

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA

Plaintiff,

v.

EXELON CORPORATION

and

**CONSTELLATION ENERGY
GROUP, INC.**

Defendants.

Case: 1:11-cv-02276

Assigned To : Sullivan, Emmet G.

Assign. Date : 12/21/2011

Description: Antitrust

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.

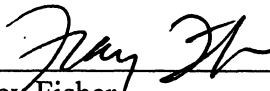
VII. DURATION OF HOLD SEPARATE AND ASSET PRESERVATION OBLIGATIONS

- 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:




Tracy Fisher
Michele Cano
Chan Mazumdar
Janet Urban
Trial Attorney
United States Department of Justice
Antitrust Division
Transportation, Energy & Agriculture Section
450 Fifth Street, NW, Suite 8000
Washington, D.C. 20001
Tel: (202) 616-1650
Fax: (202) 616-2441

FOR DEFENDANT
EXELON CORPORATION:



Steven C. Sunshine (DC Bar #450078)
John H. Lyons (DC Bar # 453191)
Skadden, Arps, Slate, Meagher &
Flom LLP
1440 New York Avenue, NW
Washington, D.C. 20005-2111
Tel: (202) 371-7860
Fax: (202) 661-0560

FOR DEFENDANT
CONSTELLATION ENERGY GROUP,
INC.:



Bilal Sayyed (DC Bar #977975)
Kirkland & Ellis LLP
655 15th Street, NW
Washington, D.C. 20005
Tel: (202) 879-5192
Fax: (202) 654-9629

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