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File #: 3288/138939

VIA HAND DELIVERY AND ELECTRONIC FILING

March 18, 2009

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor North
PO Box 3265
Harrisburg, PA 17105-3265

RE: Application of Exelon Corporation, Exelon Xchange Corporation and PECO Energy Company for Certificates of Public Convenience Evidencing Approval of the Transfer of Ultimate Control of NRG Energy Center Pittsburgh LLC and NRG Energy Center Harrisburg LLC, Approval of the Related Affiliated Transactions, and All Other Approvals or Certificates Appropriate, Customary or Necessary under the Public Utility Code to Carry Out the Transaction Described in the Application; Docket No. A-2009-2093057, A-2009-2093058 and A-2009-2093059; **PETITION TO INTERVENE OF NRG ENERGY CENTER PITTSBURGH LLC AND NRG ENERGY CENTER HARRISBURG LLC**

Dear Secretary McNulty:

Enclosed for filing on behalf of NRG Energy Center Pittsburgh LLC and NRG Energy Center Harrisburg LLC (collectively, the "NRG Companies") are an original and three (3) copies of their Petition to Intervene. The NRG Companies are concurrently filing Preliminary Objections with this Petition.

I have served copies in accordance with the attached Certificate of Service. Please date-stamp my file copy and return it with our messenger. If you have any questions regarding this filing, please direct them to me.

James J. McNulty, Secretary

March 18, 2009

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Sincerely,

A handwritten signature in black ink, appearing to read "David P. Zambito", with a long horizontal flourish extending to the right.

David P. Zambito

Counsel for

*NRG Energy Center Pittsburgh LLC and
NRG Energy Center Harrisburg LLC*

DPZ/kmg

Enclosures

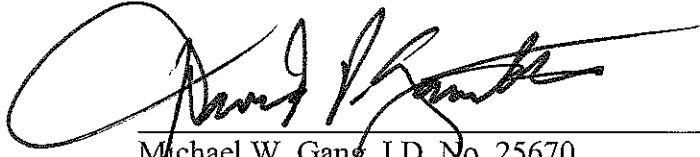
c: Honorable Marlane R. Chestnut
Bohdan R. Pankiw, Chief Counsel
Per Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of Exelon Corporation, Exelon	:	
Xchange Corporation and PECO Energy	:	
Company for Certificates of Public	:	Docket Nos. A-2009-2093057
Convenience Evidencing Approval of the	:	A-2009-2093058
Transfer of Ultimate Control of NRG Energy	:	A-2009-2093059
Center Pittsburgh LLC and NRG Energy	:	
Center Harrisburg LLC, Approval of the	:	
Related Affiliated Transactions, and All Other	:	
Approvals or Certificates Appropriate,	:	
Customary or Necessary under the Public	:	
Utility Code to Carry Out the Transaction	:	
Described in the Application	:	

NOTICE TO PLEAD

YOU ARE HEREBY ADVISED THAT, PURSUANT TO 52 PA. CODE § 5.66, YOU MAY ANSWER THE ENCLOSED PETITION TO INTERVENE WITHIN TEN (20) DAYS OF THE DATE OF SERVICE HEREOF. YOUR ANSWER TO THE PETITION TO INTERVENE MUST BE FILED WITH THE SECRETARY OF THE PENNSYLVANIA PUBLIC UTILITY COMMISSION, P.O. BOX 3265, HARRISBURG, PA 17105-3265. A COPY SHOULD ALSO BE SERVED ON THE UNDERSIGNED COUNSEL FOR NRG ENERGY CENTER PITTSBURGH LLC AND NRG ENERGY CENTER HARRISBURG LLC.



Michael W. Gang, I.D. No. 25670
David B. MacGregor, I.D. No. 28804
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DATED: March 18, 2009

Counsel for *NRG Energy Center Pittsburgh LLC*
and *NRG Energy Center Harrisburg LLC*

VERIFICATION

I, Timothy W. Merrill, Vice President and General Manager, of NRG Energy Center Pittsburgh, hereby state that the facts above set forth are true and correct to the best of my knowledge, information and belief and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).

Date: 3/18/09

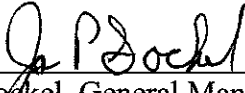


Timothy W. Merrill

VERIFICATION

I, Jan P. Sockel, General Manager and Vice President of NRG Energy Center Harrisburg LLC, hereby state that the facts set forth above are true and correct to the best of my knowledge, information and belief and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).

Date: 3/18/09



Jan P. Sockel, General Manager and Vice President
NRG Energy Harrisburg LLC
Harrisburg Energy Center
100 North Tenth Street
P.O. Box 3357
Harrisburg, PA 17105-3357

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing Petition to Intervene upon the parties, listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party.)

VIA ELECTRONIC AND FIRST CLASS MAIL

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McNees Wallace & Nurick LLC
100 Pine Street, P.O. Box 1166
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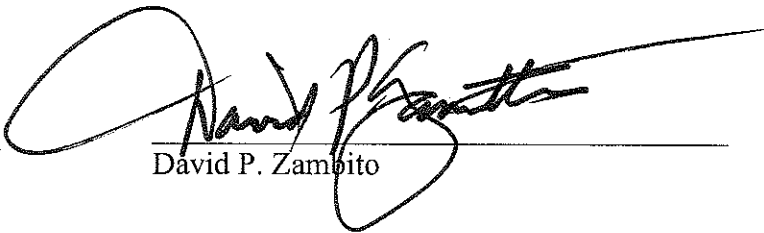
Paul R. Bonney, Esquire
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Hawke McKeon & Sniscak LLP
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Harrisburg, PA 17105-1778

DATED: March 18, 2009



David P. Zambito

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of Exelon Corporation, Exelon Xchange Corporation and PECO Energy Company for Certificates of Public Convenience Evidencing Approval of the Transfer of Ultimate Control of NRG Energy Center Pittsburgh LLC and NRG Energy Center Harrisburg LLC, Approval of the Related Affiliated Transactions, and All Other Approvals or Certificates Appropriate, Customary or Necessary under the Public Utility Code to Carry Out the Transaction Described in the Application	:	:	Docket Nos. A-2009-2093057 A-2009-2093058 A-2009-2093059
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**PETITION TO INTERVENE OF NRG ENERGY CENTER
PITTSBURGH LLC AND NRG ENERGY CENTER HARRISBURG LLC**

TO THE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

NRG Energy Center Pittsburgh LLC and NRG Energy Center Harrisburg LLC (hereinafter, collectively “NRG Companies”), by and through their attorneys, Post & Schell, P.C., hereby file this Petition to Intervene (“Petition”) in the above-captioned Application filed by Exelon Corporation (“Exelon”), Exelon Xchange Corporation (“Exelon Xchange”), and PECO Energy Company (“PECO”), docketed at Docket Nos. A-2009-2093057, A-2009-2093058, and A-2009-2093059 (“Application”), pursuant to the Regulations of the Pennsylvania Public Utility Commission (“Commission”) at 52 Pa. Code §§ 5.71-5.76. The Application directly affects the interests of the NRG Companies, which are not adequately represented by any existing parties.

The NRG Companies are seeking to intervene in the above-captioned proceeding solely for the purpose of challenging the proprietary and legality of the Application through

Preliminary Objections, which have been filed concurrently with this Petition.¹ However, the NRG Companies' request to intervene in no way constitutes an admission, consent, request, or otherwise suggest that the NRG Companies are applicants to the Application. To the contrary, the NRG Companies are not applicants, have not in any way authorized the filing of the Application, and directly oppose the Application in its entirety.² The NRG Companies intend to file a formal protest against the Application within the protest period set by the Commission's Secretary (*i.e.*, on or before March 30, 2009). Upon the filing of their formal protest, the NRG Companies respectfully request that their party status be changed from "Intervenors" to "Protestants."

For the reasons that follow, the NRG Companies respectfully request that the Commission grant their Petition to Intervene for purposes of filing their Preliminary Objections concurrently herewith.

I. THE PARTIES

NRG Pittsburgh is a certificated Pennsylvania public utility providing steam, hot water, and chilled water service to the public in the 21st and 22nd wards in the City of Pittsburgh pursuant to certificates of public convenience at Docket Nos. A-130001, *et seq.* NRG Pittsburgh's principal place of business is 111 South Commons, Pittsburgh, PA 15212.

¹ The Commission's regulations require that preliminary objections be filed by a "party," and that they be filed within 20 days of the initial pleading (*i.e.*, on or before March 18, 2009). *See* 52 Pa. Code §§ 5.101(a), (d).

² Despite how this proceeding has been docketed in the Commission's InfoMAP electronic filing system because of technical limitations, it should be noted that the NRG Companies are not Applicants in this proceeding.

NRG Harrisburg is a certificated Pennsylvania public utility providing steam service to the public in the City of Harrisburg pursuant to certificates of public convenience at Docket Nos. A-130175, *et seq.* NRG Harrisburg's principal place of business is located at the Harrisburg Energy Center, 100 North 10th Street, Harrisburg, PA 17101.

NRG Pittsburgh and NRG Harrisburg are wholly-owned subsidiaries of NRG Thermal LLC ("NRG Thermal"), which, in turn, is a wholly-owned subsidiary of NRG Energy, Inc. ("NRG Energy"). NRG Energy is a wholesale power generation company engaged in the ownership, development, construction, and operation of power generation facilities; in the transacting and trading of fuel and transportation services; and the trading of energy, capacity, and related products in the United States and select international markets. It is also engaged in providing district heating and cooling services and in the development of district heating and cooling technologies. NRG Energy's Headquarters and principal executive offices are located at 211 Carnegie Center, Princeton, NJ 08540. NRG Energy was originally incorporated as a Delaware corporation in 1992, and has existed in its current form since emerging from bankruptcy on December 5, 2003.

Exelon is a public utility holding company that, through its subsidiaries, distributes electricity to customers in Illinois and Pennsylvania, as well as natural gas to customers in the Philadelphia area. Exelon's operations include energy generation, power marketing, and energy delivery. Exelon's principal executive offices are located at 10 South Dearborn Street, Chicago, IL 60603. Exelon is not a certificated public utility. Exelon's subsidiary, PECO Energy Company ("PECO"), is a Pennsylvania public utility providing regulated electricity and natural gas services in southeastern Pennsylvania.

Exelon Xchange is a wholly-owned subsidiary of Exelon that was formed for the sole purpose of acquiring the outstanding shares of NRG common stock and consummating a subsequent merger of Exelon Xchange with and into NRG. Upon information and belief, to date, Exelon Xchange has not engaged in any business activities and has no material assets or liabilities other than those incident to its formation and those incurred in connection with Exelon's tender offer for NRG Energy and the proposed subsequent merger of Exelon Xchange with and into NRG. Exelon Xchange's principal executive offices are located at 10 South Dearborn Street, Chicago, IL 60603.

II. STANDARDS FOR INTERVENTION

The Commission's regulations at 52 Pa. Code §§ 5.71-5.76 establish the standards and requirements for a party to intervene in an action before the Commission. Section 5.72 sets forth the eligibility requirements for a party to intervene, which provides, in pertinent part, as follows:

(a) Persons. A petition to intervene may be filed by a person claiming a right to intervene or an interest of such nature that intervention is necessary or appropriate to the administration of the statute under which the proceeding is brought. The right or interest may be one of the following:

- (1) A right conferred by statute of the United States or of the Commonwealth.
- (2) An interest which may be directly affected and which is not adequately represented by existing participants, and as to which the petitioner may be bound by the action of the Commission in the proceeding.
- (3) Another interest of such nature that participation of the petitioner may be in the public interest.

52 Pa. Code § 5.72. The eligibility requirements for an interested party to intervene in an action before the Commission is less strict and easier to satisfy than the common law standard for

intervention. *Application of Metropolitan Edison Co. for Approval to Construct an Electric Generating Unit Fueled by Natural Gas*, Docket No. A-110300, 1994 Pa. PUC LEXIS 52 (Order entered Feb. 25, 1994) (citing *William Penn Parking Garage, Inc. v. City of Pittsburgh*, 464 Pa. 168, 346 A.2d 269 (1975)).

III. FACTS SUPPORTING INTERVENTION

NRG Pittsburgh and NRG Harrisburg are both certificated Pennsylvania public utilities under Chapter 11 of the Public Utility Code (“Code”) that provide service to the public in their respective service territories by using property that is used and useful in the public service. The right of the NRG Companies to intervene in the above-captioned matter arises from a proposed, but not yet finalized, transaction in which Exelon would obtain ultimate control of the NRG Companies, and their respective public service property, despite the fact that the proposed transaction was considered and ultimately rejected by the NRG Energy Board of Directors (“NRG Board”).

On or about October 19, 2008, John W. Rowe, Chairman and Chief Executive Officer of Exelon, contacted David Crane, President and Chief Executive Officer of NRG Energy, and informed him that Exelon’s board of directors had authorized him to make an offer for each outstanding share of NRG Energy common stock in exchange for a fractional share of Exelon stock. Thereafter, Mr. Rowe sent a letter to Mr. Crane that outlined Exelon’s interest in acquiring all of the outstanding NRG Energy common stock.

On November 9, 2008, NRG Energy sent correspondence to Exelon advising that the NRG Board had considered and refused the offer as inadequate, not in the best interests of the shareholders, and advised Exelon that it would not pursue further discussions regarding a merger

for numerous reasons set forth therein. In response, on November 10, 2008, Bruce G. Wilson, Senior Vice President and Deputy General Counsel of Exelon, sent a letter to Drew Murphy, Executive Vice President and General Counsel for NRG Energy, setting forth Exelon's intent to supersede the business judgment of the NRG Board by expanding the size of the NRG Board and nominating directors to fill the newly created directorships to take control of the NRG Board.

On November 12, 2008, Exelon Corporation filed a Form SC TO (Tender Offer) Form S-4 (Registration Statement) with the United States Securities and Exchange Commission ("SEC"), wherein it detailed its intention to offer to acquire each outstanding share of NRG Energy common stock in exchange for a fractional share (0.485 share of Exelon stock per share of NRG stock) of Exelon common stock. Exelon's Form S-4 and Form SC TO have been amended several times since the original filing date. On November 24, 2008, NRG Energy filed a statement with the SEC and issued a press release announcing that the NRG Board had voted unanimously to reject Exelon's exchange offer.

As set forth in the Form S-4, the exchange offer is the first step in Exelon's plan to acquire control of NRG Energy and acquire all of the issued and outstanding shares of NRG Energy common stock. Exelon clearly states in the Form S-4 that "[t]he purpose of the offer is for Exelon to acquire control of NRG, and ultimately all of the outstanding shares of NRG Common Stock." Exelon further indicates its intent to seek to have NRG Energy consummate a second-step merger of Exelon Xchange, or other wholly-owned subsidiary of Exelon, within and into NRG Energy after completion of the acquisition.

In its Form S-4, Exelon indicates that in furtherance of facilitating its proposed offer, it intends to present a proposal at NRG Energy's 2009 Annual Meeting of Stockholders to expand the size of the NRG Board, such that the directors to be elected at that meeting would constitute

not less than 50% of the newly-expanded NRG Board, and then nominate and elect directors of Exelon's choosing to fill the newly created directorships.³

The Form S-4 further provides that Exelon may, at its sole discretion, amend the terms of the proposed transaction, and acknowledges that the transaction is subject to several conditions precedent. Exelon indicates in its S-4 Form that "Pennsylvania law requires prior [Commission] approval for any transaction by which an affiliate of a public utility will acquire control of the facilities of another public utility." The initial expiration date of the tender offer was January 6, 2009, at 5:00 p.m. However, Exelon reserved the right to extend at its sole discretion the period of time in which the offer would remain open.

On February 26, 2009, Exelon filed the above-captioned Application, seeking unilateral Commission approval of the proposed change in control of NRG Energy and its subsidiaries, including NRG Pittsburgh and NRG Harrisburg. The NRG Companies are not applicants to the Application and are opposed to the proposed transaction. Moreover, neither NRG Energy nor any of its subsidiaries authorized the filing of the Application.

III. GROUNDS FOR INTERVENTION

Exelon's Application unilaterally seeks Commission approval of the acquisition of NRG Pittsburgh and NRG Harrisburg, pursuant to Section 1102(a) of the Code, 66 Pa.C.S. § 1102.

Section 1102(a) of the Code provides, in pertinent part, as follows:

Upon the *application of any public utility* and the approval of such application by the Commission evidenced by a certificate of public

³ If Exelon's intentions for NRG Energy's 2009 Annual Meeting of Stockholders are realized, Exelon, for all intents and purposes, will have gained control of NRG Energy and its subsidiaries. Accordingly, it is imperative that the NRG Companies be permitted to intervene as early in the Commission's process as possible.

convenience *first had and obtained*, and upon compliance with existing law, it shall be lawful:

(3) For any public utility or an affiliated interest of a public utility as defined in Section 2101 . . . *to acquire from, or to transfer to*, any person or corporation, . . . *by any method or device whatsoever*, including the sale or transfer of stock and including a consolidation, merger, sale or lease, the title to, or the possession or use of, any tangible or intangible property used or useful in the public service.

66 Pa.C.S § 1102(a)(3) (emphasis added). The plain language of Section 1102(a)(3) of the Code imposes an obligation on not only a public utility or its affiliate that is acquiring public service property, but also on a public utility or its affiliate that is transferring public service property. Accordingly, the public utility owning the property used in the public service must obtain Commission approval, as evidenced by a certificate of public convenience, before it may transfer such public service property -- even if such transfer is to another public utility company or its affiliate. Consequently, the NRG Companies have a right conferred by Section 1102(a)(3) of the Code to intervene in the above-captioned matter and oppose Exelon's attempt to acquire control of the NRG Companies without their consent.

Further, the NRG Companies have an interest that will be directly affected by the Commission's disposition of the Application, to which the NRG Companies will be bound. Through its Application, Exelon is attempting to acquire a controlling interest in NRG Energy and its subsidiaries -- whether by acquiring NRG Energy Common Stock or by expanding the NRG Board and filling the additional seats with Exelon candidates. The NRG Companies clearly have a substantial interest in their corporate structure and management that will be immediately and directly affected by the Commission's action on Exelon's Application.

Additionally, the interests of the NRG Companies are not adequately represented by any other party. The only other parties at this time are Exelon, Exelon XChange, and PECO; none of which are authorized or have standing to represent the interests of the NRG Companies.

The NRG Board voted unanimously to reject Exelon's proposed transaction and, therefore, declined to file an application seeking Commission approval of the transfer of the public service property of the NRG Companies to Exelon and/or its affiliates. The NRG Companies are not joint applicants and, moreover, oppose the transaction as currently proposed by Exelon.

Based on the foregoing, NRG Pittsburgh and NRG Harrisburg have substantial interests that will be directly and immediately affected by the Commission's disposition of Exelon's Application. Therefore, this Petition to Intervene should be granted.

IV. POSITION OF NRG PITTSBURGH AND NRG HARRISBURG

The plain language of Section 1102(a)(3) of the Code, 66 Pa.C.S. § 1102(a)(3), imposes an obligation on both a public utility or its affiliate that is acquiring public service property and on a public utility or its affiliate that is transferring public service property. Stated otherwise, Section 1102(a)(3) of the Code requires the Commission's grant of a certificate of public convenience *prior* to the following acts: (a) before a public utility or its affiliate acquires from any person or corporation property used or useful in the public service; and (b) before a public utility or its affiliate transfers to any person or corporation property used or useful in the public service. Thus, in order for the NRG Companies to transfer their public service property they must obtain commission approval prior to the transfer. Consequently, Exelon lacks authority to seek, in a unilateral manner, Commission approval of the proposed transaction.

Even assuming, *arguendo*, that Exelon has authority to seek Commission approval of the proposed transaction without the NRG Companies as joint applicants, which the NRG Companies specifically deny, the proposed transaction does not “affirmatively promote the service, accommodation, convenience, or safety of the public in some substantial way.” *See City of York v. Pa. Pub. Util. Comm’n*, 449 Pa. 136, 151, 295 A.2d 825, 828 (1972). Exelon has no experience in owning or operating district heating and cooling operations (as opposed to gas and electric facilities). Exelon’s Application fails to provide any meaningful commitments or any specific details about the benefits, substantial or otherwise, that the proposed transaction would provide to the NRG Companies, their ratepayers, or the general public.⁴

In addition, the terms and conditions of the proposed transaction are unknown and speculative at best.⁵ The speculative nature of the transaction is demonstrated by the numerous conditions that remain before Exelon can, or is willing to, buy a single share of NRG stock -- including, approval of Exelon’s shareholders, which has not occurred; and Exelon’s obtaining the necessary financing, which has not been obtained. The process of satisfying these conditions could result in significant changes to Exelon’s proposal and, thereby, impact the effect it would have on the NRG Companies, their ratepayers, and the general public.

⁴ The district heating business is very competitive, as customers often have other heating options such as natural gas and electric. The continuing viability of the NRG Companies depends on access to capital and management of the local operations. Exelon’s Application gives no meaningful assurances that the NRG Companies will receive the same level of attention as under the management by NRG Energy and NRG Thermal. In fact, every indication is that the steam and related operations of the NRG Companies are a mere afterthought to Exelon’s broader attempt to acquire NRG Energy’s electric generation assets.

⁵ Exelon has not even identified the point in time at which they will be taking control of the NRG Companies, as control is defined by Section 1102(a) of the Code, 66 Pa.C.S. § 1102(a), and the Commission’s Statement of Policy at 52 Pa. Code § 69.901 regarding “Utility Stock Transfer Under 66 Pa.C.S. § 1102(a)(3).”

The purpose of a certificate of public convenience includes, *inter alia*, ensuring that the entity is fit to provide the public service. *Application of Newtown Artesian Water Co.*, 2003 Pa. PUC LEXIS 40 (July 1, 2003); *Re: O'Connor*, 54 Pa. PUC 547 (1980); *Warminster Twp. Municipal Auth. v. Pa. Pub. Util. Comm'n*, 138 A.2d 240 (Pa. Super. 1958). NRG Pittsburgh and NRG Harrisburg are certificated public utilities and, therefore, have been deemed fit to provide their respective public services. In fact, nowhere in the Application or its supporting materials has Exelon alleged or even suggested that the NRG Companies are somehow unfit. Indeed, NRG Pittsburgh had a base rate increase approved by the Commission in 2006 (Docket No. R-00061435) and NRG Harrisburg had a base rate increase approved in 2008 (Docket No. R-2008-2028395). The rates and service of the NRG Companies were carefully scrutinized in those proceedings.

Based on the foregoing, and for the reasons that NRG Companies will establish through their participation in the above-captioned matter, they oppose Exelon's Application.

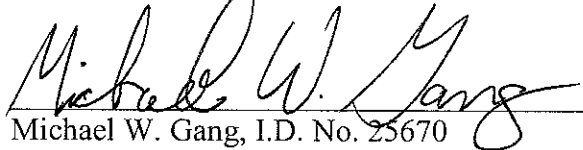
V. CONCLUSION


NRG Pittsburgh and NRG Harrisburg have a substantial interest in their corporate structure, corporate management, and the quality and cost of service delivered to their customers in a very competitive environment. Their interests will be directly and immediately affected by the Commission's disposition of Exelon's Application. The NRG Companies, together with their parent company NRG Energy, oppose the transaction proposed in Exelon's Application and, therefore, the NRG Companies are not joint applicants. However, they will be bound by the Commission's decision on the Application. Accordingly, pursuant to Section 5.72 of the Commission's regulations, 52 Pa. Code § 5.72, NRG Pittsburgh and NRG Harrisburg should be

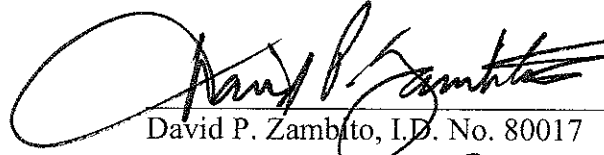
permitted to intervene for purposes of filing their Preliminary Objections to Exelon's Application, and should be permitted subsequently to file a formal protest to the Application.

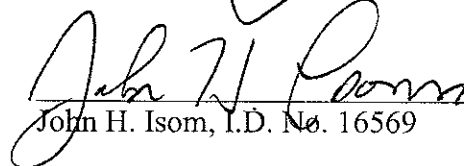
WHEREFORE, NRG Energy Center Pittsburgh LLC and NRG Energy Center Harrisburg LLC respectfully request that the Commission grant their Petition to Intervene and allow them to fully participate as parties in the above-captioned matter.

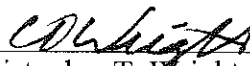
Respectfully submitted,


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David B. MacGregor, I.D. No. 28804


David P. Zambito, I.D. No. 80017


John H. Isom, I.D. No. 16569


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DATED: March 18, 2009

Counsel for *NRG Energy Center Pittsburgh LLC*
and *NRG Energy Center Harrisburg LLC*