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FEDERAL ENERGY  
REGULATORY COMMISSION

August 1, 2005

The Honorable Magalie R. Salas  
Secretary  
Federal Energy Regulatory Commission  
888 First Street, N.E.  
Washington, D.C. 20426

Re: Exelon Corporation, Public Service Enterprise Group  
Incorporated, Docket No. EC05-43-000

Dear Secretary Salas:

On July 1, 2005, the Commission issued an order authorizing the merger of Exelon Corporation ("Exelon") and Public Service Enterprise Group Incorporated ("PSEG Holdings") (collectively, "Applicants") to form Exelon Electric & Gas Corporation ("EEG").<sup>1</sup> As required by the Merger Order Ordering Para. (H), Applicants hereby submit this compliance filing addressing their commitment to retain an independent party to administer the baseload energy auction. To implement this commitment, Applicants have decided to add an additional layer of independence by hiring both an Auction Manager ("AM") and an Independent Auction Monitor ("IM"). These two roles are discussed herein and in the attachments hereto. Also as required by Ordering Para. (H), the Applicants provide

<sup>1</sup> *Exelon Corporation, Public Service Enterprise Corporation, Inc.*, 112 FERC ¶ 61,011 (2005) ("Merger Order").

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in Section III a discussion of compliance with their commitment to establish a public compliance website; that website currently is active.

This filing consists of this cover letter and the following attachments, provided for informational purposes:

- Tab A            Term Sheet for Agreement between Applicants and the Auction Manager
- Tab B            Pro Forma Agreement between Applicants and the Independent Auction Monitor
- Tab C            Public Compliance Website Template

Also included is a Notice of Filing and a diskette copy thereof. Applicants request that the Commission accept this compliance filing by October 3, 2005.

#### **I. Background**

As required by the Commission's regulations, Applicants submitted an Appendix A analysis assessing the merger's effect on competition. To address screen failures shown in Applicants' Appendix A analysis, Applicants proposed several means of interim and long-term mitigation. The Commission accepted Applicants' mitigation proposals. Relevant here, Applicants proposed to completely mitigate all screen failures in off-peak load conditions through a "virtual divestiture" accomplished by auctioning off long-term entitlements to baseload energy. Application at 22. The virtual divestiture will take one of two forms: (1) a firm sales contract for a term that expires no earlier than 15 years following the close of the transaction ("Long-Term Contract") or life of unit, which ever is shorter, or (2) an annual auction, in 25 MW blocks, of 3-year firm entitlements to baseload energy (the "Baseload Auction"). Application at 24, Merger Order at P 28. The sum of the baseload energy entitlements sold under the Long-Term Contract and the Baseload Auction options always will equal or exceed the Baseload Mitigation Amount which initially will be the energy equivalent of 2,600 MW of baseload capacity.<sup>2</sup>

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<sup>2</sup> Application at 24. The Baseload Mitigation Amount, however, will be reduced, megawatt-by-megawatt, upon the occurrence of a number of specified events. Application at 28; Merger Order at P 143.

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Under the Baseload Auction, the merged company will conduct annual auctions of 3-year firm entitlement to 25 MW blocks of baseload energy on a 24 x 7 basis. The price per MW will be established through a simultaneous multi-round ascending clock auction process, to be administered by an independent party. Application at 25. The auctions will be held annually around the time of the New Jersey BGS auctions.

To address interim mitigation during the period prior to commencement of sales under the initial annual Baseload Auction, Applicants committed to conduct an auction of interim firm entitlements to 25 MW blocks of energy. These energy entitlements will be the energy equivalent of 2,600 MW of capacity. Application at 35. The interim auction will be completed within 90 days following the month in which the Transaction closes (hereafter, references to "Baseload Auction" are meant to include the interim auction). Until that time, Applicants committed to bid all of their PJM East nuclear generation into the PJM day-ahead market at a price of zero. Application at 36.

Applicants committed to make the required baseload sales regardless of the price determined under the auction. The IM will monitor Applicants' compliance with that commitment in addition to monitoring the auction process. Merger Order at PP 134-35. The Commission "direct[ed] Applicants to make a compliance filing within 30 days of this order, detailing the process for the selection of the independent monitor." Merger Order at P 135.

Applicants also committed to "establish a public compliance website that will show how they are complying with the virtual divestiture and other mitigation requirements." Merger Order at P 135.

The Commission relied on the commitments to retain an independent party and to establish a compliance website in making its "finding that the virtual divestiture effectively mitigates the merger-related harm to competition." *Id.* Applicants compliance with these commitments is described below.

## **II. Baseload Auction**

Applicants committed to have an independent party administer the Baseload Auction. Application at 25. To fulfill this commitment, Applicants will retain a recognized expert in clock auction design and implementation to serve as the

Auction Manager ("AM"). Although the AM should satisfy all necessary independence criteria, Applicants have decided to take the additional step of hiring an Independent Auction Monitor ("IM") to monitor the Applicants' compliance with their commitments regarding the virtual divestiture of baseload energy. Applicants currently are in negotiations with a potential AM and a potential IM. Both these roles are described below.

#### **A. Auction Manager**

The AM will be the entity that develops and implements the Baseload Auction. Tab A hereto contains a term sheet ("Term Sheet") for an agreement between Exelon Generation Company, LLC ("ExGen") and the Auction Manager ("AM Agreement"). Before the close of the merger, Applicants commit to file with FERC for informational purposes the final executed AM Agreement.

Applicants have conducted an extensive search to identify an AM that meets specified independence criteria and that has the capability and reputation necessary to perform the specified functions. The Applicants initially considered eight companies for the AM role. Applicants have begun contract negotiations with Market Design, Inc. ("MDI") one of two finalists. MDI has an international reputation as a firm with considerable expertise in clock auction theory and practice. Currently, MDI is managing similar auctions of baseload nuclear energy and peaking capacity in France and Belgium in partnership with IBM Europe. MDI has provided auction services to the Federal Communications Commission and the Federal Aviation Administration. MDI has both hardware and proprietary software that it has used in numerous auctions over several years; MDI has the resources to make modifications/additions that may be necessary for the ExGen Baseload Auctions. Its extensive experience in the design and implementation of clock auctions sets MDI apart as an international expert in the clock auction field.

Independence. The AM, whether it is MDI or an alternative or successor company, shall be and shall remain throughout the Term of the agreement independent of EEG and its Affiliates (as defined by 18 CFR 35.34(b)(3)). To ensure sufficient independence: AM will not be a Market Participant; employees and directors of AM shall not be employees of EEG or its Affiliates; AM, its employees and its directors will be prohibited from acquiring a financial interest in EEG or its Affiliates, except that such a person will be permitted to own securities of EEG or its Affiliates through diversified mutual funds (other than those funds concentrating

their investments in the electric power industry or the electric utility industry or any segments thereof); and AM will not work for EEG or its Affiliates except in a similar capacity as an auction manager.

Cooperation with IM; Confidentiality. The AM Agreement will require the AM to cooperate with the IM as necessary for the IM to perform its services under the IM Agreement. This includes the AM providing the IM access to data, materials, audit trails, training sessions, meetings and processes that the IM deems reasonably necessary to perform services under the IM Agreement. The AM will be required to use all reasonable procedures necessary to protect and preserve the confidentiality of confidential information obtained in connection with the auctions.

Functions. The AM will perform the following functions:

- Auction Rules and Protocols. The AM will work with ExGen to develop detailed rules and protocols ("Rules and Protocols") for the Baseload Auction that will implement the mitigation requirements contained in the Merger Order. The Rules and Protocols will be posted on the AM's website.
- Baseload Auction Website. AM will build, host and maintain a website, owned by ExGen, that will contain a plethora of information related to the baseload auctions, including the information that the Applicants have committed to make available regarding the results of the auctions, and will serve as the forum for participating in the auctions, which will be Internet-based.
- Software and Hardware. The AM will design, test and implement necessary baseload auction bidding software, and obtain, test, and operate necessary hardware systems and infrastructure. The AM will be required to provide a real-time and ex-post audit trail, which will be available for review by the IM.
- Public Activities and Training Sessions. The AM will participate in promotion of the auction and will conduct bidder information and technical sessions. The AM will provide the IM will access to these public sessions.

- Conduct of Auction. The AM will conduct all auctions. To avoid problems in the actual auctions, as necessary, the AM will conduct internal group tests and mock auctions. The AM will give the IM access to observe the mock and actual auctions at the AM's site.
- Help Desk. During the mock and actual auctions, AM will have in place a help desk to answer questions and assist bidders with the process.
- Post Auction Activities. The AM is responsible for archiving auction data and preparing a post auction report. In addition, the AM will participate, to the extent requested by the IM, with the IM in certifying the auction results.

#### **B. Independent Auction Monitor**

As stated above, attached at Tab B is a pro forma contract between ExGen and the IM ("IM Agreement"). Before the close of the merger, Applicants commit to file with FERC for informational purposes the final executed agreement with the IM the basis for which will be the attached pro forma. The IM Agreement addresses the independence of the IM, the IM's access to information, confidentiality issues, and the IM's functions, including its reporting obligations. Each is discussed below. Notably, the IM Agreement provides that it may not be terminated or materially amended without prior FERC approval. Applicants are in discussions with two potential IMs.

Independence. The IM shall be and shall remain independent of EEG and its Affiliates (as defined by 18 CFR 35.34(b)(3)). To ensure sufficient independence: the IM will not be a Market Participant; employees and directors of IM shall not be employees of EEG or its Affiliates; IM employees and directors will be prohibited from having a financial interest in EEG or its Affiliates, except that such a person will be permitted to own securities of EEG or its Affiliates through diversified mutual funds (other than those funds concentrating their investments in the electric power industry or the electric utility industry or any segments thereof); IM's monitoring and reporting process will be independent of control by EEG and its Affiliates; and, finally, except for work done in a similar capacity as an independent monitor, the IM will not work for EEG or its Affiliates. Furthermore, IM's office will be separate from the offices of EEG and its Affiliates.

The IM, to the extent not already in place, will adopt a policy on conflict of interest, establishing appropriate standards for the professional and financial independence of the IM, consistent with FERC policies and regulations. The IM shall adopt ethics policies and standards for its employees and subcontractors. To further ensure independence, prior FERC approval would be required before the IM Agreement may be terminated or materially amended. To avoid any lapse in monitoring, the IM Agreement will not be terminated until a replacement IM is in place.

Information Access and Confidentiality. The IM will have complete access to all data or other information needed to fulfill its monitoring and reporting functions. In the event that a dispute arises over access to data or information, either ExGen or the IM may request that FERC resolve that dispute. Given the nature of the auction process, the IM will need access to confidential information. The IM Agreement is designed to protect such information without unnecessarily hindering the IM's ability to file timely reports with FERC.

Functions. The IM will be required to monitor implementation of each Baseload Auction to enable the IM to certify whether the implementation was consistent in all material respects with the Baseload Auction Rules and Protocols posted on the AM's website ("Implementation Certification"). IM also will be required to certify that no affiliate of ExGen was a bidder in the Baseload Auction. Again, to ensure that the IM would have sufficient access to relevant information, the IM has discretion to review materials related to the Baseload Auction (*e.g.*, materials provided to customers, communications with customers) and observe meetings and processes related to the Baseload Auction (*e.g.*, customer training sessions, auction process, help desk).

In addition to monitoring the implementation of the Baseload Auction, IM would be responsible for monitoring EEG's adherence to the interim and long-term mitigation requirements in the Merger Order regarding the virtual divestiture of baseload energy. This includes the duty to certify, in reports, that the quantity of energy sold through the Baseload Auction when combined with any contracts executed under the Long-Term Contract Option, is consistent with the mitigation requirements in the Merger Order. As described in the 203 Application, the quantity of energy to be auctioned will be reduced by the quantity of energy sold under the Long-Term Contract Option. Application at 24. To ensure that the type of energy product sold through the Baseload Auction and Long-Term Contract Option is

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consistent with the mitigation requirements in the Merger Order, the IM will be required to inspect the resulting contracts for consistency with those commitments.

Reporting. Although the IM may submit reports to FERC as frequently as it deems appropriate, the IM would be required to submit reports no less than annually. The IM will be required to file reports no later than 30 days following the conclusion of a Baseload Auction. During the interim mitigation period, it is anticipated that reports may be more frequent, as auctions and long-term sales may occur more frequently than annually. Once the interim period has passed, however, and auctions occur only once a year, the IM likely would file reports on an annual basis only.

### **III. Compliance Website**

Applicants committed that they will establish a public compliance website that will show exactly how they are complying with the virtual divestiture requirements, as well as with their other mitigation requirements. Answer at 43. Attached hereto at Tab C are screen shots of the website, which is active and can be accessed through a link on [www.exeloncorp.com](http://www.exeloncorp.com) or directly at [www.eegcompliance.com](http://www.eegcompliance.com). Additional information could be added to the website following the consummation of the Transaction. To the extent that the general website address of EEG changes, the Applicants commit that the website always will be accessible through the EEG general website. In addition to the link on EEG's general website, in the future, there will be links on the company specific pages that appear on the PJM OASIS for ComEd, PECO and PSE&G. The website will be updated as required and will contain current information on or before the date that the Transaction closes. There are three pages of information that will be provided.

The first page will show the current level of the Baseload Mitigation Amount, *i.e.*, the level of virtual divestiture that is required. The page also will show the specific events, such as plant retirements, transmission expansions, etc., if any, that result in a reduction in the original required Baseload Mitigation Amount of the energy equivalent of 2,600 MW, as permitted by the Merger Order.

The second page shows the status of the Baseload Mitigation, which will allow the viewer to see how the Applicants are meeting the full amount of the mitigation requirement shown on the first page. It will show how much energy equivalent capacity is being sold under the various types of permitted contracts, as well as the status of the interim baseload mitigation required by the Commission's



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Order. This page also will contain a link to the Baseload Auction website that the AM will maintain that will have detailed information regarding the results of the Baseload Energy Auctions.

The third page will show the status of the remaining 4,000 MW fossil divestiture commitment. It will identify the specific units being sold, as well as the date of the sale and the identity of the purchasers. This page also will show the status of the interim mitigation that is required by the Commission's order.

#### **IV. Communications**

Applicants request that all copies of notices and correspondence related to this filing be sent to the following individuals and further request waiver of the Commission's regulations to the extent necessary to allow the designation of four individuals to receive service:

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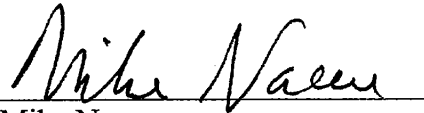
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Applicants respectfully request that the Commission accept this compliance filing by October 3, 2005, to facilitate the implementation of the Baseload Auction.

Respectfully submitted,



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