

COMMONWEALTH OF PENNSYLVANIA



OFFICE OF CONSUMER ADVOCATE

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Consumer Advocate

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April 7, 2009

James J. McNulty
Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

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 Approval or Certificates Appropriate, Customary or Necessary under the Public Utility Code to Carry Out the Transactions Described in the Application

Docket Nos. A-2009-2093057
A-2009-2093058
A-2009-2093059

Dear Secretary McNulty:

Enclosed for filing are of the Prehearing Memorandum on behalf of the Office of Consumer Advocate, in the above referenced proceeding.

Copies have been served as indicated on the enclosed Certificate of Service.

Respectfully Submitted,

A handwritten signature in cursive script that reads "Jennedy S. Johnson".

Jennedy S. Johnson
Assistant Consumer Advocate
PA Attorney I.D. # 203098

Enclosures

cc: Honorable Marlane R. Chestnut
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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	:	Docket Nos. A-2009-2093057
Center Pittsburgh LLC and NRG Energy	:	A-2009-2093058
Center Harrisburg, LLC, Approval of the	:	A-2009-2093059
Related Affiliated Transactions, and All	:	
Other Approval or Certificates Appropriate,	:	
Customary or Necessary under the Public	:	
Utility Code to Carry Out the Transactions	:	
Described in the Application	:	

PREHEARING MEMORANDUM
OF THE
OFFICE OF CONSUMER ADVOCATE

Pursuant to Section 333 of the Public Utility Code, 66 Pa. C.S. § 333, and in response to the March 18, 2009 Prehearing Conference Order issued in the above-captioned matter, the Office of Consumer Advocate (OCA) provides the following information:

I. INTRODUCTION

On February 26, 2009, Exelon Corporation (Exelon) filed an Application with the Commission seeking authorization for the transfer of ultimate control of NRG Energy Center Pittsburgh LLC and NRG Energy Center Harrisburg LLC (collectively, NRG Energy Centers) to Exelon as a result of (1) an exchange offer by Exelon and a subsequent second-step merger acquiring all of the voting securities of the NRG Energy Centers' indirect parent NRG Energy, Inc. (NRG) or, alternatively, (2) a negotiated agreement between Exelon and Energy Centers.

Exelon formed Exelon Xchange, a wholly-owned subsidiary, for the purpose of acquiring the outstanding shares of NRG common stock with the goal of consummating a subsequent merger of Exelon Xchange with and into NRG. Exelon Xchange has, as of February 25, 2009, acquired 125,403,103 shares of stock from NRG stockholders (subject to regulatory approval), representing over 51% of NRG's outstanding common shares.

The Petition was assigned to the Office of Administrative Law Judge and was further assigned to Administrative Law Judge Marlane R. Chestnut for investigation and the scheduling of hearings. On March 18, 2009, ALJ Chestnut issued a Prehearing Conference Order indicating that an Initial Prehearing Conference was scheduled for April 9, 2009. This Order also detailed the parties' obligations with respect to the Prehearing Conference.

The OCA filed its Protest and Public Statement to the Company's Application on March 30, 2009. The OCA submits this Prehearing Memorandum in anticipation of the scheduled April 9th conference.

II. ISSUES AND SUB-ISSUES

Preliminarily, the OCA has identified the following areas that require further consideration:

a. Affirmative Ratepayer Benefits: The OCA will examine whether the proposed transaction will provide substantial, affirmative consumer benefits. The OCA will examine conditions that may be necessary to ensure that Pennsylvania consumers receive substantial, affirmative benefits if the Application is approved.

b. Savings/Synergies: The Application is devoid of any calculation of anticipated savings or synergies. Any such claims made in the course of this proceeding must be

thoroughly examined to determine if the Applicants have fully identified all relevant savings and synergies.

c. Costs to Achieve: Additional information regarding the costs to achieve the transaction is necessary before the Commission can determine that these costs are reasonable. In addition, the allocation of costs to achieve between ratepayers and shareholders, and between corporate functions and subsidiaries, must be examined to determine whether ratepayers are receiving an appropriate share of the net benefits anticipated from this transaction.

d. Quality of Service: The OCA will examine the Applicants' commitment to improving and maintaining quality of service in the service territories affected by the Application. The OCA will examine whether the transaction will divert management attention away from quality of service efforts.

e. Market Power and Effects On Competitive Markets: The OCA will examine the effect of this transaction on the competitive electric markets and the competitive natural gas markets. The OCA will thoroughly examine the market analysis presented by the Applicants and thoroughly review the market mitigation plan to determine if it appropriately mitigates any market power or market concentration that would affect wholesale electric markets. As to the natural gas markets, the OCA will seek to assure that the transaction does not negatively impact the retail and wholesale natural gas markets.

f. Additional Nuclear Risks to Ratepayers: This transaction will bring NRG's nuclear plants under one corporate control. This presents additional risks, such as the costs and uncertainties of unforeseen nuclear decommissioning and waste management costs, the costs and uncertainties of major outages, the potential significant liabilities that could result from increased safety requirements, and the significant costs of future capital additions. The OCA

will examine the risks to ratepayers posed by the combination of nuclear plants under one corporate structure.

g. Continuation of PUC Jurisdiction: Post corporate restructuring, the Commission must ensure that it retains sufficient jurisdiction, as well as access to appropriate books and records of all subsidiaries, to ensure the continued provision of safe, adequate and reliable service in Pennsylvania, to ensure against inappropriate cross subsidies at the expense of Pennsylvania consumers, and to assure workable and viable competitive markets for retail electric and retail natural gas supply.

III. WITNESSES

The OCA is in the process of retaining witness(es) for this proceeding and intends to present the direct, rebuttal, and surrebuttal testimony of such witness(es), as may be necessary. As soon as the OCA has retained witnesses for any portion of its case, the OCA will notify Administrative Law Judge Chestnut and all parties of record.

IV. DISCOVERY

If any form of expedited schedule is adopted, the OCA submits that the time period for discovery would need to be shortened.

V. PROPOSED SCHEDULE

The OCA objects to the expedited consideration of the Application that the Exelon proposes in its Application. Applications of this magnitude typically take six or more months to resolve through a full hearing process, even under an expedited schedule. The OCA is willing to work with the parties to arrive at an agreeable schedule.

VI. SERVICE ON OCA

The OCA will be represented in this case by Tanya J. McCloskey and Jennedy S. Johnson. Two copies of all documents should be served on the OCA as follows:

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Senior Assistant Consumer Advocate
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As a courtesy, the OCA requests that all electronic correspondence be copied to Jessica J. Horner (JHorner@paoca.org).

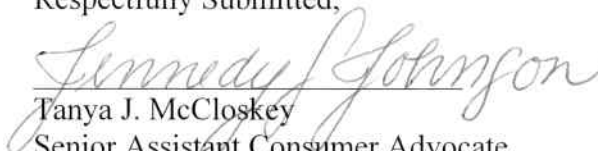
VII. SETTLEMENT

The OCA is willing to participate in settlement discussions.

VIII. PUBLIC INPUT HEARINGS

At present, the OCA has not received a request for a public input hearing. The OCA will make prompt notification and request a public input hearing should circumstances warrant.

Respectfully Submitted,



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Dated: April 7, 2009
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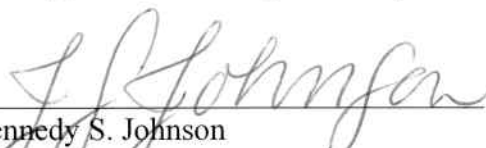
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