



October 25, 2013

VIA HAND DELIVERY

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CONTAINS CONFIDENTIAL APPENDIX

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor North
P.O. Box 3265
Harrisburg, PA 17120

Re: License Amendment Application of NRGing LLC d/b/a NetGain Energy Advisors; Docket No. A-2010-2202733; JOINT PROTEST NUNC PRO TUNC OF NRG ENERGY, INC., ET AL.

Dear Secretary Chiavetta:

Enclosed for filing with the Commission please find the Joint Protest *Nunc Pro Tunc* of NRG Energy, Inc., NRG Energy Center Pittsburgh LLC, NRG Energy Center Harrisburg LLC, and Reliant Energy Northeast LLC in the above-captioned matter. Copies of this document have been served in accordance with the attached Certificate of Service.

Please note that Appendix A contains CONFIDENTIAL INFORMATION and has been placed in a separate sealed envelope. Appendix A should be placed in a non-public folder by the Secretary's Bureau in accordance with the Commission's standard practice for proprietary information.

Please do not hesitate to contact the undersigned should you have any questions regarding this filing or require additional information. Please date-stamp the enclosed copy of the filing and return it with our messenger. Thank you for your attention to this matter.

Sincerely,

COZEN O'CONNOR

By: David P. Zambito
Counsel for NRG Energy, Inc.,
NRG Energy Center Pittsburgh LLC,
NRG Energy Center Harrisburg LLC and
Reliant Energy Northeast LLC

DPZ:JLB
Enclosures
cc: Chairman Robert F. Powelson

Rosemary Chiavetta, Secretary

October 25, 2013

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Vice Chairman John F. Coleman

Commissioner James H. Cawley

Commissioner Pamela A. Witmer

Commissioner Gladys M. Brown

Paul T. Diskin, Director, Bureau of Technical Utility Services

Robert F. Young, Deputy Chief Counsel, Law Bureau

Per Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

License Amendment Application of NRGing :
LLC d/b/a NetGain Energy Advisors : Docket No. A-2010-2202733
:

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**JOINT PROTEST *NUNC PRO TUNC*
OF NRG ENERGY, INC., NRG ENERGY CENTER
PITTSBURGH LLC, NRG ENERGY CENTER
HARRISBURG LLC, AND RELIANT ENERGY
NORTHEAST LLC**

AND NOW, come NRG Energy, Inc. (“NRG”), NRG Energy Center Pittsburgh LLC (“NRGP”), NRG Energy Center Harrisburg LLC (“NRGH”), Reliant Energy Northeast LLC d/b/a Reliant Energy, NRG Business Solutions, Reliant-NRG, NRG Residential Solutions and NRG Retail Solutions (“REN”) (together, the “NRG Companies” or “Joint Protestants”), by and through counsel, Cozen O’Connor, pursuant to 52 Pa. Code §§ 5.51-5.53, and hereby submit this Joint Protest *Nunc Pro Tunc* (“Joint Protest”) to the application filed on February 3, 2011, by NRGing LLC d/b/a NetGain Energy Advisors (“NRGing”) to amend its NGS license at Docket No. A-2010-2202733 (the “Amendment Application”). The NRG Companies seek to ensure that NRGing may not use its legal name in any marketing, advertising, trademark or other customer-facing communication in Pennsylvania, as any such use would be misleading and cause significant customer confusion. In support thereof, the NRG Companies state as follows:

I. BACKGROUND

1. NRG is a wholesale power generation company and through its subsidiaries is engaged in the ownership, development, construction and operation of power generation facilities; in the transacting and trading of fuel and transportation services; and the trading of energy, capacity and related products in the United States. NRG’s subsidiaries also provide

electricity and related services to customers and provide demand response services. It is also engaged in providing district heating and cooling services and in the development of district heating and cooling technologies. NRG is a Delaware corporation with its headquarters and principal executive offices located at 211 Carnegie Center, Princeton, NJ 08540.

2. REN is an electric generation supplier (“EGS”) licensed by the Commission at Docket No. A-2010-2192350 to provide electricity and related services to residential, small commercial, large commercial, industrial and governmental customers throughout Pennsylvania. REN is a Delaware limited liability company with its principal place of business at 1201 Fannin Street, Houston, TX 77002.

3. NRGP is a certificated Pennsylvania public utility providing steam, hot water and chilled water service to the public in the 21st and 22nd wards in the City of Pittsburgh pursuant to certificates of public convenience from the Pennsylvania Public Utility Commission (“Commission”) at Docket Nos. A-130001 *et seq.* It has approximately 20 customers and services a total of approximately 6.3 million square feet of building space in approximately 35 different buildings. NRGP is a Delaware limited liability company with its principal place of business at 111 South Commons, Pittsburgh, PA 15212.

4. NRGH is a certificated Pennsylvania public utility providing steam service in a one-square-mile area of the City of Harrisburg, Dauphin County, Pennsylvania pursuant to certificates of public convenience at Docket Nos. A-130175 *et seq.* NRGH serves Harrisburg’s central business district, which includes the following: the Capitol Complex; federal, state and municipal office buildings and court houses; commercial office buildings; a hospital complex; a museum; hotels; an educational institution; residential high- and low-rise buildings; churches; retail businesses; and, industrial facilities. NRGH generates and distributes steam for use in space heating, domestic hot water heating, humidification and industrial processes. It serves

approximately 185 downtown customers totaling 10 million square feet of space. NRGH is a Delaware limited liability corporation with its principal place of business at 900 Walnut Street, Harrisburg, Pennsylvania 17101.

5. Counsel for the NRG Companies are:

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Joshua L. Belcher (I.D. No. 313129)
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jbelcher@cozen.com

Pursuant to 52 Pa. Code § 1.54(b)(3), the undersigned counsel consent to electronic service of all documents at the e-mail addresses shown above, to be followed up with one hard copy of the documents served.

6. NRGing is a natural gas supplier (“NGS”) licensed by the Commission at Docket No. A-2010-2202733 to supply natural gas services as a broker/marketer to large commercial (6,000 MCF or more annually), industrial, and governmental customers in the natural gas distribution company service territories of Valley Energy, UGI Utilities, UGI Central Penn Gas, UGI Penn Natural Gas, Peoples TWP, PECO Energy, Philadelphia Gas Works, National Fuel Gas Distribution Corporation, Peoples Natural Gas, Equitable Gas, and Columbia Gas.

7. NRGing is also an EGS licensed by the Commission at Docket No. A-2010-2202885 to supply electric generation supplier services as a broker/marketer to large commercial, industrial and governmental customers in electric distribution company service territories throughout the Commonwealth of Pennsylvania.

8. On February 3, 2011, NRGing filed the present Amendment Application to offer, render, furnish, or supply natural gas supply services as a broker/marketer to the additional class

of small commercial (under 6,000 MCF annually) customers in their previously approved NGDC service territories.

9. The Commission's regulations provide that a person, including a corporation, objecting to the approval of an application filed with the Commission may file a protest to the application. 52 Pa. Code § 5.51(a); *see also* 52 Pa. Code § 62.108. The protest must (1) set out clearly and concisely the facts from which the alleged interest or right of the protestant can be determined; (2) state the grounds of the protest; and (3) set forth the facts establishing the protestant's standing to protest. 52 Pa. Code § 5.52(a).

10. The NRG Companies were not served with the Amendment Application. Furthermore, the NRG Companies are not aware that notice of the application was ever published in any newspapers of general circulation or on the Commission's Internet website. *See* 52 Pa. Code § 62.107. Rather, the NRG Companies only learned of the above-captioned matter through the Commission's notice of its October 17, 2013 public meeting. Accordingly, this Joint Protest should be considered timely.

11. However, out of an abundance of caution, the NRG Companies have styled this protest as "*nunc pro tunc*" and respectfully request, pursuant to 52 Pa. Code § 1.91, to the extent that the Joint Protest is not considered timely under the rules, that the Commission waive the 15-day protest period requirement at 52 Pa. Code § 62.108 and consider this Joint Protest timely nevertheless.

II. BASIS FOR PROTEST

12. Section 2208(a) of the Public Utility Code provides that no entity may serve as a NGS without a license from the Commission. 66 Pa. C.S. § 2208(a). The Commission's regulations provide that a license to provide service as a NGS will be issued as long as the

Commission finds that the applicant can perform the service proposed in conformance with the applicable provisions of the Public Utility Code and the Commission's orders and regulations and that the proposed service is consistent with the public interest and the policy of the Natural Gas Choice and Competition Act. 52 Pa. Code § 62.109.

13. Through its rules, the Commission has recognized that consumers would be defrauded and deceived if the competitive retail affiliate of a natural gas distribution company ("NGDC") used the NGDC's name and/or logo. To prevent such confusion, the Commission requires a NGDC's competitive retail affiliate to disclose the relationship in its advertising and marketing materials. See 52 Pa. Code §§ 62.142(a)(15)(i)-(iii); 62.142(a)(16)-(17) Failure to make such disclosure would be an unfair, misleading, deceptive or unconscionable act or practice.

14. While the Commission's regulations do not specifically address the present situation, where a NGS has a legal name that is substantially similar to the legal and trade names of other non-affiliated Commission-regulated entities, the potential for customer confusion raises similar concerns. In this case, the NRG Companies have an established presence in Pennsylvania as trusted providers of electric generation service, steam, hot water and chilled water. NRGP and NRGH both contain "NRG" in their legal names as well as in marketing and other public materials. Of REN's five trade names, four—NRG Business Solutions, Reliant-NRG, NRG Residential Solutions and NRG Retail Solutions—contain "NRG."

15. In fact, the Commission previously has recognized the potential for confusion between NRGing and the NRG Companies. In its orders approving the initial NRGing EGS and NGS license applications, the Commission specifically required "that NRGing, LLC d/b/a NetGain Energy Advisors shall advertise and market its products and services solely under its trade name, NetGain Energy Advisors." *Application of NRGing, LLC d/b/a NetGain Energy*

Advisors to Become a Licensed Supplier of Natural Gas Services as a Broker/Marketer, Docket No. A-2010-2202733, Ordering ¶ 3 (Order entered Jan. 13, 2011); *License Application of NRGing, LLC d/b/a NetGain Energy Advisors for Approval to Offer, Render, Furnish or Supply Electricity or Electric Generation Services as a Broker/Marketer*, Docket No. A-2010-2202885, Ordering ¶ 5 (Order entered Dec. 2, 2010).

16. Any customer-facing use of the name “NRGing,” even where the trade name of “NetGain Energy Advisors” is also disclosed, suggests a relationship between NRG and NRGing that simply does not exist. Any such suggestion could mislead or deceive customers to believe that the source of the commodity is NRG, which would be an unfair, misleading, or deceptive act or representation. The NRG Companies therefore have a direct, immediate and substantial interest that may be impacted by the NRGing filing.

17. In addition, NRG has an executed letter agreement with NRGing, dated May 15, 2013, in which NRGing has agreed that it would not use “NRGing” or any variation including “NRG” in any marketing, advertising or trademark context. A copy of the letter agreement is attached hereto as **Appendix A (CONFIDENTIAL)**. NRG considers any use by NRGing of its legal name in any customer-facing communication as “marketing” or “advertising” that would violate the terms of the letter agreement.

III. RELIEF SOUGHT

18. The NRG Companies are primarily concerned that any use by NRGing of its legal name in communications with customers would be a source of confusion and improperly associate NRGing with the NRG Companies. The NRG Companies appreciate that the Commission already has directed NRGing to advertise and market its products and services using only its trade name. Nevertheless, the NRG Companies believe that the terms of the May

15, 2013 letter agreement between NRGing and NRG provide additional assurances against the improper use of “NRGing” or any variation of “NRG.”

19. The NRG Companies thus request that the Commission expressly reaffirm the existing restrictions placed on NRGing (both as an EGS and NGS) regarding the use of its trade name in any marketing or advertising activities and further condition any approval of the Amendment Application upon NRGing not using “NRGing” or any other variation including “NRG” in any marketing, advertising, or trademark context in Pennsylvania, in any Commission jurisdictional activities, or in any other customer-facing communication, so as to be consistent with the May 15, 2013 letter agreement.

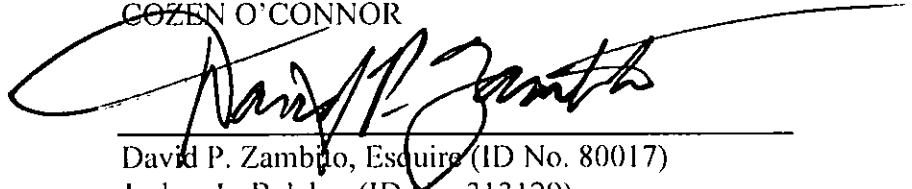
20. The NRG Companies further request that the Commission require NRGing to (1) obtain permission from the Commission staff prior to including its legal name in any public documents related to services provided in Pennsylvania, and (2) include an express disclaimer of any relationship with the NRG Companies in any (a) filings with the Commission and (b) communications with natural gas distribution companies (“NGDCs”) or electric distribution companies (“EDCs”).

WHEREFORE, for the foregoing reasons, the NRG Companies respectfully request that the Commission (1) accept NRG’s protest as timely filed; (2) reaffirm the existing restrictions placed on NRGing (both as an EGS and NGS) regarding the use of its trade name in any marketing or advertising activities; (3) further condition any approval of the Amendment Application upon NRGing not using “NRGing” or any other variation including “NRG” in any marketing, advertising, or trademark context, in any Commission jurisdictional activities, or in any other customer-facing communication; (4) require NRGing to obtain permission from the Commission staff prior to including its legal name in any public documents related to services provided in Pennsylvania, and include an express disclaimer of any relationship with the NRG

Companies in any filings with the Commission and in any communications with NGDCs or EDCs; and (5) grant such other relief deemed to be necessary and proper.

Respectfully submitted,

COZEN O'CONNOR

A handwritten signature in black ink, appearing to read "David P. Zambito", is written over a horizontal line. The signature is fluid and cursive.

David P. Zambito, Esquire (ID No. 80017)

Joshua L. Belcher (ID No. 313129)

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NRG Energy Center Harrisburg LLC and

Reliant Energy Northeast LLC

DATED: October 25, 2013

*APPENDIX A CONTAINS CONFIDENTIAL
INFORMATION AND HAS BEEN FILED UNDER
SEAL WITH THE SECRETARY OF THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION*

VERIFICATION

I, Leah Gibbons, Director of Regulatory Affairs for NRG Retail, hereby state that the facts above set forth are true and correct to the best of my knowledge, information and belief and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).

DATED: October 25, 2013



Leah Gibbons

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*APPENDIX A CONTAINS CONFIDENTIAL
INFORMATION AND HAS BEEN FILED UNDER
SEAL WITH THE SECRETARY OF THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION*

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

License Amendment Application of NRGing :
LLC d/b/a NetGain Energy Advisors : Docket No. A-2010-2202

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document (without Confidential Appendix A) upon the persons, listed below, in accordance with the requirements of § 1.54 (relating to service by a party).

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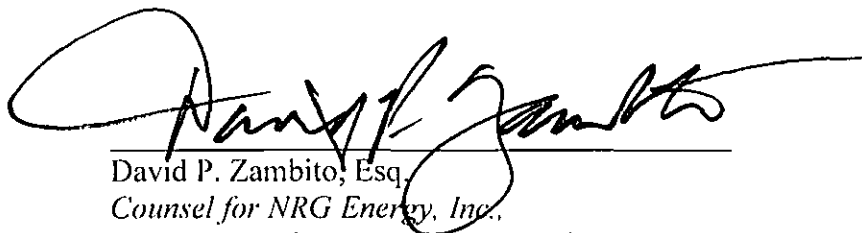
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DATED: October 25, 2013



David P. Zambito, Esq.
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NRG Energy Center Harrisburg LLC and
Reliant Energy Northeast LLC*