NRG Energy, Inc.
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David J. Collins
Executive Secretary
Maryland Public Service Commission
William Donald Schaefer Tower
6 St. Paul Street, 16th Floor
Baltimore, Maryland 21202-6806

Re: The Matter of the Merger of Exelon Corporation and Pepco Holdings, Inc. – Case No. 9361.

Dear Mr. Collins:

Please find attached Testimony of Peter D. Fuller in Response to Partial Settlements, filed on behalf of NRG Energy, Inc. ("NRG"). On April 7, 2015, NRG electronically filed the testimony, provided 17 hard copies with the Commission and electronically served the parties.

NRG requests that the Commission accept the filing of this Testimony one day out-of-time. Due to a misreading of the procedural schedule, NRG understood testimony was due April 7 instead of April 6. NRG respectfully requests that the Commission and Parties accept this Testimony into the record.

Sincerely,

/s/ Abraham Silverman

Abraham Silverman
Attorney for NRG Energy, Inc.

BEFORE THE MARYLAND PUBLIC SERVICE COMMISSION

TESTIMONY

PETER D. FULLER

ON BEHALF OF

NRG ENERGY, INC.

BY NRG ENERGY, INC.
MD PSC CASE NO. 9361

TESTIMONY OF PETER D. FULLER

1. Introduction

Q. Please state your name and business address.

A. My name is Peter Fuller. I am the Vice President for Market & Regulatory Affairs for NRG Energy, Inc.'s ("NRG") East Region, which includes Maryland. NRG owns and operates power plants nationwide and is actively engaged in the development and deployment of next-generation grid technologies, such as distributed energy resources, microgrids, and related technologies. NRG's principle place of business is 211 Carnegie Center, Princeton, NJ 08540.

Q. Please summarize your background and experience.

A. I hold a Bachelor of Science degree in Electrical Engineering from Bucknell University and a Master of Science in Electrical Engineering from Northeastern University. I have worked in the electric industry since 1984. In my current role, I am responsible for providing regulatory support for NRG's business operations, including the new technologies that NRG is developing in the East Region, an area that encompasses nineteen states, from Maine to Virginia and west to Illinois and Wisconsin. A major part of my job is ensuring that state regulatory structures allow for, and encourage, the competitive development of microgrid and other distributed energy resource investments.

Q. What is the purpose of your testimony?

A. My testimony highlights the anticompetitive aspects of the recent partial settlement reached by Exelon Corporation and PHI Holdings, Inc., ("Joint Applicants") and Montgomery County, Prince George's County, the Mid-Atlantic Off-Road Enthusiasts, and the National Consumer Law Center (as well as related parties) in this docket ("Partial Settlement"). As an experienced participant in market design and marketing of distributed energy systems, NRG sees the Partial Settlement as destructive to competition in three distinct markets: the market for solar power in Maryland, the market for microgrids in Maryland, and the market for alternatives to grid-sourced power. By throttling competition in these vital markets, the Partial Settlement will inflict significant and long-lasting harm on Maryland consumers in terms of fewer competitive options, less competitive pressure on market prices, and less innovation in new energy-related technologies and products.

Q. Please summarize your testimony.

A. If approved, the proposed merger would already result in the creation of a dominant player in Maryland's distribution system, with an opportunity and economic incentive to use its dominant position and access to regulated rate recovery from Maryland's consumers to suppress the deployment by third parties of innovative alternatives to grid sourced power. Unfortunately, the Partial Settlement proposes a variety of measures, styled as "concessions" by the Joint Applicants, that appear to perpetuate Joint Applicants' dominance over the distribution system by committing to install and own distributed resources –

in some cases at ratepayer expense – rather than adopt conditions that promote innovation and investment in Maryland's energy infrastructure by parties *other* than Joint Applicants.

The Partial Settlement's failure to include pro-competitive mitigation measures is a missed opportunity. In order to find that the proposed acquisition is "in the public interest, convenience and necessity, including benefits to consumers and no harm," any merger settlement should include pro-competitive concessions that would *open* the distribution system to competition from distributed energy resources, not *close* the door on competition. In short, giving Joint Applicants the exclusive right to provide microgrid and renewable energy services to major customers in Maryland, with zero competitive process, will result in a bad deal for ratepayers and will significantly deter the ability and willingness of non-affiliated companies to invest dollars in Maryland.

Q. How should the Commission evaluate the Partial Settlement?

A. NRG believes that the Commission should ask three questions as it considers the Partial Settlement:

1. Does the Partial Settlement increase or decrease Joint Applicants' ability to preempt competition by distributed energy resources, including competition from distributed renewables and microgrids?

2. Does the Partial Settlement encourage investment of competitive dollars into Maryland's economy, or does it stifle independent investment?
3. Does the Partial Settlement provide the maximum benefit to ratepayers for the dollars committed?

NRG's review of the Partial Settlement is that in each case, the answer to these questions comes out on the side of decreasing competition and discouraging investment in Maryland. This gives the Commission ample grounds for determining that the Partial Settlement is harmful to Maryland ratepayers and thus not in the public interest.

Q. Does NRG see the Partial Settlement as providing value to ratepayers?

A. No. NRG's review of the Partial Settlement reveals several aspects that make it a bad deal for ratepayers, and thus not in the public interest. There are a number of factors that inform this opinion. *First*, the Joint Applicants propose to fund the proposed microgrid projects by committing to spend *ratepayer* dollars. The Partial Settlement's proposal that these projects will be built at ratepayer expense, without engaging in a competitive solicitation process, removes any price discipline that the Joint Applicants might have and exposes ratepayers to cross-subsidization and stranded costs.

Second, a commitment to spend ratepayer funds on two or more "pilot" projects harms the nascent competitive microgrid market by removing two significant potential customers (the Montgomery and Prince George's Counties) from the market. Although the Partial Settlement styles these projects as "concessions,"

the microgrid pilot project commitments appear designed to bolster and extend Joint Applicants' monopoly position by bypassing any competitive process and preventing competitors who might be willing and able to provide the proposed goods and services at a lower price or with better overall terms from any opportunity to participate in the process. This denies Maryland's ratepayers even the minimal benefits of a competitive solicitation for microgrid project developers. Ratepayers would be far better off requiring Joint Applicants to (i) fund a competitively sourced microgrid system and (ii) use *shareholder* dollars to meet the commitment.

Third, the microgrid market is an emerging and thus far a relatively small market. My review of Maryland suggests that there are currently only a handful of sites that would be suitable for microgrid development. As a competing developer of microgrid systems actively investigating the Maryland market, NRG is deeply concerned that if the Commission approves the giveaway of ratepayer funds to build one or more microgrids at ratepayer expense, that eliminates a significant share of the sites that would otherwise be developed with private investment, unduly advantages the Joint Applicants, and denies consumers access to the innovation and resources that the microgrid market will derive from competitive suppliers. It would be an ironic outcome if consumers seeking better-than-grid reliability through a microgrid solution could only purchase such services from the incumbent distribution utility.

Finally, it is important to note that Exelon Corporation's unregulated affiliate has

already publically announced its intention to build out a series of microgrids in New York and other markets, with no ratepayer cost recovery. Exelon even trumpeted the synergies between its microgrid aspirations and its distribution holdings, stating that "[t]his partnership provides Exelon an opportunity to get an early foothold in the emerging microgrids market, building on our existing expertise in distributed generation and our wires business[.]"[1] Yet in Maryland, Joint Applicants propose to insulate themselves entirely from competitive pressures by seeking full cost recovery for these microgrid projects positioning themselves to be the promoter, the enabler, and the implementer. Hence Joint Applicants' "concessions" in the Partial Settlement actually increase their market power on the distribution system by chasing away potential competitors and increasing Joint Applicants' already dominant position in the relevant market (*i.e.*, the distribution system).

Q. Does the Partial Settlement result in a mitigation of Joint Applicants' market power with respect to distributed energy resources and non-grid alternatives?

A. No. I am deeply concerned that Joint Applicants have structured their proposed "concessions" in a manner that enhances their already considerable market power in the distributed energy market. The Partial Settlement will have the unmistakable effect of eliminating competitors in the distributed energy markets – and will thus inflict significant harm to Maryland consumers.

[1] http://www.exeloncorp.com/newsroom/pr_20150202_EXC_Anbaric.aspx

First, instead of creating a competitive framework designed to invite and incent competition that would benefit all Maryland consumers, the Partial Settlement restricts competition by reserving to the Joint Applicants a significant amount of solar energy projects and by denying competitive suppliers of grid-scale solar energy projects any opportunity to compete for these highly-desirable projects in Maryland. This type of "wiring" of projects that should clearly be the province of the competitive marketplace is the antithesis of a pro-competitive outcome and is evidence of the harm that the Partial Settlement would inflict on Maryland consumers.

In addition, the Partial Settlement's provision by which the Joint Applicants will effectively give away fifteen years of renewable energy is particularly troubling. This give-away, while superficially attractive, will certainly drive competitors from the renewables market in Maryland. Competitive solar development companies are in a fierce battle for market share in many states across the country. In order to win market share, companies are aggressively cutting prices. By proposing to give away renewable generation, however, Joint Applicants are taking that strategy to a new level, which will certainly affect the ability of competitors to gain a foothold in Maryland. Rather than approving these "concessions," the Commission should adopt pro-competitive structures that will build the foundation for a long-term viable market for renewables in Maryland.

Q. Is the Partial Settlement in the public interest?

My recommendation to the Commission is that it reject the Partial Settlement and find that it does not meet Maryland's statutory standards for being in the public interest. Not only does it directly expose ratepayers to cost overruns and technology risk associated with the Applicants' proposal to ratebase their microgrid projects, it affirmatively harms competition in Maryland, which will have both immediate and long-term negative impacts on innovation, investment and consumer value in Maryland. .

Q. Does this conclude your testimony?

A. Yes.