

**BEFORE THE
PUBLIC SERVICE COMMISSION
OF MARYLAND**

IN THE MATTER OF THE MERGER)	
OF EXELON CORPORATION AND)	
CONSTELLATION ENERGY GROUP, INC.)	Case No. 9271

***NON-BINDING, NON-ADMISSIBLE, NON-DISCOVERABLE SETTLEMENT MATERIAL
PURSUANT TO FEDERAL RULE OF EVIDENCE 408 AND MARYLAND RULE 5-408***

JOINT PETITION FOR APPROVAL OF SETTLEMENT

The State of Maryland and the Maryland Energy Administration (“MEA”) (collectively, the “State”); and the Mayor and City Council of Baltimore (“Baltimore City”) (collectively, the “Signatory Intervenors”), parties to the above-captioned proceeding, agree that the application of Exelon Corporation (“Exelon”), Constellation Energy Group, Inc. (“Constellation”), Baltimore Gas and Electric Company (“BGE”), and Exelon Energy Delivery Company, LLC (“EEDC, LLC”) (collectively, the “Applicants”) (the Applicants, with the Signatory Intervenors, collectively constitute the “Signatory Parties”) for authorization of Exelon to acquire the power to exercise substantial influence over the policies and actions of BGE in Maryland submitted to the Maryland Public Service Commission (“Commission”) on May 25, 2011 (the “Application”), should be approved as filed, subject to the terms and conditions set forth below in this Joint Petition for Approval of Settlement (“Settlement”), each of which would only become operative after consummation of the Merger.

This Merger and Settlement, if approved by the Commission, will represent new investment in the State of Maryland of more than \$1 billion. It will create approximately 6,000 or more new jobs in Maryland (including a number of construction jobs in connection with the development of the facilities required by the Settlement). It will result in 285 to 300 megawatts

of new generation in Maryland. It will significantly increase Maryland's Tier 1 renewable generation capacity and create the first new gas-fired generation built in Maryland in nearly a decade. It will provide Maryland with the substantial environmental benefits that come with clean generation, including carbon emissions avoidance, as well as the enhancements to the water quality in the Chesapeake Bay that accompany an investment in animal waste-fueled generation. The Settlement will provide over \$70 million in energy efficiency, low income, and weatherization assistance to Marylanders, including some of the neediest and most vulnerable BGE customers. The Settlement builds on existing BGE ring-fencing protections, including through the addition of new measures to promote local control and funding resources for reliability. It results in the construction of a new headquarters building in Baltimore City, which will pump \$95 million to \$120 million into the local economy and spur job growth. Finally, the Settlement includes approximately \$112 million in residential customer rate credits. The Signatory Parties respectfully request that the Commission approve the Application pursuant to this Settlement.

I. BACKGROUND

1. On April 28, 2011, Exelon and Constellation agreed to combine in a stock-for-stock transaction ("Merger"). Specifically, Exelon would acquire one hundred percent of Constellation's stock and Constellation would thereby become a wholly-owned subsidiary of Exelon. Because the Merger would result in Exelon acquiring the power to exercise substantial influence over the policies and actions of Constellation's regulated electric utility subsidiary, BGE, Commission approval is required before the Applicants may complete the Merger. Md. Code Ann., Pub. Utils. ("PUA") § 6-105(e)(1). Consequently, on May 25, 2011, the Applicants filed their Application requesting that the Commission find that the Merger is "consistent with

the public interest, convenience and necessity, including benefits and no harm to consumers.”
PUA § 6-105(g)(3)(i). (Application 17-25.)

2. The Application included written testimony and exhibits describing the Merger and the benefits the Applicants expect the post-merger combined company to produce for its customers and the communities it will serve. In addition, the Application included written testimony and supporting material explaining the Applicants’ position that the Merger will be consistent with the public interest, convenience, and necessity, including benefits and no harms to consumers, and will meet all requirements of PUA § 6-105(g).

3. Notice of the Application was published in the Baltimore Sun on June 6th and 13th, the Washington Post on June 9th and 16th, and the Afro-American on June 11th and 18th.

4. On June 28, 2011, the Commission held a prehearing conference to establish a procedural schedule. At the conference, the Commission adopted a schedule in which intervenor testimony was due on September 16, 2011 and rebuttal testimony was due on October 12, 2011. (Order No. 84154.) The Commission also set hearing dates beginning on October 31, 2011 and ending November 10, 2011. (*Id.*) Dates for filing testimony related to market power issues were later extended, pursuant to the Commission’s August 24, 2011 Notice of Modification to Procedural Schedule, to September 23, 2011 for intervenor testimony and October 17, 2011 for rebuttal testimony.

5. Petitions to intervene were timely filed by the following parties: the Staff of the Maryland Public Service Commission (“Staff”); the Office of People’s Counsel (“OPC”); Monitoring Analytics, LLC (“IMM”); EDF Inc. (“EDF”); Baltimore City; individuals Vincent S. Tola, Leo W. Burroughs, Jr., Maria Allwine, Vicki Ann Harding, and Chris Bush; the State; the Chesapeake Climate Action Network, Environmental Integrity Project, Environment Maryland,

Maryland League of Conservation Voters, and The Sierra Club (collectively, “Environmental Groups”); PJM Industrial Customer Coalition; Good Jobs Better Baltimore; Interstate Gas Supply, Inc. d/b/a IGS Energy (“IGS”); Retail Energy Supply Association (“RESA”); International Brotherhood of Electrical Workers (“IBEW”); Solar Alliance; RG Steel Sparrows Point LLC (“RG Steel”); Mid-Atlantic Renewable Energy Coalition (“MAREC”); NRG Energy Inc. (“NRG”); and the Baltimore Building and Construction Trades Council (“Building Trades”). All petitions were granted.

6. On September 16, 2011, Staff, OPC, the State, IMM, RG Steel, Good Jobs Better Baltimore, MAREC, IGS, and Chris Bush all filed testimony and exhibits. On September 23, 2011, Staff, OPC, and MEA filed direct market power testimony. On October 12, 2011, the Applicants, EDF, OPC, NRG, and Solar Alliance filed rebuttal testimony. On October 17, 2011, the Applicants, OPC, RESA, and the Environmental Groups filed market power rebuttal testimony. On October 26, 2011, the Applicants, Staff, OPC, the State, IGS, RG Steel, Good Jobs Better Baltimore, and MAREC all filed surrebuttal testimony.

7. On October 21, 2011, the Applicants filed a Motion to Enforce Procedural Schedule and to Strike Certain Untimely and Irrelevant Testimony filed by IGS, EDF, NRG, and Solar Alliance. The State filed a Motion to Strike Portions of the Applicants’ Rebuttal Testimony on October 24, 2011, and OPC filed a motion to Compel on October 26, 2011.

8. On October 28, 2011, the Commission held a hearing on the Applicants’, the State’s, and OPC’s motions and denied them all. At this hearing the Commission also added hearing dates on November 11, 2011 and November 18, 2011.

9. On October 31, 2011, evidentiary hearings in this proceeding commenced and continued for 11 days. During the course of the hearings, the Commission heard live testimony

from 37 witnesses and admitted approximately 317 exhibits into the record, including 75 pieces of pre-filed testimony. At the conclusion of the evidentiary hearings, the transcripts included in excess of 3500 pages. During the course and following the conclusion of the hearings, the parties engaged in settlement negotiations, the product of which is this Settlement.

10. Public comment sessions were held on November 29, 2011 in Bel Air, Maryland, December 1, 2011 in Baltimore City, Maryland, and December 5, 2011 in Annapolis, Maryland.

II. TERMS AND CONDITIONS OF SETTLEMENT

11. The Signatory Parties agree that the Application should be approved as filed and the relief requested therein granted, subject to the terms and conditions as set forth herein. The Signatory Parties further agree that the terms and conditions set forth herein in Sections II and IV of this document are a complete set of terms and conditions and are provided in lieu of and irrespective of the Applicants' prior proposed commitments and any conditions previously proposed by the other Signatory Parties, and supersede any such prior commitments and conditions. Sections I and III of this document contain explanatory matter that shall not be construed as contractual conditions of the Settlement. This Settlement, pursuant to these terms and conditions, resolves all of the concerns of the Signatory Parties related to the Merger, and the Signatory Parties jointly recommend that the Application, as modified only by this Settlement, should be approved without further modification. By signing this Settlement, each Signatory Party warrants that it is legally bound by the terms and conditions of the Settlement, as set forth in Section II and IV of this document, effective on the date of execution by all Signatory Parties in the case of the terms and conditions set forth in Section IV of this document and effective upon consummation of the Merger in the case of the terms and conditions set forth in Section II of this document.

A. Direct Customer Benefits

- 1) Residential Rate Credit: Exelon shall, within 90 days after consummation of the Merger, fund a one-time distribution of \$100 per BGE residential customer in direct rate credits, which shall be credited within 90 days after consummation of the Merger, and amount to approximately \$112 million, and which shall not be recoverable in rates. The credits will be provided for all residential customers of record with active accounts on a specified date following the Merger. Residential customers served under both a residential electric schedule and a residential gas schedule will receive one credit.
- 2) Contribution to EmPower Maryland: Exelon shall fund \$10 million to offset costs to be incurred by BGE for its EmPower Maryland programs, which shall not be recoverable in rates. The funding shall be disbursed in the amount of \$2.5 million in each of the four calendar years following consummation of the Merger, commencing in and including the year in which the Merger is consummated. BGE shall, within 90 days after consummation of the Merger, file with the Commission an implementation proposal for Commission approval. BGE shall maintain its commitments to supporting and implementing energy efficiency programs including EmPower Maryland. Exelon and BGE will work with Baltimore City to seek approval from the Commission for a proposed pilot program which would allow Baltimore City or BGE to manage a portion of EmPower funds specifically apportioned for customers in Baltimore City zip codes.

- 3) Contribution to EUSP: Exelon shall fund \$10 million to the Electric Universal Service Program, which shall not be recoverable in rates and shall be used to retire electric bill arrearages of qualified BGE residential customers. The funding shall be disbursed in the amount of \$2.5 million in each of the four calendar years following consummation of the Merger, commencing in and including the year in which the Merger is consummated. BGE shall, within 90 days after consummation of the Merger, file with the Commission an implementation proposal for Commission approval (ensuring that the amount of arrearages defrayed by Exelon's contribution will not be reflected in BGE's uncollectible expense to be recovered in future rates).
- 4) Support for Low- to- Moderate-Income Customer Weatherization: As part of ongoing efforts to encourage energy efficiency and demand-side management and to spur development of energy efficiency and demand-side management services within the State of Maryland, Exelon shall contribute \$50 million, which shall not be recoverable in rates, to support weatherization, energy conservation efforts, and programs to alleviate energy costs for low-to-moderate-income homes in BGE's service territory over a four-year period (in installments of \$12.5 million per calendar year, commencing in and including the year in which the Merger is consummated) through the Department of Housing and Community Development's ("DHCD") weatherization program. DHCD will allocate the monies to the local jurisdictions or their designees within the BGE service territory in a manner consistent with the Department of Energy allocation formula currently utilized by DHCD. It is estimated that the contribution will support

weatherization and energy conservation for more than 12,500 homes in BGE's service territory.

- 5) BGE CAIDI Study: BGE shall, within 12 months following consummation of the Merger, conduct and file with the Commission an assessment and identification of the causal factors that contribute to BGE's CAIDI performance.
- 6) Contribution to RG Steel Sparrows Point LLC ("Sparrows Point"): Exelon shall fund up to \$20,000, which shall not be recoverable in rates, to allow Sparrows Point to participate in any of the programs and associated incentives under BGE's Energy Solutions for Business Program.

B. Public Interest Benefits

- 7) Baltimore Constellation Headquarters: Exelon shall, upon consummation of the Merger, establish in the Downtown/Harbor area of Baltimore City the headquarters for the combined company's competitive energy businesses, as well as the combined company's renewable energy development headquarters. As part of this commitment, Exelon will construct or cause to be constructed (by entering into a lease of at least 15 years) a building to house the two headquarters, which headquarters will be constructed to at least LEED-certified Silver standards. Subject to permitting, zoning, planning, and all other applicable governmental requirements, Exelon shall select a developer and a site, and construction of the building shall begin within twelve months after consummation of the Merger. Exelon shall provide to the Commission and the intervening parties, as soon as possible following consummation of the Merger and to the extent available (and in further periodic updates), details on whether Exelon will be developing or

leasing the building, the terms of the lease, information on whether union labor will be used, the number of jobs associated with the building construction, and cost outlays.

- 8) New Generation: Exelon shall develop or assist in the development of 285 MW to 300 MW (nameplate capacity) of new generation in Maryland within the ten-year period following consummation of the Merger. Projects pursuant to this condition shall be selected at Exelon's discretion, subject to the below requirements. Projects that have, as of the date of this Settlement, either commenced construction or that the Applicants have committed to construct other than as part of this proceeding do not qualify toward fulfillment of this condition. The generation shall be from the following resources:

- a) *New Tier 1 Generation*: 125 MW of Tier 1 renewable resources by January 15, 2022. The Tier 1 projects shall be developed on a merchant basis, except that up to 75 MW may be developed pursuant to requests for proposals ("RFPs") issued by the Commission, one or more Maryland electric distribution companies or cooperatives, or the State, a state or Federal agency, or a local or municipal governmental entity, for new generation in Maryland.

Further, as to the Tier 1 projects:

- i. 50 MW of the 125 MW shall begin operation by December 31, 2016;
- ii. At least 62.5 MW of the 125 MW shall be from wind projects;
- iii. The following shall not be considered to fulfill this paragraph 8(a):
 - (1) solar projects, including but not limited to those developed

pursuant to paragraph 8(d); and (2) new animal waste-to-energy projects developed pursuant to Paragraph 8(c);

- iv. To the extent projects are developed pursuant to a State- or Commission-issued RFP, Exelon shall provide a \$500,000 per MW payment to the State upon commercial operation of such projects. It is the intent of the Signatory Parties that any payment paid by Exelon pursuant to this paragraph 8(a)(iv) be used to support the creation of new Tier 1 renewable energy sources in Maryland. The payment shall be deposited in the Maryland Strategic Energy Investment Fund pursuant to Section 9-20B-05(e)(6), State Government Article, Annotated Code of Maryland, and the monies shall be used solely to support the creation of new Tier I renewable energy sources in Maryland, exactly as if such monies were compliance fees being used pursuant to Section 9-20B-05(i)(l), State Government Article, Annotated Code of Maryland, and may not be used for any other purpose;
- v. For any shortfall below 50 MW as of December 31, 2016, Exelon shall, on or before January 15, 2018, pay liquidated damages equal to \$900,000 per MW below 50 MW, unless the period is extended by consent of Exelon and the State. For any shortfall below 125 MW as of January 15, 2022, Exelon shall, on or before January 15, 2023, pay liquidated damages equal to \$900,000 per MW below 125 MW, less the amount of liquidated damages, if any, paid pursuant to the

preceding sentence, unless the period is extended by consent of Exelon and the State. Payment of the liquidated damages shall release Exelon from the obligation for which the liquidated damages are paid. It is the intent of the Signatory Parties that any payment paid by Exelon pursuant to this paragraph 8(a)(v) be used to support the creation of new Tier 1 renewable energy sources in Maryland. Any liquidated damages paid by Exelon pursuant to this paragraph 8(a)(v) shall be deposited in the Maryland Strategic Energy Investment Fund pursuant to Section 9-20B-05(e)(6), State Government Article, Annotated Code of Maryland, and the liquidated damages payment shall be used to support the creation of new Tier I renewable energy sources in Maryland, exactly as if such monies were compliance fees being used pursuant to Section 9-20B-05(i)(1), State Government Article, Annotated Code of Maryland, and may not be used for any other purpose. In either case, to the extent facility construction is in progress with a reasonable likelihood of completion no later than one year following the conclusion of the period, the liquidated damages clause shall not apply;

- vi. The foregoing deadlines shall be tolled for reasonable delays in permitting or zoning beyond the developer's or Exelon's control and for conditions of force majeure affecting construction;

- b) *New Natural Gas-Fired Generation*: 120 MW of primarily gas-fired combustion turbines in Maryland within the 5004/5005 submarket by December 2015. The gas-fired generation shall be developed on a merchant basis. The foregoing deadline shall be tolled for reasonable delays in permitting or zoning beyond the developer's or Exelon's control and for conditions of force majeure affecting construction;
- c) *New Animal Waste-to-Energy Generation*: At the State's election, either (i) \$60 per MWh of output delivered to the State in subsidy paid by Exelon to the State or its designee for the duration of a 20-year Power Purchase Agreement (or \$70 per MWh of output delivered for the duration of a 15-year Power Purchase Agreement) signed under the Clean Bay Power RFP to support development of up to 10 MW of generation under the Clean Bay Power RFP primarily combusting animal waste/manure-based fuels (in which case Exelon would: (1) have the right of first refusal to purchase any renewable energy credits ("RECs") or any other environmental attributes created by the generation and received by the State or its designee and not otherwise transferred or assigned to the State's load serving entity or entities to be used for compliance purposes for the State's energy usage, at the then-current fair market value should the State or its designee determine to sell its RECs or environmental attributes received from the generation; (2) have the option, subject to the State's or its designee's prior consent, to assume and exercise any contract option the State or its designee may have to extend the contract term beyond its initial period, in which case Exelon will be subject to all terms

and conditions that would have applied to the State or its designee, and the State or its designee shall have no further obligation under the contract; and (3) have access to and non-exclusive rights to use commercial and environmental information related to the project development if the State reserves or holds such rights and is authorized by law or contract to extend such rights to Exelon or the holder of such rights gives any required consent thereto), or (ii) construction of a 25 MW plant primarily combusting animal waste/manure-based fuels if legislation is enacted by July 2016 providing for a carve-out for RECs for animal waste/manure-based fuels (at a quantity at least equal to the equivalent output of the 25 MW plant) that is deemed appropriate by consent of both Exelon and the State. Further:

- i. If, by December 31, 2016, the option in clause (c)(i) above has been selected, and the Clean Bay Power RFP has resulted in a project less than 10 MW in nameplate capacity, Exelon shall pay the State liquidated damages for any shortfall below 10 MW in the amount of \$4.4 million per MW, unless the deadline is extended by consent of Exelon and the State;
- ii. If, by December 31, 2016, the option in clause (c)(ii) above has been selected, and Exelon fails to construct or cause to be constructed the generation required by such election within four years after such election was made or four years after the required legislation was enacted, whichever is later, Exelon shall pay liquidated damages for any shortfall below 25 MW equal to \$1.76 million per MW, unless

the period is extended by consent of Exelon and the State and except to the extent facility construction is in progress with a reasonable likelihood of completion no later than one year following the conclusion of the period. The foregoing deadline shall be tolled for reasonable delays in permitting or zoning beyond the developer's or Exelon's control and for conditions of force majeure affecting construction;

- iii. If, by December 31, 2016, neither option in clause (c)(i) above nor in clause (c)(ii) above has been selected, Exelon shall pay the State liquidated damages in the amount of \$44 million, unless the deadline is extended by consent of Exelon and the State;
- iv. It is the intent of the Signatory Parties that any liquidated damages paid by Exelon pursuant to paragraphs 8(c)(i)-(iii) above be used to support the creation of new Tier 1 renewable energy sources in Maryland. Any and all liquidated damages paid by Exelon pursuant to paragraphs 8(c)(i)-(iii) above shall be deposited in the Maryland Strategic Energy Investment Fund pursuant to Section 9-20B-05(e)(6), State Government Article, Annotated Code of Maryland, and the liquidated damages payment shall be used solely to support the creation of new Tier I renewable energy sources in the State, exactly as if such monies were compliance fees being used pursuant to Section 9-20B-05(i)(1), State Government Article, Annotated Code of Maryland, and may not be used for any other purpose;

d) *New Solar Generation*: 30 MW of solar generation in Maryland in the City of Baltimore and other jurisdictions within the 5004/5005 submarket by December 2015, which may be developed on either a merchant basis or pursuant to an RFP issued by the Commission, one or more Maryland electric distribution companies or cooperatives, or the State, a State or Federal agency, or a local or municipal governmental entity, for new generation in Maryland. Solar facilities may include behind-the-meter installations at residences and public, commercial, and industrial facilities, and at locations to accommodate larger-scale, grid-connected projects. Additionally:

- i. Of the 30 MW, Exelon will construct and own not less than 10 MW of solar capacity (whether on one or more sites, the “Solar Project”) on one or more City-owned or City-leased sites, subject to terms mutually agreeable to the City and Exelon. Exelon will work together with the City to identify an optimal location or locations for the construction of the Solar Project (understanding that the City has identified sites with up to 25 MW of potential solar capacity), on which the Solar Project will be located. The City and Exelon will jointly participate in the permitting and interconnection processes. The City and Exelon will use commercially reasonable efforts to complete the construction of the Solar Project by December 31, 2015, subject to the identification and selection of mutually agreeable locations and completion of the permitting and interconnection processes. Exelon will retain the solar renewable

energy certificates (“SRECs”) and tax attributes for the Solar Project. The City will purchase the energy produced from the Solar Project under a power purchase agreement (“PPA”) for a term of 15 years at a price per kWh to be determined by the City and Exelon;

- ii. The SRECs created by such projects may not be used by any person for Maryland Renewable Portfolio Standard (“RPS”) compliance prior to 2018, though SRECs created in prior years may be banked and may then be used in 2018 or thereafter to the extent permitted by law;
- iii. Exelon shall provide Staff an annual report delivered to Staff no later than April 1 each year detailing the vintage, GATS ID number, quantity, and status (i.e. banked, expired, retired for non-MD compliance, etc.) of all SRECs from these projects through calendar year 2019; and
- iv. The foregoing deadlines shall be tolled for reasonable delays in permitting or zoning beyond the developer’s or Exelon’s control and for conditions of force majeure affecting construction.

- 9) Funding for Offshore Wind Development: Exelon shall provide, within 90 days after consummation of the Merger, \$30 million in funding for the State’s use in its efforts to realize an offshore wind project, including the development of a Construction and Operations plan. If and to the extent that the State has reserved or holds rights to any analysis and other work product relating to wind speed, sea state, and ecological resource assessment on the Outer Continental Shelf, as a

direct result of the funding and is authorized by law or contract to make such rights available to Exelon, and if any other interested party holding rights in and to such analysis and work product gives any required consent thereto, the State will, upon request of Exelon, grant Exelon non-exclusive rights to use any such analysis and other work product resulting from the funding solely for purposes of development of wind energy in Maryland. Exelon shall donate an additional \$2 million to a public institution or institutions of higher learning within Maryland, as selected by the State, to support research and development in wind energy applications. The Maryland Higher Education Commission (“MHEC”) shall conduct a competitive process such that all public institutions of higher learning in the State will have the opportunity to compete for some or all of the \$2 million. Once MHEC has determined which public institution or institutions shall be awarded the monies, and in what amount, MHEC shall direct Exelon to make the donation(s) to the selected recipients within 60 days.

- 10) Charitable Giving: Exelon and its subsidiaries shall, during the ten-year period following consummation of the Merger, provide an annual average of \$7 million in charitable contributions and traditional local community support within Maryland.
- 11) Maintain Employment at BGE: Upon approval of the Merger and for at least the first two years following consummation of the Merger, Exelon (i) shall not permit a net reduction, due to involuntary attrition as a result of the Merger integration process, in the employment levels at BGE, and (ii) shall provide current and former BGE employees compensation and benefits that are at least as favorable in

the aggregate as the compensation and benefits provided to those employees immediately before the Merger.

- 12) Support for Supplier Diversity: Exelon shall fully support the goals of the Memorandum of Understanding (“MOU”) signed by BGE on February 6, 2009 regarding supplier diversity, including all of the terms and conditions thereof, and shall use its best efforts to assist BGE with the implementation of the MOU and meeting its obligations pursuant to the MOU. BGE shall meet its obligations pursuant to the MOU.

C. Corporate Governance, Management, and No Harm to BGE Customers

- 13) BGE Headquarters: BGE shall maintain its headquarters in Baltimore, remain locally managed, and continue to serve its customers under its own name.
- 14) BGE Board of Directors: Subsequent to the first BGE Board of Directors meeting after consummation of the Merger and continuing thereafter, Exelon shall ensure that at least one-third, and no less than two members, of the BGE Board of Directors will be independent members as that term is defined under New York Stock Exchange rules. Additionally, a majority of the BGE Board of Directors shall have a primary residence or principal place of business or employment in BGE’s service territory.
- 15) Exelon Board and Shareholder Meetings: Exelon’s Board of Directors will add Baltimore to its regular rotation of the location of Exelon’s board and shareholder meetings.

- 16) Executive Committee Meetings: Exelon Management's Executive Committee shall meet periodically in Baltimore and shall file notice with the Commission when it holds meetings in Baltimore.
- 17) BGE Representation on Exelon Executive Committee: BGE's CEO shall be a member of Exelon Management's Executive Committee.
- 18) Local BGE CEO: BGE's CEO shall reside in BGE's service territory.
- 19) RF HoldCo Ownership of BGE: BGE shall remain a direct, wholly-owned subsidiary of RF HoldCo.
- 20) BGE Ring-Fencing: Exelon, RF HoldCo, BGE, and EEDC, LLC shall ensure compliance with the ongoing ring-fencing requirements applicable under Condition Numbers 2, 4, 5, and 6 of Commission Order No. 82986 in Case No. 9173. Exelon shall not, for three years following consummation of the Merger, be permitted to file with the Commission a petition for a modification to the ring-fencing measures, and, after three years, may only do so if there is a material change in circumstances.
- 21) Non-Consolidation Opinions: Within 180 days after consummation of the Merger, Exelon shall obtain new non-consolidation opinions from outside counsel to BGE and Exelon concluding that a bankruptcy court, following established legal precedent, would not substantively consolidate: (i) the assets and liabilities of RF HoldCo with those of Exelon or EEDC, LLC in the event of an Exelon or EEDC, LLC bankruptcy; or (ii) the assets and liabilities of BGE with those of (a) RF HoldCo in the event of an RF HoldCo bankruptcy, or (b) Exelon or EEDC, LLC in the event of an Exelon or EEDC, LLC bankruptcy. If, for whatever reason, the

Applicants are unable to obtain an acceptable opinion letter, Exelon and BGE shall take whatever additional measures are necessary to secure this letter.

22) Requirements Associated with Corporate Reorganizations: Exelon shall not engage in an internal corporate reorganization relating to RF HoldCo, BGE, or EEDC, LLC for which Commission approval is not required without 90 days prior written notification to the Commission. Such notification shall include: (i) an opinion of reputable bankruptcy counsel that the reorganization does not materially impact the effectiveness of BGE's existing ring fencing; or (ii) a letter from reputable bankruptcy counsel describing what changes to the ring-fencing would be required to ensure BGE is at least as effectively ring-fenced following the reorganization and a letter from Exelon committing to obtain a new non-consolidation opinion following the reorganization and to take any further steps necessary to obtain such an opinion. Exelon will not object if the Commission elects to open an investigation into the matter if the Commission deemed it appropriate, but may complete the reorganization prior to the conclusion of the Commission's investigation if Commission approval is not otherwise required. Exelon shall not, without prior Commission approval, engage in a reorganization relating to RF HoldCo, BGE, or EEDC, LLC if that reorganization would be inconsistent with Commission Order No. 82986 or would prevent BGE from obtaining a new non-consolidation opinion. This provision does not negate or alter any statutory authority the Commission may otherwise have with respect to such reorganization, including pursuant to Public Utilities Article § 6-105, and does not apply to transactions such as changes in capitalization or ownership of

subsidiaries of EEDC, LLC other than RF HoldCo and BGE (e.g., ComEd and PECO) or acquisitions or dispositions of utilities or utility assets other than RF HoldCo and BGE.

23) Maintain EEDC, LLC's Corporate Character: Exelon shall not, without prior Maryland Public Service Commission approval, alter EEDC, LLC's corporate character to become a functioning corporate entity providing common support services for EEDC, LLC subsidiaries.

24) ComEd and PECO Independence from BGE: At no time post-Merger shall BGE directly or indirectly own or control, or have any direct or indirect interest in or management or operation of, Commonwealth Edison Company ("ComEd") or PECO Energy Company ("PECO").

25) Reporting on Exelon Utilities: Exelon shall report to the Commission on a quarterly basis the activities of Exelon Utilities until the completion of BGE's first rate case following consummation of the Merger and shall file such reports thereafter as the Commission deems appropriate. Each report shall include: (i) a narrative description of the activities undertaken by Exelon Utilities; (ii) cost data for Exelon Utilities; (iii) the basis on which Exelon Utilities' costs are proposed to be allocated to BGE; and (4) a cost-benefit analysis assessing the utility of Exelon Utilities and its benefits to BGE.

26) Severance of Exelon-BGE Relationship: The Commission may, after investigation and a hearing, order Exelon to divest its interest in BGE on terms adequate to protect the interests of utility investors (including Exelon investors) and consumers and the public, if the Commission finds, based upon clear and

convincing evidence, that: (a) one or more of the divestiture conditions described below has occurred, (b) that as a consequence BGE has failed to meet its obligations as a public utility, and (c) that divestiture is necessary to allow BGE to meet its obligations and to protect the interests of BGE customers in a financially healthy utility and in the continued receipt of reasonably adequate utility service at a just and reasonable price. The divestiture conditions in which such relief may be considered shall be limited to: (i) a nuclear accident or incident at an Exelon nuclear power facility involving the release or threatened release of radioactive isotopes, resulting in (x) a material disruption of operations at such facility and material financial loss to Exelon that is not covered by insurance or indemnity or (y) the permanent closure of a material number of Exelon nuclear plants as a result of such accident or incident, (ii) a bankruptcy filing by Exelon or any of its subsidiaries constituting 10% or more of Exelon's consolidated assets at the end of its most recent fiscal quarter, or 10% or more of Exelon's consolidated net income for the 12 months ended at the close of its most recent fiscal quarter; (iii) the rating for Exelon's senior unsecured long-term public debt securities, without third-party credit enhancement, are downgraded to a rating that indicates "substantial risks" (i.e., below B3 by Moody's or B- by S&P or Fitch) by at least two of the three major credit rating agencies, and such condition continues for more than 6 months; or (iv) Exelon and/or BGE have committed a pattern of material violations of lawful Commission orders or regulations, or applicable provisions of the Public Utilities Article and, despite notice and opportunity to cure such violations, have continued to commit the violations.

D. Accounting and Financial Governance and No Harm to BGE Customers

27) Tax Indemnification: Exelon shall indemnify BGE for any liability for federal income taxes (including interest and penalties related thereto, if any) in excess of BGE's standalone liability for federal income taxes (including interest and penalties related thereto, if any) for any period during which BGE is included in a consolidated group with Exelon. Under applicable law, following the Merger BGE will have no liability for federal income taxes (including interest and penalties related thereto, if any) of Exelon or any other subsidiary of Exelon for any period during which BGE was not included in a consolidated group with Exelon (i.e. any period before the Merger). Exelon will take no action to cause BGE to have any liability for federal income taxes (including interest and penalties related thereto, if any) of Exelon or any other subsidiary of Exelon for any period during which BGE was not included in a consolidated group with Exelon for purposes of filing federal income tax returns. If BGE is included in a consolidated group with Exelon for purposes of filing federal income tax returns and the rating for Exelon's senior unsecured long term public debt securities, without third-party credit enhancement, is downgraded to a rating that indicates "substantial risks" (below B3 by Moody's or B- by S&P or Fitch) by at least two of the three major credit rating agencies, the Commission may, after investigation and hearing, require Exelon to deliver to BGE collateral of the type and amount determined by the Commission pursuant to the hearing to secure Exelon's tax indemnity to BGE if the Commission finds that such collateral is necessary for the protection of BGE's interests under Exelon's tax indemnity. BGE shall be

required to surrender or release such collateral security to Exelon (1) promptly after the rating of Exelon's senior unsecured long term public debt, without third-party credit enhancement, is restored to a rating above "substantial risks" (at or above B3 by Moody's or B- by S&P or Fitch) by at least two of the three major credit rating agencies, or (2) if and when BGE is determined by a body of competent jurisdiction no longer to be liable for federal income taxes as a member of a consolidated group with Exelon, other than BGE's standalone liability for federal income taxes (including interest and penalties related thereto, if any), or (3) upon a finding by the Commission, after investigation and hearing upon application of Exelon, that the conditions under which such collateral security was originally required no longer exist.

28) Prohibition of Cross-Default Provisions: BGE shall not: (i) guarantee the debt or credit instruments of Exelon or any other Exelon affiliate (other than a subsidiary of BGE); (ii) grant a mortgage or other lien on any property used and useful in providing retail or wholesale utility service to, or otherwise pledge such assets as security for repayment of the principal or interest of any loan or credit instrument of, Exelon or any other Exelon affiliate (other than a subsidiary of BGE); (iii) include in any of BGE's debt or credit agreements cross-default provisions between BGE's securities and the securities of Exelon or any other Exelon affiliate (other than a subsidiary of BGE); or (iv) include in its debt or credit agreements any financial covenants or rating-agency triggers related to Exelon or any other Exelon affiliate (other than a subsidiary of BGE).

- 29) Recording of Goodwill: Exelon and BGE shall not record goodwill resulting from the Merger on BGE's books unless required to do so by the Securities and Exchange Commission ("SEC"). If the SEC requires that goodwill be recorded on BGE's books, then Exelon and BGE shall ensure that such goodwill does not impact rates charged to BGE's customers.
- 30) Shared Services Comparison: As part of its Cost Allocation Manual filings for 2014, 2015, and 2016, BGE shall provide the Commission with a side-by-side comparison, by function, of (i) its post-Merger shared services costs for 2013, 2014, and 2015 and (ii) its equivalent pre-Merger functional costs for 2011.
- 31) Tracking Charges for Services Provided to BGE: In the first quarter after the first full calendar year following consummation of the Merger, BGE shall prepare and file with the Commission a side-by-side comparison of the corporate component of Exelon's service company charges to BGE for that full calendar year with the corporate component of Constellation's 2011 charges to BGE.
- 32) Tracking Merger Savings: BGE shall track Merger savings and account for such savings in its next electric rate proceeding and gas rate proceeding.
- 33) No Transaction Cost Recovery: BGE shall not seek recovery in rates of: (i) any acquisition premium or "goodwill" associated with the Merger; or (ii) transaction costs incurred in connection with the Merger by the Applicants or their subsidiaries. The categories of "transaction costs" are the following incurred with respect to consummation of the Merger: (i) consultant, investment banker, and legal fees; (ii) change in control or retention payments; and (iii) costs associated

with the shareholder meetings and proxy statement/registration statements related to the Merger.

34) No Relocation of BGE Employees: Exelon shall not, without prior Commission approval, relocate any BGE employees to the Baltimore Constellation Headquarters.

35) Neutral Merger Accounting: Exelon and BGE shall ensure that Merger accounting is rate-neutral for BGE's customers. Exelon and BGE shall ensure that any accounting treatments associated with Merger accounting do not impact rates charged to BGE customers or the calculation of BGE's equity level pursuant to Commission Order No. 82986 in Case No. 9173.

36) Credit Metrics Reporting: BGE shall report to the Commission promptly if BGE's credit rating from S&P falls below its current level of BBB+. BGE shall also report to the Commission on a quarterly basis the following credit metrics for the then current year: FFO/debt, FFO/interest, and debt/capitalization.

37) BGE Capital and O&M Expenditures: Absent Commission approval, BGE shall maintain its capital and O&M expenditures at or above 95% of its combined projected capital and O&M expenditures for 2012 (\$1.285 billion) and 2013 (\$1.494 billion), adjusted to reflect actual synergy savings net of costs to achieve. In 2014, BGE shall provide the Commission with a report of its actual capital and O&M expenditures for 2012 and 2013, and provide the Commission with its projected capital and O&M expenditures for 2014, 2015, and 2016.

38) BGE to Retain Internally Generated Equity Through 2014: BGE will not pay a dividend on BGE's common shares through the end of 2014.

39) BGE Notice to Commission of Dividends: Following the conclusion of the dividend-restriction period described above in Condition 38, BGE will notify the Commission that it intends to declare dividends on common stock at least 30 days before such a dividend is paid. BGE will continue, as required by Condition 2 of Order No. 82986, to provide the Commission with a compliance filing, made within 5 business days after payment of a dividend on common stock, setting forth the calculations used to determine BGE's equity level at the time the BGE Board considered payment of the dividends and the calculations to demonstrate that the equity ratio after the dividend payment will not fall below 48%.

E. Market-Power Mitigation and No Harm to BGE Customers

40) In addition to divesting H.A. Wagner, C.P. Crane, and Brandon Shores Generating Stations (the "Generating Stations"), which shall be divested as a group, as well as the additional mitigation measures identified on pages 12-16 of Exhibit JDP-1, Exelon shall comply with the settlement terms identified in the filing with the Maryland Public Service Commission made by Monitoring Analytics, LLC on October 11, 2011 ("IMM Settlement"). Exelon shall enter into contracts to divest the Generating Stations no later than 180 days after consummation of the Merger, and then will close on the divestitures no later than 30 days after the receipt of all regulatory approvals, including the receipt of the Federal Energy Regulatory Commission's approval under Section 203 of the Federal Power Act. Exelon shall provide notice to the Commission of any unresolved dispute regarding the IMM Settlement, and shall file with the Commission any modification to the terms of the IMM Settlement, and, if the

Commission conditions its approval of the merger on the IMM Settlement, the Commission shall have the authority to enforce the IMM Settlement. Exelon's activities in satisfaction of Condition 8, "New Generation," provide additional market-power mitigation.

III. THE SETTLEMENT IS CONSISTENT WITH THE PUBLIC INTEREST, CONVENIENCE, AND NECESSITY INCLUDING BENEFITS AND NO HARM TO CONSUMERS

13. The Signatory Parties respectfully submit that the Merger, in conjunction with the Settlement, would be consistent with the public interest, convenience and necessity, including benefits and no harm to consumers. In making this assertion, the Signatory Parties note the following:

- ***The Merger and Settlement Provide a Rate Credit to BGE's Customers and Related Benefits.*** The Settlement provides for (1) a one-time \$100 per BGE residential customer rate credit, (2) a \$10 million contribution to BGE's EmPower Maryland programs, (3) a \$10 million contribution to the Electric Universal Service Program, and (4) a \$50 million contribution to support the weatherization of thousands of low- to moderate-income homes. It is also anticipated that through the Merger BGE will be able to reduce costs by taking advantage of the combined company's larger scale and purchasing power. Further, the Applicants will offer \$20,000 to Sparrows Point for it to participate in BGE's Energy Solutions for Business programs.
- ***The Settlement Reinforces BGE's Existing Ring-Fencing and Governance Protections.*** Exelon has agreed to maintain the ongoing ring-fencing measures adopted by the Commission in Order No. 82986 in Case No. 9173. In addition, Exelon has agreed to obtain non-consolidation opinions demonstrating that the

sufficiency of the ring-fencing measures is not impacted by BGE's inclusion in the Exelon corporate structure, and to take whatever additional actions are necessary to secure the non-consolidation opinions. To further protect BGE, Exelon has agreed to indemnify BGE for any tax liability other than BGE's own tax liability and has agreed to a prohibition on BGE's participation in cross-default arrangements. Finally, as a further safeguard, Exelon has agreed that the Commission may, under certain identified circumstances, order Exelon to divest its interest in BGE if it finds that BGE has failed to meet its obligations as a public utility and that divestiture is necessary to protect the interests of BGE's customers.

- ***The Settlement Protects Customers From Increased Costs Related to the Merger.***

The Settlement ensures that customers will not be responsible for transaction costs or goodwill from the Merger, provides that Merger accounting will be rate neutral for customers, and obligates BGE to track merger savings to demonstrate that such savings are being passed on to customers. The Settlement also requires BGE to track service charges and compare such charges under Exelon to its current charges under Constellation. In addition, savings from synergies that are realized as a result of the Merger will be passed on to BGE's customers in future rate proceedings.

- ***The Settlement Addresses BGE Local Management Issues.*** The Applicants have committed that BGE will remain locally managed and continue to serve its customers under its own name. In addition, the Settlement provides that at least one-third of the BGE Board of Directors must be independent, and a majority of the Board must either live or work in the BGE service territory.

- ***The Settlement Address the Funding of BGE's Budgeted O & M Expenses.*** The Applicants have committed to maintaining its capital and O&M expenditures at or above 95% of its combined projected capital and O&M expenditures for 2012 (\$1.285 billion) and 2013 (\$1.494 billion), adjusted to reflect actual synergy savings net of costs to achieve. In 2014, BGE will provide the Commission with a report of its actual capital and O&M expenditures for 2012 and 2013, and provide the Commission with its projected capital and O&M expenditures for 2014, 2015, and 2016. Finally, BGE has agreed to report to the Commission if its credit rating falls below BBB+ as rated by Standard & Poor's and to report certain credit metrics to the Commission on a quarterly basis.
- ***The Settlement Addresses Market-Power Concerns.*** In addition to the divestiture of C.P. Crane, H.A. Wagner, and Brandon Shores (which will be divested as a group) and the additional measures described on pages 12-16 of JDP-1, the Applicants reached a settlement with the IMM and have agreed to abide by the terms of this settlement. Together with the development of additional generation, as described above, the Applicants have sufficiently addressed all outstanding market-power concerns.
- ***The Merger May Improve BGE's Operating Performance.*** The Merger allows BGE to become a part of an experienced and successful utility operator. With the assistance of Exelon Utilities, BGE's inclusion in the Exelon corporate family will facilitate the sharing of best practices with ComEd and PECO, two other high-performing utilities in major metropolitan areas. Sharing best practices may assist BGE in continuing to improve its operations and in providing high-quality, safe, and

reliable service to its customers. The Settlement also requires Exelon to report on the operations of Exelon Utilities to facilitate Commission oversight. In addition, the Settlement provides for a study of BGE's CAIDI performance, which may result in improved operating performance, to the direct benefit of BGE's customers.

- ***The Merger Will Yield a Total Investment of Over One Billion Dollars into the State of Maryland.*** With the commitments included in the Settlement, the Merger results in a major injection to Maryland's economy totaling \$1 billion or more: residential rate credits (\$112 million), EmPower Maryland contributions (\$10 million), EUSP contributions (\$10 million), low-to-moderate-income customer weatherization program (\$50 million), offshore wind (\$32 million), development of new natural gas generation in Maryland (\$96-142 million), development of new Tier 1 generation in Maryland (\$294-295 million), development of new solar generation in Maryland (\$146-155 million), development of new animal waste-fueled generation (\$89-157 million), charitable contributions (\$70 million), and new Baltimore headquarters (\$95-120 million). Through these investments in Maryland, and in combination with the other provisions of the Settlement, it is estimated that the Merger will create approximately 6,000 or more jobs (including a number of construction jobs in connection with the development of the facilities required by the Settlement).
- ***The Merger and Settlement Will Bring a Major New Commercial Building to Baltimore City.*** The Merger will result in the construction of a major new commercial building in Baltimore City that would not exist without the Merger. This building will house the combined company's wholesale and retail sales businesses,

the growth center of the combined company, as well as its renewable energy development headquarters. Construction of the building will create hundreds of new construction jobs and provide the opportunity for significant long-term job growth as the Constellation NewEnergy business expands.

- ***The Merger Will Increase Generation Capacity in Maryland, Creating Jobs and Helping the Environment.*** The Merger will result in additional new generation being built in Maryland, both renewable and natural gas. This includes 125 MW of Tier 1 generation and 120 MW of primarily natural gas-fired generation, which is enough to power roughly 22,000 Maryland homes and reduces carbon emissions by an amount approximately equal to removing 33,000 cars from Maryland roads. It will also create approximately 1,400 or more jobs for construction of the Tier 1 and natural gas projects. Additionally, Exelon will develop 30 MW of solar energy in Baltimore City and other jurisdictions, which will entail an investment of approximately \$146-155 million and create an estimated 1,100 or more jobs. The Settlement also provides for between 10 and 25 MW of generation from animal waste/manure-based fuels, which will create approximately 300 or more jobs and will significantly reduce the amount of manure-based pollution flowing into the Chesapeake Bay. Finally, the Settlement also advances the State's efforts to harness its offshore wind resources through a \$32 million fund for the development phase of an offshore wind project, \$2 million of which will be used to endow chairs to support research and development in wind energy applications.
- ***The Merger Sustains BGE's Presence in the Communities it Serves.*** The Merger ensures the continuation of Constellation's and BGE's charitable engagement in

Maryland through a giving commitment of an annual average of \$7 million per year for the next decade. This commitment represents a floor for giving set at the current average of Constellation giving. The Merger also provides for the opportunity to advance BGE's supplier diversity efforts by combining its robust programs with Exelon's programs, which have been particularly successful in utilizing diverse professional services. Finally, Exelon's Board of Directors and its Executive Committee and Exelon shareholders will meet regularly in Baltimore, bringing additional commerce to the State and ensuring that Baltimore remains a major focus of the combined company.

- ***The Settlement Offers Protection for Maryland Employment Levels at BGE.*** As in the Application, the Settlement ensures that BGE employment will not be reduced as a consequence of the Merger for at least the first two years following consummation of the Merger.

IV. ADDITIONAL TERMS AND CONDITIONS

14. This Settlement is proposed by the Signatory Parties to settle the instant case and is made without any admission against, or prejudice to, any position which any Signatory Party might adopt during subsequent litigation of this case, should this Settlement not be approved, or in any other case.

15. The Signatory Parties agree that the Application, as supplemented by this Settlement, is consistent with the public interest, convenience, and necessity, including benefits and no harm to consumers and otherwise meets the statutory requirements as set forth in PUA § 6-105. The Settlement resolves with prejudice all issues raised by the Signatory Parties and precludes the Signatory Parties from asserting contrary positions in derogation of this Settlement with respect to any issue addressed herein during this proceeding or any subsequent litigation

against Applicants which may result from this proceeding. All Signatory Parties shall support the Settlement and make reasonable and good faith efforts to obtain approval of the Settlement by the Commission and any courts.

16. This Settlement is conditioned upon the Commission's approval of the terms and conditions contained herein without modification. If the Commission should approve the Settlement but modify the terms and conditions herein, this Settlement may be withdrawn upon written notice to the Commission and all Signatory Parties within five business days following entry or service of the Commission's Order, whichever is later, by the Applicants or any of the Signatory Parties and, in such event, shall be of no force and effect as to the withdrawing Party. In the event that the Commission disapproves the Settlement or the Applicants or any other Signatory Party elect(s) to withdraw as provided above, the Applicants and the Signatory Parties reserve their respective rights to fully litigate this case, including but not limited to through submission of Reply Briefs.

17. The consummation and closing of the Merger constitutes a condition precedent to the Settlement. Once the Merger has been consummated and closed, this Settlement and its terms as approved without modification, or as approved with modification and not withdrawn pursuant to paragraph 16 above, shall be implemented and enforceable notwithstanding the pendency of a petition for reconsideration or a legal challenge to the Commission's approval of this Settlement unless such implementation and enforcement of the Settlement is stayed or enjoined by the Commission, another regulatory agency having competent jurisdiction over the matter, or a court having competent jurisdiction over the matter, or unless a regulatory agency or court decision leads to an unwinding of the Merger following its consummation. If the

Commission rejects the Settlement, the Settlement automatically will terminate and be null and void.

18. The Signatory Parties acknowledge that the Settlement reflects a compromise of competing positions to resolve outstanding issues in a fair, just and reasonable manner, and does not necessarily reflect any Signatory Party's position with respect to any issues raised in this proceeding.

19. The Signatory Parties agree that this Settlement resolves all of the issues and concerns raised by the Signatory Parties hereto related to the Merger. The Signatory Parties urge the Commission to approve the Merger pursuant to the conditions described herein.

20. The Signatory Parties agree that this Settlement shall be without prejudice to any position any Signatory Party may take, in any other proceeding, except to the extent required to implement the explicit terms of this Settlement.

21. The Signatory Parties may execute this Settlement in separate counterparts, each of which, when so executed and delivered, shall constitute an original, but all of which together shall constitute one and the same instrument.

WHEREFORE, the Signatory Parties, intending to be legally bound, respectfully request that the Commission: 1) approve this Joint Petition for Approval of Settlement, including all terms and conditions contained herein without modification; 2) find that each of the factors enumerated in the applicable sections of § 6-105, have been satisfied; 3) find that the Merger is consistent with the public interest, convenience, and necessity, including benefits and no harm to consumers; 4) grant the Application for approval of the Merger, as modified by this

Joint Petition for Approval of Settlement; and 5) terminate and mark as closed Maryland Public Service Commission Case No. 9271.

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Dated as of December __, 2011

Respectfully submitted,

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