UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA	)
Plaintiff,	)
v.	)
EXELON CORPORATION	)
and	)
CONSTELLATION ENERGY GROUP, INC.	)
Defendants.	)

COMPETITIVE IMPACT STATEMENT

Plaintiff United States of America ("United States"), pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act ("APPA" or "Tunney Act"), 15 U.S.C. § 16(b)-(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I. NATURE AND PURPOSE OF THE PROCEEDING

Defendant Exelon Corporation ("Exelon") and Defendant Constellation Energy Group, Inc. ("Constellation") entered into an Agreement and Plan of Merger, dated April 28, 2011, under which Exelon would merge with Constellation. The United States filed a civil antitrust Complaint on December 21, 2011 seeking to enjoin the proposed merger. The Complaint alleges that the likely effect of this merger would be to lessen competition substantially for wholesale

electricity in sections of the United States in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18. This loss of competition likely would increase wholesale electricity prices, raising retail electricity prices for millions of residential, commercial, and industrial customers in parts of the Mid-Atlantic states.

At the same time the Complaint was filed, the United States also filed a Hold Separate Stipulation and Order ("Stipulation") and proposed Final Judgment, which are designed to eliminate the anticompetitive effects of the merger. Under the proposed Final Judgment, which is explained more fully below, Defendants are required to divest three electric generating plants (collectively the "Divestiture Assets"). The Stipulation and proposed Final Judgment require Defendants to take certain steps to ensure that these assets are preserved and maintained and that competition is maintained during the pendency of the ordered divestiture.

The United States and Defendants have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish violations thereof. Defendants have also stipulated that they will comply with the terms of the Stipulation and the proposed Final Judgment from the date of the signing of the Stipulation, pending entry of the proposed Final Judgment by the Court and the required divestiture. Should the Court decline to enter the proposed Final Judgment, Defendants have also committed to abide by its requirements and those of the Stipulation until the expiration of the time for appeal.

II. DESCRIPTION OF THE EVENTS GIVING RISE TO THE ALLEGED VIOLATION

A. The Defendants and the Proposed Transaction

Defendant Exelon is a Pennsylvania corporation, with its headquarters in Chicago, Illinois; it owns Exelon Generation Company, LLC, which owns electric generating plants located primarily in the Mid-Atlantic and the Midwest with a total generating capacity of more than 25,000 megawatts ("MW") and annual revenues in 2010 of about $18.6 billion. Defendant Constellation is a Maryland corporation, with its headquarters in Baltimore, MD; it owns Constellation Power LLC, which owns electric generating plants located primarily in Maryland with a total generating capacity of more than 11,000 MW and annual revenues in 2010 of about $14.3 billion. By combining the generating plants owned by Exelon and Constellation, the proposed merger would enhance the ability and incentive of the merged firm to reduce output and raise wholesale electricity prices in areas of the Mid-Atlantic where Defendants are significant generators of electricity. Thus, the transaction as originally proposed would lessen competition substantially in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18.

B. Wholesale Electricity in the Mid-Atlantic

Electricity supplied to retail customers is generated at electric generating plants, which consist of one or more generating units. An individual generating unit uses any one of several types of generating technologies (including hydroelectric turbine, wind turbine, steam turbine, combustion turbine, or combined cycle) to transform the energy in fuels or the force of wind or flowing water into electricity. Generating units typically are fueled by uranium, coal, oil, or natural gas.

Generating units vary considerably in their operating costs, which are determined primarily by the cost of fuel and the efficiency of the unit's technology in transforming the

energy in fuel into electricity. "Baseload" units – which typically include nuclear and very efficient coal-fired steam turbine units – have relatively low operating costs. "Peaking" units – which typically include oil- and gas-fired combustion turbine units – have relatively high operating costs. "Mid-merit" units – which typically include combined cycle and less efficient and thus higher-cost coal-fired steam turbine units – have costs lower than those of peaking units but higher than those of baseload units.

Once electricity is generated at a plant, an extensive set of interconnected high-voltage lines and equipment, known as the transmission grid, transports the electricity to lower voltage distribution lines that relay the power to homes and businesses. Transmission grid operators must closely monitor the grid to prevent too little or too much electricity from flowing over the grid, either of which might damage lines or generating units connected to the grid. For example, to prevent such damage and to prevent widespread blackouts from disrupting electricity service, a grid operator will manage the grid to prevent additional electricity from flowing over a transmission line as that line approaches its operating limit (a "transmission constraint").

In the Mid-Atlantic, the transmission grid is overseen by PJM Interconnection, LLC ("PJM"), a private, non-profit organization whose members include transmission line owners, generation owners, distribution companies, retail customers, and wholesale and retail electricity suppliers. The transmission grid administered by PJM is the largest in the United States, providing electricity to approximately 58 million people in an area encompassing all or parts of Delaware, Illinois, Indiana, Kentucky, Maryland, Michigan, New Jersey, North Carolina, Ohio, Pennsylvania, Tennessee, Virginia, West Virginia and the District of Columbia (the "PJM control area").

PJM oversees two auctions for the sale and purchase of wholesale electricity: (1) a day-ahead auction that clears the day before electricity is to be generated and delivered and (2) a real-time auction that clears the day electricity is delivered. In these auctions, generation owners submit offers to sell electricity and electricity retailers submit bids to purchase electricity. Buyers submit bids that indicate the amount of electricity they are willing to buy at different prices. Sellers submit offers that indicate the amount of electricity they are willing to sell at different prices. PJM adds up the bids and offers to determine the total demand and supply for electricity. The amount of electricity that actually is generated and delivered is determined by the PJM auctions. Buyers and sellers of wholesale electricity may also enter into contracts with each other or with third parties, outside of the PJM auction process; the prices of these contracts generally reflect expected auction prices.

Subject to the physical limitations of the transmission grid, PJM generally attempts to minimize the total cost of generating electricity required for the next day by operating generation in "merit" order. As a result, PJM "calls" the generation with the lowest offers in the day-ahead auction, accepting the least expensive offer first and then continuing to accept offers to sell generation output at progressively higher prices until PJM has called enough generation to meet anticipated demand for each hour of the next day. The "clearing price" for any given hour is essentially determined by the highest-priced generation offer that is accepted by PJM for that hour, and all sellers for that hour receive that price, regardless of their offer or their costs. In PJM's real-time auction, which accounts for differences between the generation called to meet the day-ahead projections and that needed to meet actual demand, PJM likewise accepts additional sellers' offers in merit order until there is a sufficient quantity of additional electricity to meet actual demand. If generation is withheld from the auctions, such as by submitting a

significantly higher offer than is warranted by the generation's costs, additional generation with higher offers must be called by PJM, leading to higher overall prices for the PJM system.

At times when transmission constraints prevent the generation with the lowest offers from meeting demand in a particular area, PJM calls additional generation in that area that is not already running. In addition to satisfying demand, the additional energy from this generation also acts to relieve the constraints by helping to limit the amount of energy that otherwise would have to flow across the constraints. The effectiveness of a particular generating unit for relieving a constraint is a function of where the generating unit is located on the transmission grid in relation to that constraint and is measured by the "shift factor" of that generating unit with respect to that constraint. Generally, generating units with the highest shift factors and thus the greatest impact for relieving the constraint receive the highest prices. In the mid-Atlantic area of PJM, for example, electricity generally flows from west to east. This means that generation to the east of the major transmission constraints tends to relieve congestion and receives relatively high prices, whereas generation to the west of the major transmission constraints tends to exacerbate congestion and receives relatively low prices. A particular geographic area within the PJM control area may be affected by more than one set of transmission constraints.

PJM Mid-Atlantic North. One historically constrained area within the PJM control area includes the densely populated areas of eastern Pennsylvania, eastern Maryland, Delaware, and Washington D.C. This area, referred to in the Complaint as "PJM Mid-Atlantic North," is defined by a set of major transmission lines that divides this area from the rest of the PJM control area. The most important of these lines is the "5004/5005 Interface," which includes the Keystone-Juniata 5004 line and the Conemaugh-Juniata 5005 line. The Exelon generation in eastern Pennsylvania is particularly well suited to relieve congestion on these transmission lines,

though the Constellation generation in Maryland also provides some relief to these transmission lines. When these transmission lines are constrained, PJM is limited in its ability to meet additional demand located east of the constraint with electricity from generation located west of the constraint. PJM often responds to constraints on these transmission lines by calling on additional generation east of the constraint to run, generally resulting in higher prices in PJM Mid-Atlantic North.

PJM Mid-Atlantic South. Another constrained area in PJM also includes eastern Pennsylvania, eastern Maryland, Washington D.C., Delaware, and most of Virginia. This area is defined by a set of major transmission lines that divides this area from the rest of the PJM control area. The most important of these lines is the "AP South Interface," which includes the Mt. Storm-Doubs 512 line, the Greenland Gap-Meadowbrook 540 line, the Mt. Storm-Valley 550 line, and the Mt. Storm-Meadowbrook (TrAIL) line. The Constellation generation in eastern Maryland is particularly well suited to relieve congestion on these transmission lines, though the Exelon generation in Pennsylvania also provides some relief to these transmission lines. When these transmission lines are constrained, PJM is limited in its ability to supply additional demand located east of the constraint with electricity from generation located west of the constraint. PJM often responds to constraints on these lines by calling on additional generation east of the constraint to run, generally resulting in higher prices in PJM Mid-Atlantic South.

C. Product Market

The Complaint alleges that wholesale electricity, electricity that is generated and sold for resale, is a relevant antitrust product market. Wholesale electricity demand is a function of retail electricity demand: electricity retailers, who buy wholesale electricity to serve their customers, must provide exactly the amount of electricity their customers require. Retail electricity

consumers' demand, however, is largely insensitive to changes in retail price; thus, an increase in retail prices due to an increase in wholesale prices will have little effect on the quantity of retail electricity demanded and little effect on the quantity of wholesale electricity demanded. As a result, a small but significant increase in the wholesale price of electricity would not cause a significant number of retail electricity consumers to substitute other energy sources for electricity or otherwise reduce their consumption of electricity.

D. Geographic Markets

The Complaint alleges that "PJM Mid-Atlantic North" and "PJM Mid-Atlantic South" are relevant antitrust geographic markets defined by transmission lines in the PJM control area: PJM Mid-Atlantic North is defined by transmission lines that include the 5004-5005 Interface, and PJM Mid-Atlantic South is defined by transmission lines that include the AP South Interface. When these lines approach their operating limits, purchasers of electricity have limited ability to purchase electricity generated outside the relevant geographic market to meet their needs. Shift factors affect which generating units on the transmission grid are likely to be called when constraints occur. At such times, the amount of electricity that could be obtained from outside PJM Mid-Atlantic North or PJM Mid-Atlantic South by consumers located within those areas is insufficient to deter generators located in PJM Mid-Atlantic North or PJM Mid-Atlantic South from seeking a small but significant price increase. Thus, PJM Mid-Atlantic North and PJM Mid-Atlantic South are relevant antitrust geographic markets.

E. Market Shares and Concentration

The Complaint alleges that Exelon's proposed merger with Constellation would eliminate competition between them and give the merged firm the incentive and ability profitably to raise wholesale electricity prices, resulting in increased retail prices for millions of residential,

commercial, and industrial customers in the PJM control area. In PJM Mid-Atlantic North during 2010, more than $11 billion of wholesale electricity was sold; in PJM Mid-Atlantic South during 2010, more than $13 billion of wholesale electricity was sold. In PJM Mid-Atlantic North and PJM Mid-Atlantic South, the merged firm would own or control a substantial share of total generating capacity in markets that would be moderately concentrated after the merger. More importantly, in both geographic markets the merged firm would own or control low-cost baseload units that provide incentive to raise prices and higher-cost units that provide ability to raise prices.

Market shares in PJM Mid-Atlantic North and PJM Mid-Atlantic South. In PJM Mid-Atlantic North, Exelon currently owns or controls approximately 18 percent of the generating capacity and Constellation currently owns or controls approximately 10 percent of the generating capacity. After the merger, Exelon would own or control approximately 28 percent of the total generating capacity in PJM Mid-Atlantic North. In PJM Mid-Atlantic South, Exelon currently owns or controls approximately 14 percent of the generating capacity and Constellation currently owns or controls approximately 9 percent of the generating capacity. After the merger, Exelon would own or control over 22 percent of the total generating capacity in PJM Mid-Atlantic South.

Concentration in PJM Mid-Atlantic North and PJM Mid-Atlantic South. As articulated in the *2010 Horizontal Merger Guidelines* issued by the Department of Justice and the Federal Trade Commission ("Guidelines"), the Herfindahl-Hirschman Index ("HHI") is a measure of market concentration.[1] Market concentration is often one useful indicator of the

[1] *See* U.S. Dep't of Justice and Federal Trade Commission, Horizontal Merger Guidelines § 5.3 (2010), available at http://www.justice.gov/atr/public/guidelines/hmg-2010.html The HHI is calculated by squaring the market share of each firm competing in the market and then summing the resulting numbers. For example, for a market consisting of four firms with shares of 30, 30,

likely competitive effects of a merger. The more concentrated a market, and the more a transaction would increase concentration in a market, the more likely it is that a transaction would result in a meaningful reduction in competition harming consumers. The Guidelines consider markets in which the HHI is between 1,500 and 2,500 points to be moderately concentrated. Under the Guidelines, transactions that increase the HHI by more than 100 points in moderately concentrated markets potentially raise significant competitive concerns. Exelon's merger with Constellation would yield a post-merger HHI in PJM Mid-Atlantic North of approximately 1,600 points, representing an increase of almost 400. Exelon's merger with Constellation would yield a post-merger HHI in PJM Mid-Atlantic South of approximately 1,800 points, representing an increase of approximately 250 points. Thus, the proposed merger potentially raises significant competitive concerns in PJM Mid-Atlantic North and PJM Mid-Atlantic South.

F. Competitive Effects of the Transaction

The Complaint alleges that the proposed merger would substantially lessen competition. The combination of Constellation and Exelon's generation would increase the merged firm's ability and incentive to withhold selected output, forcing PJM to turn to more expensive generation to meet demand, resulting in higher clearing prices in PJM. [1]

20, and 20 percent, the HHI is 2,600 (302 + 302 + 202 + 202 = 2,600). The HHI takes into account the relative size distribution of the firms in a market. It approaches zero when a market is occupied by a large number of firms of relatively equal size and reaches its maximum of 10,000 points when a market is controlled by a single firm. The HHI increases both as the number of firms in the market decreases and as the disparity in size between those firms increases.

[1] The competitive effects described in this section are closely analogous to the competitive effects described in the Horizontal Merger Guidelines, § 6.3, Example 20.

In determining the competitive effects of a firm potentially withholding electricity, we consider the operating cost, offer, technology, and shift factor of generating units.[2] Specifically, these concepts impact (1) the cost to the PJM system of PJM calling substitute generation when there is withholding and (2) the benefits and losses to the post-merger firm from the potential withholding strategy.

Baseload units, such as nuclear and efficient coal-fired steam, typically generate electricity around the clock during most of the year; certain lower-cost mid-merit units, including some coal-fired steam units, generate electricity for a substantial number of hours during the year. When they are running, such baseload and mid-merit units are positioned to benefit from an increase in wholesale electricity prices. Because they run so frequently, these units provide a relatively significant incentive to withhold output and raise prices.

Higher-cost units provide ability to withhold output to increase the market-clearing price. Higher-cost units can have costs that are close to clearing prices for a substantial number of hours during the year. Where their costs are close to clearing prices, the opportunity cost of withholding output from these units – the lost profit on the withheld output – is smaller than it would be for low-cost baseload units.

Here, by giving post-merger Exelon an increased amount of relatively lower-cost capacity, combined with an increased share of higher-cost capacity, the merger substantially

[2] Shift factors inform both the substitutability of generation and the price increases the merging parties receive from withholding at times of constraint. The cost to the PJM system of using a unit to relieve a constraint is a function of both the generating unit's shift factor with respect to the constraint and the unit's offer as submitted by the unit owner. In general, and holding constant for the offer, the greater a generating unit's shift factor with respect to relieving a transmission constraint, the greater the economic effect of withholding a generating unit when that transmission line is constrained. This is because, if the most effective generation is not available, PJM must call more generation, at a greater overall cost to the system, in order to limit the amount of energy that flows across the constraint. Thus mergers may be more problematic where the shift factors of the parties' generation indicate that one party's generation is a meaningful substitute for the other party's generation with respect to a given major constraint.

increases the likelihood that Exelon would find it profitable to withhold output and raise price. With its increased share of higher-cost capacity, the merged firm would more often be able to reduce output and raise market-clearing prices at relatively low cost to it. And with its increased amount of lower-cost capacity, the merger would make it more likely that the increased revenue on this capacity would outweigh the cost of withholding its higher-cost capacity. In other words, as clearing prices increased due to its withholding of its higher-cost capacity, Exelon would earn those higher prices on its expanded post-merger baseload capacity, making it more likely that the benefit of increased revenues on its baseload capacity would outweigh the cost of withholding higher-cost capacity. Thus the merger increases Exelon's incentive and ability to reduce output and raise market prices.

G. Entry

The Complaint alleges that entry through the construction of new generation or transmission capacity would not be timely, likely, and sufficient to deter or counteract an anticompetitive price increase. Given the necessary environmental, safety, and zoning approvals required, it would generally take many years for sufficient new entry to take place.

III. EXPLANATION OF THE PROPOSED FINAL JUDGMENT

The proposed Final Judgment would preserve the competition that would have been lost in PJM Mid-Atlantic North and PJM Mid-Atlantic South had Exelon's merger with Constellation gone forward as proposed without divestitures. Within 150 days after consummation of their merger, subject to two thirty-day extensions of that period of time by the United States, Defendants must sell all of their rights, titles, and interests in the Divestiture Assets. The assets and interests will be sold to purchasers acceptable to the United States in its sole discretion. In

addition, the Final Judgment prohibits the merged company from reacquiring or controlling any of the Divestiture Assets.

A. Divestiture

The Complaint alleges that the merger would significantly enhance the merged firm's ability and incentive profitably to reduce output and raise prices in PJM Mid-Atlantic North and PJM Mid-Atlantic South. The divestiture requirements of the proposed Final Judgment will maintain competition for wholesale energy in these geographic markets by allowing one or more independent competitors to acquire the Divestiture Assets. The Divestiture Assets are three generating plants located in PJM Mid-Atlantic North and PJM Mid-Atlantic South:

- Brandon Shores Power Plant, 2030 Brandon Shores Road, Baltimore, MD 21226
- H.A. Wagner Power Plant, 3000 Brandon Shores Road, Baltimore MD 21226
- CP Crane Power Plant, 1001 Carroll Island Road, Baltimore, MD 21220

Effect of divestiture on ability and incentive profitably to withhold output and raise prices. Although the divestiture will reduce market shares and concentration levels compared to the levels that would have prevailed absent divestiture, the purpose of the divestiture is to preserve competition, not merely maintain HHIs or market shares at their pre-merger levels.[2] Accordingly, the proposed Final Judgment seeks to restore effective competition by depriving Exelon of key assets that would have made it profitable for it to withhold output and raise prices in PJM Mid-Atlantic North and PJM Mid-Atlantic South. Capacity at all three divestiture plants consists primarily of coal-fired units which, depending on demand levels, would have increased either the incentive or the ability of Exelon to exercise market power. Divestiture of the three

[2] U.S. Department of Justice, Antitrust Division Policy Guide to Merger Remedies § I (June 2011), *available at* http://www.usdoj.gov/atr/public/guidelines/272350.htm ("[E]ffectively preserving competition is the key [principle] to an appropriate merger remedy.").

plants eliminates that increased ability and incentive. In this way, the proposed Final Judgment assures that the merger is not likely to lead to consumer harm.

Requirements regarding divestiture. Defendants must take all reasonable steps necessary to accomplish the divestiture quickly and shall cooperate with prospective purchasers. Defendants must also provide acquirers information relating to personnel that are or have been involved, at any time since July 1, 2011, in the operation of, or provision of generation services by, the Divestiture Assets. Defendants further must refrain from interfering with any negotiations by the acquirer or acquirers to employ any of the personnel that are or have been involved in the operation of any of the Divestiture Assets. Moreover, the proposed Final Judgment restricts Defendants from reacquiring any of the Divestiture Assets during the term of the proposed Final Judgment.

B. Use of a Divestiture Trustee

In the event that Defendants do not accomplish the divestiture within the periods prescribed in the proposed Final Judgment, the proposed Final Judgment provides that the Court will appoint a trustee selected by the United States to effect the divestiture. If a trustee is appointed, the proposed Final Judgment provides that Defendants will pay all the costs and expenses of the trustee. The trustee's commission will be structured so as to provide an incentive for the trustee based on the price obtained and the speed with which the divestiture is accomplished. After his or her appointment becomes effective, the trustee will file monthly reports with the Court and the United States setting forth his or her efforts to accomplish the divestiture**.** If *either* (1) the trustee has not entered into definitive contracts for sale of the Divestiture Assets within ninety (90) days after the appointment of the trustee *or* (2) the trustee has not accomplished the divestitures within six (6) months after the appointment of the trustee,

the trustee and the United States will make recommendations to the Court, which shall enter such orders as appropriate to carry out the purpose of the trust, including extending the trust or the term of the trustee's appointment.

The divestiture provisions will eliminate the anticompetitive effects of the merger in wholesale electricity markets in PJM Mid-Atlantic North and PJM Mid-Atlantic South.

IV. EXPLANATION OF THE HOLD SEPARATE STIPULATION AND ORDER

The Stipulation entered into by the United States and Defendants ensures that the Divestiture assets are preserved and maintained and that competition is maintained during the pendency of the ordered divestiture. First, the Stipulation includes terms requiring that Defendants maintain the Divestiture Assets as economically viable and competitive facilities. Second, the Stipulation includes terms ensuring that Defendants do not withhold output from the wholesale electricity market. In particular, the Stipulation requires that Defendants offer the output from certain generating units into the PJM auctions at no more than specified price levels until the Divestiture Assets are sold. The Stipulation also requires the Defendants (1) to submit certain data about their offers to the Division, (2) to grant permission for the Division to discuss that data and related information with PJM and the PJM Market Monitor, (3) to submit certain proposed contracts for the output of generating assets not owned by the Defendants to the United States for review, and (4) if required to do so by the Division in its sole discretion, to hire an auditor to ensure that Defendants are offering their units at the specified price levels and are not withholding generation to raise prices. These requirements seek to ensure that Defendants will not offer their generation into the PJM auctions in ways that allows Defendants to raise market prices.

Requiring Defendants to hold the Divestiture Assets separate and distinct, a typical requirement in Antitrust Division hold separate stipulation and orders, would not have prevented competitive harm in the interim period from consummation to divestiture. The operator of the Divestiture Assets would have recognized that reducing their output would increase the clearing price and benefit Defendants' remaining generating units. Therefore, the Stipulation requires that Defendants maintain offers for output of the Divestiture Assets at the specified levels. Defendants are relieved of the requirement to offer their units at no more than specified levels if they transfer to a third party the rights to offer and receive the revenues from the sale of the complete output of the Divestiture Assets.

V. REMEDIES AVAILABLE TO POTENTIAL PRIVATE LITIGANTS

Section 4 of the Clayton Act, 15 U.S.C. § 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. § 16(a), the proposed Final Judgment has no prima facie effect in any subsequent private lawsuit that may be brought against Defendants.

VI. PROCEDURES AVAILABLE FOR MODIFICATION OF THE PROPOSED FINAL JUDGMENT

The United States and Defendants have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the

United States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least sixty (60) days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty (60) days of the date of publication of this Competitive Impact Statement in the Federal Register, or the last date of publication in a newspaper of the summary of this Competitive Impact Statement, whichever is later. All comments received during this period will be considered by the United States Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to the Court's entry of judgment. The comments and the response of the United States will be filed with the Court and published in the Federal Register.

Written comments should be submitted to:

William H. Stallings
Chief, Transportation, Energy & Agriculture Section
Antitrust Division
United States Department of Justice
450 Fifth Street, NW, Suite 8000
Washington, DC 20001

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

VII. ALTERNATIVES TO THE PROPOSED FINAL JUDGMENT

The United States considered, as an alternative to the proposed Final Judgment, a full trial on the merits against Defendants. The United States could have continued the litigation and sought preliminary and permanent injunctions against Exelon's acquisition of certain Constellation assets. The United States is satisfied, however, that the divestiture of assets described in the proposed Final Judgment will preserve competition in the market for wholesale electricity in PJM Mid-Atlantic North and PJM Mid-Atlantic South. Thus, the proposed Final Judgment would achieve all or substantially all of the relief the United States would have obtained through litigation, but avoids the time, expense, and uncertainty of a full trial on the merits of the Complaint.

VIII. STANDARD OF REVIEW UNDER THE APPA FOR THE PROPOSED FINAL JUDGMENT

The Clayton Act, as amended by the APPA, requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty (60)-day comment period, after which the Court shall determine whether entry of the proposed Final Judgment "is in the public interest." 15 U.S.C. § 16(e)(1). In making that determination, the Court shall consider:

> (A) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration of relief sought, anticipated effects of alternative remedies actually considered, whether its terms are ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to a determination of whether the consent judgment is in the public interest; and
>
> (B) the impact of entry of such judgment upon competition in the relevant market or markets, upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. § 16(e)(1)(A) & (B). In considering these statutory factors, the court's inquiry is necessarily a limited one as the government is entitled to "broad discretion to settle with the defendant within the reaches of the public interest." *United States v. Microsoft Corp.*, 56 F.3d 1448, 1461 (D.C. Cir. 1995); *see generally United States v. SBC Commc'ns, Inc.*, 489 F. Supp. 2d 1 (D.D.C. 2007) (assessing public interest standard under the Tunney Act); *United States v. InBev N.V./S.A.*, 2009-2 Trade Cas. (CCH) ¶76,736, 2009 U.S. Dist. LEXIS 84787, No. 08-1965 (JR), at *3, (D.D.C. Aug. 11, 2009) (noting that the court's review of a consent judgment is limited and only inquires "into whether the government's determination that the proposed remedies will cure the antitrust violations alleged in the complaint was reasonable, and whether the mechanisms to enforce the final judgment are clear and manageable.").[3]

As the United States Court of Appeals for the District of Columbia Circuit has held, under the APPA a court considers, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. *See Microsoft*, 56 F.3d at 1458-62. With respect to the adequacy of the relief secured by the decree, a court may not "engage in an unrestricted evaluation of what relief would best serve the public." *United States v. BNS, Inc.*, 858 F.2d 456, 462 (9th Cir. 1988) (citing *United States v. Bechtel Corp.*, 648 F.2d 660, 666 (9th Cir. 1981)); *see also Microsoft*, 56 F.3d at 1460-62; *United States v. Alcoa, Inc.*, 152 F. Supp. 2d 37, 40 (D.D.C. 2001); *InBev*, 2009 U.S. Dist. LEXIS 84787, at *3. Courts have held that:

[3] The 2004 amendments substituted "shall" for "may" in directing relevant factors for court to consider and amended the list of factors to focus on competitive considerations and to address potentially ambiguous judgment terms. *Compare* 15 U.S.C. § 16(e) (2004), *with* 15 U.S.C. § 16(e)(1) (2006); *see also SBC Commc'ns*, 489 F. Supp. 2d at 11 (concluding that the 2004 amendments "effected minimal changes" to Tunney Act review).

> [t]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is "*within the reaches of the public interest*." More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.

Bechtel, 648 F.2d at 666 (emphasis added) (citations omitted).[4] In determining whether a proposed settlement is in the public interest, a district court "must accord deference to the government's predictions about the efficacy of its remedies, and may not require that the remedies perfectly match the alleged violations." *SBC Commc'ns*, 489 F. Supp. 2d at 17; *see also Microsoft*, 56 F.3d at 1461 (noting the need for courts to be "deferential to the government's predictions as to the effect of the proposed remedies"); *United States v. Archer-Daniels-Midland Co.*, 272 F. Supp. 2d 1, 6 (D.D.C. 2003) (noting that the court should grant due respect to the United States' prediction as to the effect of proposed remedies, its perception of the market structure, and its views of the nature of the case).

Courts have greater flexibility in approving proposed consent decrees than in crafting their own decrees following a finding of liability in a litigated matter. "[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.'" *United States v. Am. Tel. & Tel. Co.*, 552 F. Supp. 131, 151 (D.D.C. 1982) (citations omitted) (quoting *United States v. Gillette Co.*, 406 F. Supp. 713, 716 (D. Mass. 1975)), *aff'd sub nom. Maryland v.*

[4] *Cf. BNS*, 858 F.2d at 464 (holding that the court's "ultimate authority under the [APPA] is limited to approving or disapproving the consent decree"); *United States v. Gillette Co.*, 406 F. Supp. 713, 716 (D. Mass. 1975) (noting that, in this way, the court is constrained to "look at the overall picture not hypercritically, nor with a microscope, but with an artist's reducing glass"). *See generally Microsoft*, 56 F.3d at 1461 (discussing whether "the remedies [obtained in the decree are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest'").

United States, 460 U.S. 1001 (1983); *see also United States v. Alcan Aluminum Ltd.*, 605 F. Supp. 619, 622 (W.D. Ky. 1985) (approving the consent decree even though the court would have imposed a greater remedy). To meet this standard, the United States "need only provide a factual basis for concluding that the settlements are reasonably adequate remedies for the alleged harms." *SBC Commc'ns*, 489 F. Supp. 2d at 17.

Moreover, the court's role under the APPA is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its Complaint, and does not authorize the court to "construct [its] own hypothetical case and then evaluate the decree against that case." *Microsoft*, 56 F.3d at 1459; see also *InBev*, 2009 U.S. Dist. LEXIS 84787, at *20 ("the 'public interest' is not to be measured by comparing the violations alleged in the complaint against those the court believes could have, or even should have, been alleged"). Because the "court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place," it follows that "the court is only authorized to review the decree itself," and not to "effectively redraft the complaint" to inquire into other matters that the United States did not pursue. *Microsoft*, 56 F.3d at 1459-60. As this Court recently confirmed in *SBC Communications*, courts "cannot look beyond the complaint in making the public interest determination unless the complaint is drafted so narrowly as to make a mockery of judicial power." *SBC Commc'ns*, 489 F. Supp. 2d at 15.

In its 2004 amendments, Congress made clear its intent to preserve the practical benefits of utilizing consent decrees in antitrust enforcement, adding the unambiguous instruction that "[n]othing in this section shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene." 15 U.S.C. § 16(e)(2). The language wrote into the statute what Congress intended when it enacted the Tunney Act in 1974, as Senator

Tunney explained: "[t]he court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process." 119 Cong. Rec. 24,598 (1973) (statement of Senator Tunney). Rather, the procedure for the public interest determination is left to the discretion of the court, with the recognition that the court's "scope of review remains sharply proscribed by precedent and the nature of Tunney Act proceedings." *SBC Commc'ns*, 489 F. Supp. 2d at 11.[5]

IX. DETERMINATIVE DOCUMENTS

There are no determinative materials or documents within the meaning of the APPA that were considered by the United States in formulating the proposed Final Judgment.

[5] *See United States v. Enova Corp.*, 107 F. Supp. 2d 10, 17 (D.D.C. 2000) (noting that the "Tunney Act expressly allows the court to make its public interest determination on the basis of the competitive impact statement and response to comments alone"); *United States v. Mid-Am. Dairymen, Inc.*, 1977-1 Trade Cas. (CCH) ¶ 61,508, at 71,980 (W.D. Mo. 1977) ("Absent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should . . . carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances."); S. Rep. No. 93-298, 93d Cong., 1st Sess., at 6 (1973) ("Where the public interest can be meaningfully evaluated simply on the basis of briefs and oral arguments, that is the approach that should be utilized.").

Dated: December 21, 2011

Respectfully submitted,

/s/ Tracy Fisher

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA	)
Plaintiff,	)
v.	)
EXELON CORPORATION	)
and	)
CONSTELLATION ENERGY GROUP, INC.	)
Defendants.	)

HOLD SEPARATE STIPULATION AND ORDER

It is hereby stipulated and agreed by and between the undersigned parties, subject to approval and entry by the Court, that:

I. DEFINITIONS

As used in this Hold Separate Stipulation and Order:

A. "Acquire" means obtain any interest in any electricity generating facility, including real property, deeded development rights to real property, capital equipment, buildings, or fixtures.

B. "Acquirer" or "Acquirers" means the entity or entities to whom Defendants divest any of the Divestiture Assets or with whom Defendants have entered into definitive contracts to sell any of the Divestiture Assets.

C. "Constellation" means Constellation Energy Group, Inc., a Maryland corporation with its headquarters in Baltimore, MD, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

D. "Control" means have the ability, directly or indirectly, to set the level of, dispatch, or Offer the output of one or more units of an electricity generating facility or to operate one or more units of an electricity generating facility.

E. "Cost-Based Offer" means the maximum offer to sell energy allowed under the version of the PJM "Amended and Restated Operating Agreement of PJM Interconnection, LLC," Section 6.4, available at <www.pjm.com>, in effect at the time the offer is made.

F. "Divestiture Assets" means the following facilities: (1) Brandon Shores Power Plant, 2030 Brandon Shores Road, Baltimore, MD 21226; (2) H.A. Wagner Power Plant, 3000 Brandon Shores Road, Baltimore, MD 21226; (3) CP Crane Power Plant, 1001 Carroll Island Road at Baltimore, MD 21220; and for each of those facilities, all of Defendants' rights, titles, and interests in any tangible and intangible assets relating to the generation, dispatch, and offering of electricity at the facility, including the land; buildings; fixtures; equipment; fixed assets; supplies; personal property; non-consumable inventory on site as of December 1, 2011; furniture; licenses, permits, and authorizations issued by any governmental organization relating to the facility (including environmental permits and all permits from federal or state agencies and all work in progress on permits or studies undertaken in order to obtain permits); plans for design or redesign of the facility or any assets at the facility; agreements, leases, commitments, and understandings pertaining to the facility and its operation; records relating to the facility or its operation, wherever

kept and in whatever form (excluding records of past offers to the PJM Market); all equipment associated with connecting the facility to PJM (including automatic generation control equipment); all remote start capability or equipment located on site; and all other interests, assets, or improvements at the facility customarily used in the generation, dispatch, or offer of electricity from the facility; provided however, that "Divestiture Assets" shall not include (i) electric and gas distribution or transmission assets located in, or appurtenant to, the boundaries of the facility, or (ii) any communications links between the facility and Defendants, which will be disconnected. To the extent that any licenses, permits, or authorizations described above are nontransferable, Defendants will use their best efforts to obtain the necessary consent for assignment to the Acquirer or Acquirers of the license, permit, or authorization.

G. "Exelon" means Defendant Exelon Corporation, a Pennsylvania corporation with its headquarters in Chicago, Illinois, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

H. "Exelon/Constellation Transaction" means the merger of Exelon and Constellation that is the subject of the "Agreement and Plan of Merger" between Exelon and Constellation dated April 28, 2011.

I. "Good Utility Practice" means any of the practices, methods, and acts engaged in or approved by a significant portion of the electric utility industry during the relevant time period, or any of the practices, methods, and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision is made, could have been expected to accomplish the desired result at a reasonable cost consistent with good

business practices, reliability, safety, and expedition. "Good Utility Practice" is not intended to be limited to the optimum practice, method, or act to the exclusion of all others, but rather is intended to include acceptable practices, methods, or acts generally accepted in the region.

J. "Including" means including but not limited to.

K. "Market Monitor" means Monitoring Analytics, LLC, 2621 Van Buren Avenue, Suite 160, Eagleville, PA 19403, or any market monitor for the PJM market authorized by the Federal Energy Regulatory Commission.

L. "Offer" or "Offers" means an offer to sell energy submitted into the PJM Market pursuant to the version of PJM "Amended and Restated Operating Agreement of PJM Interconnection, LLC," Section 6.4, available at <www.pjm.com>, in effect at the time the offer is made.

M. "Outage" means any outage as defined in the version of PJM Manual 35, "Definitions and Acronyms," available at <www.pjm.com>, in effect at the time the outage occurs, including "forced outage," "forced/unplanned outage," "generator forced outage," "generator forced/unplanned outage," "maintenance outage," "generator maintenance outage," "generator planned outage," "immediate outage," and "planned outage."

N. "Person" means any natural person, corporation, association, firm, partnership, or other business or legal entity.

O. "PJM" means PJM Interconnection, LLC, 995 Jefferson Ave., Norristown, PA, 19403.

P. "PJM Market" means any market for energy operated or administered by PJM, including the "Day-Ahead Energy Market" or the "Real-time Energy Market."

II. OBJECTIVES

The Final Judgment filed in this case is meant to ensure Defendants' prompt divestiture of the Divestiture Assets in order to remedy the effects that the United States alleges would otherwise result from the Exelon/Constellation Transaction. This Hold Separate Stipulation and Order ensures that, prior to such divestitures, (1) the Divestiture Assets will be offered into the PJM Market as specified herein; (2) the Divestiture Assets will be preserved, maintained, and operated at least in the same physical condition as of the date the Complaint was filed, ordinary wear and tear excepted and consistent with Good Utility Practice; and (3) competition is maintained during the pendency of the ordered divestiture.

III. JURISDICTION AND VENUE

The Court has jurisdiction over the subject matter of this action and over each of the parties hereto, and venue of this action is proper in the United States District Court for the District of Columbia.

IV. COMPLIANCE WITH AND ENTRY OF FINAL JUDGMENT

A. The parties stipulate that a Final Judgment in the form attached hereto as Exhibit A may be filed with and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16, and without further notice to any party or other proceedings, provided that the United States has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on Defendants and by filing that notice with the Court. Defendants agree to

arrange, at their expense, publication as quickly as possible of the newspaper notice required by the APPA. The publication shall be arranged no later than five (5) calendar days after Defendants' receipt from the United States of the text of the notice and the identity of the newspaper within which the publication shall be made. Defendants shall promptly send to the United States (1) confirmation that publication of the newspaper notice has been arranged, and (2) the certification of the publication prepared by the newspaper within which the notice was published.

B. Defendants shall abide by and comply with the provisions of the proposed Final Judgment, pending the entry of the Final Judgment by the Court, or until expiration of time for all appeals of any Court ruling declining entry of the proposed Final Judgment, and shall, from the date of the signing of this Stipulation by the parties, comply with all the terms and provisions of the proposed Final Judgment as though the same were in full force and effect as an order of the Court.

C. Defendants shall not consummate the transaction sought to be enjoined by the Complaint herein before the Court has signed this Hold Separate Stipulation and Order.

D. This Stipulation shall apply with equal force and effect to any amended proposed Final Judgment agreed upon in writing by the parties and submitted to the Court.

E. In the event that (1) the United States has withdrawn its consent, as provided in Section IV(A) above, or (2) the proposed Final Judgment is not entered pursuant to this Stipulation, the time has expired for all appeals of any Court ruling declining entry of the proposed Final Judgment, and the Court has not otherwise ordered continued compliance with the terms and provisions of the proposed Final Judgment, then the parties are

released from all further obligations under this Stipulation, and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

F. Defendants represent that the divestitures ordered in the proposed Final Judgment can and will be made, subject to receipt of necessary regulatory approvals, and that Defendants will later raise no claims of mistake, hardship, or difficulty of compliance as grounds for asking the Court to modify any provisions contained therein.

V. HOLD SEPARATE PROVISIONS

Until the divestitures required by Section IV or Section V of the Final Judgment have been accomplished:

A. Defendants shall take all steps necessary to assure that the Divestiture Assets are maintained as separate, distinct, and saleable assets, apart from other assets of Defendants. Defendants shall preserve the documents, books, and records relating to the Divestiture Assets until the date of divestiture. Within twenty (20) calendar days after the entry of this Hold Separate Stipulation and Order, Defendants will inform the United States of the steps Defendants have taken to comply with this Hold Separate Stipulation and Order.

B. Defendants shall provide sufficient working capital to continue to maintain the Divestiture Assets as economically viable and competitive facilities, consistent with the requirements of Section V(A).

C. Defendants shall take no action that would jeopardize, delay, or impede the sale of the Divestiture Assets.

D. Defendants shall take all steps necessary to ensure that the Divestiture Assets are fully maintained in operable condition at no less than their capacity and shall maintain and adhere to normal repair and maintenance schedules for the Divestiture Assets, consistent with Good Utility Practice.

E. Defendants shall not, except as part of a divestiture in accordance with Sections IV or V of the proposed Final Judgment or a contract in accordance with Section VI(C), remove, sell, lease, assign, transfer, pledge, or otherwise dispose of any of the Divestiture Assets.

F. Defendants' employees stationed at the Divestiture Assets shall not be transferred or reassigned to other areas within the company except for transfers initiated by employees pursuant to Defendants' regular, established job posting policy and existing collective bargaining agreements. Defendants shall provide the United States with ten (10) calendar days notice of such transfer.

G. Defendants shall take no action that would interfere with the ability of any trustee appointed pursuant to the Final Judgment to complete the divestitures pursuant to the Final Judgment to an Acquirer or Acquirers acceptable to the United States.

VI. CONDITIONS FOR OFFERS, PENDING DIVESTITURE

From consummation of the Exelon/Constellation Transaction until the divestitures required by Section IV or Section V of the Final Judgment have been accomplished:

A. Defendants shall offer into the PJM Day-Ahead Energy Market the units listed in Attachment A at offers no more than the Cost-Based Offer.[1] Defendants must submit

[1] Exelon's Cromby 2 and Eddystone 2 units are paid according to the terms of Reliability Must Run agreements between Exelon and PJM. Defendants shall continue to operate these units according to those agreements between Exelon and PJM until such time as Cromby 2 and Eddystone 2 are retired from service.

offers into the PJM Market in accordance with the terms of Section VI(A) for each facility listed in Attachment A, unless unable to do so due to an Outage. In the event of an Outage, Defendants will offer all energy that is unaffected by the Outage in accordance with the terms of Section VI(A).

B. Notwithstanding Section VI(A), Defendants will be relieved from their obligation to offer the units listed in Attachment A in accordance with the limits defined in Section VI(A) after the sales of all the Divestiture Assets have been completed.

C. For electricity generating facilities in the utility zones of Atlantic City Electric Company, the Baltimore Gas and Electric Company, the Delmarva Power and Light Company, the Jersey Central Power and Light Company, the Metropolitan Edison Company, the Rockland Electric Company, the PECO Energy Company, the Potomac Electric Power Company, the PPL Electric Utilities Corporation, the Public Service Electric and Gas Company, and the Dominion Virginia Power Company, Defendants may enter into contracts that give Defendants Control over solar, wind, biomass, or landfill gas electricity generating facilities. Defendants may enter into contracts that give Defendants Control over other electricity generating facilities in those zones provided that

1. Defendants shall submit any such proposed contract to the United States for review by submitting the name of the other person and a copy of the proposed contract, the term sheet, and any related agreements to the United States;

2. The United States may, in its sole discretion, disapprove any such proposed contract; and

3. The United States will inform Defendants within ten (10) calendar days of Defendants' submission of the required information about any such proposed

contract whether the United States disapproves the proposed contract. The United States, in its sole discretion, may extend the time period set forth in Section VI(C)(3) for an additional period or periods of time not to exceed five (5) calendar days in total.

D. Defendants agree to grant permission for, and otherwise make no objection to, any communications or exchanges of information between the United States and PJM or between the United States and the PJM Market Monitor relating to Section VI(A). Defendants agree to submit a copy of the Complaint, (Proposed) Final Judgment, Hold Separate Stipulation and Order, and Competitive Impact Statement to PJM and to the PJM Market Monitor.

E. Every two weeks, the Defendants will provide for each unit in Attachment A, by day, the following information to the Division: (1) the unit identification number of the unit, the unit schedule identification number of the unit, and the unit type; (2) whether the unit was available, and if not, the reason for the unit being unavailable (e.g., economic, emergency, forced outage, planned outage, etc.); (3) the PJM bid type (e.g., Cost-Based Offer or market-based offer); (4) the Cost-Based Offer for the unit, as submitted to PJM in the Day-Ahead Energy Market, including startup, no-load, and incremental energy offers, for each point on the offer curve; (5) the market-based offer for the unit, as submitted to PJM in the Day-Ahead Energy Market, including startup, no-load, and incremental energy offers, for each point on the offer curve; (6) the unit characteristics submitted with the Cost-Based Offer, including but not limited to, economic maximum megawatts, economic minimum megawatts, economic maximum cost/price, economic minimum cost/price, emergency maximum megawatts, emergency minimum megawatts,

emergency maximum cost/price, emergency minimum cost/price, maximum number of daily starts, maximum number of weekly starts, hot startup cost/price, intermediate startup cost/price, cold startup cost/price, no load cost/price, ramp rate limit, turn down ratio, notification time, startup time, minimum down time, and minimum run time; and (7) whether the unit was self scheduled or must run and, if so, for how much of its output, by hour.

F. The United States may retain an auditor to monitor Defendants' compliance with the requirements of Section VI(A). The auditor shall have or shall contract with professionals or agents who have competence or experience in the operation of electric generation facilities and understanding of the requirements of Cost-Based Offers.

1. Within five (5) calendar days of the United States informing Defendants that an auditor is to be retained, Defendants shall execute an agreement that, subject to the prior approval of the United States, confers on the auditor all the power and authority necessary to permit the auditor to monitor Defendants' compliance with Section VI(A), in a manner consistent with the purposes of this Stipulation.

2. If an auditor is retained, this Section VI(F)(2) shall apply to the auditor's duties and responsibilities.

    a. The auditor shall have the rights, duties, and responsibilities necessary to monitor Defendants' compliance with Section VI(A) and shall exercise such power and authority and carry out the duties and responsibilities of the auditor in a manner consistent with the purposes of this Stipulation, including determining (a) whether an Outage taken by Defendants is

consistent with the requirements of Section VI(A) or (b) whether an offer made for any unit is contrary to the requirements of Section VI(A).

b. On demand the auditor shall receive all information relevant to the necessity and duration of an Outage of any asset covered by Section VI(A), including but not limited to Generating Availability Data System (GADS) data, Dispatcher Application and Reporting Tool (eData) data, and engineering or any other logs or contemporaneous records. All information relevant to the offering of generation units in the PJM Market, including all information necessary to evaluate compliance with Section VI(A) must be maintained by Defendants for one year after the sale of the Divestiture Assets.

c. The auditor shall have full and complete access to all personnel, books, records, documents, and facilities of Defendants related to Defendants' compliance with Section VI(A) or to any other relevant information as the auditor may request including but not limited to all documents and records kept in the normal course of business that relate to Defendants' obligations under Section VI(A). Defendants shall provide such financial or other information as the auditor may request and shall cooperate with the auditor. Defendants shall take no action to interfere with or impede the auditor's ability to perform his or her responsibilities or to monitor Defendants' compliance with Section VI(A).

d. At any time during the period that Defendants are bound by Section VI(A), (i) if Defendants contact PJM or the Market Monitor orally or in

writing to discuss offers made by Defendants for units subject to the requirements of Section VI(A), Defendants must also communicate the same information to the auditor in writing within six (6) hours, unless another form of communication is authorized by the auditor; and (ii) if Defendants are contacted by PJM or the Market Monitor orally or in writing to discuss offers made by Defendants for units subject to the requirements of Section VI(A), Defendants must communicate any information they provide to PJM to the auditor in writing within six (6) hours, unless another form of communication is authorized by the auditor.

e. Defendants may require the auditor to sign a confidentiality agreement, on terms agreeable to the United States, prohibiting the disclosure of any information gained as a result of his or her role as auditor to anyone other than the United States or the Court.

f. The auditor shall serve, without bond or other security, at the cost and expense of Defendants, on terms agreeable to the United States and commensurate with the auditor's experience and responsibilities. Defendants shall indemnify the auditor and hold the auditor harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the auditor's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of any claim, whether or not resulting in any liability, except to the extent that such liabilities, losses, damages,

claims, or expenses result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the auditor.

g. The auditor shall have no responsibility or obligation for the operation of, or the right to operate, Defendants' businesses.

h. The term of the auditor shall end sixty (60) calendar days after the sale of the Divestiture Assets is completed. The United States may extend the time period set forth in this Section VI(F)(2)(h) for an additional period or periods of time not to exceed thirty (30) calendar days.

i. The auditor shall report in writing to the United States concerning Defendants' compliance with Section VI(A) thirty (30) days after execution of the agreement referenced in this Section VI(F)(2)(i) and every thirty (30) calendar days thereafter until the auditor's term expires. The auditor shall provide a final report to the United States sixty (60) calendar days after the sale of the Divestiture Assets. The United States may extend the time period set forth in this Section VI(F)(2)(i) for an additional period or periods of time not to exceed thirty (30) calendar days.

VII. DURATION OF HOLD SEPARATE AND ASSET PRESERVATION OBLIGATIONS

A. Defendants obligations under Section V and VI of this Stipulation shall remain in effect until (1) consummation of the divestitures required by the proposed Final Judgment or (2) further order of the Court. If the United States voluntarily dismisses the Complaint in this matter, Defendants are released from all further obligations under this Stipulation.

Dated: December 19, 2011

Respectfully submitted,

FOR PLAINTIFF
UNITED STATES OF AMERICA:

/s/ Tracy Fisher
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Michele Cano
Chan Mazumdar
Janet Urban
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FOR DEFENDANT
EXELON CORPORATION:

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FOR DEFENDANT
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ORDER

It is SO ORDERED, this _____ day of _____, 2011.

_____
United States District Court Judge

ATTACHMENT A

Electric Generating Facility	**Location/Address**	**Unit Number(s)**
Chester	Front and Ward Sts. Chester PA 19013	7, 8, 9
Croyden	955 River Rd. Croydon PA 19020	11, 12, 21, 22, 31, 32, 41, 42
Delaware	1325 N. Beach St. Philadelphia PA 19125	9, 10, 11, 12
Eddystone Generating Station	1 Industrial Hwy. Eddystone PA 19022	3, 4, 10, 20, 30, 40
Fairless Hills	990 Steel Rd South Fairless Hills PA 19030	A, B
Falls	Bristol and Tyburn Rds. Fallsington PA 19067	1, 2, 3
Montenay	1155 Conshohocken Rd. Conshohocken PA 19428	
Moser	1595 Industrial Hwy. Pottstown PA 19464	1, 2, 3
Pennsbury	1414 Bordentown Rd. Morrisville PA 19067	1, 2
Richmond	3901 N. Delaware Ave. Philadelphia PA 19137	91, 92
Schuylkill Generating Station	2800 Christian St. Philadelphia PA 19146	1, 10, 11
Southwark	2501 S. Delaware Ave. Philadelphia PA 19148	3, 4, 5, 6
Brandon Shores	2030 Brandon Shores Road Baltimore MD 21226	1, 2
C.P. Crane	1001 Carroll Island Road Baltimore, MD 21220	1, 2, GT1
Gould Street	2105 Gould St. Baltimore MD 21230	3
H.A. Wagner	3000 Brandon Shores Road Baltimore MD 21226	1, 2, 3, 4, GT1
Notch Cliff	10650 Harford Road Baltimore MD 21057	1, 2, 3, 4, 5, 6, 7, 8
Perryman	900 Chelsea Rd. Perryman MD 21130	1, 2, 3, 4, 51
Philadelphia Road	3914 Pulaski Hwy Baltimore MD 21224	1, 2, 3, 4

Riverside	4000 Broening Highway Baltimore MD 21222	4, 6, 7, 8
Westport	2101 Kloman St Baltimore MD 21230	5
Delta	1597 Atom Road Delta, PA 17314	CC1

EXHIBIT A

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA	)
Plaintiff,	)
v.	)
EXELON CORPORATION	)
and	)
CONSTELLATION ENERGY GROUP, Inc.	)
Defendants.	)

PROPOSED FINAL JUDGMENT

WHEREAS, Plaintiff, United States of America, filed its Complaint on December 21, 2011, the United States and Defendants, Defendant Exelon Corporation ("Exelon") and Defendant Constellation Energy Group, Inc. ("Constellation"), by their respective attorneys, have consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law, and without this Final Judgment constituting any evidence against or admission by any party regarding any issue of fact or law;

AND WHEREAS, Defendants agree to be bound by the provisions of this Final Judgment pending its approval by the Court;

AND WHEREAS, the essence of this Final Judgment is the prompt and certain divestiture of certain rights or assets by Defendants to assure that competition is not substantially lessened;

AND WHEREAS, the United States requires Defendants to make certain divestitures for the purpose of remedying the loss of competition alleged in the Complaint;

AND WHEREAS, Defendants have represented to the United States that the divestitures required below can and will be made, subject to receipt of necessary regulatory approvals, and that Defendants will later raise no claim of hardship or difficulty as grounds for asking the Court to modify any of the provisions contained below;

NOW THEREFORE, before any testimony is taken, without trial or adjudication of any issue of fact or law, and upon consent of the parties, it is ORDERED, ADJUDGED, AND DECREED:

I. JURISDICTION

This Court has jurisdiction over the subject matter of and each of the parties to this action. The Complaint states a claim upon which relief may be granted against Defendants under Section 7 of the Clayton Act, as amended (15 U.S.C. § 18).

II. DEFINITIONS

As used in this Final Judgment:

A. "Acquire" means obtain any interest in any electricity generating facility, including real property, deeded development rights to real property, capital equipment, buildings, or fixtures.

B. "Acquirer" or "Acquirers" means the entity or entities to whom Defendants divest any of the Divestiture Assets or with whom Defendants have entered into definitive contracts to sell any of the Divestiture Assets.

C. "Constellation" means Constellation Energy Group, Inc., a Maryland corporation headquartered in Baltimore, Maryland, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, joint ventures, and their directors, officers, managers, agents, and employees.

D. "Control" means have the ability, directly or indirectly, to set the level of, to dispatch, or to Offer the output of one or more units of an electricity generating facility or to operate one or more units of an electricity generating facility.

E. "Divestiture Assets" means the following facilities: (1) Brandon Shores Power Plant, 2030 Brandon Shores Road, Baltimore, MD 21226; (2) H.A. Wagner Power Plant, 3000 Brandon Shores Road, Baltimore, MD 21226; (3) CP Crane Power Plant, 1001 Carroll Island Road, Baltimore, MD 21220; and for each of those facilities, all of Defendants' rights, titles, and interests in any tangible and intangible assets relating to the generation, dispatch, and offering of electricity at the facility; including the land; buildings; fixtures; equipment; fixed assets; supplies; personal property; non-consumable inventory on site as of December 1, 2011; furniture; licenses, permits, and authorizations issued by any governmental organization relating to the facility (including environmental permits and all permits from federal or state agencies and all work in progress on permits or studies undertaken in order to obtain permits); plans for design or redesign of the facility or any assets at the facility; agreements, leases, commitments, and understandings pertaining to the facility and its operation; records relating to the facility or its operation, wherever

kept and in whatever form (excluding records of past offers submitted to PJM); all equipment associated with connecting the facility to PJM (including automatic generation control equipment); all remote start capability or equipment located on site; and all other interests, assets, or improvements at the facility customarily used in the generation, dispatch, or offer of electricity from the facility; provided, however, that "Divestiture Assets" shall not include (i) electric and gas distribution or transmission assets located in, or appurtenant to, the boundaries of the facility, or (ii) any communications links between the facility and Defendants, which will be disconnected. To the extent that any licenses, permits, or authorizations described above are nontransferable, Defendants will use their best efforts to obtain the necessary consent for assignment to the Acquirer or Acquirers of the license, permit, or authorization.

F. "Exelon" means Exelon Corporation, a Pennsylvania corporation headquartered in Chicago, Illinois, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, joint ventures, and their directors, officers, managers, agents, and employees.

G. "Exelon/Constellation Transaction" means the merger of Exelon and Constellation that is the subject of the "Agreement and Plan of Merger" between Exelon and Constellation dated April 28, 2011.

H. "Good Utility Practice" means any of the practices, methods, and acts engaged in or approved by a significant portion of the electric utility industry during the relevant time period, or any of the practices, methods, and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision is made, could have been expected to accomplish the desired result at a reasonable cost consistent with good

business practices, reliability, safety, and expedition. "Good Utility Practice" is not intended to be limited to the optimum practice, method, or act to the exclusion of all others, but rather is intended to include acceptable practices, methods, or acts generally accepted in the region.

I. "Including" means including but not limited to.

J. "Offer" or "Offers" means an offer to sell energy submitted into the PJM Market pursuant to the version of PJM "Amended and Restated Operating Agreement of PJM Interconnection, LLC," Section 6.4, available at <www.pjm.com>, in effect at the time the offer is made.

K. "Person" means any natural person, corporation, association, firm, partnership, or other business or legal entity.

L. "PJM" means PJM Interconnection, LLC, 995 Jefferson Ave., Norristown, PA, 19403.

III. APPLICABILITY

A. This Final Judgment applies to Defendants Exelon and Constellation, as defined above, and all other persons in active concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise.

B. If, prior to complying with Section IV and V of this Final Judgment, Defendants sell or otherwise dispose of all or substantially all of their electricity generating facilities in Maryland, Pennsylvania, Delaware, the District of Columbia, New Jersey, or Virginia, or of lesser business units that include the Divestiture Assets, they shall require the purchaser to be bound by the provisions of this Final Judgment. Defendants need not obtain such an agreement from the Acquirers of the Divestiture Assets.

IV. DIVESTITURES

A. Defendants are hereby ordered and directed to divest the Divestiture Assets in a manner consistent with this Final Judgment to an Acquirer acceptable to the United States, in its sole discretion. Defendants shall enter into definitive contracts for sale of the Divestiture Assets within 150 days after consummation of the Exelon/Constellation Transaction. Defendants shall use their best efforts to, as expeditiously as possible, (1) enter into these contracts, and (2) after obtaining the United States' approval of the Acquirers, seek the necessary approvals of the sale of the Divestiture Assets from regulatory agencies. The United States, in its sole discretion, may agree to up to two thirty (30) day extensions of this time period, not to exceed sixty (60) calendar days in total, and shall notify the Court in such circumstances. Defendants shall consummate the contracts for sale no later than thirty (30) calendar days after receiving, for each Divestiture Asset, the last necessary regulatory approval required for that Divestiture Asset.

B. In accomplishing the divesture ordered by this Final Judgment, Defendants promptly shall make known, by usual and customary means, the availability for sale of the Divestiture Assets. Defendants shall inform any person making inquiry regarding a possible purchase of the Divestiture Assets that they are being divested pursuant to this Final Judgment and provide such person with a copy of this Final Judgment. Defendants shall also offer to furnish to all prospective Acquirers who have been invited to submit binding bids, subject to customary confidentiality assurances, all information and documents relating to the Divestiture Assets customarily provided in a due diligence process except such information subject to the attorney-client privilege or work-product

doctrine. Defendants shall make available such information to the United States at the same time that such information is made available to any other person.

C. Defendants shall provide the Acquirers and the United States the name and most recent contact information (if known) for each individual who is currently, or who, to the best of Defendants' knowledge, has, at any time since July 1, 2011, been stationed at a specific Divestiture Asset or involved in the operation, dispatch, or offering of the output, of that Divestiture Asset to be purchased by the Acquirer to enable the Acquirers to make offers of employment. Defendants will not interfere with any negotiations by the Acquirers to employ such persons.

D. Subject to customary confidentiality assurances, Defendants shall permit prospective Acquirers who have been invited to submit binding bids for the Divestiture Assets to have reasonable access to personnel and to make inspection of the physical facilities of the Divestiture Assets; access to any and all environmental, zoning and other permit documents and information; and access to any and all financial, operational, or other documents and information customarily provided as part of a due diligence process.

E. Defendants agree to preserve the Divestiture Assets in a condition and state of repair at least equal to their condition and state of repair as of the date the Complaint was filed, ordinary wear and tear excepted, and consistent with Good Utility Practice.

F. Defendants shall not take any action that will impede in any way the permitting, operation, or divestiture of the Divestiture Assets.

G. Defendants shall warrant to the Acquirers of the Divestiture Assets that each asset will be operational, consistent with Good Utility Practice, on the date of sale, subject to legal or regulatory restrictions on any of the Divestiture Assets in existence on the date of sale.

H. Defendants shall warrant to the Acquirers of the Divestiture Assets that there are no material defects in the environmental, zoning, or other permits pertaining to the operation of each asset, and that following the sale of the Divestiture Assets, Defendants will not undertake, directly or indirectly, any challenges to the environmental, zoning, or other permits relating to the operation of the Divestiture Assets.

I. Unless the United States otherwise consents in writing, the divestitures pursuant to Section IV, or by the trustee appointed pursuant to Section V, of this Final Judgment, shall include the entire Divestiture Assets, and shall be accomplished in such a way as to satisfy the United States, in its sole discretion, that the Divestiture Assets can and will be used by the Acquirers as part of a viable, ongoing business engaged in the provision of electric generation services. Divestiture of the Divestiture Assets may be made to one or more Acquirers, provided that in each instance it is demonstrated to the sole satisfaction of the United States that the Divestiture Assets will remain viable and the divestiture of such assets will remedy the competitive harm alleged in the Complaint. The divestitures, whether pursuant to Section IV or Section V of this Final Judgment,

(1) shall be made to Acquirers that, in the United States' sole judgment, have the intent and capability (including the necessary managerial, operational, technical, and financial capability) of competing effectively in the business of the provision of electric generation services; and

(2) shall be accomplished so as to satisfy the United States, in its sole discretion, that none of the terms of any agreement between the Acquirers and Defendants give Defendants the ability unreasonably to raise the Acquirers' costs, to lower the

Acquirers' efficiency, or otherwise to interfere in the ability of the Acquirers to compete effectively.

V. APPOINTMENT OF TRUSTEE

A. If Defendants have not entered into definitive contracts for sale of the Divestiture Assets within the time specified in Section IV(A), Defendants shall notify the United States of that fact in writing. Upon application of the United States, the Court shall appoint a trustee selected by the United States and approved by the Court to effect the divestiture of the Divestiture Assets, including prosecuting any applications for required regulatory approvals. Until such time as a trustee is appointed, Defendants shall continue their efforts to effect the sale of the Divestiture Assets as specified in Section IV.

B. After the appointment of a trustee becomes effective, only the trustee shall have the right to sell the Divestiture Assets. The trustee shall have the power and authority to accomplish the divestiture to Acquirers acceptable to the United States at such price and on such terms as are then obtainable upon reasonable effort by the trustee, subject to the provisions of Sections IV, V, and VI of this Final Judgment, and shall have such other powers as this Court deems appropriate. Subject to Section V(D) of this Final Judgment, the trustee may hire at the cost and expense of Defendants any investment bankers, attorneys, or other agents, who shall be solely accountable to the trustee, reasonably necessary in the trustee's judgment to assist in the divestitures.

C. Defendants shall not object to a sale by the trustee on any ground other than the trustee's malfeasance. Any such objections by Defendants must be conveyed in writing to the

United States and the trustee within ten (10) calendar days after the trustee has provided the notice required under Section VI.

D. The trustee shall serve at the cost and expense of Defendants, on such terms and conditions as the United States approves, and shall account for all monies derived from the sale of the assets sold by the trustee and all costs and expenses so incurred. After approval by the Court of the trustee's accounting, including fees for its services and those of any professionals and agents retained by the trustee, all remaining money shall be paid to Defendants, and the trust shall then be terminated. The compensation of the trustee and any professionals and agents retained by the trustee shall be reasonable in light of the value of the Divestiture Assets and based on a fee arrangement providing the trustee with an incentive based on the price and terms of the divestitures and the speed with which they are accomplished, but timeliness is paramount.

E. Defendants shall use their best efforts to assist the trustee in accomplishing the required divestiture, including their best efforts to effect all necessary regulatory approvals. The trustee and any consultants, accountants, attorneys, and other persons retained by the trustee shall have full and complete access to the personnel, books, records, and assets at the Divestiture Assets, and Defendants shall develop financial and other information relevant to the Divestiture Assets as the trustee may reasonably request, subject to reasonable protection for confidential research, development, or commercial information. Subject to customary confidentiality assurances, Defendants shall permit prospective Acquirers who have been invited to submit binding bids for the Divestiture Assets to have reasonable access to personnel and to make inspection of the physical facilities of the Divestiture Assets; access to any and all environmental, zoning and other permit

documents and information; and access to any and all financial, operational, or other documents and information customarily provided as part of a due diligence process.

F. Defendants shall take no action to interfere with or to impede the trustee's accomplishment of the divestitures.

G. After its appointment, the trustee shall file monthly reports with the United States and the Court setting forth the trustee's efforts to accomplish the divestitures ordered under this Final Judgment. To the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. Such reports shall include the name, address, and telephone number of each person who, during the preceding month, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Divestiture Assets, and shall describe in detail each contact with any such person. The trustee shall maintain full records of all efforts made to divest the Divestiture Assets.

H. If the trustee either (1) has not entered into definitive contracts for sale of the Divestiture Assets within ninety (90) calendar days after its appointment or (2) has not accomplished the divestitures ordered under this Final Judgment within six (6) months after its appointment, the trustee shall promptly file with the Court a report setting forth (1) the trustee's efforts to accomplish the required divestitures; (2) the reasons, in the trustee's judgment, why definitive contracts have not been reached or why the required divestitures have not been accomplished; and (3) the trustee's recommendations. To the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. The trustee shall at the same time

furnish such report to the United States, which shall have the right to make additional recommendations consistent with the purpose of the trust. The Court thereafter shall enter such orders as it shall deem appropriate to carry out the purpose of this Final Judgment, which may, if necessary, include extending the trust and the term of the trustee's appointment by a period requested by the United States.

VI. NOTICE OF PROPOSED DIVESTITURES

A. Within two (2) business days following execution of a definitive contract for sale of any of the Divestiture Assets, Defendants or the trustee, whichever is then responsible for effecting the divestiture required herein, shall notify the United States of any proposed divestiture required by Sections IV or V of this Final Judgment, and submit to the United States a copy of the proposed contract for sale and any other agreements with the Acquirer relating to the Divestiture Assets. If the trustee is responsible, it shall similarly notify Defendants. The notice shall set forth the details of the proposed divestiture and list the name, address, and telephone number of each person not previously identified who offered or expressed an interest in or desire to acquire any ownership interest in the Divestiture Assets, together with full details of the same.

B. Within fifteen (15) calendar days of receipt by the United States of such notice, the United States may request from Defendants, the proposed Acquirers, any other third party, or the trustee, if applicable, additional information concerning the proposed divestiture, the proposed Acquirers, and any other potential Acquirers. Defendants and the trustee shall furnish any additional information requested within fifteen (15) calendar days of the receipt of the request, unless the parties shall otherwise agree.

C. Within thirty (30) calendar days after receipt of the notice or within twenty (20) calendar days after the United States has been provided the additional information requested from Defendants, the proposed Acquirers, any third party, and the trustee, whichever is later, the United States shall provide written notice to Defendants and the trustee, if there is one, stating whether or not it objects to the proposed divestiture, provided, however, that the United States may extend the period for its review up to an additional thirty (30) calendar days. If the United States provides written notice that it does not object, the divestiture may be consummated, subject only to Defendants' limited right to object to the sale under Section V(C) of this Final Judgment. Absent written notice that the United States does not object to the proposed Acquirer or upon objection by the United States, a divestiture proposed under Section IV or Section V shall not be consummated. Upon objection by Defendants under Section V(C), a divestiture proposed under Section V shall not be consummated unless approved by the Court.

VII. FINANCING

Defendants shall not finance all or any part of any purchase made pursuant to Section IV or V of this Final Judgment.

VIII. HOLD SEPARATE

Until the divestitures required by this Final Judgment have been accomplished, Defendants shall take all steps necessary to comply with the Hold Separate Stipulation and Order entered by the Court. Defendants shall take no action that would jeopardize the divestiture ordered by the Court.

IX. AFFIDAVITS

A. Within twenty (20) calendar days of the filing of the Complaint in this matter, and every thirty (30) calendar days thereafter until the divestiture has been completed under Section IV or V, Defendants shall deliver to the United States an affidavit as to the fact and manner of its compliance with Sections IV or V of this Final Judgment. Each such affidavit shall include the name, address, and telephone number of each person who, during the preceding thirty (30) calendar days, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Divestiture Assets, and shall describe in detail each contact with any such person during that period. Each such affidavit shall also include a description of the efforts Defendants have taken to solicit buyers for the Divestiture Assets and to provide required information to prospective Acquirers, including the limitations, if any, on such information. Assuming the information set forth in the affidavit is true and complete, any objection by the United States to information provided by Defendants, including limitation on information, shall be made within fourteen (14) calendar days of receipt of such affidavit.

B. Within twenty (20) calendar days of the filing of the Complaint in this matter, Defendants shall deliver to the United States an affidavit that describes in reasonable detail all actions Defendants have taken and all steps Defendants have implemented on an ongoing basis to comply with Section VIII of this Final Judgment. Defendants shall deliver to the United States an affidavit describing any changes to the efforts and actions outlined in

Defendants' earlier affidavits filed pursuant to this section within fifteen (15) calendar days after the change is implemented..

C. Defendants shall keep all records of all efforts made to preserve and divest the Divestiture Assets until one year after such divestiture has been completed.

X. COMPLIANCE INSPECTION

A. For purposes of determining or securing compliance with this Final Judgment, or of determining whether the Final Judgment should be modified or vacated, and subject to any legally recognized privilege, from time to time duly authorized representatives of the United States Department of Justice Antitrust Division, including consultants and other persons retained by the United States, shall, upon written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to Defendants, be permitted:

1. Access during Defendants' office hours to inspect and copy, or at the option of the United States, to require Defendants to provide hard copy or electronic copies of, all books, ledgers, accounts, records, data, and documents in the possession, custody, or control of Defendants, relating to any matters contained in this Final Judgment; and

2. To interview, either informally or on the record, Defendants' officers, employees, or agents, who may have their individual counsel present, regarding such matters. The interviews shall be subject to the reasonable convenience of the interviewee and without restraint or interference by Defendants.

B. Upon the written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division, Defendants shall submit written reports or responses to written interrogatories, under oath if requested, relating to any of the matters contained in this Final Judgment as may be requested.

C. No information or documents obtained by the means provided in this Section shall be divulged by the United States to any person other than an authorized representative of the executive branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by Defendants to the United States, Defendants represent and identify in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure, and Defendants mark each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure," then the United States shall give Defendants ten (10) calendar days notice prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

XI. NO REACQUISITION

Defendants may not acquire or control any of the Divestiture Assets during the term of this Final Judgment.

XII. RETENTION OF JURISDICTION

This Court retains jurisdiction to enable any party to this Final Judgment to apply to the Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify any of its provisions, to enforce compliance, and to punish violations of its provisions.

XIII. EXPIRATION OF FINAL JUDGMENT

Unless the Court grants an extension, this Final Judgment shall expire ten (10) years from the date of its entry.

XIV. PUBLIC INTEREST DETERMINATION

The parties have complied with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16, including making copies available to the public of this Final Judgment, the Competitive Impact Statement, and any comments thereon and the United States's responses to comments. Based upon the record before the Court, which includes the Competitive Impact Statement and any comments and response to comments filed with the Court, entry of this Final Judgment is in the public interest.

Dated: _____

[Court approval subject to procedures
of Antitrust Procedures and Penalties
Act, 15 U.S.C. § 16]

[TO BE SIGNED AFTER SUCH PROCEDURES]

_____

United States District Judge