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Presiding Commissioner Joseph L. Fiordaliso
State of New Jersey
Board of Public Utilities
44 South Clinton Avenue, 9th Floor
P.O. Box 350
Trenton, New Jersey 08625-0350

RE: In the Matter of the Merger of Exelon Corporation and Pepco Holdings, Inc.
BPU Docket No.: EM14060581

Dear Commissioner Fiordaliso:

Please accept this informal letter on behalf of the NRG Companies ("NRG") protesting the Proposed Stipulation of Settlement ("Proposed Settlement") entered in the above matter on January 14, 2015. NRG has three major concerns with the Proposed Settlement:

(1) The Proposed Settlement provides insufficient customer benefits, as it provides no funding for renewable generation or grid hardening, as is typical for these types of acquisitions;

(2) The limited customer benefits that are included in the Proposed Settlement are not structured to provide the maximum benefit for customers; and

(3) The Proposed Settlement contains no limitations on the combined companies' ability to spend ratepayer dollars for services that can be more appropriately provided by the market.

NRG addresses each of its concerns in turn.

First, NRG is disappointed that the Proposed Settlement did not include any requirement that the combined companies enter into long-term contracts to purchase power or green attributes from socially-desirable generation facilities, such as renewables or energy-resilient microgrids. Both types of generation would further the State's environmental and resilience goals. A

competitively-sourced long-term contract from a creditworthy counter-party (such as Atlantic City Electric Company, or ACE) would have spurred investment in this type of desirable infrastructure.

Additionally, a commitment from the merging parties to enter into long-term contractual investment is consistent with previous acquisitions in other jurisdictions – including Exelon Corporation's acquisition of Baltimore Gas & Electric, where Exelon agreed to spend significant shareholder dollars to fund new solar and other renewable projects totaling in excess of 150 MW. Other recent mergers have involved even more substantial commitments.[1]

Second, NRG objects to the provision of the Proposed Settlement giving Exelon the discretion to "…pay for and implement . . . energy-efficiency programs (including energy-efficiency programs directed to benefit low-income customers) that are projected to yield a total of $15 million in savings to ACE customers over the life of the measures." (*See* Stipulation of Settlement ¶ 8.) Ratepayers in the State of New Jersey would be much better off if the Proposed Settlement required Exelon to put these investments out for bid. Companies, including NRG, may be able to provide significantly better value for the millions that Exelon expects to spend to deliver $15 million "in savings" to ACE customers. NRG has recently partnered with several leading utilities to provide energy efficiency and residential demand response services. If the New Jersey Board of Public Utilities ("Board") concludes, after a review of competing programs, that Exelon's proposal represents the best value to customers, then it should be

[1]For example, Northeast Utilities and NSTAR agreed to procure 129 MW of off-shore wind as part of their merger agreement. Despite the utilities' recent cancellation of the PPAs due to the developer's inability to meet certain financial commitments by December 31, 2014, the NSTAR/Northeast Utilities merger itself provided a vehicle to encourage the execution of a long term offtake agreement, demonstrating a commitment to invest in renewable energy, above and beyond that required by the Massachusetts Renewable Portfolio Standards. *See* Massachusetts Department of Public Utilities 10-170-B, *Joint Petition for Approval of Merger between NSTAR and Northeast Utilities, pursuant to G.L. c. 164, § 96* (April 4, 2012).

permitted to move forward. Indeed, ratepayers can only benefit if the Board rejects this component of the Proposed Settlement, and instead requires that Exelon put this program out for competitive bids.

Third, the Proposed Settlement does not proactively address competitive issues that may occur on the distribution system. Specifically, the Board should not allow the Exelon-controlled ACE, or any affiliated companies, to build, own and operate new renewable energy projects, including microgrid or distributed generation projects, or be the sole provider of demand-side programs.[2] The State of New Jersey opened the door to competitive electric supply and has ensured a level playing field for competitive suppliers since the enactment of the Electric Discount and Energy Competition Act in 1999 ("EDECA"). Allowing the merged company to control these market segments would create the risk that it could exert undue influence over New Jersey's energy market, stifling potential investment from other providers and preventing residents and businesses from being able to avail themselves of the innovation, price advantages and choices that competitive markets provide. Such an outcome would be directly contrary to EDECA.

In order to help ensure that New Jersey's residents and businesses continue to have access to competitive electricity choices and new innovative products and services, including expanded choices for community solar, roof top solar and other clean energy technologies that enable customers to contribute to grid hardening with distributed solutions, the merged company

[2] Concerns over utility domination of demand response programs takes on an added concern since PJM proposed to make Load Serving Entities the sole gatekeepers of demand response participation in the PJM capacity markets. While this issue arose after the Proposed Settlement was announced, NRG recommends that the Board require ACE to make any competitive demand response provider its "agent" under the newly proposed rules and pass through any capacity market savings to the agent and its customers. *See* PJM "Stop Gap" Demand Response filing, in FERC Docket No. ER15-852-000.

should be judged in part on the degree to which its decisions and actions empower consumers to take control of their electricity service, with a requirement that the merged entity use competitive third party providers to support these goals, unless it can be demonstrated that the utility is the only entity with the capability to do so.

For the above reasons, NRG respectfully requests that the Board reject the Proposed Stipulation and amend the agreement as discussed above. Please do not hesitate to contact me if you have any questions.

Respectfully submitted,

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