereafter apply for any positions other than Internal Audit Manager.

After reviewing Shirani's application and the applications of the other applicants, decided not to offer the position to Shirani. reached this conclusion because Shirani did not meet the minimum position qualifications for the Manager job. Shirani did not have either a C.P.A. or

C.I.A. certificate, he had less than a year of internal audit experience, he lacked supervisory experience and moreover, they felt that his ineffective communication skills would prevent him from being effective as a manager. Shirani's weakness in the area of communications had been pointed out to Shirani in the past, both formally and informally. Indeed, Shirani acknowledged this deficiency in an August 29, 2001 e-mail note to [REDACTED]. Shirani confided, "I promise you that I will change and get rid of some of my aggressiveness. I will communicate my intent in a more flexible and smooth manner. I am also seeking advice from experts. Thanks for your continued support and guidance."

Because no qualified internal applicants applied for the position, the search has been opened to external candidates. This search is ongoing. [REDACTED] decision to search for external candidates rather than offer Shirani the job was based upon business considerations only. It was not impacted by any other factor, including Shirani's national origin, religion, age or any alleged prior complaints about discriminatory conduct by Shirani. TC

#### Shirani is Informed of His Non-Selection

Shirani was told of his non-selection on Friday, October 26, 2001 by [REDACTED] and Human Resources Manager Martha Garza. They explained that [REDACTED] was seeking someone with a strong financial background and deeper technical experience than Shirani yet possessed. They further explained that they sought someone with supervisory experience, noting that the person selected would have responsibility for supervising a team of auditors. Finally, [REDACTED] and Garza noted that Shirani needed to improve his listening and communication skills before he could be successful in a managerial role.

Garza and [REDACTED] informed Shirani that he would be released from his position effective December 26, 2001<sup>1</sup> and that he would be eligible to receive severance benefits upon his termination.

#### Shirani Becomes Belligerent Upon Being Asked to Transition His Work

[REDACTED] and Garza met with Shirani again on the afternoon of Tuesday, October 30, 2001. The purpose of this meeting was to discuss the transition of Shirani's remaining audit projects to other department members so that Shirani could devote his full time and efforts to working with the outplacement firm to locate alternative employment. [REDACTED] and Garza explained that Shirani TC

<sup>1</sup> Before attending the meeting, Shirani sent an e-mail message to Exelon Co-CEO John Rowe. In the e-mail, Shirani expresses his view that the salary grade E4 manager position was unfairly placed out of his reach with the addition of the addition of the experience and certification and supervisory experience requirements. Shirani went on to vent about issues relating back to his tenure in the Company's Nuclear organization, and about his belief that his

would remain on the payroll as an active employee through his December 26 release date, but that it did not make sense for Shirani to become enmeshed in a newly-started audit that was scheduled to continue into 2002. Shirani became very angry and upset, accusing [redacted] and Garza of attempting to force him out. He announced his refusal to leave the building without a court order requiring him to do so, and loudly and angrily accused [redacted] and Garza of wanting him out of the building because they believed him to be a terrorist. [redacted] and Garza were fearful, not that Shirani was a terrorist, but that he would [redacted]. Accordingly, [redacted] contacted security personnel to escort Shirani from the building. As is routinely the case when an employee is believed either to be potentially violent or to have reason to want to sabotage Company property or equipment, immediate efforts were undertaken to revoke Shirani's access to the office as well as to the computer network. K

Shirani Remains Belligerent, Disruptive and Disparages the Company

Shirani continued to leave voice and e-mail messages for various people making disparaging statements about the Company generally and [redacted] specifically. He demanded access to the Company's offices, and when this access was denied, disparaged the Company to the security guards preventing his entrance. Shirani wrote an e-mail to [redacted] asking that she send him copies of all of the files stored on his computer hard drive as well as in his directory on the Company's computer network. He said of [redacted] TC

[redacted] is nice to you, don't trust [redacted] is the one who had resentment toward Hispanic and Asian people. [redacted] is a double face or god [sic] knows how many more faces. . . . [redacted] later apologized to change the subject and pretended that [redacted] is going to be nice to me, but [redacted] had to get me out of [redacted] face. If [redacted] is giving you some sort of promotion, it is all to dilute the subject and show you that [redacted] does not have anything against diverse people.

I know that you are a wonderful person, but watch your back with this [redacted] I will trust that you will not share this information with any one, but as a friend I have to tell you to watch out. Underneath [redacted] fake smile [redacted] is very bias [sic] and only care [sic] for [redacted] and [redacted] race. TC

Faced with Shirani's disruptive behavior, the Company wrote Shirani reminding him that he remained an employee of the Company, subject to the expectations contained in the Company

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career with the Company was cut short not because of his race, religion or prior activist on behalf of Asian employees, but rather because of his efforts while part of the Nuclear Organization to ensure strict adherence to nuclear regulatory guidelines.

Code of Business Conduct, and that he could be subject to termination with recourse to any severance benefits if he continued his behavior. Shirani was given the names and telephone numbers of the individuals to contact if he had concerns about nuclear safety or about discrimination or harassment. Shirani did not contact either of these people, however, instead filing this charge and retaining legal counsel to attempt to renegotiate the terms of his severance package.

**Shirani's Current Status**

Shirani continues to be employed by the Company with an anticipated release date of December 26, 2001. Shirani may accept the proffered severance benefits through that date.

**EXELON'S POSITION**

**Shirani's Assertions of Discrimination Are Baseless**

Shirani asserts that he was discharged because of his age, his [REDACTED] his religion, and/or his activism on behalf of Asian employees, most recently on behalf of Asian interns. Shirani's accusations are without basis. When Shirani was asked to enter the internal audit department less than a year earlier, he possessed all of the same qualities that he now claims were the bases of his discharge. Indeed, Shirani was well known as an activist for Asian employees and at the time held the presidency of Exelon's Employee Resource Group for Asian and Asian-American employees. The only real change between January, 2001 when Shirani entered the Department and October 26, 2001 when Shirani was informed that his skills were not a match for the only position that he bothered to apply for in the reorganized department were the tragic events of September 11<sup>th</sup>.

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[REDACTED]

But he is wrong.

Exelon was swift and clear in its response to the events of September 11. On September 13, Exelon Corporation Senior Vice President and Chief Human Resources Officer Gary Snodgrass circulated a letter to all employees by e-mail, with a second copy mailed to every employee's home. The letter expressed sadness about the events of September 11, but reminded all employees that regardless of their anger or other emotions concerning the events, negative comments or harassment toward members of minority groups, particularly toward members of racial, ethnic or religious groups believed to be responsible for the terrorist attacks, would not be tolerated. He urged employees to come forward with any concerns about inappropriate or harassing conduct, and reminded all employees, "Now is the time to pull together, not apart. It is

a time for us to express our sympathies through our thoughts and individual efforts to the victims, their families and many people throughout the nation whose lives have been touched by this tragedy."

The following day, Friday September 14, 2001, was designated a national day of mourning by President Bush. On that date, Co-CEO John Rowe circulated his own message to all Exelon employees. Rowe expressed his mixed feelings of patriotism, frustration that he could not do more to help his fellow human beings who had been so affected by the tragedy, and the hope that in its response, our Government act with toughness, but without engaging in acts of humanity that would haunt our nation in the years to come. Rowe continued,

Today, I attended a [REDACTED] I went to make my own modest statement that we cannot take out our anger or frustration on our fellow employees, customers, or citizens who are Arabic or Muslim. I heard the Imam say that the perpetrators of this terrible crime, whatever they may claim to be, are not more Moslem than the perpetrators of the Oklahoma City bombing were Christian. I do not think I did anyone else any good, but perhaps it did me some good to hear that said.

As we enter the weekend, I wish all of you peace in your hearts and I wish our leaders great wisdom in dealing with this great crime, this terrible tragedy.

Clearly, the strong and unequivocal message from Exelon's highest leadership has been that any negative treatment by employees against people of Middle-Eastern ancestry or of the Muslim faith because of their ancestry or faith simply will not be tolerated under any circumstances. Exelon is pleased that this message has been received and heeded by its employees. With the exception of Shirani's charge, which as explained above, is without factual basis, neither Exelon Corporation nor any of its affiliated companies within the Chicagoland area have received any internal complaints alleging discriminatory or harassing conduct on the bases of the [REDACTED] ancestry or their [REDACTED] faith occurring since the September 11.

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Shirani was not selected for the Internal Audit Manager position because, as even he acknowledged on October 11, he did not possess the required education, experience, and background to qualify him for that role. Shirani did meet the position requirements for the Senior Auditor position and likely would have been selected for one of those positions, but he refused to apply. Because he was not qualified for the one position for which he did apply, and because he did not apply for the positions for which he was qualified, it is not surprising that Shirani emerged from the reorganization without a position.

**CONCLUSION**

There is no basis to Shirani's contention that his age, national origin, faith or activism on behalf of Asian employees motivated the Company's decision not to place Shirani in the Internal Audit Manager position. The Company's decision in this regard was motivated by its legitimate business needs and not by any desire to discriminate against any individual on the basis of any non-job-related criteria. Accordingly, Exelon respectfully requests that Shirani's claims be rejected.

Very truly yours,



Alice Burke

Assistant General Counsel  
for Labor and Employment