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File #: 3288/138939

May 14, 2009

VIA ELECTRONIC AND FIRST CLASS MAIL

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 Nos. A-2009-2093057, A-2009-2093058 and A-2009-2093059; **MOTION TO COMPEL APPLICANTS TO ANSWER INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS – SET I PROPOUNDED BY NRG ENERGY CENTER PITTSBURGH LLC AND NRG ENERGY CENTER HARRISBURG LLC**

Dear Secretary McNulty:

Enclosed for filing in the above-referenced matter, please find the Motion to Compel Applicants to Answer Interrogatories and Requests for Production of Documents Propounded by NRG Companies on Exelon – Set 1, together with a Certification of Counsel as required by Paragraph 17 of Prehearing Order No.1 issued by Administrative Law Judge Marlane R. Chestnut on April 16, 2009. As indicated on the certificate of service, copies are being served to the parties in the manner indicated and in accordance with Prehearing Order No. 1.

Pursuant to Prehearing Order No. 1, counsel for the NRG Companies and Exelon engaged in several discussions in an attempt to resolve Exelon's objections to the discovery requests. On May 13, 2009, the NRG Companies' counsel and Exelon's counsel participated in a telephone conference in which Exelon indicated that it will attempt to answer in part on Friday, May 15, 2009, certain interrogatories to which it objected. However, Exelon was unwilling to withdraw

James J. McNulty
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or otherwise modify any of its objections to fifty-three (53) of the NRG Companies' eighty-three (83) interrogatories.

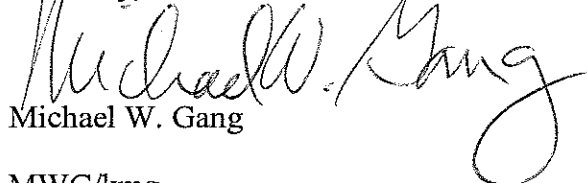
Pursuant to Prehearing Order No. 1, the NRG Companies must file and serve motions to dismiss objections and to compel responses within three (3) calendar days of receipt of the objections, which were received on May 11, 2009. Although Exelon has indicated that it will attempt to answer in part certain of the interrogatories to which it objected, it is unknown to what extent Exelon will answer the interrogatories in question or whether the answers provided will be satisfactory. Further, given the truncated discovery schedule in this proceeding and the fact that the direct testimony of the NRG Companies is due on June 5, 2009, a timely response to the interrogatories is essential. Accordingly, the Motion to Compel is required under the accelerated schedule in this proceeding and is necessary to ensure that the NRG Companies receive full and complete answers to interrogatories in time to comply with the procedural schedule set forth in Prehearing Order No. 1.

Upon receipt of Exelon's answers, the NRG Companies will review the answers provided to determine if they are satisfactory. For any such answers, the NRG Companies will promptly notify the Presiding Officer and parties to this proceeding that the portion of the Motion to Compel applicable to the relevant interrogatory is withdrawn. Similarly, counsel for the NRG Companies will promptly notify the Presiding Officer of the need for a ruling for any answers provided by Exelon that do not satisfactorily answer the applicable interrogatory and fail to resolve the objection thereto, pursuant to Prehearing Order No. 1.

Finally, the NRG Companies note that Exelon has advised that it is its position that objections to interrogatories need only be served upon the party propounding the interrogatories, pursuant to Paragraph 17 of Prehearing Order No. 1. The NRG Companies do not believe that this was intended by the Prehearing Order, but, if it was, request that the ALJ revise such provision and direct that written objections be served on all parties. Doing so will allow parties seeking similar information to be advised and participate in discovery disputes, which will provide more effective administration of the case under the accelerated schedule.

If you have any questions regarding the enclosed filing, please do not hesitate to contact me.

Sincerely,



Michael W. Gang

MWG/kmg
Counsel for
*NRG Energy Center Pittsburgh LLC and
NRG Energy Center Harrisburg LLC*

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May 14, 2009
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Enclosure

c: Honorable Marlane R. Chestnut
Kathy Niesborella
Per Certificate of Service

CERTIFICATE OF SERVICE

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

I hereby certify that I have this day served a true copy of the foregoing Motion to Compel Applicants to Answer Interrogatories and Requests for Production of Documents Propounded by NRG Companies on Exelon – Set 1, upon the parties, listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

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DATED: May 14, 2009



Christopher T. Wright

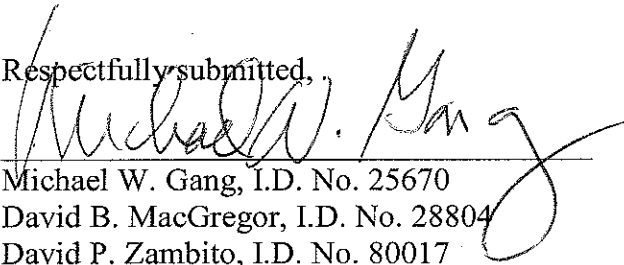
**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of Exelon Corporation, Exelon Xchange Corporation and : Docket Nos.
PECO Energy Company for Certificates of Public Convenience : A-2009-2093057
Evidencing Approval of the Transfer of Ultimate Control of NRG Energy : A-2009-2093058
Center Pittsburgh LLC and NRG Energy Center Harrisburg LLC, : A-2009-2093059
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 PREHEARING ORDER NO.1 IN THE ABOVE-CAPTIONED PROCEEDING, YOU MAY ANSWER THE ENCLOSED MOTION TO COMPEL WITHIN THREE (3) DAYS AFTER THE DATE OF SERVICE. YOUR ANSWER SHOULD 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 AND THE PRESIDING OFFICER.

Respectfully submitted,


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DATED: May 14, 2009
Attorneys for *NRG Energy Center
Pittsburgh LLC and NRG Energy Center
Harrisburg LLC*

**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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**MOTION TO COMPEL APPLICANTS TO ANSWER INTERROGATORIES AND
REQUESTS FOR PRODUCTION OF DOCUMENTS PROPOUNDED BY NRG
COMPANIES ON EXELON – SET 1**

TO ADMINISTRATIVE LAW JUDGE CHESTNUT:

NRG Energy Center Pittsburgh LLC (“NRG Pittsburgh”) and NRG Energy Center Harrisburg LLC (“NRG Harrisburg”) (collectively “NRG Companies”), by their attorneys, Post & Schell, P.C., hereby file this Motion to Compel Answers to its First Set of Interrogatories and Requests for Production of Documents directed to Exelon Corporation, Exelon Xchange Corporation, and PECO Energy Company (hereinafter, collectively “Exelon”), together with a Certification of Counsel as required by Paragraph 17 of Prehearing Order No. 1. In support of this Motion, the NRG Companies state as follows:

1. On February 26, 2009, Exelon filed the above-captioned Application, docketed at Docket Nos. A-2009-2093057, A-2009-2093058, and A-2009-2093059 (“Application”), seeking Commission approval of the proposed change in control of NRG Energy, Inc. (“NRG Energy”) and its affiliates, including the NRG Companies. The applicants to the Application include only Exelon, Exelon Xchange, and PECO. The NRG Companies are not applicants to the Application and are opposed to the proposed transaction.

2. Pursuant to 52 Pa. Code § 5.341 and the Prehearing Order No. 1, the NRG Companies served Interrogatories And Requests For Production Of Documents – Set I (hereinafter “NRG Interrogatories”) upon Exelon on May 5, 2009. A copy of the NRG Interrogatories is attached hereto as Appendix “A.”

3. On May 11, 2009, Exelon served its Objections to fifty-three (53) of the NRG’s eighty-three (83) Interrogatories (hereinafter “Exelon Objections”). A copy of the Exelon Objections is attached hereto as Appendix “B.”

4. On May 13, 2009, in an attempt to resolve Exelon’s objections, the NRG Companies’ counsel and Exelon’s counsel participated in a conference call. Counsel for the respective parties also had several previous discussions. However, they were unable to reach an agreement.

5. The NRG Companies hereby file this Motion to Compel Exelon to answer the NRG Interrogatories. In a further effort to resolve Exelon’s objections, the NRG Companies will herein modify certain NRG Interrogatories to the extent possible.

6. Under 52 Pa. Code § 5.321(b), a party is entitled to obtain discovery of any matter not privileged that is relevant to a pending proceeding, or any matter that is reasonably calculated to lead to the discovery of admissible evidence.

7. An objection must “[i]nclude a description of the facts and circumstances purporting to justify the objection.” 52 Pa. Code § 5.342(c).

8. For the reasons that follow, the NRG Companies respectfully request that Your Honor grant their Motion to Compel and order Exelon to answer fully and completely the NRG Interrogatories pursuant to 52 Pa. Code § 5.342.

I. PRELIMINARY MATTERS

9. As a preliminary matter, Exelon has taken the position that it is somehow not obligated or required to serve written objections to discovery requests on any party other than the propounding party. Further, Exelon has taken the position that it may engage in informal discovery with certain parties to the exclusion of the remainder of the parties to this proceeding.

10. Exelon's approach to discovery is contrary to the intent of the Commission's regulations and the modified discovery procedures set forth in Prehearing Order No. 1. Exelon is attempting to: divide the parties through informal discovery sessions with selected parties; delay responses through objections; and, then dribble information through partial responses and offers of informal discussions at a future time. The truncated procedural schedule in this case affords no room for these tactics.

WHEREFORE, the NRG Companies respectfully request that Your Honor direct (a) that all written objections be served on all parties of record in accordance with the Commission's regulations, and (b) that all parties to this proceeding be privy to any and all discovery responses, whether formal or informal.

II. EXELON'S GENERAL OBJECTIONS TO THE "INSTRUCTIONS AND DEFINITIONS" LACK MERIT

11. In its General Objections, Exelon objects to the "Instructions and Definitions" on the basis that they are overly broad, unduly burdensome, require unreasonable investigation, special studies or analysis, or pertain to information available from other sources. Exelon further objects on the basis that the "Instructions and Definitions" are unlimited in nature and fail to consider regulations prohibiting Exelon from disclosing the requested information. However, Exelon has failed to identify which Instruction and/or Definition that is, in its opinion, subject to

Exelon's General Objections, nor has Exelon provided any explanation of why its objection applies. *See* 52 Pa. Code § 5.342(c) ("An objection must ... [i]nclude a description of the facts and circumstances purporting to justify the objection."). Further, Instruction 18 of the NRG Interrogatories specifically provides as follows:

18. In answering these interrogatories, you are requested to furnish all information **that is available to Exelon**, including information in the possession of Exelon's attorneys, agents or investigators, and not merely such information of Exelon's own knowledge. **If any of the interrogatories cannot be answered in full** after exercising due diligence to secure the requested information, please **so state and answer to the extent possible**, specifying Exelon's inability to answer the remainder, and stating whatever information Exelon has concerning the unanswered portions. If Exelon's answer is qualified in any particular, please set forth the details of such qualification.

NRG Interrogatories, Instructions and Definitions, at ¶ 18 (emphasis added). The definition of "documents" in Instruction 12 of NRG Interrogatories is similarly limited to documents "of which Exelon has or has had possession, custody or control, or which Exelon has knowledge." NRG Interrogatories, Instructions and Definitions, at ¶ 12. Thus, to the extent any information is not available or Exelon is otherwise prevented from fully answering an interrogatory, the Instructions and Definitions clearly provide that Exelon should so state and answer to the extent possible.

III. EXELON'S SPECIFIC OBJECTIONS LACK MERIT

A. Exelon's Objections to NRG-1-2, NRG-1-3, and NRG-1-4 lack merit.

12. NRG Interrogatory numbers NRG-1-2, NRG-1-3, and NRG-1-4 provide as follows:

NRG-1-2 Identify any and all district heating or cooling plants owned or operated in the past by Exelon or any of its affiliates since 1985. For each such plant, identify the following:

- (a) The name of the plant.
- (b) The location of the plant.
- (c) The services provided by the plant.
- (d) Whether the plant was subject to regulation as a utility and, if so, the name of the regulatory body and a copy of the most recent tariff if applicable.
- (e) The name of the entity or affiliate that owns or operates the plant.
- (f) The date that Exelon or any of its affiliates commenced operation and/or ownership of the plant.
- (g) The date that Exelon or any of its affiliates ceased operation and/or ownership of the plant.
- (h) The reason/s that Exelon or any of its affiliates no longer own and/or operate the plant.
- (i) The number of customers served by the plant.
- (j) A copy of the contract of any customers served by the plant.
- (k) A copy of the application for approval of the cessation of operation and/or sale of the plant, if applicable.
- (l) A copy of any order from a regulatory body approving the cessation and/or sale of the plant.

NRG-1-3 For any plant identified in response to Interrogatories NRG-1-1 and NRG-1-2, identify and produce a copy of any and all of the following received since 1985:

- (a) accident or incident reports;
- (b) environmental violations, notice of violations, or reports; and
- (c) OSHA violations, notice of violations, citations, or reports.

NRG-1-4 For any plant identified in response to Interrogatories NRG-1-1 and NRG-1-2, identify any formal or informal customer complaint, since 1985, regarding the service provided by the plant. For any such complaint, provide the following:

- (a) A copy or description of the complaint.
- (b) The name of the adjudicatory body, court, or other agency where the complaint was filed.
- (c) Identify in detail the nature of the complaint.
- (d) State whether the complaint was resolved and, if so, explain in detail the manner in which the complaint was resolved.

13. Exelon objects to NRG-1-2, NRG-1-3, and NRG-1-4 on the basis that they are overly broad, burdensome, and unreasonable in scope and volume because they seek information dating back to 1985. Exelon further contends that such information is not relevant.

14. In NRG-1-2, NRG-1-3, and NRG-1-4, the NRG Companies have sought information regarding district heating and cooling plants owned or operated by Exelon or any of its affiliates. Such information is clearly relevant to the above-captioned Application in which Exelon seeks to acquire NRG Pittsburgh and NRG Harrisburg, which are certificated Pennsylvania public utilities providing steam, hot water, and chilled water service to the public. The technical fitness of Exelon to operate the NRG Companies' plants is directly relevant to this proceeding.

15. Further, NRG-1-2, NRG-1-3, and NRG-1-4 have been limited to 1985 to obtain information about the abandonment by Philadelphia Electric Co. of steam service facilities in Philadelphia in 1987, which is now operated by Philadelphia Thermal Energy Corporation. To the extent that Exelon objects to the scope or time period of these interrogatories, the Instruction and Definition No. 20 requests Exelon to identify any scope or time period that Exelon finds objectionable and answer the interrogatory for the scope or time period that Exelon does not find objectionable. *See* 52 Pa. Code § 5.342(c)(5) ("An objection must: ... Not excuse the answering party from answering the remaining interrogatories or subparts of the interrogatories to which no

objection is stated.”). NRG Pittsburgh incorporates Paragraph 22, supra, as if fully set forth herein. Thus, Exelon’s Objection fails to comply with the Instructions and Definitions, as well as the Commission’s regulations. The NRG Companies note also that, if Exelon or PECO have not owned any steam service facilities since 1987, the interrogatories only request information regarding 1986 and the portion of 1987 before Philadelphia Electric Co. abandoned that service.

B. Exelon’s Objections to NRG-1-17, NRG-1-18, NRG-1-19, NRG-1-23 and NRG-1-24 Lack Merit.

16. NRG Interrogatory numbers NRG-1-17, NRG-1-18, NRG-1-19, NRG-1-23 and NRG-1-24 provide as follows:

- NRG-1-17 Identify all documents relating to or referring to the proposed acquisition of NRG Energy by Exelon.
- NRG-1-18 Identify any and all documents relating to or referring to actual competitive or potential competitive effects of the proposed transaction on energy markets.
- NRG-1-19 Identify any and all market surveys, analyses, and studies prepared by Exelon or in the possession of Exelon that relate to or refer to any actual or potential effect the proposed transaction would have on competition in the energy market.
- NRG-1-23 Identify any and all documents relating to or referring to NRG Pittsburgh, its business and/or its management, and/or the results or effects of the proposed transaction on NRG Pittsburgh.
- NRG-1-24 Identify any and all documents relating to or referring to NRG Harrisburg, its business and/or its management, and/or the results or effects of the proposed transaction on NRG Harrisburg.

17. Exelon Objects on the basis that the above interrogatories are not relevant. Under 52 Pa. Code § 5.321(b), the NRG Companies are entitled to obtain discovery of any matter not privileged that is relevant to a pending proceeding, or any matter that is reasonably calculated to lead to the discovery of admissible evidence. In its Application, Exelon seeks Commission

approval of the proposed change in control of NRG Energy and its affiliates, including the NRG Companies, whether by acquiring NRG Energy Common Stock or by expanding the NRG Board and engaging in a proxy solicitation to elect Exelon-nominated directors to NRG's Board of Directors. NRG Interrogatory numbers NRG-1-17, NRG-1-18, NRG-1-19, NRG-1-23 and NRG-1-24 are directly related to the transaction proposed in Exelon's Application and, therefore, are relevant and likely to lead to discoverable information.

18. Further, the proposed transaction's effect on energy markets could not be more relevant. Exelon's proposed transaction would result in the acquisition of all of NRG's generation assets including those located in Pennsylvania. Far from constituting a "clean sweep" of NRG's generation in PJM East, *cf.* Application at p. 28, Exelon's divestiture package proposes to retain NRG's Pennsylvania assets (NRG Conemaugh, NRG Keystone, and NRG Paxton) -- as well as other assets that could be imported into PJM East. In considering the transaction proposed in the Application, the Commission must determine whether conditions on any approval are necessary in order to protect the public interest. *See* 66 Pa. C.S. § 1103(a) ("The commission, in granting such certificate, may impose such conditions as it may deem to be just and reasonable."); *see also id.* § 2811(e)(2) ("[T]he commission shall not approve such proposed merger, consolidation, acquisition or disposition, except upon such terms and conditions as it finds necessary to preserve the benefits of a properly functioning and workable competitive retail electricity market.").

19. Further, the information requested is exclusively within the knowledge of Exelon. The NRG Companies are entitled to request information and documents that "are in the possession, custody or control of the party upon whom the request is served." 52 Pa. Code §

5.349(a)(1). To the extent that such information is not within Exelon's possession, Instruction 18 of the NRG Interrogatories specifically provides as follows:

18. In answering these interrogatories, you are requested to furnish all information **that is available to Exelon**, including information in the possession of Exelon's attorneys, agents or investigators, and not merely such information of Exelon's own knowledge. **If any of the interrogatories cannot be answered in full** after exercising due diligence to secure the requested information, please **so state and answer to the extent possible**, specifying Exelon's inability to answer the remainder, and stating whatever information Exelon has concerning the unanswered portions. If Exelon's answer is qualified in any particular, please set forth the details of such qualification.

NRG Interrogatories, Instructions and Definitions, at ¶ 18 (emphasis added). Thus, Exelon's Objection fails to comply with the Instructions and Definitions, as well as the Commission's regulations.

20. To the extent that Exelon asserts that NRG Interrogatory numbers NRG-1-17, NRG-1-18, NRG-1-19, NRG-1-23 and NRG-1-24 are redundant, Exelon can simply incorporate other answers by reference.

21. Exelon objects on the basis that NRG Interrogatory numbers NRG-1-17, NRG-1-18, NRG-1-19, NRG-1-23 and NRG-1-24 have no time limit and are overly broad. However, each of the above-mentioned interrogatories are limited to the pending transaction proposed in Exelon's Application, which was announced only recently in November, 2008. To the extent that Exelon objects to the scope or time period of these interrogatories, the Instruction and Definition No. 20 requests Exelon to identify any scope or time period that Exelon finds objectionable and answer the interrogatory for the scope or time period that Exelon does not find objectionable. *See* 52 Pa. Code § 5.342(c)(5) ("An objection must: ... Not excuse the answering party from answering the remaining interrogatories or subparts of the interrogatories to which no

objection is stated.”). Thus, Exelon’s Objection fails to comply with the Instructions and Definitions, as well as the Commission’s regulations.

22. To the extent that NRG Interrogatory numbers NRG-1-17, NRG-1-18, NRG-1-19, NRG-1-23 and NRG-1-24 seek any information that is either confidential, proprietary, or highly confidential, Exelon may not simply refuse to provide the allegedly proprietary or confidential information; rather, the NRG Companies must agree, and have agreed, to treat the information as confidential pursuant to the terms of Your Honor’s Protective Order issued on April 17, 2009.

23. Although the NRG Companies are not entitled to obtain discovery of privileged portions of documents, Exelon must provide sufficient information to allow the ALJ to determine if the claim of privilege is valid. Indeed, Instructions 21 and 22 of the NRG Interrogatories provide as follows:

21. If, in connection with an interrogatory, Exelon contends that any information, otherwise subject to discovery, is covered by either the attorney-client privilege, the so-called “attorneys’ work product doctrine,” or any other privilege or doctrine, then specify the general subject matter of the information and the basis to support each such objection.

22. If any information is withheld on grounds of privilege or other protection from disclosure, provide the following information: (a) every person to whom such information has been communicated and from whom such information was learned; (b) the nature and subject matter of the information; and, (c) the basis on which the privilege or other protection from disclosure is claimed.

Exelon has totally failed to provide any information regarding any documents that are in Exelon’s opinion subject to a privilege.

24. Exelon also asserts that the information requested in NRG Interrogatory numbers NRG-1-17, NRG-1-18, NRG-1-19, NRG-1-23 and NRG-1-24 is protected by the so-called “white knight privilege.” NRG Energy is a corporate entity organized and existing pursuant to

the laws of the State of Delaware. However, the State of Delaware does not have a “white knight privilege” within its body of jurisprudence. *BNS, Inc. v. Koppers Co.*, 683 F. Supp. 454, 457 (D. Del. 1988) (“There is no Delaware case which protects ‘white knight’ documents through a ‘white knight’ privilege.”); *see also Ipalco Enters. v. PSI Resources*, 148 F.R.D. 604, 606 (S.D. Ind. 1993) (“Neither federal common law nor federal case law establishes an evidentiary privilege for business strategies.”). Moreover, there is no body of law in Pennsylvania that creates the so-called “white knight privilege” or business strategy privilege. Finally, to the extent that such a privilege exists and is somehow applicable to this case, it has arisen in the context of a *target corporation’s need* to protect secret business strategies, such as negotiations with other non-hostile bidders, *i.e.*, the “white knights”, from discovery by a hostile bidder. *See, e.g., Cincinnati Bell Cellular Sys. Co. v. Ameritech Mobile Phone Serv.*, 1995 Del. Ch. LEXIS 63 (Del. Ch. May 17, 1995); *Grand Metropolitan PLC v. The Pillsbury Company*, Del. Ch., C.A. No. 10323, Allen, C. (Nov. 22, 1989). Further, the privilege provides only a temporary reprieve from discovery regarding pending strategy decisions. Once a decision has been made, the privilege disappears. *See BNS; Cincinnati; Grand Metropolitan*. Here, Exelon’s strategies to acquire the NRG Energy and its subsidiaries, including NRG Pittsburgh and NRG Harrisburg, have been announced publicly. Thus, no business privilege for Exelon exists. In light of the foregoing, it is egregious and nonsensical for Exelon to assert that its hostile takeover is immune from discovery under the so-called “white knight privilege.”

25. Finally, to the extent that Exelon objects to these interrogatories because it would purportedly be “extremely difficult to evaluate within the time for objection,” it must be remembered that Exelon asked for and received a modified and expedited discovery schedule. Exelon cannot now credibly object to the expedited schedule it requested.

C. Exelon’s Objections to NRG Interrogatories NRG-1-20, NRG-1-69, and NRG-1-70 Lack Merit

26. NRG Interrogatory numbers NRG-1-20, NRG-1-69, and NRG-1-70 provide as follows:

NRG-1-20 List the names and addresses of each of the companies that have competed with Exelon in the PJM East market in the last five (5) years.

NRG-1-69 NRG-1-69 Please confirm that the latest gas rate case filed by PECO and approved by the PAPUC was in docket number R-2008-2028394.

(a) Please provide detailed rate base calculation and rate of return calculation as proposed by PECO at the initial phase of this rate case and as finally approved by the Commission.

NRG-1-70 When was the last time PECO filed an electricity rate case that was approved by the PAPUC?

(a) Please provide the filing date and docket number.

(b) Please provide detailed explanation of the approved rate base calculation.

(c) Please provide detailed explanation of the approved rate of return calculation.

27. Exelon objects on the basis that NRG Interrogatory numbers NRG-1-20, NRG-1-69, and NRG-1-70 are overly burdensome and not likely to lead to relevant information. However, NRG-1-20 relates to competition in electric wholesale markets, which is clearly relevant. *See* 66 Pa. C.S. § 1103(a) (“The commission, in granting such certificate, may impose such conditions as it may deem to be just and reasonable.”); *see also id.* § 2811(e)(2) (“[T]he commission shall not approve such proposed merger, consolidation, acquisition or disposition, except upon such terms and conditions as it finds necessary to preserve the benefits of a properly functioning and workable competitive retail electricity market.”).

28. Further, NRG-1-69 and NRG-1-70 concern the effect that the proposed transaction will have on the cost of capital of the Commission regulated utilities, including the NRG Companies and PECO. Exelon has failed to provide details regarding the effect of its speculative transaction on its cost of capital. Under the terms of NRG's debt facilities, Exelon's actions at NRG's 2009 Annual Meeting could trigger an acceleration of NRG's approximately \$8 billion of outstanding corporate-level debt which would have serious negative consequences for NRG and its subsidiaries. Exelon's proposed acquisition of NRG will result in increased debt, higher risk profile, and increased cost of capital. Exelon's proposed transaction may, and likely will, have a dramatic and adverse affect on the cost of capital for Exelon's regulated utilities, as well as the NRG Companies. Exelon's attempt to avoid discovery with regard to such a fundamental issue as the effect of the transaction on the regulated rates of jurisdictional utilities, such as the NRG Companies and PECO, illustrates Exelon's attempts to avoid its inability to address the fundamental terms and conditions of the transaction that remain uncertain and are not ripe for review.

29. Exelon objects to NRG Interrogatory numbers NRG-1-20, NRG-1-69, and NRG-1-70 on the basis that the requested information is available by other means. The NRG Companies are entitled to request information and documents that "are in the possession, custody or control of the party upon whom the request is served." 52 Pa. Code § 5.349(a)(1). Thus, absent a proper and valid objection, Exelon is required to disclose and produce any requested information or documents in its possession or control. Exelon must specifically identify any publicly available documents as such. *See* 52 Pa. Code § 5.342(c) ("An objection must ... [i]nclude a description of the facts and circumstances purporting to justify the objection.").

30. Further, Exelon states that it will provide the docket numbers for the referenced Commission proceedings; however, this fails to answer fully NRG Interrogatory numbers NRG-1-20, NRG-1-69, and NRG-1-70. *See* 52 Pa. Code § 5.342(a)(4) (“Answer each interrogatory fully and completely...”) Absent a proper and valid objection, Exelon is required to disclose and produce any requested information or documents in its possession or control.

D. Exelon’s Objections to NRG-1-21, NRG-1-22, and NRG-1-65 Lack Merit.

31. NRG Interrogatory numbers NRG-1-21, NRG-1-22, and NRG-1-65 provide as follows:

NRG-1-21 Identify any and all documents relating to or referring to consideration by Exelon, or any officer or agent thereof, of the acquisition of NRG Energy, whether by tender offer, exchange offer, negotiated agreement, or otherwise.

NRG-1-22 Identify the minutes of all meetings of board members of Exelon at or during which the acquisition of NRG Energy, whether by tender offer, negotiated agreement, or otherwise, was discussed, considered, analyzed, or authorized, and all documents that were prepared for or relied upon in any such meeting.

NRG-1-65 According to slide 6 in a file named “EXC_NRG equity roadshow deck_Wed_Final.pdf” downloaded from the investor relations section of Exelon’s corporate website, Exelon has prepared NPV analysis of the merger. Please provide the detailed inputs to this analysis, including the assumptions and calculation of the discount rate.

32. Exelon asserts that information related to its decision to undertake the proposed transaction and determine the price it would pay to acquire NRG Energy is not relevant. In its Application, Exelon seeks Commission approval of the proposed change in control of NRG Energy and its affiliates, including the NRG Companies, whether by acquiring NRG Energy Common Stock or by expanding the NRG Board and engaging in a proxy solicitation to elect Exelon-nominated directors to NRG’s Board of Directors. However, Exelon has failed to, and is

unable at this time to, define and describe the specifics of the transaction. The terms and conditions of the proposed transaction are unknown and speculative at best. 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. For example, in its Form S-4, Exelon states:

Exelon intends to continue to seek to negotiate with NRG with respect to the combination of NRG and Exelon. If such negotiations result in a definitive merger agreement between Exelon and NRG, the consideration to be received by the holders of NRG common stock could include or consist of Exelon common stock, other securities, cash or any combination thereof. In addition, the structure of a combination between Exelon and NRG under any such definitive merger agreement may be different than the structure of the offer and second-step merger. Accordingly, such negotiations could result in, among other things, the termination of the offer and submission of a different combination proposal to NRG's stockholders for their approval.

See Exelon Application, Ex. A at p. 36. The Commission must closely examine these issues to ensure that ratepayers are adequately protected. Thus, information related to Exelon's decision to undertake the proposed transaction and determine the price it would pay to acquire NRG Energy is clearly likely to lead to discovery relating to Exelon's plans with regard to the NRG Companies and competitive markets and other information relevant to the Commission's Review of the transaction proposed in Exelon's Application.

33. To the extent that NRG Interrogatory numbers NRG-1-21, NRG-1-22, and NRG-1-65 seek any information that is either confidential, proprietary or highly confidential, Exelon may not simply refuse to provide the allegedly proprietary or confidential information; rather, the NRG Companies must agree, and have agreed, to treat the information as confidential pursuant to the terms of Your Honor's Protective Order issued on April 17, 2009.

34. Exelon also asserts that the information requested in NRG Interrogatory numbers NRG-1-21, NRG-1-22, and NRG-1-65 is protected by the so-called “white knight privilege.” However, as explained in paragraph 24, supra, which is incorporated herein as if set forth fully, the “white knight privilege” or business strategy privilege is not applicable to Exelon this proceeding.

E. Exelon’s Objection to NRG-1-30 Lacks Merit

35. NRG Interrogatory NRG-1-30 provides as follows:

NRG-1-30 In the matter of Retail Electricity Procurements, please answer the following questions:

- (a) New Jersey: Has Exelon or any of its affiliates participated in any of the basic generation service auctions held in New Jersey from 2002 onward? If so, please provide the following information:
 - (i) Date each procurement auction.
 - (ii) For each auction, identify the participating Exelon affiliate.
 - (iii) Specify products offered.
 - (iv) For each product, specify the quantity and price of bids submitted by Exelon and/or its affiliates.
 - (v) Specify which bids, if any, were accepted and awarded a contract.
 - (vi) Provide a copy of each contract employed in the New Jersey Basic Generation Service in auctions where Exelon or its affiliates participated.
- (b) Washington, D.C.: Has Exelon or any of its affiliates participated in any of the standard offer RFPs held in Washington, D.C. from 2005 onward? If so, please provide the following information:
 - (i) Date each procurement auction.

- (ii) For each auction, identify the participating Exelon affiliate.
 - (iii) Specify products offered.
 - (iv) For each product, specify the quantity and price of bids submitted by Exelon and/or its affiliates.
 - (v) Specify which bids, if any, were accepted and awarded a contract.
 - (vi) Provide a copy of each contract employed in the D.C. standard offer RFPs where Exelon or its affiliates participated.
- (c) Delaware: Has Exelon or any of its affiliates participated in any of the standard offer RFPs held in Delaware from 2006 onward? If so, please provide the following information:
- (i) Date each procurement auction.
 - (ii) For each auction, identify the participating Exelon affiliate.
 - (iii) Specify products offered.
 - (iv) For each product, specify the quantity and price of bids submitted by Exelon and/or its affiliates.
 - (v) Specify which bids, if any, were accepted and awarded a contract.
 - (vi) Provide a copy of each contract employed in each Delaware standard offer RFP where Exelon or its affiliates participated
- (d) Maryland: Has Exelon or any of its affiliates participated in any of the standard offer service RFPs held in Maryland from 2003 onward? If so, please provide the following information:
- (i) Date each procurement auction.
 - (ii) For each auction, identify the participating Exelon affiliate.
 - (iii) Specify products offered.

- (iv) For each product, specify the quantity and price of bids submitted by Exelon and/or its affiliates.
 - (v) Specify which bids, if any, were accepted and awarded a contract.
 - (vi) Provide a copy of each contract employed in each Maryland SOS procurement event where Exelon or its affiliates participated.
- (e) Illinois: Has Exelon or any of its affiliates participated in the 2006 Illinois Auction (covering the 2007 period) or any of the ComEd standard products RFPs or Ameren Basic Generation Service RFPs held from 2007 onward? If so, please provide the following information:
- (i) Date each procurement auction.
 - (ii) For each auction, identify the participating Exelon affiliate.
 - (iii) Specify products offered.
 - (iv) For each product, specify the quantity and price of bids submitted by Exelon and/or its affiliates.
 - (v) Specify which bids, if any, were accepted and awarded a contract.
 - (vi) Provide a copy of each contract employed in each procurement event (Illinois Auction, ComEd RFP or Ameren BGS) where Exelon or its affiliates participated.
- (f) Connecticut: Has Exelon or any of its affiliates participated in any of the transition standard offer solicitations held in Connecticut from 2004 to 2006, or in any of the standard offer solicitations held from 2007 onward? If so, please provide the following information:
- (i) Date each procurement auction.
 - (ii) For each auction, identify the participating Exelon affiliate.
 - (iii) Specify products offered.

- (iv) For each product, specify the quantity and price of bids submitted by Exelon and/or its affiliates.
 - (v) Specify which bids, if any, were accepted and awarded a contract.
 - (vi) Provide a copy of each contract employed in each Connecticut TSO or SO solicitations where Exelon or its affiliates participated.
- (g) Massachusetts: Has Exelon or any of its affiliates participated in any of the default service RFPs held in Massachusetts from 2000 onward? If so, please provide the following information:
- (i) Date each procurement auction.
 - (ii) For each auction, identify the participating Exelon affiliate.
 - (iii) Specify products offered.
 - (iv) For each product, specify the quantity and price of bids submitted by Exelon and/or its affiliates.
 - (v) Specify which bids, if any, were accepted and awarded a contract.
 - (vi) Provide a copy of each contract employed in the Massachusetts Default service RFPs where Exelon or its affiliates participated.
- (h) New Hampshire: Has Exelon or any of its affiliates participated in the transition service RFP held in New Hampshire in 2005 or any of the default service RFPs held from 2006 onward? If so, please provide the following information:
- (i) Date each procurement auction.
 - (ii) For each auction, identify the participating Exelon affiliate.
 - (iii) Specify products offered.
 - (iv) For each product, specify the quantity and price of bids submitted by Exelon and/or its affiliates.

- (v) Specify which bids, if any, were accepted and awarded a contract.
- (vi) Provide a copy of each contract employed in the New Hampshire default service RFPs where Exelon or its affiliates participated.

36. Exelon objects to NRG-1-30 on the basis that Exelon is precluded by local auction rules from disclosing the information requested. In support, Exelon cites three (3) websites for two (2) of the states addressed in NRG-1-30, New Jersey and Illinois. As the objecting party, Exelon bears the burden to establish facts and circumstances purporting to justify the objections to each and every interrogatory that it contends is objectionable. *See* 52 Pa. Code § 5.342(c). Therefore, even assuming, *arguendo*, that the local auction rules for Illinois and New Jersey prohibit Exelon from disclosing the requested information, Exelon has failed to set forth grounds sufficient to support objections to the remaining jurisdictions. *See* 52 Pa. Code § 5.342(c)(5) (“An objection must: ... Not excuse the answering party from answering the remaining interrogatories or subparts of the interrogatories to which no objection is stated.”)

37. With respect to the local auction rules for New Jersey, said rules provide, in relevant part, as follows:

Once the Auction has been concluded, if the Board approves the Auction results, the Board may choose to release information regarding final BGS-FP prices and the names of the winners. At that point, a winner may itself release information only regarding the number of tranches it has won and the territories the winner will be serving, and a losing bidder may itself release information only regarding the fact that it participated in the Auction. The winner and losing bidders will otherwise continue to be bound by their certifications as described previously.

Final BGS-FR Auction Rules, § XI.E, *available at* <http://www.bgs-auction.com> (last visited May 12, 2009). Thus, despite Exelon’s assertion to the contrary, Exelon is not completely prohibited from disclosing the information requested in NRG-1-30(a) regardless of whether it was a

winning or losing party. *See* 52 Pa. Code § 5.342(c)(5) (“An objection must: ... Not excuse the answering party from answering the remaining interrogatories or subparts of the interrogatories to which no objection is stated.”)

38. With respect to the local auction rules for Illinois, said rules provide, in relevant part, as follows:

If there is a Declaration of a Successful Results for a Section, the Auction Manager will release information regarding final Auction prices and the names of the winners for the Section. The ICC may choose to release additional information. At that point, a winner may itself release information regarding the number of tranches it has won and the products that the winner will be serving, and a losing bidder may itself release information only regarding the fact that it participated in the Auction. The winners and losing bidders otherwise continue to be bound by their certifications as described previously.

Illinois Auction Rules, § VI.D, *available at* <http://www.illinois-auction.com> (last visited on May 12, 2009). Thus, despite Exelon’s assertion to the contrary, Exelon is not completely prohibited from disclosing the information requested in NRG-1-30(e) regardless of whether it was a winning or losing party. *See* 52 Pa. Code § 5.342(c)(5) (“An objection must: ... Not excuse the answering party from answering the remaining interrogatories or subparts of the interrogatories to which no objection is stated.”)

39. Exelon also objects to NRG-1-30 on the basis that it requests information that is available from third-parties. The NRG Companies are entitled to request information and documents that “are in the possession, custody or control of the party upon whom the request is served.” 52 Pa. Code § 5.349(a)(1). Thus, absent a proper and valid objection, Exelon is required to disclose and produce any requested information or documents in its possession or control. Although Exelon is not required to produce information or documents that are publicly available, Equitable must specifically identify any publicly available documents as such. *See* 52

Pa. Code § 5.342(c) (“An objection must ... [i]nclude a description of the facts and circumstances purporting to justify the objection.”).

40. Exelon objects to subparts (e), (f), (g), and (h) of NRG-1-30 on the basis that they involve markets outside the PJM East market and, therefore, are not relevant. However, the Commission has a statutory obligation to examine Exelon’s proposed transaction to determine whether it “is likely to result in anticompetitive or discriminatory conduct, including the unlawful exercise of market power.” *See* 66 Pa. C.S. § 2811(e). This obligation is not limited to simply the PJM East market. Exelon is already an active player in the energy generation, power marketing, and energy delivery markets (as is NRG). Exelon states that it would become the largest power company in the United States as a result of the proposed transaction. *See* Exelon Application, at p.21. Thus, the merger would affect electric markets beyond PJM East, which includes only a portion of New Jersey and the Philadelphia area. A thorough examination of the impact of the proposed transaction on the entire PJM market is required prior to the Commission’s making of a determination that Exelon’s hostile takeover will affirmatively benefit the public in some substantial way. To determine whether there will be a substantial benefit, detriments must also be considered. *See id.* § 1103(a) (regarding procedure to obtain the certificates of public convenience); *see also id.* § 2811(e). Accordingly, subparts (e), (f), (g), and (h) of NRG-1-30 are likely to lead to discovery of relevant information.

F. Exelon’s Objections to NRG-1-31 and NRG-1-32 Lack Merit

41. NRG Interrogatory numbers NRG-1-31 and NRG-1-32 provide as follows:

NRG-1-31 Please provide a complete list of bidders in the 2006 Illinois Auction and the following information:

(a) Names of bidders, organized by product and term.

- (b) Whether any bidders were disqualified and briefly explain why bidder was disqualified.
- (c) Quantity and price history of all qualified bids in the 2006 Auction.
- (d) Quantity and final price for each winning bidder in the 2006 Auction.
- (e) Credit and collateral requirements for each winning bidder in the 2006 Auction.
- (f) Provide a copy of the contract that was employed in the 2006 Auction.

NRG-1-32 Please provide a complete list of bidders in each procurement event since 2006 for full requirement service of ComEd's load. For each procurement event, please provide the following:

- (a) Names of bidders, organized by product and term.
- (b) Whether any bidders were disqualified and briefly explain why bidder was disqualified.
- (c) Quantity and price history of all qualified bids in the procurement event.
- (d) Quantity and final price for each winning bidder.
- (e) Credit and collateral requirements for each winning bidder.
- (f) Provide a copy of the contract that was employed in each procurement event.

42. Exelon objects to NRG-1-31 and NRG-1-32 on the basis that they are markets outside the PJM East market and, therefore, are not relevant. However, as explained above in paragraph 40, *supra*, which is incorporated herein as if set forth fully, a thorough examination of the impact of the proposed transaction on the entire PJM market is required prior to the Commission's making of a determination that Exelon's hostile takeover will affirmatively benefit the public in some substantial way.

43. Exelon also objects on the basis that Exelon is precluded by local auction rules of Illinois and ComEd from disclosing the information requested. With respect to the local auction rules for Illinois, said rules provide, in relevant part, as follows:

If there is a Declaration of a Successful Results for a Section, the Auction Manager will release information regarding final Auction prices and the names of the winners for the Section. The ICC may choose to release additional information. At that point, a winner may itself release information regarding the number of tranches it has won and the products that the winner will be serving, and a losing bidder may itself release information only regarding the fact that it participated in the Auction. The winners and losing bidders otherwise continue to be bound by their certifications as described previously.

Illinois Auction Rules, § VI.D, *available at* <http://www.illinois-auction.com> (last visited on May 12, 2009). Thus, despite Exelon's assertion to the contrary, Exelon is not completely prohibited from disclosing the information requested in NRG-1-31 regardless of whether it was a winning or losing party. *See* 52 Pa. Code § 5.342(c)(5) ("An objection must: ... Not excuse the answering party from answering the remaining interrogatories or subparts of the interrogatories to which no objection is stated.")

44. Similarly, with respect to the local auction rules for ComEd, said rules provide, in relevant part, as follows:

VI.3.1. Any information provided by an RFP Bidder in its Part 1 Proposal is provided on a confidential basis to the Procurement Administrator, and may be provided on a confidential basis to the Procurement Monitor or to ICC Staff...

V.I.3.3. The Procurement Administrator, the Procurement Monitor, and representatives from ComEd involved in the evaluation of Proposals will consider all data and information provided by RFP Bidders in response to this RFP to be confidential and will attempt to limit its disclosure to the public in accordance with the provisions of this Section...

VI.3.4 However absolute protection from public disclosure of the RFP Bidders's data and information filed in response to this RFP

cannot be provided and is not intended. By submitting a Proposal in response to this RFP, each RFP Bidder acknowledges and agrees to the limitations of the confidentiality provisions set forth in this Section.

VI.3.5. In addition, the RFP Bidder's data and information filed in response to the RFP will be disclosed if required by any federal, state or local agency (including without limitation, the ICC) or by a court of competent jurisdiction.

ComEd Rules of Personnel and Confidentiality, § VI.3, *available at* <http://www.comed-energyrfp.com> (last visited May 12, 2009); *also available at* <http://www.2008-rfp.com/> (last visited May 12, 2009). Despite Exelon's implication to the contrary, the above-quoted rules clearly do not prohibit a bidder from disclosing information but, rather, apply to the entities evaluating the proposals. Thus, Exelon is not completely prohibited from disclosing the information requested in NRG-1-32. *See* 52 Pa. Code § 5.342(c)(5) ("An objection must: ... Not excuse the answering party from answering the remaining interrogatories or subparts of the interrogatories to which no objection is stated.")

G. Exelon's Objections to NRG-1-33 and NRG-1-34 Lack Merit

45. NRG Interrogatory numbers NRG-1-33 and NRG-1-34 provide as follows:

NRG-1-33 Please provide a summary of the contractual terms for Exelon's obligation for Pennsylvania POLR over the period 2007-2010. Please specify the amount of retail load served in each year (actual and projected) by customer class, the price terms agreed to, and the specific generating assets that are earmarked, if specified in agreement, for POLR service.

NRG-1-34 Please provide a detailed summary of the terms of the financial swap agreement that Exelon provides for the benefit of ComEd consumers, as referenced on page 6 of Exelon's FERC Application (see Application of Exelon Corporation under Section 203 of The Federal Power Act, 18 December 2008).

46. Exelon objects to NRG-1-33 and NRG-1-34 on the basis that they are not relevant. However, these interrogatories are directly related to market power and competition issues. The Commission has a statutory obligation to examine Exelon's proposed transaction to determine whether it "is likely to result in anticompetitive or discriminatory conduct, including the unlawful exercise of market power." *See* 66 Pa. C.S. § 2811(e).

47. As explained above in paragraph 40, *supra*, which is incorporated herein as if set forth fully, a thorough examination of the impact of the proposed transaction on the entire PJM market is required prior to the Commission's making of a determination that Exelon's hostile takeover will affirmatively benefit the public in some substantial way..

48. While Exelon's acquisition proposal contemplates divestitures of assets in Delaware and Maryland in order to allegedly maintain a competitive balance, it would result in the absorption of a competitor in Pennsylvania with respect to generation. Exelon already has a significant market share in Pennsylvania and is a dominant supplier. Furthermore, even if NRG's generation assets are divested, a competitor will be lost if such assets are directed to an existing generator in PJM. The loss of NRG as a competitor may be most significant with respect to the auctions that will be utilized to source default service for customers of PECO Energy and other Pennsylvania electric distribution companies. The competitiveness of those auctions turns on the number of suppliers, other than the dominant incumbents such as Exelon, that have the scale, creditworthiness, and sophistication to support large, longer-term commitments and meet auction requirements. Moreover and most importantly, these competitors must have access to generation that is proximate to the load and thus insulated from congestion costs.

49. NRG's Pennsylvania generation (NRG Conemaugh, NRG Keystone, and NRG Paxton), which Exelon does not propose to divest, will accrue to Exelon's already significant market share if the transaction is permitted to go forward as proposed. Compounding this concern is the fact that many of the financial institution affiliates that previously were able to participate in these auctions are pulling back from significant participation in electricity markets.

50. The Commission should examine the transaction's impact on the market for default service in Pennsylvania and whether Exelon's divestiture proposal is adequate. Based on the foregoing, the information requested in NRG-1-33 and NRG-1-34 is likely to lead to the discovery of relevant information. Under 52 Pa. Code § 5.321(b), the NRG Companies are entitled to obtain discovery of any matter not privileged that is relevant to a pending proceeding, or any matter that is reasonably calculated to lead to the discovery of admissible evidence.

H. Exelon's Objections to NRG-1-35 and NRG-1-36 Lack Merit

51. NRG Interrogatory numbers NRG-1-35 and NRG-1-36 provide as follows:

NRG-1-35 Has Exelon entered into any other contracts or agreements to financially hedge or physically service retail load obligations in PJM in the past since 1998 or for anytime in the future? If so, please specify the key terms of such contract/agreement, including start and end date, quantity (volume) terms and price terms.

NRG-1-36 Please provide details as to Exelon's generation assets in PJM. Specifically, for each generating plant listed in response to OCA-I-2a and OCA-I-2b located within PJM, please specify the following information on a unit level for the period, 2007-2008:

- (a) actual monthly production;
- (b) monthly range of hourly production levels (minimum to maximum production in a given hour over the course of the month);
- (c) average actual heat rate, by month;

- (d) full loaded heat rate;
- (e) actual emissions by month for SO₂, NO_X, and CO₂;
- (f) ramp rate (MW/min), as provided to PJM;
- (g) monthly actual forced outage rate and maintenance schedule (days/month);
- (h) negotiated costs (capped generation offers) that Exelon has filed with PJM for each unit;
- (i) operating and maintenance costs for each unit, on an annual basis, broken down by fixed and variable categories, with variable O&M denoted in \$/MWh and fixed costs denoted in \$/kW-year; and
- (j) actual capital expenditures (in \$/kW).

52. Exelon objects to NRG-1-35 and NRG-1-36 on the basis that the information sought related market power and competition issues is not relevant. However, as explained in paragraphs 40 and 48-50, *supra*, which are incorporated herein as if fully set forth, information related to market power and competition issues is likely to lead to the discovery of information relevant to the transaction proposed in Exelon's Application. *See* 52 Pa. Code § 5.321(b).

53. Exelon also objects to NRG-1-35 and NRG-1-36 on the basis that they request information that is purportedly confidential or proprietary. However, Exelon may not simply refuse to provide the allegedly proprietary or confidential information; rather, the NRG Companies must agree, and have agreed, to treat the information as confidential pursuant to the terms of Your Honor's Protective Order issued on April 17, 2009.

54. Exelon further objects to NRG-1-35 and NRG-1-36 on the basis of the so-called "white knight privilege." However, as explained in paragraph 24, *supra*, which is incorporated herein as if set forth fully, the so-called "white knight privilege" or business strategy privilege is not applicable to Exelon in this proceeding.

I. Exelon's Objections to NRG-1-37, NRG-1-38, NRG-1-39, NRG-1-40 and NRG-1-41 Lack Merit

55. NRG Interrogatory numbers NRG-1-37, NRG-1-38, NRG-1-39, NRG-1-40 and NRG-1-41 provide as follows:

NRG-1-37 Please provide the plant- or unit-specific bidding profile for Exelon's PJM assets. Please specify if the output generally is sold in the spot market, under contract, or in one of the ancillary services market?

- (a) If it is sold in the spot market, how much is sold in the day-ahead market versus the real-time market?
- (b) Please provide the bidding schedules for each day for the 2007 and 2008 timeframe. Please include the following information:
 - (i) Bid date;
 - (ii) Unit code;
 - (iii) MW portions of the unit's bid curve;
 - (iv) \$/MW portions of the unit's bid curve;
 - (v) No load cost;
 - (vi) Cold start cost;
 - (vii) Inter start cost;
 - (viii) Hot start cost;
 - (ix) Max daily starts;
 - (x) Min Run time;
 - (xi) Highest "Economic Maximum" value for the day for each unit;
 - (xii) Lowest "Economic Maximum" value for the day for each unit;
 - (xiii) Highest "Economic Minimum" value for the day for each unit;

- (xiv) Lowest “Economic Minimum” value for the day for each unit; and
 - (xv) Average “Economic Minimum value for the day for each unit.
- (c) If contracted, please specify the terms of the contract, including duration, quantity, price, and dispatch control. Please specify the name of the counterparty.
 - (d) If output from any of the units is sold into the ancillary services market, please provide monthly sales and revenues from such sales, classified by type of ancillary services market.
- NRG-1-38 Have Exelon’s bids in the energy or ancillary services markets ever been mitigated (offer capped)?
- (a) If yes, please provide specific details about each mitigation event, including the datetime stamp of the event, the name of the unit mitigated, the quantity bid for that unit, the pre-mitigation bid by Exelon and the post-mitigation outcome.
- NRG-1-39 Please provide information on historical fuel supply contracts for assets of Exelon in PJM. For each unit, specify:
- (a) the name of the fuel supplier,
 - (b) the term, quantity and price for each contract with each fuel supplier.
- NRG-1-40 Please provide information as to historical FTRs/ARRs acquired by or awarded to Exelon by month in 2007 and 2008 (including any annual or long term FTRs). Include the following:
- (a) Please specify the path of such FTRs/ARRs, including the load zone for the sink and source.
 - (b) Please specify the type of FTR and quantity.
 - (c) Please specify for each FTR whether it was acquired through bilateral markets or through PJM auctions and provide the acquisition price.
 - (d) Please specify the monthly revenues received under the ARR and FTRs listed in response to (a) through (c) above.

NRG-1-41 Please provide information on Exelon's bids into each Base Residual Auction (BRA) of the RPM (PJM's capacity market). Include the following:

- (a) Please specify the quantity of capacity offered, the location of that capacity and association with specific unit.
- (b) Please specify whether any of the capacity was sold outside the BRA through bilateral agreements.
- (c) Have any of Exelon's capacity bids in the BRA been mitigated? If yes, please describe the mitigation event, including information on date of mitigation, quantity mitigated, and the mitigated price as compared to original offer price.

56. Exelon objects to NRG-1-37, NRG-1-38, NRG-1-39, NRG-1-40 and NRG-1-41 on the basis that they are allegedly not relevant. However, these interrogatories are directly related to market power and competition issues. As explained in paragraphs 40 and 48-50, *supra*, which are incorporated herein as if fully set forth, information related to market power and competition issues is likely to lead to the discovery of information relevant to the transaction proposed in Exelon's Application. See 52 Pa. Code § 5.321(b).

J. Exelon's Objections to NRG-1-43 and NRG-1-61 Lack Merit

57. NRG Interrogatory numbers NRG-1-43 and NRG-1-61 provide as follows:

NRG-1-43 Please provide information on planned transmission or distribution expansions in next five years (2009-2014).

- (a) Please specify the location, the expected cost and the timing (in-service date) of each expansion.

NRG-1-61 Does Exelon or PECO have any expansion plans for its transmission and distribution businesses in PJM over the next five years (2009-2014)? If yes, please list all the proposed projects, describe the project briefly and specify whether they need (or have received) regulatory approval, specify the budgeted capex for each project and the commercial in-service date. How does Exelon plan to finance these projects? What portion of these projects will be on

balance sheet for PECO and ComEd? How will the leverage of PECO and ComEd change?

58. Exelon objects to NRG-1-43 on the basis that it is not relevant. However, NRG-1-43 is likely to lead to the discovery of information relevant to Exelon's financial capacity and whether the transaction will impact its ability to provide public utility service. Such information is clearly relevant to Exelon's fitness to own and operate NRG Pittsburgh and NRG Harrisburg.

59. Exelon also objects to NRG-1-43 on the basis that it is overly broad. However, NRG-1-43 is reasonably limited to a five-year period. Moreover, the NRG Companies are willing to limit NRG-1-43 to seek information related to planned transmission or distribution expansion of Exelon and PECO in the next five years (2009-2014) and expansive projects individually expected to costs less than \$1 million may be reported by year in the aggregate.

60. Exelon objects to NRG-1-61 on the basis that they do not seek relevant information. However, NRG-1-61 seeks to elicit information concerning market power and competition issues. As explained in paragraphs 40 and 48-50, *supra*, which are incorporated herein as if fully set forth, information related to market power and competition issues is likely to lead to the discovery of information relevant to the transaction proposed in Exelon's Application. *See* 52 Pa. Code § 5.321(b).

61. Exelon also objects to NRG-1-43 and NRG-1-61 on the basis that they seek publically available information in PJM's Regional Transmission Expansion Plan ("RTEP"). The NRG Companies are entitled to request information and documents that "are in the possession, custody or control of the party upon whom the request is served." 52 Pa. Code § 5.349(a)(1). Thus, absent a proper and valid objection, Exelon is required to disclose and produce any requested information or documents in its possession or control. Although Exelon is not required to produce information or documents that are publicly available, Exelon must

specifically identify any publicly available documents as such. See 52 Pa. Code § 5.342(c) (“An objection must ... [i]nclude a description of the facts and circumstances purporting to justify the objection.”). Further, RTEP does not cover transmission lines of all voltages but, rather, concentrates on transmission lines of 235 kV or greater.

62. Exelon also objects to NRG-1-43 and NRG-1-61 on the basis that they request information that is purportedly confidential or proprietary. However, Exelon may not simply refuse to provide the allegedly proprietary or confidential information; rather, the NRG Companies must agree, and have agreed, to treat the information as confidential pursuant to the terms of Your Honor’s Protective Order issued on April 17, 2009. Finally, Exelon cannot credibly assert that the information is publically available and, yet, is somehow still commercially sensitive. Such contrary positions are nonsensical.

63. Exelon further objects to NRG-1-43 and NRG-1-61 on the basis of the so-called “white knight privilege.” However, as explain in paragraph 24, *supra*, which is incorporated herein as if set forth fully, the “white knight privilege” or business strategy privilege is not applicable to Exelon in this proceeding.

K. Exelon’s Objections to NRG-1-44, NRG-1-45, NRG-1-46, NRG-1-47, NRG-1-48, NRG-1-49, NRG-1-50, NRG-1-51, NRG-1-52, NRG-1-52, NRG-1-55, NRG-1-56, NRG-1-57, NRG-1-58, and NRG-1-59 Lack Merit

64. NRG Interrogatory numbers NRG-1-44, NRG-1-45, NRG-1-46, NRG-1-47, NRG-1-48, NRG-1-49, NRG-1-50, NRG-1-51, NRG-1-52, NRG-1-52, NRG-1-55, NRG-1-56, NRG-1-57, NRG-1-58, and NRG-1-59 provide as follows:

NRG-1-44 Please provide an hourly schedule of 2008 actual load broken down by the four customer classes proposed in the Settlement for PECO’s default service provider (“DSP”) plan.

- NRG-1-45 Please provide an hourly schedule of projected 2011 load broken down by the four customer classes proposed in the Settlement for PECO's default service provider ("DSP") plan.
- NRG-1-46 Are any of Exelon's Affiliates planning to participate in the RFPs for PECO's default service? If so, please provide any and all internal documentation discussing strategic and management plans for Exelon's affiliates to participate in these upcoming RFPs.
- NRG-1-47 Will any Exelon affiliate(s) be responsible for serving all or part of the "PECO share" of the residential class through self-scheduling of its resources. If so, which resources have been earmarked to meet this load obligation?
- NRG-1-48 In the first year of the DSP, will any Exelon affiliate(s) be responsible for servicing the fixed price option plan for Large Commercial and Industrial customers?
- NRG-1-49 The DSP proposes that 10% of the Small Commercial class load, 15% of the Medium Commercial class load, and 100% of the Large Commercial and Industrial class load (less any that choose the fixed price option) be serviced through contracts where the energy price is indexed to PJM day-ahead ("DA") market prices for energy. Will this specifically be the hourly PECO load zone LMP or (some other combination of) nodal LMPs? Will these contracts include separate payment for non-energy services?
- NRG-1-50 What is the term of the full requirement contracts proposed for load tranches serving Large Commercial and Industrial customer class?
- NRG-1-51 Please provide an example of how the 65% limit ("Load Cap") for serving load will be applied across each customer class. For example, in determination of the 65% limit for a single supplier, will the load under the "PECO Share" for the residential class and the first year fixed option plan for Large Commercial and Industrial customers be included in the percentage share calculation?
- NRG-1-52 How does the 65% limit relate to the proposed tranches for each customer class as documented in Table I-2 in Exhibit C to the Settlement?
- NRG-1-53 PECO describes full requirements services as that consisting of "all energy, capacity, ancillary services, and other products necessary to serve default service customers" (see page 8 of PECO's Statement to the Settlement). Please provide specific examples of "other products" as referred to in the statement above.

- NRG-1-54 Please comprehensively summarize from the Full Requirements Supply Master Agreement all the proposed provisions that suppliers must meet in order to serve PECO's default service customers, namely the qualifications for "RFP Bidders" in "Part I Proposal" and "Part II Proposal."
- NRG-1-55 How was the number of fixed-price tranches determined (as described in Table I-2 to Exhibit C of the Settlement)?
- NRG-1-56 How was the number of spot-price tranches determined (as described in Table I-3 to Exhibit C of the Settlement)?
- NRG-1-57 What is the expected annual budget for PECO to administer its DSP?
- NRG-1-58 As information becomes available on the activities in the Spring 2009 solicitation for residential customer class (Exhibit C of the Settlement confirms that Part I begins on May 19th and ends on May 27th with notification of qualified RFP Bidders by June 1st), please provide information on the number and identity of "prospective suppliers" and qualified "RFP Bidders."
- NRG-1-59 How much of the "Alternate Energy Portfolio Standards" requirements does PECO anticipate must be fulfilled directly by RFP Bidders for the Spring 2009 solicitation?

65. Exelon objects to NRG-1-44, NRG-1-45, NRG-1-46, NRG-1-47, NRG-1-48, NRG-1-49, NRG-1-50, NRG-1-51, NRG-1-52, NRG-1-52, NRG-1-55, NRG-1-56, NRG-1-57, NRG-1-58, and NRG-1-59 on the basis that they are not relevant because Exelon's Application indicates that it will not have any effect on PECO unless the form of the transaction becomes a negotiated deal. However, in its Application, Exelon seeks Commission approval of the proposed change in control of NRG Energy and its affiliates, including the NRG Companies whether by acquiring NRG Energy Common Stock, by expanding the NRG Board and engaging in a proxy solicitation to elect Exelon-nominated directors to NRG's Board of Directors, or by entering into a negotiated deal. Thus, Exelon concedes that the requested information is likely to lead to the discovery of information relevant to the possible negotiated deal.

66. Further, as explained in paragraphs 40 and 48-50, *supra*, which are incorporated herein as if fully set forth, information related to market power and competition issues is likely to lead to the discovery of information relevant to the transaction proposed in Exelon's Application. *See* 52 Pa. Code § 5.321(b).

67. Exelon objects to NRG-1-58 on the basis that it seeks confidential and proprietary information. However, Exelon may not simply refuse to provide the allegedly proprietary or confidential information; rather, the NRG Companies must agree, and have agreed, to treat the information as confidential pursuant to the terms of Your Honor's Protective Order issued on April 17, 2009. Further, Exelon cannot credibly assert that the information is publically available from the Commission and, yet, is somehow still commercially sensitive. Such contrary positions are nonsensical.

68. Finally, Exelon objects on the basis that the requested information is publicly available from the Commission. However, as Exelon concedes in its objections, NRG-1-44, NRG-1-45, NRG-1-46, NRG-1-47, NRG-1-48, NRG-1-49, NRG-1-50, NRG-1-51, NRG-1-52, NRG-1-52, NRG-1-55, NRG-1-56, NRG-1-57, NRG-1-58, and NRG-1-59 seek information above and beyond the information contained in the Commission's files related to PECO's DSP proceedings. *See* 52 Pa. Code § 5.342(a)(4) ("Answer each interrogatory fully and completely...").

L. Exelon's objection to NRG-1-60 Lacks Merit

69. NRG Interrogatory number NRG-1-60 provides as follows:

NRG-1-60 Please respond to the following questions in relation to Exelon's preliminary proxy filing (issued on April 17th 2009):

- (a) The unaudited pro forma of the combined company on page 53 shows that the total long-term debt of Exelon will

increase from \$13 billion to \$21 billion after the merger. Please provide a comparison of the annual debt payments pre- and post-merger, including a breakdown of interest versus principal. Please identify the sources of income (including dividends from affiliates) that would be earmarked to service the increase in debt.

- (b) On page 58, Exelon states that it assumes a 10% interest rate on a ten-year bond to refinance NRG's \$7,695 million debt. Please describe how Exelon developed this assumption. What credit rating is presumed by the 10% interest rate? What type of market conditions are the basis for the 10% rate? In Exelon's opinion, how have these market conditions changed since the proxy filing was issued?
- (c) In reference to the refinancing assumptions discussed in the proxy, please estimate the long-term debt position of Exelon post-merger at a 12%, 14% and 16% interest rate. Please provide a summary of the annual debt payments, balance sheet impacts and interest rate coverage parameters. Please provide this analysis in Excel-based format within a working version of the pro forma (with all formulas intact).
- (d) Both Exelon and NRG have recently issued Form 10-Qs for the first quarter of 2009. Has Exelon prepared any updated pro forma analysis based on the latest financial information? If so, please provide an updated pro forma and summarize any changes from the pro forma from the April 17th 2009 proxy filing.
- (e) The pro forma on page 51-53 of the April 17th 2009 proxy filing is presented on a consolidated basis. Please provide the pro forma for the holding company only, Exelon Corporation, under the same condition as the consolidated pro forma.

70. Exelon objects to NRG-1-60 on the basis that it is overly burdensome and would allegedly require an unreasonable investigation. However, under 52 Pa. Code § 5.321(b), the NRG Companies are entitled to obtain discovery of any matter not privileged that is relevant to a pending proceeding, or any matter that is reasonably calculated to lead to the discovery of admissible evidence. Additionally, the NRG Companies are entitled to request information and

documents that “are in the possession, custody or control of the party upon whom the request is served.” 52 Pa. Code § 5.349(a)(1). Thus, absent a proper and valid objection, Exelon is required to disclose and produce any requested information or documents in its possession or control. Finally, Exelon has failed to provide any explanation of why its objection applies. *See* 52 Pa. Code § 5.342(c) (“An objection must ... [i]nclude a description of the facts and circumstances purporting to justify the objection.”).

71. Further, NRG-1-60 seeks information related to the financial strength of Exelon and the NRG Companies after the proposed acquisition. Such information is clearly relevant to the transaction proposed in Exelon’s Application.

M. Exelon’s Objections to NRG-1-72 and NRG-1-73 Lack Merit

72. NRG Interrogatory numbers NRG-1-72 and NRG-1-73 provides as follows:

NRG-1-72 Please provide the current number of customers and anticipated number of customers after the merger served by PECO by type of business (gas and electricity) and by customer type (residential, commercial, industrial and other customers), with their respective actual (2008) and projected (2009-2014) annual consumption figures (in MWh for electric consumers and in MCF for gas customers).

NRG-1-73 Please provide the 2009 projected revenue budgets for PECO by business type (gas and electricity) and by customer type (residential, commercial, industrial and other customers).

73. Exelon objects to NRG-1-72 and NRG 1-73 on the basis that they are not relevant and require an unreasonable investigation. However, under 52 Pa. Code § 5.321(b), the NRG Companies are entitled to obtain discovery of any matter not privileged that is relevant to a pending proceeding, or any matter that is reasonably calculated to lead to the discovery of admissible evidence. Additionally, the NRG Companies are entitled to request information and documents that “are in the possession, custody or control of the party upon whom the request is

served.” 52 Pa. Code § 5.349(a)(1). Thus, absent a proper and valid objection, Exelon is required to disclose and produce any requested information or documents in its possession or control. Finally, Exelon has failed to provide any explanation of why its objection applies. *See* 52 Pa. Code § 5.342(c) (“An objection must ... [i]nclude a description of the facts and circumstances purporting to justify the objection.”).

74. Further, NRG-172 and NRG-1-73 are likely to lead to the discovery of information related to the financial strength of Exelon and its subsidiary, PECO, after the proposed acquisition of NRG Energy. Such information is clearly relevant to the transaction proposed in Exelon’s Application.

N. Exelon’s Objections to NRG-1-74, NRG-1-75, NRG-1-76, NRG-1-77, NRG-1-78, and NRG-1-79 Lack Merit.

75. NRG Interrogatory numbers NRG-1-74, NRG-1-75, NRG-1-76, NRG-1-77, NRG-1-78, and NRG-1-79 provide as follows:

NRG-1-74 In Exelon’s “Report on Status of Decommissioning Funding for Reactors,” submitted to the U.S. Nuclear Regulatory Commission (“NRC”) on March 31, 2009 (“Decommissioning Funding Status Report”), Exelon admits that its decommissioning funds for at least eight of its nuclear power reactor units do not meet the NRC’s minimum funding requirement under 10 C.F.R. 50.75(b) and (c) as of December 31, 2008. For each of the reactors owned by Exelon Generation Company, LLC (EGC), provide the following information:

- (a) The NRC minimum funding amount calculated in accordance with 10 C.F.R. 50.75, together with a calculation of the amount by which any of the reactors is underfunded.
- (b) Provide the basis for the calculation of the amount of radiological decommissioning funds estimated to be required for each reactor for which a shortfall in funding exists. If such amount for a reactor is based on a site-

specific decommissioning cost estimate, provide a complete copy of the site-specific cost estimate.

- (c) Describe whether the funding shortfall for any reactor is based solely on the cost of radiological decommissioning.
- (d) To the extent Exelon proposes to recover costs related to (i) decommissioning non-radiological portions of any reactor facility, (ii) greenfielding of the site, or (iii) spent nuclear fuel storage, provide cost estimates for each of these categories, together with any calculations, work sheets, or studies providing the basis for such cost estimates.

NRG-1-75 In Attachment 3 to the Decommissioning Funding Status Report, Exelon provides a schedule of the annual amounts remaining to be collected. The schedule indicates that for most of the reactors owned by EGC the annual amount remaining to be collected is zero (\$0), which includes at least six of the reactors that Exelon admits are currently underfunded (Braidwood Station Units 1 and 2, Byron Station Units 1 and 2, and LaSalle County Station Units 1 and 2). Describe the basis for the schedule shown in Attachment 3 to the Decommissioning Funding Status Report, and specifically explain why the annual amount remaining to be collected for many of the reactors is \$0.

NRG-1-76 In the Decommissioning Funding Status Report, Exelon states that “[Exelon Generation Company] is currently evaluating the alternative funding mechanisms, as allowed by 10 CFR 50.75, to address these funding shortfalls ...” Please describe the alternative funding mechanisms that Exelon is evaluating and describe any conclusions that Exelon has reached with respect to each alternative explored, including whether such alternative would comply with applicable NRC requirements and whether any such alternatives would include collections from Pennsylvania ratepayers under the Nuclear Decommissioning Cost Adjustment.

NRG-1-77 For any adjustments designed to compensate for the decommissioning funding shortfall for Limerick Generating Station, provide the basis for any requested adjustments in the Nuclear Decommissioning Cost Adjustment, including all calculations, work sheets, cost estimates or other documents supporting such adjustments.

NRG-1-78 Has Exelon prepared a site-specific decommissioning cost estimate for Limerick Generating Station? If so, provide a complete copy of such site-specific cost estimate. Any such site-specific estimate should include the basis for the estimated cost of low-level

radioactive waste disposal associated with decommissioning the Limerick facility.

NRG-1-79 With regard to NRC license renewal, please answer the following questions:

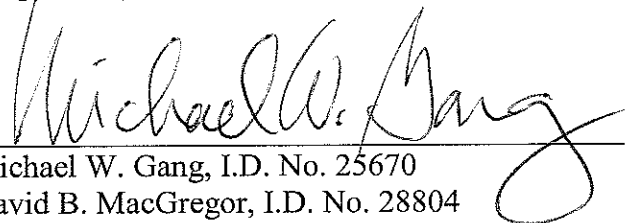
- (a) List Exelon's reactors that are going through or have gone through the NRC's license renewal process.
- (b) List Exelon's reactors that have not completed license renewal and indicate whether and when Exelon intends to seek renewal of the NRC licenses for each of these plants.
- (c) Has Exelon prepared any license renewal feasibility studies, or cost estimates for license renewal, for any of the reactors for which a decommissioning funding shortfall exists? If so, provide a complete copy of all such studies.
- (d) If Exelon intends to renew the NRC licenses for additional reactors, what are Exelon's estimated costs, including the costs of major capital expenditures, associated with the license renewals?

76. Exelon objects to NRG-1-74, NRG-1-75, NRG-1-76, NRG-1-77, NRG-1-78, and NRG-1-79 on the basis that they are not relevant and require an unreasonable investigation. However, under 52 Pa. Code § 5.321(b), the NRG Companies are entitled to obtain discovery of any matter not privileged that is relevant to a pending proceeding, or any matter that is reasonably calculated to lead to the discovery of admissible evidence. Additionally, the NRG Companies are entitled to request information and documents that "are in the possession, custody or control of the party upon whom the request is served." 52 Pa. Code § 5.349(a)(1). Thus, absent a proper and valid objection, Exelon is required to disclose and produce any requested information or documents in its possession or control. Finally, Exelon has failed to provide any explanation of why its objection applies. *See* 52 Pa. Code § 5.342(c) ("An objection must ... [i]nclude a description of the facts and circumstances purporting to justify the objection.").

77. Further, NRG-1-74, NRG-1-75, NRG-1-76, NRG-1-77, NRG-1-78, and NRG-1-79 are likely to lead to the discovery of information related to the financial strength of Exelon and its subsidiaries after the proposed acquisition of NRG Energy. Exelon must demonstrate that Pennsylvania ratepayers will be shielded, through effective ring-fencing, from these nuclear decommissioning costs. Such information is clearly relevant to the transaction proposed in Exelon's Application.

WHEREFORE, NRG Energy Center Pittsburgh LLC and NRG Energy Center Harrisburg LLC respectfully request that Your Honor grant their Motion to Compel and order Exelon to answer fully all of the NRG Interrogatories, as modified herein.

Respectfully submitted,



Michael W. Gang, I.D. No. 25670
David B. MacGregor, I.D. No. 28804
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DATED: May 14, 2009

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

CERTIFICATION OF COUNSEL

I, Christopher T. Wright, hereby certify that, pursuant to the Prehearing Order No. 1 issued by Administrative Law Judge Marlane R. Chestnut on April 16, 2009, counsel for the NRG Companies and counsel for Exelon have engaged in several discussions in attempt to resolve Exelon's objections to the discovery requests of the NRG Companies.

I further certify that, on May 13, 2009, the NRG Companies' counsel and Exelon's counsel participated in a telephone conference in which Exelon indicated that it will attempt to answer in part on Friday, May 15, 2009, certain interrogatories to which it objected. However, Exelon was unwilling to withdraw or otherwise modify any of its objections to fifty-three (53) of the NRG Companies' eighty-three (83) interrogatories. It is unknown to what extent Exelon will answer the interrogatories in question or whether the answers provided will be satisfactory. Further, given the truncated discovery schedule in this proceeding and the fact that the direct testimony of the NRG Companies is due on June 5, 2009, a timely response to the interrogatories is essential. Accordingly, the foregoing Motion to Compel Applicants to Answer Interrogatories and Requests for Production of Documents Propounded by NRG Companies on Exelon – Set 1 is required under the accelerated schedule in this proceeding and is necessary to ensure that the NRG Companies receive full and complete answers to interrogatories in time to comply with the procedural schedule set forth in Prehearing Order No. 1.



Christopher T. Wright

Date: May 14, 2009

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

APPENDIX A

**Interrogatories And Requests for Production of Documents
Propounded by NRG Companies on Exelon– Set I**



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May 5, 2009

VIA ELECTRONIC AND FIRST CLASS MAIL

Kevin J. McKeon, Esquire
Hawke McKeon & Sniscak LLP
100 North Tenth Street
P.O. Box 1778
Harrisburg, PA 17105-1778


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 Nos. A-2009-2093057, A-2009-2093058 and A-2009-2093059; **INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS PROPOUNDED BY NRG COMPANIES ON EXELON - SET I**

Dear Mr. McKeon:

Enclosed please find two copies of the Interrogatories and Requests for Production of Documents - Set I of the NRG Companies addressed to Exelon. Pursuant to ALJ Chestnut's Prehearing Order No. 1, please forward your responses to me by May 15, 2009.

If you have any questions, please feel free to contact me.

Sincerely,



David P. Zambito

Counsel for
NRG Energy, Inc., NRG Energy Center Pittsburgh LLC, NRG Energy Center Harrisburg LLC, NRG Energy Center Paxton LLC, Conemaugh Power LLC, and Keystone Power LLC

DPZ/kmg

Enclosures

c: James J. McNulty, Secretary (Letter and Certificate of Service only)
Per Certificate of Service

ALLENTOWN HARRISBURG LANCASTER PHILADELPHIA PITTSBURGH PRINCETON WASHINGTON, D.C.

A PENNSYLVANIA PROFESSIONAL CORPORATION

APPENDIX A

CERTIFICATE OF SERVICE

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

I hereby certify that I have this day served a true copy of the foregoing Interrogatories and Requests for Production of Documents Propounded by NRG Energy, Inc., NRG Energy Center Pittsburgh LLC, NRG Energy Center Harrisburg LLC, NRG Energy Center Paxton LLC, Conemaugh Power LLC, and Keystone Power LLC ("NRG Companies") on Exelon – Set I, upon the parties, listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

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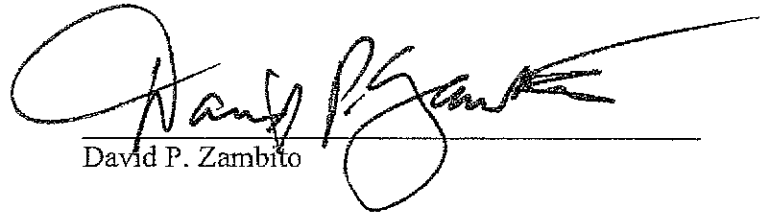
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DATED: May 5, 2009



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	:	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	:	
Approvals or Certificates Appropriate,	:	
Customary or Necessary under the Public	:	
Utility Code to Carry Out the Transaction	:	
Described in the Application	:	

**INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS
PROPOUNDED BY NRG COMPANIES ON EXELON – SET I**

Pursuant to 66 Pa.C.S. § 333 and 52 Pa. Code §§ 5.341 *et seq.*, NRG Energy Center Pittsburgh LLC and NRG Energy Center Harrisburg LLC (hereinafter, collectively “NRG Companies”), propound the following Interrogatories and Requests for Production of Documents on Exelon Corporation, Exelon Xchange Corporation, and PECO Energy Company (hereinafter, collectively “Exelon”) – Set I.

INSTRUCTIONS AND DEFINITIONS

1. “NRG Pittsburgh” refers to NRG Energy Center Pittsburgh LLC, its predecessors, and/or all attorneys, agents, employees and representatives acting on its behalf.
2. “NRG Harrisburg” refers to NRG Energy Center Harrisburg LLC, its predecessors, and/or all attorneys, agents, employees, and representatives acting on its behalf.

3. "NRG Companies" refers collectively to NRG Energy Center Pittsburgh LLC and NRG Energy Center Harrisburg LLC, and their predecessors.

4. "NRG Energy" refers to NRG Energy, Inc..

5. "Exelon" or "Applicants" refers collectively to Exelon Corporation, Exelon Xchange Corporation, and PECO Energy Company.

6. "PECO" refers to PECO Energy Company.

7. "Exelon Xchange" refers to Exelon Xchange Corporation.

8. "Transaction" or "proposed transaction" refers to the transaction proposed in the above-captioned application.

9. To "identify" a natural person means to state that person's full name, title or position, employer, last known address, and last known telephone number.

10. To "identify" a business entity means to state the full name of such business, the form of the business, and its location or address.

11. To "identify" a "document" means to provide all of the following information irrespective of whether the document is deemed privileged or subject to any claim of privilege:

- a. The title or other means of identification of each such document;
- b. The date of each such document;
- c. The author, preparer or signer of each such document; and
- d. A description of the subject matter of such document sufficient to permit an understanding of its contents and importance to the testimony or position being examined and the present or last known location of the document. The specific nature of the document should also be stated (e.g., letter, business record, memorandum, computer print-out, etc.).

In lieu of "identifying" any document, it shall be deemed a sufficient compliance with these interrogatories to attach a copy of each such document to the answers hereto and reference said document to the particular interrogatory to which the document is responsive.

12. "Document" means the original and all drafts of all written and graphic matter, however produced or reproduced, of any kind or description, whether or not sent or received, and all copies thereof which are different in any way from the original (whether by interlineation, date-stamp, notarization, indication of copies sent or received, or otherwise), including without limitation, any paper, book, account, photograph, blueprint, drawing, sketch, schematic, agreement, contract, memorandum, press release, circular, advertising material, correspondence, letter, telegram, telex, object, report, opinion, investigation, record, transcript, hearing, meeting, study, notation, working paper, summary, intra-office communication, diary, chart, minutes, index sheet, computer software, computer-generated records or files, however stored, check, check stub, delivery ticket, bill of lading, invoice, record or recording or summary of any telephone or other conversation, or of any interview or of any conference, or any other written, recorded, transcribed, punched, taped, filmed, or graphic matter of which Exelon has or has had possession, custody or control, or of which Exelon has knowledge.

13. "Communication" means any manner or form of information or message transmission, however produced or reproduced, whether as a document as herein defined, or orally or otherwise, which is made, distributed, or circulated between or among persons, or data storage or processing units.

14. "Date" means the exact day, month, and year, if ascertainable, or if not, the best approximation thereof.

15. Items referred to in the singular include those in the plural, and items referred to in the plural include those in the singular.

16. Items referred to in the masculine include those in the feminine, and items referred to in the feminine include those in the masculine.

17. The answers provided should first restate the question asked and identify the person(s) supplying the information.

18. In answering these interrogatories, you are requested to furnish all information that is available to Exelon, including information in the possession of Exelon's attorneys, agents or investigators, and not merely such information of Exelon's own knowledge. If any of the interrogatories cannot be answered in full after exercising due diligence to secure the requested information, please so state and answer to the extent possible, specifying Exelon's inability to answer the remainder, and stating whatever information Exelon has concerning the unanswered portions. If Exelon's answer is qualified in any particular, please set forth the details of such qualification.

19. If Exelon objects to providing any document requested on any ground, identify such document by describing it as set forth in Instruction 7 and state the basis of Exelon's objection.

20. If Exelon objects to part of an interrogatory and refuses to answer that part, state Exelon's objection and answer the remaining portion of that interrogatory. If Exelon objects to the scope or time period of an interrogatory and refuses to answer for that scope or time period, state Exelon's objection and answer the interrogatory for the scope or time period that Exelon believes is appropriate.

21. If, in connection with an interrogatory, Exelon contends that any information, otherwise subject to discovery, is covered by either the attorney-client privilege, the so-called "attorneys' work product doctrine," or any other privilege or doctrine, then specify the general subject matter of the information and the basis to support each such objection.

22. If any information is withheld on grounds of privilege or other protection from disclosure, provide the following information: (a) every person to whom such information has been communicated and from whom such information was learned; (b) the nature and subject matter of the information; and, (c) the basis on which the privilege or other protection from disclosure is claimed.

23. These interrogatories are continuing and Exelon is obliged to change, supplement and correct all answers given to conform to new or changing information.

**INTERROGATORIES AND REQUESTS FOR
PRODUCTION OF DOCUMENTS – NRG COMPANIES SET I**

NRG-1-1 Identify any and all district heating or cooling plants currently owned or operated by Exelon or any of its affiliates. For each such plant, identify the following:

- (a) The name of the plant.
- (b) The location of the plant.
- (c) The services provided by the plant.
- (d) Whether the plant is subject to regulation as a utility and, if so, the name of the regulatory body and a copy of the most recent tariff if applicable.
- (e) The name of the entity or affiliate that owns or operates the plant.
- (f) The date that Exelon or any of its affiliates commenced operation and/or ownership of the plant.
- (g) The number of customers served by the plant.
- (h) A copy of the contract of any customers served by the plant.

NRG-1-2 Identify any and all district heating or cooling plants owned or operated in the past by Exelon or any of its affiliates since 1985. For each such plant, identify the following:

- (a) The name of the plant.
- (b) The location of the plant.
- (c) The services provided by the plant.
- (d) Whether the plant was subject to regulation as a utility and, if so, the name of the regulatory body and a copy of the most recent tariff if applicable.
- (e) The name of the entity or affiliate that owns or operates the plant.
- (f) The date that Exelon or any of its affiliates commenced operation and/or ownership of the plant.

- (g) The date that Exelon or any of its affiliates ceased operation and/or ownership of the plant.
- (h) The reason/s that Exelon or any of its affiliates no longer own and/or operate the plant.
- (i) The number of customers served by the plant.
- (j) A copy of the contract of any customers served by the plant.
- (k) A copy of the application for approval of the cessation of operation and/or sale of the plant, if applicable.
- (l) A copy of any order from a regulatory body approving the cessation and/or sale of the plant.

NRG-1-3 For any plant identified in response to Interrogatories NRG-1-1 and NRG-1-2, identify and produce a copy of any and all of the following received since 1985:

- (a) accident or incident reports;
- (b) environmental violations, notice of violations, or reports; and
- (c) OSHA violations, notice of violations, citations, or reports.

NRG-1-4 For any plant identified in response to Interrogatories NRG-1-1 and NRG-1-2, identify any formal or informal customer complaint, since 1985, regarding the service provided by the plant. For any such complaint, provide the following:

- (a) A copy or description of the complaint.
- (b) The name of the adjudicatory body, court, or other agency where the complaint was filed.
- (c) Identify in detail the nature of the complaint.
- (d) State whether the complaint was resolved and, if so, explain in detail the manner in which the complaint was resolved.

- NRG-1-5 Identify and produce any internal communications, including electronic messages, or documents in the control of Exelon or any of its affiliates, generated within the past ten years, that relate to or address the ownership or operation of district heating or cooling plants in Pennsylvania. In the case of oral communications, describe in detail the communications and produce any notes or other written memorializations of the communications.
- NRG-1-6 Identify the name, address, telephone number, employer, and job title of each expert you expect to call as a witness in the hearings of this matter, and identify and describe each specific subject matter on which the witness is expected to testify.
- NRG-1-7 For each expert witness identified in response to NRGP-1-14, please identify, describe, and provide the following:
- (a) The substance of each opinion on which the witness will testify;
 - (b) The basis for each opinion on which the witness will testify;
 - (c) A summary of the expert witness' background and qualifications including, without limitation, schools attended, dates of attendance, degree(s) received, work experience, articles published, and the area(s) of expertise;
 - (d) Each document supplied to, reviewed by, relied on, or prepared by the expert witness in connections with his/her testimony in this matter;
 - (e) All proceedings, other than this case, in which the witness has filed testimony or testified on the same or similar topic as those to be addressed in this proceeding, by agency, court, case name, and case number;
 - (f) Whether the expert witness has ever provided expert reports and/or testimony for you in prior cases. If so, please describe the nature and content of such report and/or testimony and the nature of the underlying dispute; and,
 - (g) All studies or analyses on which the expert witness will base any portion of her/his testimony.

- NRG-1-8 In its Form S-4, Exelon indicates that it may make any changes to NRG Energy or its subsidiaries that Exelon deems necessary or convenient. Please describe in detail any changes to NRG Energy or the NRG Companies that Exelon may undertake within the next ten (10) years if the proposed transaction is approved, including, but not limited to, any changes in corporate structure, assets, properties, marketing strategies, capitalization management, personnel or dividend policy.
- NRG-1-9 Describe in detail how Exelon will finance the proposed transaction if it is approved.
- NRG-1-10 Identify whether Exelon is required to satisfy the requirements of Section 203 of the Delaware General Corporation Law, DEL. CODE ANN. tit. 8, § 203, in order to consummate the proposed transaction if approved. If so, please explain in detail how Exelon will satisfy these requirements.
- NRG-1-11 Explain in detail what effect the proposed transaction would have on the cost of capital, return on equity, and debt costs with respect to the ratepayers of NRG Pittsburgh.
- NRG-1-12 Explain in detail what effect the proposed transaction would have on the cost of capital, return on equity, and debt costs with respect to the ratepayers of NRG Harrisburg.
- NRG-1-13 Explain in detail what effect the proposed transaction would have on the cost of capital, return on equity, and debt costs with respect to the ratepayers of PECO.
- NRG-1-14 Identify any and all approvals or certifications required for Exelon to effectuate the proposed transaction. For each such approval, identify the following:

- (a) The name of the administrative agency.
- (b) Whether Exelon has filed the documents necessary to seek the required approval or certification.
- (c) Whether any part of Exelon's request or filing has been granted or denied.
- (d) A copy of any order, decision, opinion, or other dispositive document issued by the identified agency.

NRG-1-15 Provide any and all pension reports filed in the last five (5) years with the Pennsylvania Public Utility Commission by Exelon and/or any of its affiliates.

NRG-1-16 Describe in detail Exelon's investment plans to fund the existing and future pension funds of NRG Energy if the proposed transaction is approved.

NRG-1-17 Identify all documents relating to or referring to the proposed acquisition of NRG Energy by Exelon.

NRG-1-18 Identify any and all documents relating to or referring to actual competitive or potential competitive effects of the proposed transaction on energy markets.

NRG-1-19 Identify any and all market surveys, analyses, and studies prepared by Exelon or in the possession of Exelon that relate to or refer to any actual or potential effect the proposed transaction would have on competition in the energy market.

NRG-1-20 List the names and addresses of each of the companies that have competed with Exelon in the PJM East market in the last five (5) years.

- NRG-1-21 Identify any and all documents relating to or referring to consideration by Exelon, or any officer or agent thereof, of the acquisition of NRG Energy, whether by tender offer, exchange offer, negotiated agreement, or otherwise.
- NRG-1-22 Identify the minutes of all meetings of board members of Exelon at or during which the acquisition of NRG Energy, whether by tender offer, negotiated agreement, or otherwise, was discussed, considered, analyzed, or authorized, and all documents that were prepared for or relied upon in any such meeting.
- NRG-1-23 Identify any and all documents relating to or referring to NRG Pittsburgh, its business and/or its management, and/or the results or effects of the proposed transaction on NRG Pittsburgh.
- NRG-1-24 Identify any and all documents relating to or referring to NRG Harrisburg, its business and/or its management, and/or the results or effects of the proposed transaction on NRG Harrisburg.
- NRG-1-25 Identify each of the NRG Companies' ongoing capital projects and explain in detail Exelon's commitment to such projects if the proposed transaction is approved.
- NRG-1-26 Explain in detail Exelon's plans for and commitment to future capital investment in the NRG Companies if the proposed transaction is approved.
- NRG-1-27 Explain in detail how Exelon intends to improve the service, reduce costs, and foster economic growth and development of the NRG Companies if the proposed transaction is approved.

NRG-1-28 Identify any and all employees of Exelon or any of its affiliates with experience in operating a district heating, cooling, or steam plant. For any such employee, provide the following:

- (a) the name, address, and telephone number of the employee;
- (b) the name and/or location of the employer;
- (c) number of years experience working or operating a district heating, cooling, or steam plant;
- (d) job title and responsibilities while employed with the district heating, cooling, or steam plant; and
- (e) if different, the employee's current job title and place of employment.

NRG-1-29 Identify any and all persons responsible for supervising and/or managing the NRG Companies district heating and cooling plants if the proposed transaction is approved. For any such persons, provide the following:

- (a) the name, address, and telephone number of each identified person;
- (b) the name of current employer of each identified person;
- (c) the current job title and job responsibilities of each identified person; and
- (d) number of years experience working or operating a district heating, cooling, or steam plant.

NRG-1-30 In the matter of Retail Electricity Procurements, please answer the following questions:

- (a) **New Jersey:** Has Exelon or any of its affiliates participated in any of the basic generation service auctions held in New Jersey from 2002 onward? If so, please provide the following information:
 - (i) Date each procurement auction.
 - (ii) For each auction, identify the participating Exelon affiliate.

- (iii) Specify products offered.
 - (iv) For each product, specify the quantity and price of bids submitted by Exelon and/or its affiliates.
 - (v) Specify which bids, if any, were accepted and awarded a contract.
 - (vi) Provide a copy of each contract employed in the New Jersey Basic Generation Service in auctions where Exelon or its affiliates participated.
- (b) **Washington, D.C.:** Has Exelon or any of its affiliates participated in any of the standard offer RFPs held in Washington, D.C. from 2005 onward? If so, please provide the following information:
- (i) Date each procurement auction.
 - (ii) For each auction, identify the participating Exelon affiliate.
 - (iii) Specify products offered.
 - (iv) For each product, specify the quantity and price of bids submitted by Exelon and/or its affiliates.
 - (v) Specify which bids, if any, were accepted and awarded a contract.
 - (vi) Provide a copy of each contract employed in the D.C. standard offer RFPs where Exelon or its affiliates participated.
- (c) **Delaware:** Has Exelon or any of its affiliates participated in any of the standard offer RFPs held in Delaware from 2006 onward? If so, please provide the following information:
- (i) Date each procurement auction.
 - (ii) For each auction, identify the participating Exelon affiliate.
 - (iii) Specify products offered.
 - (iv) For each product, specify the quantity and price of bids submitted by Exelon and/or its affiliates.
 - (v) Specify which bids, if any, were accepted and awarded a contract.
 - (vi) Provide a copy of each contract employed in each Delaware standard offer RFP where Exelon or its affiliates participated

- (d) **Maryland:** Has Exelon or any of its affiliates participated in any of the standard offer service RFPs held in Maryland from 2003 onward? If so, please provide the following information:
- (i) Date each procurement auction.
 - (ii) For each auction, identify the participating Exelon affiliate.
 - (iii) Specify products offered.
 - (iv) For each product, specify the quantity and price of bids submitted by Exelon and/or its affiliates.
 - (v) Specify which bids, if any, were accepted and awarded a contract.
 - (vi) Provide a copy of each contract employed in each Maryland SOS procurement event where Exelon or its affiliates participated.
- (e) **Illinois:** Has Exelon or any of its affiliates participated in the 2006 Illinois Auction (covering the 2007 period) or any of the ComEd standard products RFPs or Ameren Basic Generation Service RFPs held from 2007 onward? If so, please provide the following information:
- (i) Date each procurement auction.
 - (ii) For each auction, identify the participating Exelon affiliate.
 - (iii) Specify products offered.
 - (iv) For each product, specify the quantity and price of bids submitted by Exelon and/or its affiliates.
 - (v) Specify which bids, if any, were accepted and awarded a contract.
 - (vi) Provide a copy of each contract employed in each procurement event (Illinois Auction, ComEd RFP or Ameren BGS) where Exelon or its affiliates participated.
- (f) **Connecticut:** Has Exelon or any of its affiliates participated in any of the transition standard offer solicitations held in Connecticut from 2004 to 2006, or in any of the standard offer solicitations held from 2007 onward? If so, please provide the following information:
- (i) Date each procurement auction.
 - (ii) For each auction, identify the participating Exelon affiliate.
 - (iii) Specify products offered.

- (iv) For each product, specify the quantity and price of bids submitted by Exelon and/or its affiliates.
 - (v) Specify which bids, if any, were accepted and awarded a contract.
 - (vi) Provide a copy of each contract employed in each Connecticut TSO or SO solicitations where Exelon or its affiliates participated.
- (g) **Massachusetts:** Has Exelon or any of its affiliates participated in any of the default service RFPs held in Massachusetts from 2000 onward? If so, please provide the following information:
- (i) Date each procurement auction.
 - (ii) For each auction, identify the participating Exelon affiliate.
 - (iii) Specify products offered.
 - (iv) For each product, specify the quantity and price of bids submitted by Exelon and/or its affiliates.
 - (v) Specify which bids, if any, were accepted and awarded a contract.
 - (vi) Provide a copy of each contract employed in the Massachusetts Default service RFPs where Exelon or its affiliates participated.
- (h) **New Hampshire:** Has Exelon or any of its affiliates participated in the transition service RFP held in New Hampshire in 2005 or any of the default service RFPs held from 2006 onward? If so, please provide the following information:
- (i) Date each procurement auction.
 - (ii) For each auction, identify the participating Exelon affiliate.
 - (iii) Specify products offered.
 - (iv) For each product, specify the quantity and price of bids submitted by Exelon and/or its affiliates.
 - (v) Specify which bids, if any, were accepted and awarded a contract.
 - (vi) Provide a copy of each contract employed in the New Hampshire default service RFPs where Exelon or its affiliates participated.

NRG-1-31 Please provide a complete list of bidders in the 2006 Illinois Auction and the following information:

- (a) Names of bidders, organized by product and term.
- (b) Whether any bidders were disqualified and briefly explain why bidder was disqualified.
- (c) Quantity and price history of all qualified bids in the 2006 Auction.
- (d) Quantity and final price for each winning bidder in the 2006 Auction.
- (e) Credit and collateral requirements for each winning bidder in the 2006 Auction.
- (f) Provide a copy of the contract that was employed in the 2006 Auction.

NRG-1-32 Please provide a complete list of bidders in each procurement event since 2006 for full requirement service of ComEd's load. For each procurement event, please provide the following:

- (a) Names of bidders, organized by product and term.
- (b) Whether any bidders were disqualified and briefly explain why bidder was disqualified.
- (c) Quantity and price history of all qualified bids in the procurement event.
- (d) Quantity and final price for each winning bidder.
- (e) Credit and collateral requirements for each winning bidder.
- (f) Provide a copy of the contract that was employed in each procurement event.

NRG-1-33 Please provide a summary of the contractual terms for Exelon's obligation for Pennsylvania POLR over the period 2007-2010. Please specify the amount of retail load served in each year (actual and projected) by customer class, the price terms agreed to, and the specific generating assets that are earmarked, if specified in agreement, for POLR service.

NRG-1-34 Please provide a detailed summary of the terms of the financial swap agreement that Exelon provides for the benefit of ComEd consumers, as referenced on page 6 of Exelon's FERC Application (see Application of Exelon Corporation under Section 203 of The Federal Power Act, 18 December 2008).

NRG-1-35 Has Exelon entered into any other contracts or agreements to financially hedge or physically service retail load obligations in PJM in the past since 1998 or for anytime in the future? If so, please specify the key terms of such contract/agreement, including start and end date, quantity (volume) terms and price terms.

NRG-1-36 Please provide details as to Exelon's generation assets in PJM. Specifically, for each generating plant listed in response to OCA-I-2a and OCA-I-2b located within PJM, please specify the following information on a unit level for the period, 2007-2008:

- (a) actual monthly production;
- (b) monthly range of hourly production levels (minimum to maximum production in a given hour over the course of the month);
- (c) average actual heat rate, by month;
- (d) full loaded heat rate;
- (e) actual emissions by month for SO₂, NO_X, and CO₂;
- (f) ramp rate (MW/min), as provided to PJM;
- (g) monthly actual forced outage rate and maintenance schedule (days/month);
- (h) negotiated costs (capped generation offers) that Exelon has filed with PJM for each unit;
- (i) operating and maintenance costs for each unit, on an annual basis, broken down by fixed and variable categories, with variable O&M denoted in \$/MWh and fixed costs denoted in \$/kW-year; and
- (j) actual capital expenditures (in \$/kW).

NRG-1-37 Please provide the plant- or unit-specific bidding profile for Exelon's PJM assets. Please specify if the output generally is sold in the spot market, under contract, or in one of the ancillary services market?

- (a) If it is sold in the spot market, how much is sold in the day-ahead market versus the real-time market?
- (b) Please provide the bidding schedules for each day for the 2007 and 2008 timeframe. Please include the following information:
 - (i) Bid date;
 - (ii) Unit code;
 - (iii) MW portions of the unit's bid curve;
 - (iv) \$/MW portions of the unit's bid curve;
 - (v) No load cost;
 - (vi) Cold start cost;
 - (vii) Inter start cost;
 - (viii) Hot start cost;
 - (ix) Max daily starts;
 - (x) Min Run time;
 - (xi) Highest "Economic Maximum" value for the day for each unit;
 - (xii) Lowest "Economic Maximum" value for the day for each unit;
 - (xiii) Highest "Economic Minimum" value for the day for each unit;
 - (xiv) Lowest "Economic Minimum" value for the day for each unit; and
 - (xv) Average "Economic Minimum value for the day for each unit.
- (c) If contracted, please specify the terms of the contract, including duration, quantity, price, and dispatch control. Please specify the name of the counterparty.

- (d) If output from any of the units is sold into the ancillary services market, please provide monthly sales and revenues from such sales, classified by type of ancillary services market.

NRG-1-38 Have Exelon's bids in the energy or ancillary services markets ever been mitigated (offer capped)?

- (a) If yes, please provide specific details about each mitigation event, including the datetime stamp of the event, the name of the unit mitigated, the quantity bid for that unit, the pre-mitigation bid by Exelon and the post-mitigation outcome.

NRG-1-39 Please provide information on historical fuel supply contracts for assets of Exelon in PJM. For each unit, specify:

- (a) the name of the fuel supplier,
- (b) the term, quantity and price for each contract with each fuel supplier.

NRG-1-40 Please provide information as to historical FTRs/ARRs acquired by or awarded to Exelon by month in 2007 and 2008 (including any annual or long term FTRs). Include the following:

- (a) Please specify the path of such FTRs/ARRs, including the load zone for the sink and source.
- (b) Please specify the type of FTR and quantity.
- (c) Please specify for each FTR whether it was acquired through bilateral markets or through PJM auctions and provide the acquisition price.
- (d) Please specify the monthly revenues received under the ARR and FTRs listed in response to (a) through (c) above.

NRG-1-41 Please provide information on Exelon's bids into each Base Residual Auction (BRA) of the RPM (PJM's capacity market). Include the following:

- (a) Please specify the quantity of capacity offered, the location of that capacity and association with specific unit.
- (b) Please specify whether any of the capacity was sold outside the BRA through bilateral agreements.
- (c) Have any of Exelon's capacity bids in the BRA been mitigated? If yes, please describe the mitigation event, including information on date of mitigation, quantity mitigated, and the mitigated price as compared to original offer price.

NRG-1-42 What are Exelon's current plans for expansion of generation capacity in PJM?

- (a) For each planned unit, please provide location, fuel type and prime mover, expected commercial operation date, and nameplate capacity.
- (b) Does Exelon currently own any development sites? Please provide the location of each site.
- (c) Has any new generation equipment (turbines) been optioned?

NRG-1-43 Please provide information on planned transmission or distribution expansions in next five years (2009-2014).

- (a) Please specify the location, the expected cost and the timing (in-service date) of each expansion.

NRG-1-44. Please provide an hourly schedule of 2008 actual load broken down by the four customer classes proposed in the Settlement for PECO's default service provider ("DSP") plan.

NRG-1-45 Please provide an hourly schedule of projected 2011 load broken down by the four customer classes proposed in the Settlement for PECO's default service provider ("DSP") plan.

- NRG-1-46 Are any of Exelon's Affiliates planning to participate in the RFPs for PECO's default service? If so, please provide any and all internal documentation discussing strategic and management plans for Exelon's affiliates to participate in these upcoming RFPs.
- NRG-1-47 Will any Exelon affiliate(s) be responsible for serving all or part of the "PECO share" of the residential class through self-scheduling of its resources. If so, which resources have been earmarked to meet this load obligation?
- NRG-1-48 In the first year of the DSP, will any Exelon affiliate(s) be responsible for servicing the fixed price option plan for Large Commercial and Industrial customers?
- NRG-1-49 The DSP proposes that 10% of the Small Commercial class load, 15% of the Medium Commercial class load, and 100% of the Large Commercial and Industrial class load (less any that choose the fixed price option) be serviced through contracts where the energy price is indexed to PJM day-ahead ("DA") market prices for energy. Will this specifically be the hourly PECO load zone LMP or (some other combination of) nodal LMPs? Will these contracts include separate payment for non-energy services?
- NRG-1-50 What is the term of the full requirement contracts proposed for load tranches serving Large Commercial and Industrial customer class?
- NRG-1-51 Please provide an example of how the 65% limit ("Load Cap") for serving load will be applied across each customer class. For example, in determination of the 65% limit for a single supplier, will the load under the "PECO Share" for the residential class and the first year fixed option plan for Large Commercial and Industrial customers be included in the percentage share calculation?

- NRG-1-52 How does the 65% limit relate to the proposed tranches for each customer class as documented in Table I-2 in Exhibit C to the Settlement?
- NRG-1-53 PECO describes full requirements services as that consisting of “all energy, capacity, ancillary services, and other products necessary to serve default service customers” (see page 8 of PECO’s Statement to the Settlement). Please provide specific examples of “other products” as referred to in the statement above.
- NRG-1-54 Please comprehensively summarize from the Full Requirements Supply Master Agreement all the proposed provisions that suppliers must meet in order to serve PECO’s default service customers, namely the qualifications for “RFP Bidders” in “Part I Proposal” and “Part II Proposal.”
- NRG-1-55 How was the number of fixed-price tranches determined (as described in Table I-2 to Exhibit C of the Settlement)?
- NRG-1-56 How was the number of spot-price tranches determined (as described in Table I-3 to Exhibit C of the Settlement)?
- NRG-1-57 What is the expected annual budget for PECO to administer its DSP?
- NRG-1-58 As information becomes available on the activities in the Spring 2009 solicitation for residential customer class (Exhibit C of the Settlement confirms that Part I begins on May 19th and ends on May 27th with notification of qualified RFP Bidders by June 1st), please provide information on the number and identity of “prospective suppliers” and qualified “RFP Bidders.”

NRG-1-59 How much of the "Alternate Energy Portfolio Standards" requirements does PECO anticipate must be fulfilled directly by RFP Bidders for the Spring 2009 solicitation?

NRG-1-60 Please respond to the following questions in relation to Exelon's preliminary proxy filing (issued on April 17th 2009):

- (a) The unaudited pro forma of the combined company on page 53 shows that the total long-term debt of Exelon will increase from \$13 billion to \$21 billion after the merger. Please provide a comparison of the annual debt payments pre- and post-merger, including a breakdown of interest versus principal. Please identify the sources of income (including dividends from affiliates) that would be earmarked to service the increase in debt.
- (b) On page 58, Exelon states that it assumes a 10% interest rate on a ten-year bond to refinance NRG's \$7,695 million debt. Please describe how Exelon developed this assumption. What credit rating is presumed by the 10% interest rate? What type of market conditions are the basis for the 10% rate? In Exelon's opinion, how have these market conditions changed since the proxy filing was issued?
- (c) In reference to the refinancing assumptions discussed in the proxy, please estimate the long-term debt position of Exelon post-merger at a 12%, 14% and 16% interest rate. Please provide a summary of the annual debt payments, balance sheet impacts and interest rate coverage parameters. Please provide this analysis in Excel-based format within a working version of the pro forma (with all formulas intact).
- (d) Both Exelon and NRG have recently issued Form 10-Qs for the first quarter of 2009. Has Exelon prepared any updated pro forma analysis based on the latest financial information? If so, please provide an updated pro forma and summarize any changes from the pro forma from the April 17th 2009 proxy filing.
- (e) The pro forma on page 51-53 of the April 17th 2009 proxy filing is presented on a consolidated basis. Please provide the pro forma for the holding company only, Exelon Corporation, under the same condition as the consolidated pro forma.

NRG-1-61 Does Exelon or PECO have any expansion plans for its transmission and distribution businesses in PJM over the next five years (2009-2014)? If yes, please list all the proposed projects, describe the project briefly and specify whether they need (or have received) regulatory approval, specify the budgeted capex for each project and the commercial in-service date. How does Exelon plan to finance these projects? What portion of these projects will be on balance sheet for PECO and ComEd? How will the leverage of PECO and ComEd change?

NRG-1-62 On page 11-12 of the Affidavit of Susan D. Abbott in Exelon's FERC filing for Section 203 approval of the proposed merger, please find a table which compares Exelon's ring fencing proposal to those conditions prevailing in OPUC/PGE:

- (a) Exelon notes in its Section 203 application that it proposes at least one independent director for each company's board. With this change in mind, please specify the total number of planned post-merger directors for each company. Please confirm that the articles of incorporation or bylaws for each company are defined on the basis of the act of the majority of the directors present at a meeting. Are any determinations not subject to majority voting of the Board of Directors?
- (b) In Exelon's opinion, what are necessary threshold levels for liquidity, dividend payout and interest coverage ratios, per standards applied by the US credit rating agencies, to maintain investment grade rating?
- (c) What is the earliest date that PECO can seek to raise rates for electricity distribution? For electricity transmission? For natural gas distribution?
- (d) Exelon has some long term debt that will be payable in the next twelve months. In addition, Exelon has acknowledged that there are refinancing requirements with the merger. Under a hypothetical set of future market conditions, if Exelon's debt costs rose by 300 basis points from current levels, please estimate the increase in interest expense and impact on net income. At what level of increase in debt service costs would Exelon management have a fiduciary obligation to shareholders to seek rate modifications with regulators?
- (e) In other utilities' ring fencing plans a \$1.00 golden share vote mechanism has been implemented to prevent enforcement of "voluntary bankruptcy". Is it correct that Exelon has not proposed such a safeguard in respect to its regulated utilities?
- (f) As of March 31st 2009 (per Form 10-Q), PECO had \$2,291 million in common equity, \$87 million in preferred equity and \$3,363 million in total

long-term debt. In its Section 203 application at FERC, Exelon proposes that each utility will issue its own long-term debt. Will Exelon extend the same commitment to preferred equity?

- (g) Exelon proposes that PECO will not transfer assets to any other Exelon affiliate without regulatory approval. Will Exelon agree to an absolute, full restriction on the transfer of any property used or useful in the public service (existing and future assets) from PECO to other Exelon affiliates?
- (h) Exelon proposes the utilities will be managed by their Boards of Directors in accordance with their status as public utilities. Controls and procedures for cost allocations are proposed. What specific requirements or limits is Exelon proposing, if any, on allocations/charges from parent to utility?
- (i) Please summarize the operating parameters of the “money pool” arrangements. Please provide a statement for each quarter from January 1, 2006 through March 31, 2009 showing the maximum and average contribution and borrowing amounts by participant (affiliate) in the intercompany money pool. Please also note the terms of the borrowing (interest rate, payback period) as compared to external financing options in each quarter.

NRG-1-63 Historically Exelon’s equity beta has been 0.92 and NRG’s equity beta has been 1.11. A merger of these two entities could raise the merged companies’ beta above Exelon’s historic level. Has Exelon or its advisors conducted any analysis on the implications for the equity beta post-merger? If so, please provide all such analysis, work papers and other documentation.

NRG-1-64 According to the news release on March 19, 2009 on Exelon’s website, PECO has recently completed \$250 million debt offering. Please describe the purpose of this debt offering, noting the planned use of funds raised. Please provide the daily trading history of these newly issued bonds.

NRG-1-65 According to slide 6 in a file named “EXC_NRG equity roadshow deck_Wed Final.pdf” downloaded from the investor relations section of Exelon’s corporate website, Exelon has prepared NPV analysis of the merger. Please provide the detailed inputs to this analysis, including the assumptions and calculation of the discount rate.

NRG-1-66 As of March 31st 2009, as described on page 23 of PECO's Form 10-Q, PECO had \$551 million long term debt due within one year. What is the interest term of the debt? This debt is due to PECO Energy Transition Trust. Please explain the relationship between PECO and PECO Energy Transition Trust and the nature of that long term debt.

NRG-1-67 As of March 31st 2009, as described on page 23 of Form 10-Q, PECO had \$(420) million receivable from parent. Please explain this item.

NRG-1-68 As of December 31st 2008, as described on page 247, PECO had electricity transmission and distribution assets of \$5,174 million. Please provide the breakdown of this number.

NRG-1-69 Please confirm that the latest gas rate case filed by PECO and approved by the PAPUC was in docket number R-2008-2028394.

- (a) Please provide detailed rate base calculation and rate of return calculation as proposed by PECO at the initial phase of this rate case and as finally approved by the Commission.

NRG-1-70 When was the last time PECO filed an electricity rate case that was approved by the PAPUC?

- (a) Please provide the filing date and docket number.
- (b) Please provide detailed explanation of the approved rate base calculation.
- (c) Please provide detailed explanation of the approved rate of return calculation.

- NRG-1-71 Does PECO have plans to file a new rate case for either gas or electric rates? If so, when?
- NRG-1-72 Please provide the current number of customers and anticipated number of customers after the merger served by PECO by type of business (gas and electricity) and by customer type (residential, commercial, industrial and other customers), with their respective actual (2008) and projected (2009-2014) annual consumption figures (in MWh for electric consumers and in MCF for gas customers).
- NRG-1-73 Please provide the 2009 projected revenue budgets for PECO by business type (gas and electricity) and by customer type (residential, commercial, industrial and other customers).
- NRG-1-74 In Exelon's "Report on Status of Decommissioning Funding for Reactors," submitted to the U.S. Nuclear Regulatory Commission ("NRC") on March 31, 2009 ("Decommissioning Funding Status Report"), Exelon admits that its decommissioning funds for at least eight of its nuclear power reactor units do not meet the NRC's minimum funding requirement under 10 C.F.R. 50.75(b) and (c) as of December 31, 2008. For each of the reactors owned by Exelon Generation Company, LLC (EGC), provide the following information:
- (a) The NRC minimum funding amount calculated in accordance with 10 C.F.R. 50.75, together with a calculation of the amount by which any of the reactors is underfunded.
 - (b) Provide the basis for the calculation of the amount of radiological decommissioning funds estimated to be required for each reactor for which a shortfall in funding exists. If such amount for a reactor is based on a site-specific decommissioning cost estimate, provide a complete copy of the site-specific cost estimate.
 - (c) Describe whether the funding shortfall for any reactor is based solely on the cost of radiological decommissioning.
 - (d) To the extent Exelon proposes to recover costs related to (i) decommissioning non-radiological portions of any reactor facility, (ii) greenfielding of the site, or (iii) spent nuclear fuel storage, provide cost

estimates for each of these categories, together with any calculations, work sheets, or studies providing the basis for such cost estimates.

NRG-1-75 In Attachment 3 to the Decommissioning Funding Status Report, Exelon provides a schedule of the annual amounts remaining to be collected. The schedule indicates that for most of the reactors owned by EGC the annual amount remaining to be collected is zero (\$0), which includes at least six of the reactors that Exelon admits are currently underfunded (Braidwood Station Units 1 and 2, Byron Station Units 1 and 2, and LaSalle County Station Units 1 and 2). Describe the basis for the schedule shown in Attachment 3 to the Decommissioning Funding Status Report, and specifically explain why the annual amount remaining to be collected for many of the reactors is \$0.

NRG-1-76 In the Decommissioning Funding Status Report, Exelon states that “[Exelon Generation Company] is currently evaluating the alternative funding mechanisms, as allowed by 10 CFR 50.75, to address these funding shortfalls” Please describe the alternative funding mechanisms that Exelon is evaluating and describe any conclusions that Exelon has reached with respect to each alternative explored, including whether such alternative would comply with applicable NRC requirements and whether any such alternatives would include collections from Pennsylvania ratepayers under the Nuclear Decommissioning Cost Adjustment.

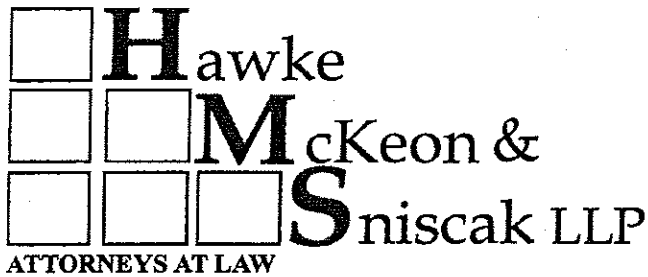
NRG-1-77 For any adjustments designed to compensate for the decommissioning funding shortfall for Limerick Generating Station, provide the basis for any requested adjustments in the Nuclear Decommissioning Cost Adjustment, including all calculations, work sheets, cost estimates or other documents supporting such adjustments.

NRG-1-78 Has Exelon prepared a site-specific decommissioning cost estimate for Limerick Generating Station? If so, provide a complete copy of such site-specific cost estimate. Any such site-specific estimate should include the basis for the estimated cost of low-level radioactive waste disposal associated with decommissioning the Limerick facility.

- NRG-1-79 With regard to NRC license renewal, please answer the following questions:
- (a) List Exelon's reactors that are going through or have gone through the NRC's license renewal process.
 - (b) List Exelon's reactors that have not completed license renewal and indicate whether and when Exelon intends to seek renewal of the NRC licenses for each of these plants.
 - (c) Has Exelon prepared any license renewal feasibility studies, or cost estimates for license renewal, for any of the reactors for which a decommissioning funding shortfall exists? If so, provide a complete copy of all such studies.
 - (d) If Exelon intends to renew the NRC licenses for additional reactors, what are Exelon's estimated costs, including the costs of major capital expenditures, associated with the license renewals?
- NRG-1-80 Identify any commitments that Exelon has or is willing to make with regard to the term of its ownership of NRG Pittsburgh.
- NRG-1-81 Identify any commitments that Exelon has or is willing to make with regard to the term of its ownership of NRG Harrisburg.
- NRG-1-82 Identify any commitment that Exelon has or is willing to make with regard to the period of time that it will maintain NRG Pittsburgh's current management.
- NRG-1-83 Identify any commitment that Exelon has or is willing to make with regard to the period of time that it will maintain NRG Harrisburg's current management.

APPENDIX B

**Exelon's Objections to Interrogatories
Propounded by the NRG Companies**



William T. Hawke
Kevin J. McKeon
Thomas J. Sniscak
Lillian Smith Harris
Scott T. Wyland
Todd S. Stewart

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May 11, 2009

Via Electronic Mail and First Class Mail

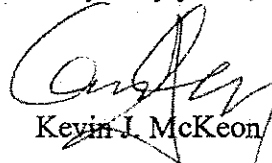
Michael W. Gang, Esquire
David P. Zambito, Esquire
Post & Schell, PC
17 North Second St., 12th Floor
Harrisburg, PA 17101-1601

Re: In 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 Interest Transactions, and All Other Approvals 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, and A-20093059;
APPLICANTS' OBJECTIONS TO NRG INTERROGATORIES, SET I

Dear Messers Gang and Zambito:

Enclosed are Objections of the Applicants to the Interrogatories of NRG, Set I, in the above-captioned matter.

Very truly yours,



Kevin J. McKeon

KEL/das/bes
Enclosures

MAILING ADDRESS: P.O. BOX 1778 HARRISBURG, PA 17105

APPENDIX B

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Application of Exelon Corporation, Exelon	:	
Xchange Corporation and PECO Energy	:	Docket Nos. A-2009-2093057;
Company for Certificates of Public	:	A-2009-2093058; and
Convenience Evidencing Approval of the	:	A-2009-2093059
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 Transactions	:	
Described in the Application	:	

**APPLICANTS' OBJECTIONS TO INTERROGATORIES
PROPOUNDED BY THE NRG COMPANIES**

Exelon Corporation, Exelon Xchange Corporation and PECO Energy Company (“Exelon” or “Applicants”) hereby object to interrogatories propounded by NRG Energy Center Pittsburgh LLC and NRG Energy Center Harrisburg LLC (“NRG” or “the Energy Centers”) on May 5, 2009.¹ Of the 83 discovery requests (that contain subparts totaling 267 separate questions or requests) propounded in Set I, Applicants object to interrogatories 2, 3, 4, 17, 18, 19, 20, 21, 22, 23, 24, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 65, 69, 70, 72, 73, 74, 75, 76, 77, 78, and 79. Applicants also object generally to the “Instructions and Definitions” section of the interrogatories. Specifically, Applicants object as follows:

¹Applicants are willing to discuss each of these objections with NRG to see if an informal resolution can be achieved.

I. General Objections to “Instructions and Definitions” section of NRG Interrogatories, Set I:

Applicants generally object to the “Instructions and Definitions” section of Interrogatories, Set I, to the extent that they may be construed to require responses to discovery that is overly broad, unreasonably burdensome, requires unreasonable investigation, special studies or analysis, or pertains to information available other sources. The lack of reasonable limitations set forth in the “Instructions and Definitions” when applied to the excessive detail requested in the many subparts could be construed to require Applicants to compile voluminous amounts of information that, of questionable value or relevance, has never been within Exelon’s custody or control, information reaching back so far in time (25 years in one example) as to be of no use or probative moment in this proceeding. Indeed, the unfettered instructions applied to these discovery requests would require production of volumes of information that is otherwise publically available to NRG. The unreasonably broad and unlimited nature of the “Instructions and Definitions” also fails to consider rules and regulations governing Applicants in several contexts that prohibit the disclosure of certain types of information that is requested, such as the NERC rules relating to disclosure of critical infrastructure information and rules pertaining to RFP processes and specific regional power auctions. Where there is a specific rule that applies to a specific interrogatory, an objection will be set forth below, but, in general, the “Instructions and Definitions” are deficient for failing to provide for these types of situations.

II. Objections to Specific Interrogatories:

Interrogatory NRG-I-2:

Identify any and all district heating or cooling plants owned or operated in the past by Exelon or any of its affiliates since 1985. For each such plant, identify the following:

- (a) The name of the plant.
- (b) The location of the plant.
- (c) The services provided by the plant.
- (d) Whether the plant was subject to regulation as a utility and, if so, the name of the regulatory body and a copy of the most recent tariff if applicable.
- (e) The name of the entity or affiliate that owns or operates the plant.
- (f) The date that Exelon or any of its affiliates commenced operation and/or ownership of the plant.
- (g) The date that Exelon or any of its affiliates ceased operation and/or ownership of the plant.
- (h) The reason/s that Exelon or any of its affiliates no longer own and/or operate the plant.
- (i) The number of customers served by the plant.
- (j) A copy of the contract of any customers served by the plant.
- (k) A copy of the application for approval of the cessation of operation and/or sale of the plant, if applicable.
- (l) A copy of any order from a regulatory body approving the cessation and/or sale of the plant.

Interrogatory NRG-I-3:

For any plant identified in response to Interrogatories NRG-1-1 and NRG-1-2, identify and produce a copy of any and all of the following received since 1985:

- (a) accident or incident reports;
- (b) environmental violations, notice of violations, or reports; and
- (c) OSHA violations, notice of violations, citations, or reports.

Interrogatory NRG-I-4:

For any plant identified in response to Interrogatories NRG-1-1 and NRG-1-2, identify any formal or informal customer complaint, since 1985, regarding the service provided by the plant. For any such complaint, provide the following:

- (a) A copy or description of the complaint.
- (b) The name of the adjudicatory body, court, or other agency where the complaint was filed.
- (c) Identify in detail the nature of the complaint.
- (d) State whether the complaint was resolved and, if so, explain in detail the manner in which the complaint was resolved.

OBJECTIONS TO NRG-I-2, NRG-1-3, AND NRG-1-4:

These interrogatories are overbroad, burdensome, and unreasonable in scope and volume. Response would require unreasonable investigation, study or analysis or production of documents maintained in public records that are available to NRG. Data of this breadth and level of detail, such as every customer contract dating back to 1985 is not relevant and would be burdensome to produce. Without waiver of objection, Applicants will provide responses to these interrogatories that include documents and information in the Applicant's possession that would not require unreasonable or burdensome investigation.

Interrogatory NRG-I-17:

Identify all documents relating to or referring to the proposed acquisition of NRG Energy by Exelon.

Interrogatory NRG-I-18:

Identify any and all documents relating to or referring to actual competitive or potential competitive effects of the proposed transaction on energy markets.

Interrogatory NRG-I-19:

Identify any and all market surveys, analyses, and studies prepared by Exelon or in the possession of Exelon that relate to or refer to any actual or potential effect the proposed transaction would have on competition in the energy market.

Interrogatory NRG-I-23:

Identify any and all documents relating to or referring to NRG Pittsburgh, its business and/or its management, and/or the results or effects of the proposed transaction on NRG Pittsburgh.

Interrogatory NRG-I-24:

Identify any and all documents relating to or referring to NRG Harrisburg, its business and/or its management, and/or the results or effects of the proposed transaction on NRG Harrisburg.

OBJECTIONS TO NRG-I-17, NRG-I-18, NRG -I-19, NRG-I-23 AND NRG-I-24:

These interrogatories are overbroad, burdensome, redundant to other more narrowly-drawn discovery requests to which Applicants do not object, demand response concerning documents not in Exelon's possession, and may demand response concerning documents protected by privilege, including but not limited to the attorney-client, work product, and business strategy privileges; as such they are unreasonable. Response would require unreasonable investigation, study or analysis. These requests are not tied to any specific issue in this proceeding and thus on their face fail to establish relevance or a likelihood to lead to relevant evidence. The requests also relate to information NRG could obtain itself from other or public sources. For these reasons, they violate the limitations upon discovery contained at 52 Pa. Code § 5.361. That NRG seeks "identification" in these requests that can be satisfied by "production" does nothing to decrease the burden.

NRG-I-17 is unlimited in scope, time frame, and subject matter. It is in no way targeted toward the discovery of matters or specific issues that may be relevant to Applicant's acquisition of the Energy Centers and therefore is not "reasonably calculated" to lead to the discovery of admissible evidence. 52 Pa. Code § 5.321. Instead, this interrogatory is an impermissible "catch-all" that would require unreasonable annoyance, burden or expense to search all documents, including those not in Exelon's possession, that happen to mention or relate to Exelon's acquisition of the Energy Centers' parent company. It would also include documents protected by privileges including but not limited to attorney-client, work product and business strategy.

Similarly, NRG-I-18 is unreasonable because it seeks "any" documents, anywhere, including those not in Exelon's possession, that may reference competition and Exelon's acquisition of the Energy Centers' indirect parent. The impact of the transaction "on energy

markets” is also unreasonably broad because it encompasses all energy markets, thereby imposing an unreasonable annoyance, burden or expense. It would also require a special search, study or analysis without any showing that NRG cannot obtain such information from other sources, public or otherwise. This question too fails to meet the requirements of Section 5.361.

NRG-I-19 likewise is overbroad, vague in scope, and likely to impermissibly require Applicants to review or produce information that has no relevance to the issues presented. Like NRG-I-18, this interrogatory seeks documents relating to competitive impacts “in the energy market,” without focusing in any way on relevant energy markets.

NRG-I-23 and NRG-I-24 unreasonably seek all documents, anywhere, that mention either of the Energy Centers. It also has no time limit and is therefore unreasonable and would require unreasonable investigation, study or analysis prohibited by Section 5.361.

In contrast, other NRG interrogatories are expressly limited to documents in Exelon’s possession, and are otherwise more narrowly drawn. NRG-I- 17, 18, 23 and 24, however, are so broad that they necessarily encompass, or are redundant to, nearly all of the discovery responses the Applicants have already served in this proceeding to date in response to other parties’ discovery requests, as well as all materials and information Applicants may provide in response to the Energy Centers’ other, more targeted and comparatively more narrowly-drawn interrogatories included in Set I. These “identify everything” interrogatories are repetitive, unreasonable, and violate Section 5.361.

Such broad, ill-defined discovery requests necessarily will elicit highly confidential and commercially sensitive information that is neither relevant nor reasonably calculated to lead to the discovery of relevant evidence, and that, if disclosed, would cause Exelon harm that far outweighs any possible probative value of the information requested. Exelon should not be required to disclose irrelevant and extremely confidential and proprietary information in a

nonconsensual change of control proceeding in response to what amounts to a fishing expedition. Federal policy regarding discovery in contested takeover situations supports this basic protection for Exelon and such policy logically should apply here. The business strategy privilege or “white knight privilege” protects from disclosure information related to the ongoing strategy of a takeover bidder or target company during the pendency of a takeover attempt. F.R.C.P. Rule 26(c); *IPALCO Enterprises, Inc. v. PSI Resources, Inc.*, 148 F.R.D. 604, 606 (S.D. Ind. 1993); *BNS v. Koppers Co.*, 683 F. Supp. 454, 458 (D. Del. 1988; Melissa J. Rhodes, *The White Knight Privilege in Litigated Takeovers; Leveling the Playing Field in Discovery*, 43 Stan. L. Rev. 445, 445-46 (1990-1991); *see also* F.R.E. 403 (probative value of potential evidence must be weighed against prejudice that may result from it). The overbroad nature of these interrogatories makes it extremely difficult to evaluate within the time for objection provided whether disclosure of some of the information requested would have a prejudicial impact on the pending transaction and whether such impact substantially outweighs any possible probative value to the parties of the information sought. Applicants must be permitted to timely challenge the relevancy of a request that may elicit highly confidential, competitively sensitive information and cannot do so based upon open-ended catch-all requests such as these.

Interrogatory NRG-I-20:

List the names and addresses of each of the companies that have competed with Exelon in the PJM East market in the last five (5) years.

Interrogatory NRG-69:

Please confirm that the latest gas rate case filed by PECO and approved by the PAPUC was in docket number R-2008-2028394.

- (a) Please provide detailed rate base calculation and rate of return calculation as proposed by PECO at the initial phase of this rate case and as finally approved by the Commission.

Interrogatory NRG-I-70:

When was the last time PECO filed an electricity rate case that was approved by the PAPUC?

- (a) Please provide the filing date and docket number.
- (b) Please provide detailed explanation of the approved rate base calculation.
- (c) Please provide detailed explanation of the approved rate of return calculation.

OBJECTIONS TO NRG-I-20, NRG-I-69, AND NRG-I-70:

These interrogatories are overly burdensome and would require unreasonable investigation. They also seek to elicit information that is neither relevant nor calculated to lead to relevant evidence. Finally, all of the information requested is available to NRG either through the PJM Website this Commission. Without waiver of objection, Applicants will provide the docket numbers for the referenced Commission proceedings with its answers to interrogatories.

Interrogatory NRG-I-21:

Identify any and all documents relating to or referring to consideration by Exelon, or any officer or agent thereof, of the acquisition of NRG Energy, whether by tender offer, exchange offer, negotiated agreement, or otherwise.

Interrogatory NRG-I-22:

Identify the minutes of all meetings of board members of Exelon at or during which the acquisition of NRG Energy, whether by tender offer, negotiated agreement, or otherwise, was discussed, considered, analyzed, or authorized, and all documents that were prepared for or relied upon in any such meeting.

Interrogatory NRG-I-65:

According to slide 6 in a file named "EXC_NRG equity roadshow deck_Wed Final.pdf" downloaded from the investor relations section of Exelon's corporate website, Exelon has prepared NPV analysis of the merger. Please provide the detailed inputs to this analysis, including the assumptions and calculation of the discount rate.

OBJECTION TO NRG-I-21, NRG-I-22, AND NRG-1-65:

Applicants object to these interrogatories because they request highly confidential information regarding Exelon's internal consideration and valuation of the transaction that is neither relevant to the issue presented nor reasonably calculated to lead to the discovery of admissible evidence, and which if disclosed would cause Exelon harm that far outweighs any possible probative value of the information requested. 52 Pa. Code § 5.321.

First, the information is not relevant. The issue in this proceeding is whether the transfer of ultimate control of two Pennsylvania steam utilities will affirmatively promote the service, accommodation, convenience, or safety of the public in some substantial way. 66 Pa.C.S. § 1102(a)(3); *City of York v. Pa. P.U.C.*, 449 Pa. 136, 139, 295 A.2d 825, 828 (1972); *see also* Transcript of Prehearing Conference at 24, 45 (Presiding Officer noted the limited scope of this proceeding as "pretty straight-forward, it is just a transfer of control case"). Exelon's internal process for deciding to undertake the transaction and for determining the price it would pay to acquire NRG Energy, Inc. ("NRG Energy"), the indirect parent company of the Energy Centers, is not in any way relevant to whether the ultimate transfer of control of the Pennsylvania steam utilities meets this standard. Simply put, the price offered is what it is and what it might or might not have been is of no moment. The amount of Exelon's actual offer is public information and pro-forma financial statements have already been provided with the Application. Exelon's deliberative process in determining the amount to offer is not relevant, and the request for what, if any, other amounts or options not pursued by Exelon are of no moment to the issues in this Application proceeding.

Second, Exelon should not be required to disclose irrelevant and extremely confidential and proprietary information in a nonconsensual change of control proceeding to the target company that opposes the acquisition. NRG should not be permitted to use discovery in this proceeding to gain access to the tender-offeror's internal valuation of the transaction that would not otherwise be disclosed outside of Exelon's board room. NRG's management is actively resisting the expressed interest of a majority of its shareholders to sell their stock at the price Exelon has offered, and by this request obviously seeks market intelligence to which it has no right.

Nondisclosure of the information requested is consistent with Federal policy regarding discovery in contested takeover situations. The business strategy privilege or "white knight privilege" protects from disclosure information, including internal valuations considered by a board of directors, related to the ongoing strategy of a takeover bidder or target company during the pendency of a takeover attempt. F.R.C.P. Rule 26(c); *IPALCO Enterprises, Inc. v. PSI Resources, Inc.*, 148 F.R.D. 604, 606 (S.D. Ind. 1993); *BNS v. Koppers Co.*, 683 F. Supp. 454, 458 (D. Del. 1988; Melissa J. Rhodes, *The White Knight Privilege in Litigated Takeovers; Leveling the Playing Field in Discovery*, 43 Stan. L. Rev. 445, 445-46 (1990-1991); see also F.R.E. 403 (probative value of potential evidence must be weighed against prejudice that may result from it). Exelon has already disclosed publicly the range of value; that is sufficient for any analysis of whether the ultimate change of control of the Energy Centers will result in public benefits. The prejudicial impact on Exelon and the pending transaction that could result from disclosure of the information substantially outweighs any possible probative value to NRG of any arguably legitimate use of the information in this case.

Interrogatory No. 30:

In the matter of Retail Electricity Procurements, please answer the following questions:

- (a) **New Jersey:** Has Exelon or any of its affiliates participated in any of the basic generation service auctions held in New Jersey from 2002 onward? If so, please provide the following information:
- i. Date each procurement auction.
 - ii. For each auction, identify the participating Exelon affiliate.
 - iii. Specify products offered.
 - iv. For each product, specify the quantity and price of bids submitted by Exelon and/or its affiliates.
 - v. Specify which bids, if any, were accepted and awarded a contract.
 - vi. Provide a copy of each contract employed in the New Jersey Basic Generation Service in auctions where Exelon or its affiliates participated.
- (b) **Washington, D.C.:** Has Exelon or any of its affiliates participated in any of the standard offer RFPs held in Washington, D.C. from 2005 onward? If so, please provide the following information:
- i. Date each procurement auction.
 - ii. For each auction, identify the participating Exelon affiliate.
 - iii. Specify products offered.
 - iv. For each product, specify the quantity and price of bids submitted by Exelon and/or its affiliates.
 - v. Specify which bids, if any, were accepted and awarded a contract.
 - vi. Provide a copy of each contract employed in the D.C. standard offer RFPs where Exelon or its affiliates participated.
- (c) **Delaware:** Has Exelon or any of its affiliates participated in any of the standard offer RFPs held in Delaware from 2006 onward? If so, please provide the following information:
- i. Date each procurement auction.
 - ii. For each auction, identify the participating Exelon affiliate.
 - iii. Specify products offered.
 - iv. For each product, specify the quantity and price of bids submitted by Exelon and/or its affiliates.
 - v. Specify which bids, if any, were accepted and awarded a contract.
 - vi. Provide a copy of each contract employed in each Delaware standard offer RFP where Exelon or its affiliates participated

- (d) **Maryland:** Has Exelon or any of its affiliates participated in any of the standard offer service RFPs held in Maryland from 2003 onward? If so, please provide the following information:
- i. Date each procurement auction.
 - ii. For each auction, identify the participating Exelon affiliate.
 - iii. Specify products offered.
 - iv. For each product, specify the quantity and price of bids submitted by Exelon and/or its affiliates.
 - v. Specify which bids, if any, were accepted and awarded a contract.
 - vi. Provide a copy of each contract employed in each Maryland SOS procurement event where Exelon or its affiliates participated.
- (e) **Illinois:** Has Exelon or any of its affiliates participated in the 2006 Illinois Auction (covering the 2007 period) or any of the ComEd standard products RFPs or Ameren Basic Generation Service RFPs held from 2007 onward? If so, please provide the following information:
- i. Date each procurement auction.
 - ii. For each auction, identify the participating Exelon affiliate.
 - iii. Specify products offered.
 - iv. For each product, specify the quantity and price of bids submitted by Exelon and/or its affiliates.
 - v. Specify which bids, if any, were accepted and awarded a contract.
 - vi. Provide a copy of each contract employed in each procurement event (Illinois Auction, ComEd RFP or Ameren BGS) where Exelon or its affiliates participated.
- (f) **Connecticut:** Has Exelon or any of its affiliates participated in any of the transition standard offer solicitations held in Connecticut from 2004 to 2006, or in any of the standard offer solicitations held from 2007 onward? If so, please provide the following information:
- i. Date each procurement auction.
 - ii. For each auction, identify the participating Exelon affiliate.
 - iii. Specify products offered.
 - iv. For each product, specify the quantity and price of bids submitted by Exelon and/or its affiliates.
 - v. Specify which bids, if any, were accepted and awarded a contract.
 - vi. Provide a copy of each contract employed in each Connecticut TSO or SO solicitations where Exelon or its affiliates participated.

(g) **Massachusetts:** Has Exelon or any of its affiliates participated in any of the default service RFPs held in Massachusetts from 2000 onward? If so, please provide the following information:

- i. Date each procurement auction.
- ii. For each auction, identify the participating Exelon affiliate.
- iii. Specify products offered.
- iv. For each product, specify the quantity and price of bids submitted by Exelon and/or its affiliates.
- v. Specify which bids, if any, were accepted and awarded a contract.
- vi. Provide a copy of each contract employed in the Massachusetts Default service RFPs where Exelon or its affiliates participated.

(h) **New Hampshire:** Has Exelon or any of its affiliates participated in the transition service RFP held in New Hampshire in 2005 or any of the default service RFPs held from 2006 onward? If so, please provide the following information:

- i. Date each procurement auction.
- ii. For each auction, identify the participating Exelon affiliate.
- iii. Specify products offered.
- iv. For each product, specify the quantity and price of bids submitted by Exelon and/or its affiliates.
- v. Specify which bids, if any, were accepted and awarded a contract.
- vi. Provide a copy of each contract employed in the New Hampshire default service RFPs where Exelon or its affiliates participated.

OBJECTION TO NRG-I-30:

Applicants object to all subparts on the basis that, to the extent Applicants have participated in these auctions, Applicants are prohibited by the local auction rules of each of these markets from disclosing the information requested to third parties. *See, e.g.:*

- New Jersey Basic Generation Service (“BGS”) Auction, *available at* <http://www.bgs-auction.com>
- Ameren Illinois Utilities RFP Process, *available at* <http://www.levitan.com/AIURFP/>
- Illinois Auction *available at* <http://www.illinois-auction.com>

Moreover, to the extent NRG or any subsidiary of NRG Energy participated in these auctions, it has or had access to much of the information requested. Certain information requested is publicly available on the above-listed websites.

Applicants further object to subparts (e), (f), (g), and (h) as irrelevant. These sub-parts request information involving markets outside of the PJM East market. For purposes of the market power/competition issues involved in this application proceeding, Applicants' activities in New England and the Midwest are not relevant.

Interrogatory NRG-I-31:

Please provide a complete list of bidders in the 2006 Illinois Auction and the following information:

- (a) Names of bidders, organized by product and term.
- (b) Whether any bidders were disqualified and briefly explain why bidder was disqualified.
- (c) Quantity and price history of all qualified bids in the 2006 Auction.
- (d) Quantity and final price for each winning bidder in the 2006 Auction.
- (e) Credit and collateral requirements for each winning bidder in the 2006 Auction.
- (f) Provide a copy of the contract that was employed in the 2006 Auction.

Interrogatory NRG-I-32:

Please provide a complete list of bidders in each procurement event since 2006 for full requirement service of ComEd's load. For each procurement event, please provide the following:

- (a) Names of bidders, organized by product and term.
- (b) Whether any bidders were disqualified and briefly explain why bidder was disqualified.
- (c) Quantity and price history of all qualified bids in the procurement event.
- (d) Quantity and final price for each winning bidder.
- (e) Credit and collateral requirements for each winning bidder.
- (f) Provide a copy of the contract that was employed in each procurement event.

OBJECTIONS TO NRG-I-31 AND NRG-I-32:

NRG-I-31 and NRG-I-32 request information that is not relevant to the Commission's evaluation of the Application that is before the Commission and is not reasonably calculated to lead to the discovery of admissible evidence. To the extent market power and competition issues are implicated in this application proceeding, the activities of Applicants or their affiliates in the Midwest are not relevant, as they involve markets outside of the PJM East market. For the same reason, information concerning bidders in ComEd's past procurement events is likewise irrelevant.

Moreover, Applicants are prohibited by the local auction rules of each of these markets from disclosing the information requested to third parties. *See, e.g.:*

- Ameren Illinois Utilities RFP Process, *available at* <http://www.levitan.com/AIURFP/>
- Illinois Auction *available at* <http://www.illinois-auction.com>
- Commonwealth Edison Company RFP Process, *available at* <http://www.comed-energyrfp.com>
- Commonwealth Edison Company RFP Process (2008) *available at* <http://www.2008-rfp.com/>

Interrogatory NRG-I-33:

Please provide a summary of the contractual terms for Exelon's obligation for Pennsylvania POLR over the period 2007-2010. Please specify the amount of retail load served in each year (actual and projected) by customer class, the price terms agreed to, and the specific generating assets that are earmarked, if specified in agreement, for POLR service.

Interrogatory NRG-I-34:

Please provide a detailed summary of the terms of the financial swap agreement that Exelon provides for the benefit of ComEd consumers, as referenced on page 6 of Exelon's FERC Application (see Application of Exelon Corporation under Section 203 of The Federal Power Act, 18 December 2008).

OBJECTIONS TO NRG-I-33 AND NRG-I-34

These interrogatories request information that is not relevant to the Commission's evaluation of the Application that is before the Commission and are not reasonably calculated to lead to the discovery of admissible evidence. Applicants' POLR proceedings and the ComEd swap agreement have nothing to do with and no conceivable impact on Exelon's acquisition of the Energy Centers. To the extent the questions seek to elicit information concerning market power and competition issues, information concerning PECO is irrelevant because of Exelon's "clean sweep" proposal in PJM East. Information concerning Com Ed is irrelevant because it is outside of PJM East.

Interrogatory NRG-I-35:

Has Exelon entered into any other contracts or agreements to financially hedge or physically service retail load obligations in PJM in the past since 1998 or for anytime in the future? If so, please specify the key terms of such contract/agreement, including start and end date, quantity (volume) terms and price terms.

Interrogatory NRG-36:

Please provide details as to Exelon's generation assets in PJM. Specifically, for each generating plant listed in response to OCA-I-2a and OCA-I-2b located within PJM, please specify the following information on a unit level for the period, 2007-2008:

- (a) actual monthly production;
- (b) monthly range of hourly production levels (minimum to maximum production in a given hour over the course of the month);
- (c) average actual heat rate, by month;
- (d) full loaded heat rate;
- (e) actual emissions by month for SO₂, NO_X, and CO₂;
- (f) ramp rate (MW/min), as provided to PJM;
- (g) monthly actual forced outage rate and maintenance schedule (days/month);
- (h) negotiated costs (capped generation offers) that Exelon has filed with PJM for each unit;
- (i) operating and maintenance costs for each unit, on an annual basis, broken down by fixed and variable categories, with variable O&M denoted in \$/MWh and fixed costs denoted in \$/kW-year; and
- (j) actual capital expenditures (in \$/kW).

OBJECTIONS TO NRG-I-35 AND NRG-I-36:

NRG-I-35 and NRG-I-36 seek to elicit information that is neither relevant nor likely to lead to relevant evidence. To the extent the questions seek to elicit information concerning market power and competition issues, information concerning Exelon is irrelevant because of Exelon's "clean sweep" proposal in PJM East. To the extent the questions seek information beyond PJM East they are overbroad and not reasonably calculated to lead to the discovery of admissible evidence. Section 5.361.

These interrogatories also request highly confidential, commercially sensitive business strategy information that, if disclosed, could cause Exelon harm that far outweighs any possible probative value of the information requested. Exelon should not be required to disclose extremely confidential and proprietary information in this proceeding where the relevance of that material is clearly tenuous. This is consistent with Federal policy regarding discovery in contested takeover situations. The business strategy privilege or "white knight privilege" protects from disclosure information related to the ongoing strategy of a takeover bidder or target company during the pendency of a takeover attempt. F.R.C.P. Rule 26(c); *IPALCO Enterprises, Inc. v. PSI Resources, Inc.*, 148 F.R.D. 604, 606 (S.D. Ind. 1993); *BNS v. Koppers Co.*, 683 F. Supp. 454, 458 (D. Del. 1988; Melissa J. Rhodes, *The White Knight Privilege in Litigated Takeovers; Leveling the Playing Field in Discovery*, 43 Stan. L. Rev. 445, 445-46 (1990-1991); see also F.R.E. 403 (probative value of potential evidence must be weighed against prejudice that may result from it). The Energy Centers can adequately evaluate the issues in this Application for a change of control proceeding without such commercially sensitive materials.

Interrogatory NRG-I-37:

Please provide the plant- or unit-specific bidding profile for Exelon's PJM assets. Please specify if the output generally is sold in the spot market, under contract, or in one of the ancillary services market?

- a. If it is sold in the spot market, how much is sold in the day-ahead market versus the real-time market?
- b. Please provide the bidding schedules for each day for the 2007 and 2008 timeframe. Please include the following information:
 - i. Bid date;
 - ii. Unit code;
 - iii. MW portions of the unit's bid curve;
 - iv. \$/MW portions of the unit's bid curve;
 - v. No load cost;
 - vi. Cold start cost;
 - vii. Inter start cost;
 - viii. Hot start cost;
 - ix. Max daily starts;
 - x. Min Run time;
 - xi. Highest "Economic Maximum" value for the day for each unit;
 - xii. Lowest "Economic Maximum" value for the day for each unit;
 - xiii. Highest "Economic Minimum" value for the day for each unit;
 - xiv. Lowest "Economic Minimum" value for the day for each unit;
and
 - xv. Average "Economic Minimum value for the day for each unit.
- c. If contracted, please specify the terms of the contract, including duration, quantity, price, and dispatch control. Please specify the name of the counterparty.
- d. If output from any of the units is sold into the ancillary services market, please provide monthly sales and revenues from such sales, classified by type of ancillary services market.

Interrogatory NRG-I-38:

Have Exelon's bids in the energy or ancillary services markets ever been mitigated (offer capped)?

- (a) If yes, please provide specific details about each mitigation event, including the datetime stamp of the event, the name of the unit mitigated, the quantity bid for that unit, the pre-mitigation bid by Exelon and the post-mitigation outcome.

Interrogatory NRG-I-39:

Please provide information on historical fuel supply contracts for assets of Exelon in PJM. For each unit, specify:

- (a) the name of the fuel supplier,
- (b) the term, quantity and price for each contract with each fuel supplier.

Interrogatory NRG-I-40:

Please provide information as to historical FTRs/ARRs acquired by or awarded to Exelon by month in 2007 and 2008 (including any annual or long term FTRs). Include the following:

- (a) Please specify the path of such FTRs/ARRs, including the load zone for the sink and source.
- (b) Please specify the type of FTR and quantity.
- (c) Please specify for each FTR whether it was acquired through bilateral markets or through PJM auctions and provide the acquisition price.
- (d) Please specify the monthly revenues received under the ARR and FTRs listed in response to (a) through (c) above.

Interrogatory NRG-I-41:

Please provide information on Exelon's bids into each Base Residual Auction (BRA) of the RPM (PJM's capacity market). Include the following:

- (a) Please specify the quantity of capacity offered, the location of that capacity and association with specific unit.
- (b) Please specify whether any of the capacity was sold outside the BRA through bilateral agreements.
- (c) Have any of Exelon's capacity bids in the BRA been mitigated? If yes, please describe the mitigation event, including information on date of mitigation, quantity mitigated, and the mitigated price as compared to original offer price.

OBJECTIONS TO NRG-I-37, NRG-I-38, NRG-I-39, NRG-I-40, NRG-I-41:

These interrogatories are overly broad, seek to elicit information that is neither relevant nor likely to lead to relevant evidence, and will cause undue burden and require unreasonable investigation. The interrogatories request information that is not relevant to the Commission's evaluation of the Application that is before the Commission. To the extent the questions seek to elicit information concerning market power and competition issues, such information is irrelevant because of Exelon's "clean sweep" proposal in PJM East. To the extent the questions

seek information beyond PJM East they are overbroad and not reasonably calculated to lead to the discovery of admissible evidence. Section 5.361.

Further, much of the information requested by these interrogatories is maintained by PJM, and would require unreasonable investigation and expense for Applicants to acquire and compile the information. Because this level of detail of information related to Exelon's activities in the PJM market is not necessary in order to analyze the effects of a change of control over the Energy Centers, the burden of this significant endeavor is outweighed by any minor probative value this information could even arguably have in this proceeding.

Interrogatory NRG-I-43:

Please provide information on planned transmission or distribution expansions in next five years (2009-2014).

- (a) Please specify the location, the expected cost and the timing (in-service date) of each expansion.

Interrogatory NRG-I-61:

Does Exelon or PECO have any expansion plans for its transmission and distribution businesses in PJM over the next five years (2009-2014)? If yes, please list all the proposed projects, describe the project briefly and specify whether they need (or have received) regulatory approval, specify the budgeted capex for each project and the commercial in-service date. How does Exelon plan to finance these projects? What portion of these projects will be on balance sheet for PECO and ComEd? How will the leverage of PECO and ComEd change?

OBJECTIONS TO NRG-I-43 AND NRG-I-61:

NRG-I-43 is overly broad and seeks to elicit information that is neither relevant nor likely to lead to relevant evidence. This interrogatory is not tailored or limited in any way. It essentially asks Applicants to provide information on any transmission or distribution expansions anywhere. Even if construed narrowly to mean transmission and distribution expansions of Exelon, this is still entirely too broad, as it could include Exelon's possible planned transmission or distribution expansions nation-wide.

To the extent NRG-I-43 and NRG-I-61 seek to elicit information concerning market power and competition issues related to Exelon, the information is irrelevant because of Exelon's "clean sweep" proposal in PJM East. To the extent the questions seek information beyond PJM East they are overbroad and not reasonably calculated to lead to the discovery of admissible evidence. Section 5.361.

Further, to the extent that these interrogatories relate to transmission expansion plans, information concerning approved transmission expansions is included in PJM's Regional Transmission Expansion Plan which is publicly available.

Finally, these interrogatories request highly confidential, commercially sensitive business strategy information that, if disclosed, could cause Applicants harm that far outweighs any possible probative value of the information requested. Applicants should not be required to disclose extremely confidential and proprietary information in this proceeding where the relevance of that material is clearly tenuous. This is consistent with Federal policy regarding discovery in contested takeover situations. The business strategy privilege or "white knight privilege" protects from disclosure information related to the ongoing strategy of a takeover bidder or target company during the pendency of a takeover attempt. F.R.C.P. Rule 26(c); *IPALCO Enterprises, Inc. v. PSI Resources, Inc.*, 148 F.R.D. 604, 606 (S.D. Ind. 1993); *BNS v. Koppers Co.*, 683 F. Supp. 454, 458 (D. Del. 1988; Melissa J. Rhodes, *The White Knight Privilege in Litigated Takeovers; Leveling the Playing Field in Discovery*, 43 Stan. L. Rev. 445, 445-46 (1990-1991); *see also* F.R.E. 403 (probative value of potential evidence must be weighed against prejudice that may result from it). The Energy Centers can adequately evaluate the issues in this Application for a change of control without such commercially sensitive materials.

Interrogatory NRG-44:

Please provide an hourly schedule of 2008 actual load broken down by the four customer classes proposed in the Settlement for PECO's default service provider ("DSP") plan.

Interrogatory NRG-45:

Please provide an hourly schedule of projected 2011 load broken down by the four customer classes proposed in the Settlement for PECO's default service provider ("DSP") plan.

Interrogatory NRG-46:

Are any of Exelon's Affiliates planning to participate in the RFPs for PECO's default service? If so, please provide any and all internal documentation discussing strategic and management plans for Exelon's affiliates to participate in these upcoming RFPs.

Interrogatory NRG-I-47:

Will any Exelon affiliate(s) be responsible for serving all or part of the "PECO share" of the residential class through self-scheduling of its resources. If so, which resources have been earmarked to meet this load obligation?

Interrogatory NRG-I-48:

In the first year of the DSP, will any Exelon affiliate(s) be responsible for servicing the fixed price option plan for Large Commercial and Industrial customers?

Interrogatory NRG-I-49:

The DSP proposes that 10% of the Small Commercial class load, 15% of the Medium Commercial class load, and 100% of the Large Commercial and Industrial class load (less any that choose the fixed price option) be serviced through contracts where the energy price is indexed to PJM day-ahead ("DA") market prices for energy. Will this specifically be the hourly PECO load zone LMP or (some other combination of) nodal LMPs? Will these contracts include separate payment for non-energy services?

Interrogatory NRG-I-50:

What is the term of the full requirement contracts proposed for load tranches serving Large Commercial and Industrial customer class?

Interrogatory NRG-I-51:

Please provide an example of how the 65% limit (“Load Cap”) for serving load will be applied across each customer class. For example, in determination of the 65% limit for a single supplier, will the load under the “PECO Share” for the residential class and the first year fixed option plan for Large Commercial and Industrial customers be included in the percentage share calculation?

Interrogatory NRG-52:

How does the 65% limit relate to the proposed tranches for each customer class as documented in Table I-2 in Exhibit C to the Settlement?

Interrogatory NRG-I-53:

PECO describes full requirements services as that consisting of “all energy, capacity, ancillary services, and other products necessary to serve default service customers” (see page 8 of PECO’s Statement to the Settlement). Please provide specific examples of “other products” as referred to in the statement above.

Interrogatory NRG-I-54:

Please comprehensively summarize from the Full Requirements Supply Master Agreement all the proposed provisions that suppliers must meet in order to serve PECO’s default service customers, namely the qualifications for “RFP Bidders” in “Part I Proposal” and “Part II Proposal.”

Interrogatory NRG-I-55:

How was the number of fixed-price tranches determined (as described in Table I-2 to Exhibit C of the Settlement)?

Interrogatory NRG-I-56:

How was the number of spot-price tranches determined (as described in Table I-3 to Exhibit C of the Settlement)?

Interrogatory NRG-I-57:

What is the expected annual budget for PECO to administer its DSP?

Interrogatory NRG-I-58:

As information becomes available on the activities in the Spring 2009 solicitation for residential customer class (Exhibit C of the Settlement confirms that Part I begins on May 19th and ends on May 27th with notification of qualified RFP Bidders by June 1st), please provide information on the number and identity of “prospective suppliers” and qualified “RFP Bidders.”

Interrogatory NRG-I-59:

How much of the “Alternate Energy Portfolio Standards” requirements does PECO anticipate must be fulfilled directly by RFP Bidders for the Spring 2009 solicitation?

OBJECTIONS TO NRG-I-44, NRG-I-45, NRG-I-46, NRG-I-47, NRG-I-48, NRG-I-49, NRG-I-50, NRG-I-51, NRG-I-52, NRG-I-53, NRG-I-54, NRG-I-55, NRG-I-56, NRG-I-57, NRG-I-58, NRG-I-59:

This group of interrogatories requests detailed and extensive information about PECO’s default service provider (“DSP”) approval proceedings and service and alternative energy standards (“AEPS”) requirements. These interrogatories seek to elicit information that is neither relevant nor likely to lead to relevant evidence and are overly burdensome. As stated in the Application this proceeding seeks approval for the transfer of control of the Energy Centers and will not have any effect on PECO unless the form of the transaction becomes a negotiated deal. Even if the form of the transaction were a negotiated transaction such that PECO may be affected in some way by the transaction, PECO’s DSP and AEPS data would not be relevant to the proceeding. Indeed, the scope and volume of information the Energy Centers are seeking is broader than what was provided to the Commission in approving PECO’s DSP proposal.

To the extent the questions seek to elicit information concerning market power and competition issues, information concerning PECO’s DSP plan is irrelevant because of Exelon’s “clean sweep” proposal in PJM East. To the extent the questions seek information beyond PJM East they are overbroad and not reasonably calculated to lead to the discovery of admissible evidence. Section 5.361.

With regard to NRG-I-58, Applicants object to this request because it seeks information that is highly confidential and competitively sensitive. The Applicants further object to this request because it is contrary to the reporting process approved by the Pennsylvania Public Utility Commission (“PUC”) in granting PECO’s Petition for Approval of its Default Service

Program and Mitigation Plan. In addition, Applicants object to this request because it is premature, and requests information that is not currently available.

Finally, the requests are unduly burdensome because the Energy Centers can access the Commission's public files of the DSP proceeding.

Interrogatory NRG-I-60:

Please respond to the following questions in relation to Exelon's preliminary proxy filing (issued on April 17th 2009):

- (a) The unaudited pro forma of the combined company on page 53 shows that the total long-term debt of Exelon will increase from \$13 billion to \$21 billion after the merger. Please provide a comparison of the annual debt payments pre- and post-merger, including a breakdown of interest versus principal. Please identify the sources of income (including dividends from affiliates) that would be earmarked to service the increase in debt.
- (b) On page 58, Exelon states that it assumes a 10% interest rate on a ten-year bond to refinance NRG's \$7,695 million debt. Please describe how Exelon developed this assumption. What credit rating is presumed by the 10% interest rate? What type of market conditions are the basis for the 10% rate? In Exelon's opinion, how have these market conditions changed since the proxy filing was issued?
- (c) In reference to the refinancing assumptions discussed in the proxy, please estimate the long-term debt position of Exelon post-merger at a 12%, 14% and 16% interest rate. Please provide a summary of the annual debt payments, balance sheet impacts and interest rate coverage parameters. Please provide this analysis in Excel-based format within a working version of the pro forma (with all formulas intact).
- (d) Both Exelon and NRG have recently issued Form 10-Qs for the first quarter of 2009. Has Exelon prepared any updated pro forma analysis based on the latest financial information? If so, please provide an updated pro forma and summarize any changes from the pro forma from the April 17th 2009 proxy filing.
- (e) The pro forma on page 51-53 of the April 17th 2009 proxy filing is presented on a consolidated basis. Please provide the pro forma for the holding company only, Exelon Corporation, under the same condition as the consolidated pro forma.

OBJECTION TO NRG-I-60:

NRG-I-60 is overly burdensome and would require an unreasonable investigation or special study. Without waiver of objection, Applicants will attempt to respond to the portions of this interrogatory for which data is available in the form requested that would not require a special study or report that the Applicants do not otherwise maintain.

Interrogatory NRG-I-72:

Please provide the current number of customers and anticipated number of customers after the merger served by PECO by type of business (gas and electricity) and by customer type (residential, commercial, industrial and other customers), with their respective actual (2008) and projected (2009-2014) annual consumption figures (in MWh for electric consumers and in MCF for gas customers).

Interrogatory NRG-I-73:

Please provide the 2009 projected revenue budgets for PECO by business type (gas and electricity) and by customer type (residential, commercial, industrial and other customers).

OBJECTIONS TO NRG-I-72 AND NRG-I-73:

NRG-I-72 and NRG-I-73 seek to elicit information that is neither relevant nor likely to lead to relevant evidence, and require unreasonable investigation, study or analysis. They violate Section 5.361. As stated in the Application, this proceeding seeks approval for the transfer of control of the Energy Centers and will not have any effect on PECO unless the form of the transaction becomes a negotiated deal. Under either form of the transaction, PECO's customer numbers and business will not change and, therefore, the requested information is not relevant to the evaluation of the Application.

Interrogatory NRG-I-74:

In Exelon's "Report on Status of Decommissioning Funding for Reactors," submitted to the U.S. Nuclear Regulatory Commission ("NRC") on March 31, 2009 ("Decommissioning Funding Status Report"), Exelon admits that its decommissioning funds for at least eight of its nuclear power reactor units do not meet the NRC's minimum funding requirement under 10 C.F.R. 50.75(b) and (c) as of December 31, 2008. For each of the reactors owned by Exelon Generation Company, LLC (EGC), provide the following information:

- (a) The NRC minimum funding amount calculated in accordance with 10 C.F.R. 50.75, together with a calculation of the amount by which any of the reactors is underfunded.
- (b) Provide the basis for the calculation of the amount of radiological decommissioning funds estimated to be required for each reactor for which a shortfall in funding exists. If such amount for a reactor is based on a site-

- specific decommissioning cost estimate, provide a complete copy of the site-specific cost estimate.
- (c) Describe whether the funding shortfall for any reactor is based solely on the cost of radiological decommissioning.
 - (d) To the extent Exelon proposes to recover costs related to (i) decommissioning non-radiological portions of any reactor facility, (ii) greenfielding of the site, or (iii) spent nuclear fuel storage, provide cost estimates for each of these categories, together with any calculations, work sheets, or studies providing the basis for such cost estimates.

Interrogatory NRG-I-75:

In Attachment 3 to the Decommissioning Funding Status Report, Exelon provides a schedule of the annual amounts remaining to be collected. The schedule indicates that for most of the reactors owned by EGC the annual amount remaining to be collected is zero (\$0), which includes at least six of the reactors that Exelon admits are currently underfunded (Braidwood Station Units 1 and 2, Byron Station Units 1 and 2, and LaSalle County Station Units 1 and 2). Describe the basis for the schedule shown in Attachment 3 to the Decommissioning Funding Status Report, and specifically explain why the annual amount remaining to be collected for many of the reactors is \$0.

Interrogatory NRG-I-76:

In the Decommissioning Funding Status Report, Exelon states that “[Exelon Generation Company] is currently evaluating the alternative funding mechanisms, as allowed by 10 CFR 50.75, to address these funding shortfalls” Please describe the alternative funding mechanisms that Exelon is evaluating and describe any conclusions that Exelon has reached with respect to each alternative explored, including whether such alternative would comply with applicable NRC requirements and whether any such alternatives would include collections from Pennsylvania ratepayers under the Nuclear Decommissioning Cost Adjustment.

Interrogatory NRG-I-77:

For any adjustments designed to compensate for the decommissioning funding shortfall for Limerick Generating Station, provide the basis for any requested adjustments in the Nuclear Decommissioning Cost Adjustment, including all calculations, work sheets, cost estimates or other documents supporting such adjustments.

Interrogatory NRG-I-78:

Has Exelon prepared a site-specific decommissioning cost estimate for Limerick Generating Station? If so, provide a complete copy of such site-specific cost estimate. Any such site-specific estimate should include the basis for the estimated cost of low-level radioactive waste disposal associated with decommissioning the Limerick facility.

Interrogatory NRG-I-79:

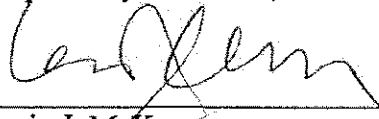
With regard to NRC license renewal, please answer the following questions:

- (a) List Exelon's reactors that are going through or have gone through the NRC's license renewal process.
- (b) List Exelon's reactors that have not completed license renewal and indicate whether and when Exelon intends to seek renewal of the NRC licenses for each of these plants.
- (c) Has Exelon prepared any license renewal feasibility studies, or cost estimates for license renewal, for any of the reactors for which a decommissioning funding shortfall exists? If so, provide a complete copy of all such studies.
- (d) If Exelon intends to renew the NRC licenses for additional reactors, what are Exelon's estimated costs, including the costs of major capital expenditures, associated with the license renewals?

OBJECTIONS TO NRG-I-74, NRG-I-75, NRG-I-76, NRG-I-77, NRG-I-78, AND NRG-I-79:

These interrogatories, which request detailed and extensive information regarding nuclear decommissioning, seek to elicit information that is neither relevant nor likely to lead to relevant evidence, and are overly burdensome. They require unreasonable investigation, study or analysis. Jurisdiction over these matters resides with the Nuclear Regulatory Commission. There is no legitimate basis for inquiry into these issues in connection with Applicants' request for approval of the transfer of ultimate control of the Energy Centers from NRG Energy to Exelon.

Respectfully submitted,



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