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10 C.F.R. 50.80

U.S. Nuclear Regulatory Commission
Attention: Document Control Desk
One White Flint North
11555 Rockville Pike
Rockville, MD 20852

**SUBJECT: SOUTH TEXAS PROJECT, UNITS 1 AND 2
DOCKET NOS. STN 50-498, STN 50-499
ADDITIONAL RESPONSE TO LICENSE TRANSFER
APPLICATION SUBMITTED BY EXELON CORPORATION**

By letter dated February 10, 2009, counsel for Exelon Corporation ("Exelon") submitted to the Nuclear Regulatory Commission ("NRC") a response ("Exelon Letter") to NRG Energy, Inc.'s ("NRG") letter of February 4, 2009. NRG's letter provided a preliminary response to Exelon's unilateral submission on January 29, 2009 of an application for NRC consent to the transfer of control of the licenses for NRG's 44% ownership interest in South Texas Project Units 1 and 2 ("STP") and NRG's corresponding interest in STP Nuclear Operating Company ("STPNOC").^{1/}

Contrary to Exelon's claims, NRG is not asking the NRC to inject itself into the merits of Exelon's ongoing exchange offer and proxy solicitation. As the NRC has stated, in a license transfer review, the "NRC's focus is on the health and safety aspects, not on the financial intricacies, of the proposed transaction." NUREG-1556 (Vol. 15), *Consolidated Guidance About Materials Licenses* (Nov. 2000) at 1-2. NRG is simply asking that the NRC make a threshold determination as to when and under what conditions it is appropriate for a party engaged in a hostile takeover bid

^{1/} In its letter, Exelon appears to question NRG's right to comment on Exelon's license transfer application concerning NRG's own licensed interests. NRG is the parent company of NRG South Texas LP, the licensee that owns the largest portion (44%) of STP and the largest corresponding interest in STPNOC, the operating licensee. NRG, on behalf of its licensee subsidiary NRG South Texas LP, not only clearly possesses the authority to submit correspondence on its own docket, but it is responsible for keeping the NRC informed on issues pertaining to its licensed interests.

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for an NRC licensee (or its corporate parent) to submit unilaterally an application for transfer of control of the relevant license. This appears to be an issue of first impression for the NRC, and clearly presents policy concerns for the orderly functioning of the NRC's license transfer process. In addition, Exelon's attempt to elect a substantial number of members to the NRG Board of Directors without NRC review raises significant policy issues. It is thus appropriate for NRG to raise its concerns to the NRC at this time.

A. Exelon's proposed transaction is conditional and speculative

Exelon's license transfer application ("LTA") continues to be premature. Exelon recognizes as much when it states that "the details of how Exelon would consummate the acquisition of NRG pursuant to a negotiated transaction with NRG are still underdetermined, and various alternatives are summarized in the LTA." Exelon Letter at 3. Exelon also acknowledges that "the transaction described in the LTA cannot be consummated before a majority of NRG shareholders have consented to the acquisition of NRG by Exelon by accepting Exelon's tender offer." Exelon Letter at 2. A majority of NRG shareholders have not tendered their shares in response to Exelon's tender offer, and thus Exelon has had to extend the deadline of its tender offer once, and is likely to do so again.^{2/} In addition, Exelon's own shareholders, whose consent is required for Exelon to issue its shares of common stock in the tender offer, have not yet approved the transaction.

In any event, there is strong evidence to suggest that Exelon does not actually intend to go through with the tender offer. Exelon recently stated:

[B]ut really the exchange offer is part of a two-pronged approach for us to try to acquire NRG with a management that is opposed to the transaction. . . . But what is very important to focus on here is in both instances [referring to exchange offer and proxy solicitation] what we're trying to do is reach a negotiation with NRG management, reach an accommodation that does not require us to go through all of these legal steps; **and in essence what all these steps are designed to do is give the NRG shareholders the opportunity to convey to the management their interest in the transaction, and**

^{2/} Even the tendered shares do not definitively reflect which NRG shareholders are in favor of the transaction. Exelon cannot accept the tendered shares at this time because the proposed transaction contains many other unfulfilled conditions. Exelon does not acquire voting control of the tendered shares until Exelon has accepted such shares and made arrangements for the immediate payment for such shares by depositing with the exchange agent shares of Exelon's common stock. Until such time, Exelon cannot vote such shares. Importantly, the shareholders who tendered their shares can withdraw them at any time until the exchange offer has expired and Exelon has accepted the tendered shares for payment.

that is in essence what we're trying to do [emphasis added].

Our intention is to get to a point where a Board of Directors and a management team is willing to sit down and negotiate a transaction... What we are trying to do is get a sufficient number of shareholder-minded directors in the board room to direct management at NRG to consummate a transaction that makes sense.... [W]e're hoping that [the new board members]...will be sufficient **to get to our intended goal line, which is a negotiated settlement with shareholder value firmly in mind for all that are at issue [emphasis added].**^{3/}

Because the nature and structure of any transaction between NRG and Exelon, particularly a negotiated transaction (Exelon's stated "goal line"), still remains uncertain and subject to numerous conditions, there is no reason for the NRC to proceed with the requested license transfer review at this time. As the various events unfold, it will become apparent whether or not Exelon's takeover attempt is likely to succeed, i.e., whether Exelon will succeed in its attempt to gain control of the NRG Board of Directors, whether a majority of NRG's shareholders will tender their shares to Exelon, whether Exelon's shareholders approve the transaction, whether Exelon will be able to raise the financing necessary to consummate the transaction, and whether the numerous other conditions and contingencies to Exelon's exchange offer will be satisfied. NRG believes that asking the NRC to review the LTA at this point in time would be a waste of resources, especially in light of the fact that Exelon has indicated that it does not expect to close on the transaction until "*the fourth quarter of 2009.*"^{4/}

B. Exelon's LTA is deficient because NRG is not a co-applicant

As explained in our February 4, 2009 letter, Exelon's LTA is deficient for the further reason that NRG and STPNOC have not authorized Exelon to submit the LTA. The NRC recognizes that "the burden of notification [of a license transfer] is on the existing licensee." NUREG-1556 (Vol. 15) at 1-2. Accordingly, the NRC normally receives a license transfer application filed jointly by the licensee (the transferor) and the transferee. In some unique circumstances, such as a bankruptcy of a licensee, the NRC could be faced with a unilateral application if the

^{3/} Remarks of William Von Hoene, Jr., Exelon Executive Vice President and General Counsel, at the Credit Suisse Energy Summit, February 2, 2009 (attached) at pp. 2, 6-7.

^{4/} Attached Remarks at 3.

existing licensee has liquidated. For this reason, 10 C.F.R. 50.80(b)(2) provides that the NRC “may require” a license transfer applicant “to file a written consent from the existing licensee or a certified copy of an order or judgment of a court of competent jurisdiction attesting to the person’s right (subject to the licensing requirements of the [Atomic Energy Act] and these regulations) to possession of the facility or site involved.” In the ordinary case where the existing licensee has not liquidated, the existing licensee must be a joint applicant and participant in the application to transfer control of its NRC license, or at least file written consent to the transfer. Such joint participation achieves the important objective of preserving the NRC’s orderly process for transfer of control of a license and the obligations that go with it, and ensuring that the NRC secures complete and accurate information related to the proposed transfer.

Exelon, however, argues that the consent of the existing licensee to a transfer of its license is purely discretionary. Exelon Letter at 2. Such a position would be inconsistent with the statutory provision on “inalienability of licenses” under Section 184 of the Atomic Energy Act, which is implemented through 10 C.F.R. 50.80 and corresponding provisions in other parts of the NRC’s licensing regulations (e.g., 10 C.F.R. 40.46 and 10 C.F.R. 70.36). By virtue of the inalienability of licenses provision, an existing licensee must apply to the NRC for a transfer of its license (or a termination of the license) in order to be relieved of its licensed responsibilities. For this reason, with the possible exception of a situation where the existing licensee has liquidated, the existing licensee must be a joint applicant along with the proposed transferee for a transfer of control of its license.

To date Exelon has not sought NRG’s or STPNOC’s consent to the proposed transfer. Exelon’s letter does not even explain or attempt to justify Exelon’s failure to seek the consent of the existing STP licensees. Until Exelon has addressed the need for the consent of the existing licensees, the NRC should find the LTA insufficient.

C. Exelon’s attempt to elect directors to NRG’s Board of Directors could effect a change of control, but such hostile board actions should be discouraged as a matter of policy

Exelon’s license transfer application does not address Exelon’s proxy solicitation pursuant to which it has announced a slate of nine nominees for election to NRG’s Board of Directors at the 2009 annual meeting of stockholders, together with a proposal to increase the number of NRG directors from 12 to 19 with two vacancies. Exelon apparently believes, as stated at page 5 of its letter, that its “proposal to elect directors to the NRG Board [of Directors] does not implicate 10 C.F.R. 50.80.” In NRG’s view, Exelon’s attempt to elect a substantial number of directors to the NRG Board of Directors without NRC review raises significant policy issues for the Commission.

As the NRC has noted in a related context, “control” arises when an entity “has the ‘power,’ direct or indirect, whether or not exercised, to direct or decide matters affecting the management or operations” of the licensee or applicant. *Final Standard Review Plan on Foreign Ownership, Control, or Domination*, 64 Fed. Reg. 52355, 52358 (Sept. 28, 1999). The power to direct or decide such matters quite clearly can arise from membership on a corporation’s board of directors. Apart from board membership, the NRC has noted that the acquisition of greater than 5% of the outstanding common stock of a licensee can involve a possible change in control and thus implicate 10 C.F.R. 50.80.^{5/} Clearly, then, the election of 9 out of 19 directors, which would give Exelon’s nominees control of 47% of the NRG Board, should constitute a potential change in control warranting NRC review.

Of potentially even greater concern, Exelon’s nominees could compose a majority of NRG’s Board of Directors if the two vacancies on NRG’s Board (created if Exelon’s proposal to expand NRG’s Board of Directors to 19 members is approved) are not filled by directors nominated by the current NRG Board of Directors.^{6/} Exelon would then control 9 out of 17 directors (giving the Exelon nominees control of 53% of NRG’s Board of Directors and unquestionably representing a change in control). Even if NRG were to maintain a 10:9 majority on the NRG Board after this year’s annual shareholder meeting, NRG could lose that majority in the event of the resignation, retirement or death of any non-Exelon nominated Board member. As a result, on the day of election to the NRG Board of Directors and thereafter, Exelon could have control over the NRG Board.

Thus, a proxy battle for control of the board of directors of a licensee (or its parent company) such as the one contemplated by Exelon should require 10 C.F.R. 50.80 review. From a policy standpoint, the NRC should discourage such actions. An attempt to take control of a licensee’s Board of Directors could conceivably, under different circumstances, create uncertainty for the licensee’s management and employees, and adversely affect the licensee’s ability to retain key personnel and attract new talent. As noted in our prior letter, Exelon’s effort could set a dangerous precedent for future cases, such as those involving potential foreign control and influence. The NRC has recognized that board membership can raise foreign control and influence issues in some cases, and for this reason, has reminded licensees that it is prohibited to allow a licensee’s “Board of Directors [to become] controlled or dominated by board members who are not U.S. citizens.”

^{5/} See, e.g., NRC Letter re Comanche Peak Steam Electric Station, Units 1 and 2, “Threshold Determination Concerning Convertible Notes and Stock Transactions,” April 14, 2003 (addressing acquisition of 10.05% of outstanding common stock of licensee’s parent company).

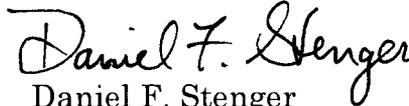
^{6/} Four of Exelon’s nominees are proposed to replace the NRG Class III directors who are up for election at the 2009 annual shareholder meeting. The remainder of Exelon’s nominees would fill five of the seven new positions on the expanded Board as proposed by Exelon, thus leaving two seats open. While the Exelon Letter (at page 4) claims that Exelon is offering “independent candidates,” the determination of each director’s independence is a matter for the NRG Board of Directors considering all relevant facts and circumstances.

Regulatory Issue Summary 2000-01, *Changes Concerning Foreign Ownership, Control, or Domination of Nuclear Reactor Licensees* (Feb. 1, 2000) at 1-2.

Accordingly, depending on the circumstances, the election of nine Exelon nominees to the NRG Board of Directors could well require 10 C.F.R. 50.80 review. However, Exelon's license transfer application does not address Exelon's proxy solicitation, its proposed board expansion, and its director nominations. Exelon does not, for example, provide any background information about its proposed nominees for directors. In the absence of any discussion of these matters, the NRC should find the application to be incomplete and defer any review. In fact, despite the existence of Exelon's proxy solicitation, there is no need for the NRC to engage in a review at this stage.

For the foregoing reasons, the NRC should find that at this point in time Exelon's license transfer application is both premature and insufficient, and defer any review of the application. Unless and until there is a negotiated transaction that is approved by the NRG Board of Directors (which is Exelon's stated goal), it is premature for Exelon to pursue the NRC license transfer approval process.

Very truly yours,



Daniel F. Stenger

Amy C. Roma

Counsel for NRG Energy, Inc.

cc: Chairman Dale E. Klein
Commissioner Gregory B. Jaczko
Commissioner Peter B. Lyons
Commissioner Kristine L. Svinicki
R. William Borchardt, NRC Executive Director for Operations
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Enclosure:

Remarks of William Von Hoene, Jr., Exelon Executive Vice President and General Counsel, at the Credit Suisse Energy Summit, February 2, 2009

ENCLOSURE

CREDIT SUISSE ENERGY SUMMIT
REMARKS OF WILLIAM VON HOENE, JR.,
EXELON EXECUTIVE VICE PRESIDENT AND GENERAL COUNSEL
FEBRUARY 2, 2009

Good morning. We're going to get started, thank you all for being here at this hour. My name is Bill Von Hoene, Executive Vice President and General Counsel at Exelon. Also with me here this morning are Matt Hilzinger who is our Chief Financial Officer, and Frank Konkowski who is our senior economist. We're here today to talk to you about our transaction with NRG. Let me do the lawyerly thing first and get by a couple of the statements. One, relating to the fact we do have an exchange offer coming, and this is not part of the exchange offer; and second, that we are going to engage in some forward-looking statements and have the protections that this slide embraces. I suspect that all of you, being here at this hour, are familiar with the industrial logic that we have advocated this transaction with; but let me just go through for a second in setting the table for what we're going to talk about today, which is primarily, how we're going to go forward to try to consummate the transaction and the level of our commitment to do that. As you know, we're seeking to combine Exelon and NRG; Exelon, the largest United States power company with the largest industrial nuclear fleet in the country; NRG, an independent power-producer, also very well run, with substantial value in a number of competitive markets, including primarily Texas. We view the transaction to have a number of tremendous benefits for both the constituents of Exelon and of NRG. It would be earnings and cash accretive that creates a growth platform that the companies individually would not have; it provides diversity of marketplaces and fuel sources; and it would, if consummated, provide an investment-grade platform with which to go forward in a world where consolidation, we think, is the future. In total, the combined company would have 51,000 megawatts of power after some

divestitures that I'll talk about in a minute, and would remain the second least carbon-concentrated major power producer in the country.

This journey for us started with discussions last September and ultimately with an offer that we made by letter to NRG in October offering to buy all of NRG's shares, exchange all of NRG's shares for Exelon shares at a 37 percent premium off of the October 17th price, and that October 17th price was the closing price on the Friday before we made the letter offer. Between October 19th, when we made the letter offer, and November 12, when we filed the exchange offer, we engaged in dialogue via letter with NRG's management, urging them to consider the offer. They ultimately advised us on the 9th of November that they were rejecting the offer, and on the 12th we filed the exchange offer that memorialized and really captured the offer that we had made by letter earlier. The exchange offer, I want to talk about some of the mechanics in this in a second but really the exchange offer is part of a two-pronged approach for us to try to acquire NRG with a management that is opposed to the transaction. The second prong of that, which I'll talk about in a minute, is the proxy solicitation that we will undertake later this month with regard to their Board of Directors. But what is very important to focus on here is in both instances what we're trying to do is reach a negotiation with NRG management, reach an accommodation that does not require us to go through all of these legal steps; and in essence what all these steps are designed to do is to give the NRG shareholders the opportunity to convey to the management their interest in the transaction, and that is in essence what we're trying to do.

The next slide shows the timetable by which we're operating. You'll see in the fourth quarter last year we initiated the process. The exchange offer, which was an offer at the rate that I identified, the .487 rate, to exchange the shares, expired in the first instance, or was set to expire, on January sixth, and we extended that date to February 25th; I'll talk about that in a

minute. We will initiate the proxy solicitation later this month. The proxy solicitation, if we do not get to the table and negotiate a transaction, would essentially end with their annual shareholder meeting. They have not yet scheduled the shareholder meeting; by law they have to hold it by the middle of June, and so we're anticipating that meeting will be in May or June. The third box from the bottom shows the timetable for a number of the regulatory filings that we have to make in this case. We have to get the approval at FERC, we have to get Department of Justice sign-off, a couple of state regulatory agencies, and the NRC; and we've identified a timetable for making those filings and securing the approval.

One thing about this transaction that was very important to us was that we think the regulatory path is relatively simple and straightforward, and that is in large part because the market overlap between the NRG assets and the Exelon assets is minimal. And so what we have proposed to do with all of the bodies that look at market power is to divest about 3200 megawatts, partially in PJM East, partially in ERCOT, to eliminate any market power considerations whatsoever. So this is an accelerated scale for the approval; but it is a scale that we think is doable given the limited complexity in the regulatory approval process. So the last box at the end of course is the finish line, and we think as we get through all of the transactional complications, coming to a deal, getting the regulatory approvals, that our expectation is that we will close in the fourth quarter of 2009.

As I said, the initial exchange offer was to expire on January sixth, and what we did was, we went out to directly speak to the NRG shareholders, a number of folks who are at this conference, to urge them to tender their shares. And the act of tendering is not an irrevocable act; it's saying that essentially we support the transaction. And I don't know how many of you have operated in M&A land very frequently, but it's not uncommon in an initial tender, even for

a successful transaction, for the tender to be 15, 20, 25 percent as the shareholders are looking for other things to make the deal more attractive, or are uncertain about the industrial logic of the deal. In this instance we got a 45.6 tender, which is a very, very high rate; it's higher than we anticipated, it's higher than I think any of the analysts who covered it and made prognostications anticipated. And while it does not make what might be viewed, at least psychologically, as a magical 50 percent number, it is a very, very compelling number. And indeed, if you take that and apply that to the body of shares that would normally vote at the annual shareholder meeting, where historically NRG 80 to 85 percent actually vote, this exceeds 50 percent of what would be the anticipated shares voting at the meeting. What we decided to do in light of the strong showing is two things. Number one, extend the exchange offer until February 25; and we've done that, so there'll be another period where shareholders will have another opportunity to tender; and we'll recount that, and at February 25th we'll announce again what those results are. But what we really wanted through that is an opportunity to recommence our efforts to negotiate with NRG. So after the offer, we talked to a number of the NRG shareholders who indicated surprise that we had not be [sic] been contacted by NRG management in light of the strong shareholder support.

We contacted, initially through our banks, NRG management, and then a week ago, Monday, you may have read in our security filings and in theirs, John Rowe, David Crane, myself and my counterpart at NRG met in Washington, DC. It was a congenial meeting. What John Rowe indicated to David Crane, the CEO at NRG, was that we were prepared immediately to initiate a very concentrated due diligence process of approximately two weeks in duration, enter into a confidentiality agreement, go forward and do that. And at the end of two weeks, we would assess the value that was ascribed to the deal. We essentially want to confirm the value

that we think is there from publicly available information, and if there is additional value that we've not uncovered in our analysis, we'll look at what opportunities that presents in terms of how the deal would be structured. And what David told John was that he would not allow us to engage in a due diligence; that he was exploring other possibilities, essentially for the sale of the company. There were other parties that had interest; and that we would not be permitted to do so and therefore that the negotiations could not go forward. So that's the playing field on which we are located currently, and that really makes the proxy solicitation all the more important.

So here's what we're doing in connection with the proxy solicitation. Last Friday, we advised NRG, and we publicly announced, that we would solicit proxies to get in sometime later this month, in February. And what we are asking the NRG shareholders to do is two things. Number one, to expand the size of the NRG Board, the current board is 12, to 19 members; and the shareholders, under the NRG charter, are permitted to do that by a vote at the shareholder meeting. So what we're saying is expand the size. And then we are asking them to elect nine Directors that have been publicly announced on Friday, and make those nine part of the enlarged 19-member NRG Board. Now, in terms of the current NRG Board Members, four ... they have a standard board, four are up for re-election at this annual shareholder meeting, so we have four candidates we're proposing that the NRG shareholders elect, with regard to those four replacing those and elect an additional five shareholders for a total of nine out of the nineteen.

We went through a painstaking process to ensure that the nominees for the NRG Board that we are proposing are independent, are well-qualified, are business savvy; and if you look at our press release and see who these people are, virtually all of them either are or have been CEOs of major companies; virtually all of them have served on public boards or currently serve on public boards; and virtually all of them have a body ... well, all of them have a body of

business experience that makes them well-qualified. We do not ask them how they're going to vote on this transaction. That's not part of the deliberation. They have to be independent, they have to exercise the fiduciary duty that will be their obligation if they become a part of the board. What we do think is that they are value-oriented for shareholders, and that's what we're asking the Board to do now, is to look at shareholder value for NRG shareholders and to get to the point where they can sit down and negotiate.

Now, a number of questions have been raised about why we selected the number nine as opposed to taking a majority of the Board, so I want to address that just for a second ... or asking for a majority of the Board. And there are really two reasons for that. The primary reason is, all of the NRG debt that is in existence, which is in excess of eight billion dollars, about 8.7 billion dollars, has change in control provisions under which the debt becomes immediately due upon a type of change of control, and I'm going to talk about a distinction there between the bondholders and the shareholders in a minute. But if we had the majority of the Board, absent some real technical maneuvering that would be difficult to explain and difficult to implement, that would constitute a change of control under that debt. So what that would mean is, by the election of that board, essentially all that debt would become due. We don't want to have that happen; we don't want to wreak that havoc. Our intention is to get to a point where a Board of Directors and a management team is willing to sit down and negotiate a transaction that we believe makes as much sense for all parties concerned. So that's item number one. Item number two is, we really are not trying to take control of their Board, and we don't want shareholders to be offended by something that created that impression. What we are trying to do is get a sufficient number of shareholder-minded directors in the board room to direct management at NRG to consummate a transaction that makes sense. So that's why we got to the nine point.

Historically, if you have nine board members in the board room, it's undoubtedly going to change the dynamic and we're hoping that the shareholder value orientation of the directors that we have nominated, if we have to go to that point, will be sufficient to get to our intended goal line, which is a negotiated settlement with shareholder value firmly in mind for all that are at issue.

So that's kind of the place we are now. We would really like to not do that. We'd like to not have to do that. So if we could reach a negotiation with NRG prior to the annual meeting of the shareholders where we could get this deal transacted, this would be unnecessary to do it. But because they've shown no inclination whatsoever to negotiate a transaction that has a fair reflection of shareholder value on both sides, we have to go down this path. And I want to assure everybody, and I hope our actions speak louder than my words, that we are absolutely committed to this path; if it's necessary to get to the point to sit down at the table.

Now I wanted, before answering questions, just close to talk about two things that have been said by NRG, and in some cases by others, kind of levels of skepticism about, can we get the transaction done? And is it worth NRG investing the time in the negotiation, and that is, is the regulatory approval path, sufficiently clear that we have a degree of assurance that we can get there? And two, can Exelon provide the financing that is necessary to consummate the transaction? So let me turn first to the regulatory approval process. And we have already alluded to this earlier. We've already initiated most of the filings that are necessary, if the approval is acquired, to consummate the transaction. In December we filed at FERC, and FERC is on a six month schedule. We made that filing. We also made our Hart-Scott-Rodino filing in December and we've been in active negotiations with the Department of Justice. We've received what is called the second request, which is a bit of a misnomer; we've give [sic] them

some information with the filing, and then they'd made a request, which they made on January 16th, for additional information; and the idea there is to resolve market power kinds of issues; and we've been very forward in our FERC filing, and very forward in our Hart-Scott-Rodino filing about the divestiture that we are proposed to undertake in order to eliminate the market power issues. We've also made state filings in Texas and New York, and we made a filing this last Friday at the Nuclear Regulatory Commission, so this slide is just one day out of date in that regard.

The two state jurisdictions where we don't have filings on currently are Pennsylvania and California, and some of you may know from the news that we did actually file in California, and the California PUC would not accept the filing on the ground that it was premature. And essentially what they said was, "If you don't have a consummated transaction with NRC [sic], we're not going to entertain your filing." Now, we don't believe the law says that, and we've been out there to talk to the commissioners, and talked to the commission about that in California, and we do anticipate that we will be able to file without the same objection prior to the consummation of a transaction if we have to go through the entire process that I described a few minutes earlier. In Pennsylvania we're preparing our filing and we'll do that shortly. Both in Pennsylvania and California, the scope of what is looked at is very, very limited. So we're not anticipating any difficulties in the state. Understandably we're seeing a little bit of murmur at the state level about, "Well, since it's such a simple process, should we engage in this now or should we wait until you get a deal consummated?" As I said, we don't think the law requires us to do that, but we're trying to walk a line between getting this done as quickly as possible, and also accommodating the concerns in the state agencies.

So the bottom-line story on this slide is that we are on target for the regulatory approval process. It is a relatively simple process, especially relative to the things that we went through recently with PSPG that many of you are aware of, and that we anticipate this not being any impediment whatsoever to the consummation of the transaction. So let me turn to the second issue that I raised a few minutes ago, and that is the financing. As I said before, there is in excess of eight billion dollars in finances that NRG has that under a riot of circumstances we would have to refinance. And it breaks down basically into two bodies. There's the kind of term debt, which is about four billion dollars, the revolver and those types of things; and then there's the NRG bond debt, which is about 4.7 billion dollars. We looked at this very carefully, and particularly as the markets are changed, we're confident we can refinance that whole amount if we need to do so. We've been in very intensive negotiations with banks and we have no issue with being able to do that if it's necessary to do so. We'd like to ... Notwithstanding the fact that we can do that, we have the capacity, and we believe the money will be available to do that ... and by the way, the question often comes up, why haven't you signed executed [sic] the commitment letters for at least a portion of this debt? And the reason we haven't done that is it costs us money to execute the commitment letters. We'd like to get a little farther along in terms of certainty that we can come to the transaction before we spend that money. But the letters are ready to be executed on a substantial amount of this debt.

The change in control ... no matter what we do the change in control comes into play with the transaction, with respect to the term debt. It's a little bet [sic] different with respect to the bondholder debt, and that is, there is a structure, which we've looked at very carefully, under which we could consummate this transaction without triggering the changing in control provisions in the bond debt, and essentially we call this, and you hear it referred to as Top-co,

and essentially what it would be is, we would take the Exelon entity, merge it into NRG, and simultaneously change it to Exelon. So because of the way the covenants are written in the bond debt, that would not constitute a change in control.

So we would not have to refinance that if we implement the Topco. And we're prepared to implement the Topco if that's necessary to consummate the deal. It's less expensive for us to implement the Topco than it is to refinance that 4.7 billion dollars in debt. And our NRC filing that we filed on Friday; indeed, we've put out very exclusively for the NRC that one of these two options may come into play and we'd like your approval regardless of what form it takes. We'd like to not have to do that if we can because we'd like to do this in a very peaceful way with all parties concerned, so we are in discussions with the bondholders to see whether we can get waivers of the change in control covenant so that we don't have to implement the Topco, and do that at a price that is reasonable for all parties concerned; and we hope that those discussions will be fruitful. But it would be a mistake not to understand very firmly that if we're not able to consummate those negotiations, we're prepared to go forward with the Topco and forgo [sic] that financing. So that's one of the things in the pot at the end of the day we're looking at to try to make this as inexpensive for the shareholders as possible, as efficient, to put all of the constituencies that are involved here, the Exelon shareholders, the NRG shareholders, and the NRG bondholders in a place where they have benefited by this transaction. And as our chairman has said on many occasions, everybody can make some money out of this transaction, all of those constituencies, if everybody acts reasonably, and everybody has reasonable expectations. There's plenty here to make this a very, very good transaction for all concerned, and we're trying on one front with the bondholders, on another front with their shareholders, and another front with getting the approval processes to get us to the finish line so that can happen.

Question and Answer Session

With that, we will open up the floor to any questions that anybody has, and I just have to warn you I can't see anything out there because of the light, so if I don't recognize your hand, just yell and I'll know what direction you're in. Are there any questions on our transaction?

Question: Is there an economic policy front in Washington that would change your enthusiasm for this deal?

WVH: No. You know one of the things that people ask a great deal on the policy front in Washington is what's going to happen to carbon because obviously Exelon is in a very, very attractive carbon position and our shareholders rightfully ask "Are you diluting your carbon position if the carbon momentum goes forward in Washington and we get legislation that gives us an extra value[?]" We've weighed very carefully the carbon options. We don't have a crystal ball and we don't know what it's going to look like. We do think it will be carbon. We do think it will ultimately be beneficial to Exelon.

But when you look at the value that for Exelon that is created by this transaction, the slight dilution on the pure carbon value is well outweighed by the value in all the cases we've done including the stress cases by the value that we would derive from the combination.

So we look at that. You know, there have been announcements that there's going to be more rigorous anti-trust review in the Department of Justice now. We have so eliminated the market power issues, we don't think we'll be implicated by that policy. So we're really not seeing anything else in the new administration that would serve to be an impediment for us consummating the transaction.

Question: I guess since the time you announced this transaction, natural gas has come off substantially and I mean even at that point, we're probably thinking, "Oh, gas is weak but it'll get stronger." I mean does this transaction — are you confident that it still holds the same value in today's *Fords* (23.53) for gas [to] hold true?

WVH: Yeah. What I'd like to do is ask Frank Natlasky [Konkowski] to respond to that because Frank has done our analysis on a variety of cases including stress cases where we anticipated, you know, lower gas prices for a longer period of time. Frank, do you want to comment on that?

Frank Natlasky [Konkowski]: Sure. right now, the gas futures are in the \$5 range in '09, going up to \$6 in '10, and then, you know, get remounted to \$7 in '11 and after. Both companies are pretty well hedged in '09 and '10. So we're protected against sort of the \$5 and \$6 price. We've analyzed it, looking at prices from about say 6.50 to 8.50 when you get out in 2012 and '13. And we still think

that that's where gas prices will end up within that range. So it has shifted down a bit. But I think it's still within the range that we analyzed initially.

Question: Good morning. If you do this Topco structure, would all Exelon debt fall onto the NRC bond indenture? And it seems like something you guys wouldn't want to do, given the RP basket, etc.

WVH: No. It stays separate. So the NRG bondholder and its indenture stays intact as it is, including the high-yield covenants, although there's a springing function there. But our debt and our covenants as it is with Exelon stays intact. There is no merging of the two.

Question: You say the regulatory glidepath looks pretty clear, but could you just be a little more granular, thinking back to the last deal, you were involved in took quite a while, what would be some of the potential speedbumps here or stress cases that might slow this down a bit?

WVH: Well, let me first say something about the last deal. And what we had in the last deal in terms of the — two things — in terms of the overlap of the assets was a completely different picture than we have here. And that was really what held up the show at DOJ. And you'll recall we got FERC approval very quickly in the last deal. We got Pennsylvania approval very quickly in the last deal.

And then we had complications in New Jersey where part of it was market power considerations and part of it was just kind of the internal politics. We don't see any of those things in our case now in front of any of those jurisdictions. We have gone out and talked to the regulators and the politicians in all of the jurisdictions. We talked to FERC before we filed, which we're allowed to do. We've engaged in discussions with DOJ on a continuous basis.

We don't see any of those kind of impediments. The main speed bump that I foresee in this and that we foresee is at least at the state level agencies having a reluctance, or utility commissions having a reluctance to act on this until a deal has been signed. And engaging in the process and the elbow grease that's necessary to look at it. And what we're telling those agencies is number one, the law authorizes you to look at it, which we believe the law does. Number two, given the nature of the transaction, the work you have to do to satisfy yourself that the approval standard has been satisfied is minimal. And number three, it's in the best interest of everyone to get this transaction done as quickly as possible so that the expenses that are associated with delay are avoided, so it's in the interest of the people of your state to get it done. But that's what I foresee as the major potential speed bump. The other stuff I think we've dealt with pretty effectively, particularly with the divestiture that we've openly advocated to do to take out the market power issue.

Question: Bill, considering the fact that, you know hostile deals are always harder to get done, or harder to get done than most, what are going to be the

breakpoints for Exelon where you decide not to go forward in the transaction? What would be the timeline where you'd make a decision to pull up stakes and look somewhere else?

WVH: Yeah. The only break point that I see at the moment is if we lose the proxy solicitation. If we don't get a significant number of directors elected to their board. If we haven't consummated a negotiated transaction by that time, and we don't get a sufficient number of directors elected to the board, that will be an indication to us, from their shareholders that the shareholders do not support the transaction. Until we get an indication from their shareholders that they do not support the transaction, we're going to move forward on this. And we think that the initial exchange offer results are a very strong indication of that.

Obviously, at the other end if we got bogged down into years of delay or a substantial period of delay that we couldn't foresee, and it affected the business case that we continually look at, then we'd have to deal with that. But what we're currently anticipating is that we will be at a point by June when their shareholder meeting we expect will take place, where one of two things will have happened. Either we will have been able to get to the table with NRG and negotiate and consummate a transaction, or they will have a differently composed board that will have the appetite to engage in those negotiations. And if we get to that point, we think the logic behind the transaction is compelling and that we'll be able to consummate. So it's really dependent upon what the NRG shareholders' support level is. And we'll look at the real kind of touchstones or the places where they can show that they do or do not support the transaction, at least conceptually.

Question: I guess to get the bigger picture for Exelon, you know, with the acquisition of NRG and the size of the generation fleet that she would have, the vast, vast majority of Exelon would be generation based. How do you guys think about the utility generation mix on a long-term basis and what do you think about rebalancing some of the utility exposure to blend out the business mix?

WVH: Sure. First of all, we've constantly engaged in the analysis of what our business should look like and what is the most productive architecture for our business in terms of shareholder value.

At the present we see a very, very strong compelling basis for having the utilities combine with the generation business, notwithstanding the fact that our revenue, the relative revenue contributions of those two parts of our business have changed so dramatically in the last seven or eight years. The utilities provide us a stability with the rating agencies that is valuable. They provide us a political platform in the places where our power plants operate that is valuable. And they provide us with a diversity of resources. We will look at that kind of stuff constantly and look for opportunities but the utility mix right now is one that's very positive for us. To the extent your question is would we enhance the utility side? We look at all of the possibilities on a very, very methodical basis as we go forward and one of the things I'd like to think that we do relatively well is change course when the

economics and the circumstances change course. And be flexible enough and have enough dexterity to respond to conditions that would make anything in the future attractive to us.

Question: Bill, just one question in light of the timeline that you put out. You said it was an accelerated scale but do you think it's regulatory doable today? How long potentially could it get extended if things don't go exactly to plan?

WVH: Sure. If we look at — well, let's start with the state agencies and then I'll go back up to the federal, okay? On the state agency level we've had far more complicated transactions approved several times in Pennsylvania, much more complicated transactions in less than six months from the date of filing. So we can't envision a circumstance in which we would exceed that period of time and we think it'll be much less. The nature of the transactions in California and New York and Texas are such that absent the bump that I alluded to a little bit before, we think that that's probably a 90-day calendar in connection with that. And if we were in a negotiated position where both parties were coming to the table together, to see the approval, obviously you have the possibility of some acceleration there. FERC is on a six-month, 180-day calendar from the date of filing. They can, in their discretion, extend that an additional six months. So it is conceivable that FERC, although we do not expect them to do that given the nature of the transaction, it is conceivable that when six months from our filing expires they could extend it another six months. The FERC comments are due on February 21, so we'll get a sense by then of kind of what issues may be raised in front of FERC.

And the Department of Justice thing is kind of interesting because really at the DOJ it's not an approval. What happens is when we comply with the second request, which they issued a week before last, once we've made substantial clients with that meeting, once we've given all of the information that they need, that they've asked for, and we think we can do that in a period of probably six weeks, four to six weeks, that's what we're aiming for. Or six to eight weeks. Excuse me. Then the clock starts on them. And they have 30 days. With the expiration of that 30 days, if they have not done anything, meaning if they have not filed a lawsuit to stop the transaction from going forward, we're entitled to go forward. We don't need any further authorization from them. Now as a practical matter, that's not how we want to do business with the Department of Justice. And what we're trying to do is put it into play so that it's accommodated without those kinds of, you know, brinkmanship occurring and we don't anticipate based on the discussions we've had to date that we'll have any of that. Okay? Dan, I think they're blinking the clock on us here. Up to you?

Thank you all very much.