

From: andersd@pjm.com
To: pjm-mc@lists.pjm.com;
Subject: [Pjm-mc] FW: Notice to PJM Members of Disclosure of Market Sensitive Information Pursuant to OA Section 18.17.2, Acquisition of NRG Energy, Inc. by Exelon Corp.
Date: Thursday, April 23, 2009 11:24:12 AM
Attachments: [Attachment-CID Data Requests.pdf](#)
[Attachment-DoJ CID.pdf](#)

Dear members,

At the request of the market Monitor, this is being resent with an additional attachment.

Best Regards,
Dave Anders, PE
Manager, PJM Stakeholder Affairs
610-666-4675
andersd@pjm.com

Dear Members,

PJM provides the following notice to its Members at the request of Monitoring Analytics, LLC.

Best Regards,
Dave Anders, PE
Manager, PJM Stakeholder Affairs
610-666-4675
andersd@pjm.com

Market Monitoring Unit Notification to PJM Members of Disclosure of Confidential Information Pursuant to Operating Agreement Section

18.17.2(a)

Dated: April 23, 2009

Pursuant to section 18.17.2(a) of the PJM Operating Agreement, the Market Monitoring Unit hereby notifies PJM Members that it is directed to disclose to the Department of Justice certain market sensitive information that is otherwise required to be maintained in confidence pursuant to the

Operating Agreement. This obligation arises as a result of the attached Civil Investigative Demand (CID) received in connection with the U.S. Department of Justice's review of the proposed acquisition of NRG Energy, Inc. by Exelon Corp.



U.S. Department of Justice

Antitrust Division

*Liberty Square Building
450 5th Street, NW
Washington, DC 20001*

April 1, 2009

VIA E-MAIL

Monitoring Analytics, LLC
2621 Van Buren Avenue, Suite 160
Eagleville, PA 19403

Re: Proposed Acquisition of NRG Energy, Inc. ("NRG") by Exelon Corp.
("Exelon") and Electronic Production

Dear Sir/Madam:

I am writing regarding the Division's requirements for producing electronic documents in response to the Civil Investigative Demand ("CID") issued to Monitoring Analytics, LLC regarding the proposed acquisition of NRG by Exelon. Definition & Instruction L.3 of the CID calls for the electronic production of electronic documents and information. This letter describes the features of an electronic production that would satisfy the obligations of a CID, but it does not constitute a modification of the CID. Further, this letter does not address or endorse any search method counsel may use to identify responsive electronic documents.

To ensure the efficient processing and review of any such electronic production, Division legal, economic, and technical staff would like to resolve the details prior to production, and preferably before Monitoring Analytics or its vendor begins to gather and process responsive documents. We will make ourselves available so that we can resolve the details of the production promptly.

I have enclosed a questionnaire seeking basic information about your client's electronic systems and back-up and archiving policies. To facilitate negotiations, please provide written answers as soon as possible.

A. Categories of Documents

We believe that any discussion regarding the details of an electronic production should focus on five categories of documents: (1) hard-copy, (2) e-mail and other electronic messages (e.g., instant messaging), (3) other electronic documents, (4) shared resources, and (5) databases. General requirements for each category of document are outlined below. For information regarding document-specific metadata and bibliographic information (identifying information), please refer to the enclosed table.

5. Databases

We will need to discuss databases individually as soon as the Division receives a list of those that are responsive to the CID. This list should include a brief description of the contents/function of the database, the database platform, and its size. This will be very helpful in resolving what may need to be produced from any database. No database should be produced without discussions with the Division's staff.

B. Technical and Other Requirements

The technical requirements for the electronic production are as follows:

1. Form and Manner of the Production

The production should be pursuant to the attached Summation Database Specifications and should use the Summation database shell provided by the Division. Production should be on a "rolling basis." Each submission should be accompanied by an index of what is produced by custodian and Bates number, along with information to confirm that the Division has received everything that Monitoring Analytics intended to send. For further details, see the attached Summation Database Submission Requirements. Please note that a web-based production is not likely to be possible due to technical issues related to the Department's firewall.

To minimize the amount of time required to load your submissions, each submission should consist of as few Summation databases as possible. Each database within each submission should be as large as practical under the Summation Specifications and contain multiple custodians as grouped by the Division. Within any submission, documents from an individual custodian should all be in the same database. Submissions that contain (a) Summation databases with documents from an individual custodian spread across multiple databases or (b) Summation databases that are relatively small will not be sufficient to comply with the CID until they have either been replaced with complying Summation databases or until the Division has finished merging the produced Summation databases.

2. Native Format Files

Native format files require that the Division has the associated software and any necessary licenses to view the documents. Please notify the Division's legal staff as soon as possible of any documents to be produced from electronic documents in any native format to make sure that we have the capability to open and view these documents. Password protection should be removed from all files. Additionally, please provide a list of all native formats that will be provided to the Division, and confirm that the Division has the appropriate software and licenses.

3. Image and Text Files

Image files must be produced in the following manner:

- Images must be Group IV single-page TIFF files;
- There should be no spaces in file names and image files should be named “<PageID>.TIF” (e.g., “DOJ-005.TIF”);
- The TIFF images for a single document should be in one folder and not split across multiple folders; and
- The number of image files in a folder should not exceed 5,000.

Text files must be produced in the following manner:

- Text files should include page breaks that correspond to the “pagination” of the image files;
- There must be a carriage return and line feed in the first 80 characters of each text file;
- For hard-copy documents the text files should be produced using OCR techniques, but text should be extracted directly from electronic documents; and
- All full text, whether produced using OCR techniques or extracted from native files, should be loaded as OCR.

4. Privilege Designations

Items withheld or redacted pursuant to any assertion of privilege should be so designated in the Summation Database, as indicated in the attached Metadata and Family Record Specifications Table in the properties (“Prpties”) field. When any privileged document is withheld and is an attachment to another or a larger “family” of documents, its absence due to privilege should be designated accordingly in the “properties” field for its “parent” document and all “sibling” attachments in the family.

5. Deduplication Methods

Deduplication should occur both vertically within each custodian and horizontally across custodians. Vertical deduplication is crucial with the production of electronic documents from back-up tapes. Horizontal deduplication must be done in a manner to preserve and produce information on blind copy (Bcc) recipients of e-mails and other custodians who have the duplicates that will be eliminated from the production. Before doing any deduplication, provide the Division with a written description of the method used to deduplicate (including what information is compared and what hash codes are used) and what is considered a duplicate, and confirm that your approach is acceptable to the Division. However, there can be no deduplication of “loose” electronic documents (e.g., presentation slides located on the custodians C: drive) against e-mail attachment versions of those same documents; the integrity of any produced e-mail must be maintained except as limited by any claim of privilege. The Division does not agree to any deduplication of hard-copy documents.

6. Hard-Copy/Native Format File Production Waiver

Except as otherwise agreed, if hard-copy and electronic documents are produced electronically as agreed, Monitoring Analytics will not have to produce hard-copy documents in

actual hard-copy form or produce electronic documents in native file format, unless specifically requested by the Division in order to properly interpret the document or in response to certain requests relating to unforeseen circumstances. However, please note that some documents may more appropriately and efficiently be produced in hard-copy (e.g., color documents, maps).

7. Physical Production

The Division can accept electronic production loaded onto hard drives, CD-ROMs, or DVD-ROMs; however, it has been our experience that production on hard drives minimizes costs and delay. Other methods may be possible, but a direct feed or download is likely not a viable option for reasons similar to those that preclude other web-based solutions. The method chosen should be discussed with the Division's legal staff prior to production.

8. Bates Numbering Identification

Bates numbering should use a consistent format across the entire production. In general, Bates numbers should contain hyphens and no more than three segments: for example, a company identifier, a middle segment (e.g., custodian identifier), and a sequence number of 6-8 digits (the number of digits should be consistent across the entire production). Bates numbers should not contain embedded spaces (" "), slashes ("/"), backslashes ("\"), or underscores ("_"). Native format files should also be assigned a Bates number; if images have been produced with a native format file, the beginning Bates number of the images should be the native format file's Bates number.

9. Sample Submission Required Prior to Full Production

A sample submission must be provided to the Division for testing and comment, before you "ramp up" production. To minimize the likelihood of encountering problems during full production, the sample must be representative of an actual production, including multiple types of documents and documents with attachments. With databases (as opposed to load files), the process of checking the sample can take as few as three business days.

We invite you to schedule an initial meeting with Division staff to discuss these issues as soon as possible after reviewing this letter. We further request that any vendor you use participate in discussions relating to Monitoring Analytic's electronic production, along with any of your firm's IT personnel who will be involved in the production. In our experience, it is particularly important to hold discussions about databases and back-up/archival systems early on, as such

considerations can save significant time and effort. Please feel free to contact me at (202) 353-1560.

Sincerely,

J. Chandra Mazumdar / ren

J. Chandra Mazumdar
Trial Attorney
Transportation, Energy and
Agriculture Section

Enclosures

Questions about Electronic Systems and Back-up/Archiving Policies
Metadata and Family Record Specifications Table
Summation Database Specifications
Summation Database Submission Requirements

U.S. DEPARTMENT OF JUSTICE, ANTITRUST DIVISION

METADATA & FAMILY RECORD SPECIFICATIONS

Default File Layout (txt) Field Name has 8 character limit.									
Field Name	Field Description	Field Type	Hard Copy	E-mail	Spreadsheets	Presentations	Other Elec. Docs.		
Company	Company submitting data	Note Text	X	X	X	X	X		
Box#	Submission/Volume #	Note Text	X	X	X	X	X		
Custodian	Custodian(s)/Source(s) — formatted Last, First	Multi-Entry	X	X	X	X	X		
BeginDoc#	Start Bates (including Prefix) - No spaces	Note Text	X	X	X	X	X		
EndDoc#	End Bates (including Prefix) - No spaces	Note Text	X	X	X*	X	X		
DocID	Populate with exact same value as Start Bates	Note Text	X	X	X	X	X		
PgCount	Page count	Integer	X	X	X*	X	X		
ParentID	Parent Bates, including Prefix (ONLY IN CHILD RECORDS)	Note Text	X	X	X	X	X		
Attchids	Child document list - Start Bates of each Child (ONLY IN PARENT RECS)	Multi-Entry	X	X	X	X	X		
FamilyRng	Family Start and End Bates (including Prefix) (i.e. ABC-001 - ABC-003)	Note Text	X	X	X	X	X		
PPrivies	Record Type -> (File, E-mail, Attachment, Hard Copy); Privilege Notations -> (Redacted, Document Withheld Based On Privilege)	Multi-Entry	X	X	X	X	X		
From	Author — formatted Last, First	Multi-Entry		X	X	X	X		
To	Recipient — formatted Last, First	Multi-Entry		X	X	X	X		
Cc	Cc field — formatted Last, First	Multi-Entry		X	X	X	X		
Bcc	Bcc field — formatted Last, First	Multi-Entry		X	X	X	X		
Subject	Subject / Document Title	Note Text		X	X	X	X		
DocDate	Document Date / Date Sent - MM/DD/YYYY	Date Keyed		X	X	X	X		
Timesent	Time email was sent	Time		X					
Datecrd	Date Created	Date			X	X	X		
Datesvd	Date Modified	Date			X	X	X		
Datecvd	Date Accessed / Received	Date		X	X	X	X		
Filesize	File size	Note Text			X	X	X		
Attile	File name - Name of file as appeared in original locator	Note Text			X	X	X		
Appicat	Application used to create native file (e.g., Excel, Word)	Note Text			X	X	X		
Filepath	Data's source filepath information	Note Text		X	X	X	X		
Doclink	Current filepath location to the native file	Note Text			X	X	X		
FolderID	Email folder path (sample: InboxActive) or Hard Copy Folder Information	Note Text	X	X					
Paragraph	Paragraph # to which the document is responsive	Note Text	X	X	X	X	X		
Hash	Hash Value (used for deduplication or other processing)	Note Text		X	X	X	X		
Srchtrms	List of Terms used to identify record as responsive (if search terms used)	Multi-Entry		X	X	X	X		

*Indicates field may be empty if only native files producer

Parent IDs, Attachment IDs, and Family Range Details									
Customer Notes:									
Y	Confirm Family Range definition for attached files								
Y	Confirm Field names and types								
Y	Each member of the Family is its own record								
Family Range Definition:									
All records will have a family range when the file or email has a parent or child/r									
Family Range will start with the first page of the top most parent and go until the last child's last page									
Example:									
Description:	Top most Email	Attachment to Doc1	Attachment to Doc1						
	Doc No. 1	Doc No. 2	Doc No. 3						
Begin Bates	ABC-001	ABC-011	ABC-016						
End Bates	ABC-010	ABC-015	ABC-020						
ParentID	(empty)	ABC-001	ABC-001						
Attchids	ABC-011; ABC-015	(empty)	(empty)						
Family Range	ABC-001 - ABC-020	ABC-001 - ABC-020	ABC-001 - ABC-020						

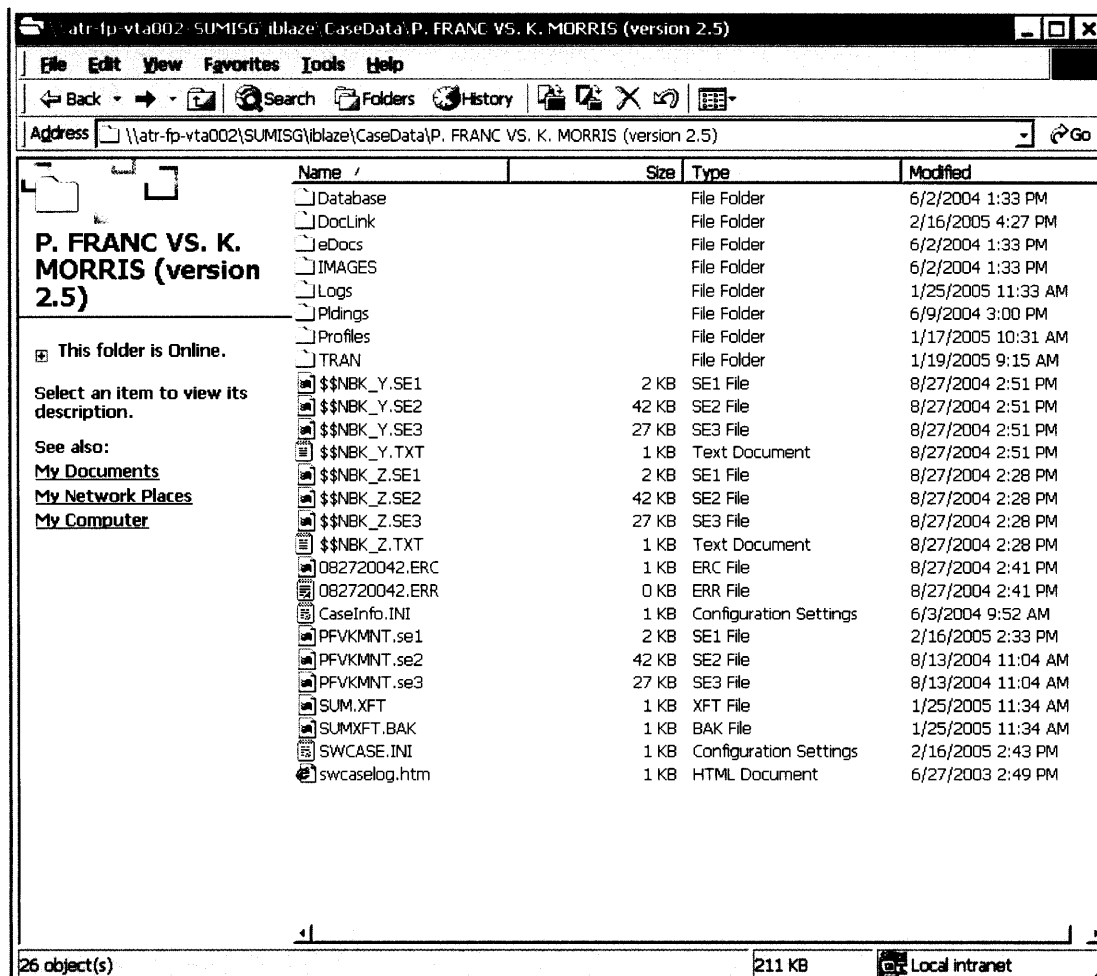
August 2008

U.S. DEPARTMENT OF JUSTICE, ANTITRUST DIVISION

Summation Database Specifications

- DOJ to provide empty Summation database shell. The Division currently uses Summation version 2.6.3.
- DOJ will accept loaded Summation databases with the following conditions:
 - Each database has no more that 5-6 GB OCRBase.
 - If the database will have more than 120,000 records, it must be addressed with Division staff prior to production.
 - Custodians do not cross databases, except under limited circumstances.
 - Metadata fields must be populated
 - Data should be structured in the standard Summation format, with images stored inside the Images subdirectory of the case folder.
 - When records include a Doclink field to a native file, the native file should also reside inside the case folder in a folder called DocLink.

See Example of Case Directory Structure, below.



U.S. DEPARTMENT OF JUSTICE, ANTITRUST DIVISION
Summation Submission Requirements

Via e-mail or on CD-ROM, the DOJ has provided a DOJShell Summation database directory. Please categorize your submissions by placing the *DOJShell* folder under sequential Database folder names. The folder naming scheme should be 2 to 3 letters (indicating your company) followed by 3 numbers. For example:

For the first 3 databases from ABC Co., the root of the piece of media (External, CD, or DVD) should display the following folders: ABC001, ABC002, and ABC003. Each of these folders should contain the **loaded DOJShell** Summation Case Directory.

The cover letter for each submission of loaded Summation databases should include information about the loaded Summation database(s) included on each External Hard Drive or other piece of media submitted, preferably in spreadsheet format.

Include the following for each submission:

A. For each piece of media:

1. Assign a unique identifier for each piece of media that is also readily identifiable *on* the piece of media (i.e. Submission #; Serial number is also acceptable), and
2. Identify the Databases on the piece of media.

B. For each Database:

1. The Custodians included;
2. The total number of records;
3. The number of records for each Custodian (e.g., ABC001 contains 183,000 records: Jones - 150,000 records, Smith - 13,000 records, Doe - 20,000 records);
4. The Bates number ranges (and any gaps therein) for each Custodian;
5. The total number of native files in each Database;
6. The number of native files for each Custodian (e.g., ABC001 contains 15,980 native files: Jones - 1,500; Smith - 5,250; Doe - 9,230);
7. The total number of images included in each database; and
8. The total number of images included for each Custodian (e.g., ABC001 contains 15,980 images: Jones - 1,500; Smith - 5,250; Doe - 9,230).

CIVIL INVESTIGATIVE DEMAND FOR DOCUMENTS AND INFORMATION MONITORING ANALYTICS, LLC

Unless otherwise noted in this schedule, or modified by agreement with the staff of the Department of Justice, each Specification of this Civil Investigative Demand (“CID”) requires a complete search of “the company” as defined in Paragraph “A” of the Definitions and Instructions which appear after the following Specifications. If the company believes that the required search or any other part of the CID can be narrowed in any way that is consistent with the Department’s need for documents and information, you are encouraged to discuss such questions and possible modifications with the Department representatives identified on the last page of this CID. All modifications to this CID must be agreed to in writing by those representatives.

SPECIFICATIONS

1. Identify all internal and external PJM generating units and include the following fields: (i.) unit ID; (ii.) node ID; (iii.) unit name; (iv.) participant ID; (v.) parent company name; (vi.) dates for which the unit was a designated PJM capacity resource; and (vii.) valid dates (to be used if one of the fields above changed during the relevant period).
2. For PJM's energy auctions, provide:
 - a. the energy offers effective for the day-ahead market for each generating unit identified in Specification 1. Provide the following fields: (i.) market date; (ii.) node ID; (iii.) unit ID; (iv.) unit type; (v.) start-up cost; (vi.) no-load cost; (vii.) all market-based offer price increments; (viii.) all corresponding market-based offer quantity increments; (ix.) all cost-based offer price increments; (x.) all corresponding cost-based offer quantity increments; and (xi.) bidslope indicators.
 - b. the energy offers effective for the real-time market for each generating unit identified in Specification 1. Provide the following fields: (i.) market date; (ii.) node ID; (iii.) unit ID; (iv.) unit type; (v.) start-up cost; (vi.) no-load cost; (vii.) all market-based offer price increments; (viii.) all corresponding market-based offer quantity increments; (ix.) all cost-based offer price increments; (x.) all corresponding cost-based offer quantity increments; and (xi.) bidslope indicators.
 - c. the following unit-level data: (i.) date; (ii.) hour; (iii.) node ID; (iv.) unit ID; (v.) day-ahead MW taken; (vi.) real-time MW taken; (vii.) unit availability flag (e.g., available, unavailable, must-run); (viii.) marginal flag indicator; (ix.) cost-capped indicator; (x.) economic min; (xi.) economic max; (xii.) emergency min; and (xiii.) emergency max.
3. Separately for (i.) NRG Rockford I Energy Center Unit 1; (ii.) NRG Rockford I Energy Center Unit 2; and (iii.) NRG Rockford II Energy Center Unit 1: list each hour that the unit operated to provide Energy, the reason it operated (e.g., self-scheduled, cleared in

PJM auction(s)), whether it was marginal, and whether its offer was mitigated.

4. Separately for each generating unit in PJM, for the (i.) Beddington-Black Oak; (ii.) Cloverdale-Lexington; (iii.) Kammer; (iv.) 5004/5005 Interface; (v.) AP South; (vi.) East; (vii.) West; and (viii.) Mount Storm-Pruntytown constraints, identify the day-ahead generation shift factors calculated by PJM for:
 - a. Hour 1700 of August 5, 2008, and
 - b. Hour 900 of December 16, 2008.
5. Separately for each annual PJM Reliability Pricing Model (“RPM”) Base Auction from the 2007/08 Auction to the present:
 - a. provide the market demand curves for each Locational Delivery Area (“LDA”); and
 - b. identify each potential capacity resource and state: (i.) the type of capacity (*e.g.*, demand resource, existing generating unit, entering generating unit, interruptible load for reliability, qualifying transmission upgrade); (ii.) the LDA; (iii.) the price offered; (iv.) the quantity offered; (v.) whether it was committed to satisfy reliability requirements of Load-Serving Entities that have elected the Fixed Resource Requirement alternative; and (vi.) any offer cap, and if so, the calculation type (*e.g.*, default ACR selected, ACR data input (APIR), ACR data input (non-APIR), opportunity costs), and whether it was imposed.
6. From December 1, 2008 to the present, separately for each Exelon or NRG generating unit in PJM that offered into the Regulation market or operated to provide Regulation, state:
 - a. for each offer: (i.) the date of the offer; (ii.) the time, day, month, or multi-month period covered by the offer; (iii.) the quantity offered; (iv.) the price offered; and (v.) whether the offer was mitigated, and if so, the mitigated offer; and
 - b. if the unit operated: (i.) the hour and date of the provision; (ii.) the quantity provided; (iii.) why the service was provided (*e.g.*, self-scheduled, cleared in PJM auction(s)); and (iv.) the clearing price.
7. From March 15, 2008 to the present, separately for each Exelon or NRG generating unit in PJM that offered into the Synchronized Reserve market or operated to provide Synchronized Reserves, state:
 - a. for each offer: (i.) the date of the offer; (ii.) the time, day, month, or multi-month

period covered by the offer; (iii.) the quantity offered; (iv.) the price offered; and (v.) whether the offer was mitigated, and if so, the mitigated offer; and

- b. if the unit operated: (i.) the hour and date of the provision; (ii.) the quantity provided; (iii.) why the service was provided (*e.g.*, self-scheduled, cleared in PJM auction(s)); and (iv.) the clearing price.
- 8. Submit all studies, and any workpapers for such studies, concerning the proposed acquisition of NRG by Exelon.
 - 9. For each database provided in response to the above Specifications, provide documentation detailing the field name, field format, and field definition. Where hourly information is provided, explain: (i.) how daylight savings time is accommodated; (ii.) how instantaneous prices and quantities are averaged over the hour; and (iii.) whether the hour denotes the “hour beginning” or the “hour ending.”
 - 10. Identify the person(s) responsible for preparing the response to this Demand and submit a copy of all instructions prepared by the Company relating to the steps taken to respond to this Demand. Where oral instructions were given, identify the person who gave the instructions and describe the content of the instructions and the person(s) to whom the instructions were given. For each Specification, identify the individual(s) who assisted in the preparation of the response, with a listing of the person(s) (identified by name and corporate title or job description) whose files were searched by each.

DEFINITIONS AND INSTRUCTIONS

For the purposes of this CID, the following definitions and instructions apply:

- A. “Monitoring Analytics,” “your Company,” “the Company,” “you,” or “your” means Monitoring Analytics, LLC, its domestic and foreign parents, predecessors, divisions, subsidiaries, affiliates, partnerships and joint ventures, and all directors, officers, employees, agents and representatives of the foregoing. The terms “subsidiary,” “affiliate,” and “joint venture” refer to any person in which the Company holds at least a 25 percent interest, regardless of how the Company’s interest is measured (*e.g.*, number of shares, degree of control, board seats or votes).
- B. “PJM” means PJM Interconnection, L.L.C., its domestic and foreign parents, predecessors, divisions, subsidiaries, affiliates, partnerships and joint ventures, and all directors, officers, employees, agents and representatives of the foregoing. The terms “subsidiary,” “affiliate,” and “joint venture” refer to any person in which PJM holds at least a 25 percent interest, regardless of how PJM’s interest is measured (*e.g.*, number of shares, degree of control, board seats or votes).

- C. “Exelon” means Exelon Corporation, its domestic and foreign parents, predecessors, divisions, subsidiaries, affiliates, partnerships, and joint ventures, and all directors, officers, employees, agents, and representatives of the foregoing. The terms “subsidiary,” “affiliate,” and “joint venture” refer to any person in which Exelon holds at least a 25 percent interest, regardless of how Exelon’s interest is measured (*e.g.*, number of shares, degree of control, board seats or votes).
- D. “NRG” means NRG Energy, Inc., its domestic and foreign parents, predecessors, divisions, subsidiaries, affiliates, partnerships and joint ventures, and all directors, officers, employees, agents, and representatives of the foregoing. The terms “subsidiary,” “affiliate,” and “joint venture” refer to any person in which NRG holds at least a 25 percent interest, regardless of how NRG’s interest is measured (*e.g.*, number of shares, degree of control, board seats or votes).
- E. The terms “and” and “or” have both conjunctive and disjunctive meanings.
- F. The term “discussing” when used to refer to documents means analyzing, constituting, summarizing, reporting on, considering, recommending, setting forth or describing a subject. Documents that contain reports, studies, forecasts, analyses, plans, proposals, evaluations, recommendations, directives, procedures, policies, or guidelines regarding a subject should be treated as documents that discuss the subject. However, documents that merely mention or refer to a subject without further elaboration should not be treated as documents that discuss that subject.
- G. The term “documents” means all written, recorded, and graphic materials and all electronic data of every kind in the possession, custody or control of the Company. The term “documents” includes electronic correspondence, drafts of documents, metadata, embedded, hidden and other bibliographic or historical data describing or relating to documents created, revised, or distributed on computer systems, and all duplicates of documents (whether or not identical) in the files of or in the files maintained on behalf of all directors, officers, managers, or other supervisory employees, duplicates of documents in all other files that are not identical duplicates of the originals, and duplicates of documents the originals of which are not in the possession, custody or control of the Company. The term “documents” includes spreadsheets, as well as underlying cell formulae and other codes. The term “documents” also includes electronic mail messages and other documents and data stored in, or accessible through, computer or other information retrieval systems, such as personal computers, portable computers, workstations, minicomputers, personal data assistants, archival voice storage systems, group and collaborative tools, electronic messaging devices, portable or removable storage media, mainframes, servers, backup disks and tapes, archive disks and tapes, and other forms of online or offline storage, whether on or off company premises. Unless otherwise specified, the term “documents” excludes bills of lading, invoices in non-electronic form, purchase orders, customs declarations, and other similar documents of a

purely transactional nature and also excludes architectural plans and engineering blueprints.

- H. “Identify,” in the case of an electric generating unit, means a statement of the name by which it is commonly known, its location, and:
1. its name;
 2. its owner(s) (including any parent company) and their respective ownership interests; and
 3. any tolling agreement company.
- I. The term “person” includes the Company and means any natural person, corporate entity, partnership, association, joint venture, government entity, or trust.
- J. The term “relating to” means in whole or in part constituting, containing, concerning, discussing, describing, analyzing, identifying, or stating.
- K. All references to year refer to calendar year. Unless otherwise specified, each Specification that calls for documents requires the Company to submit all responsive documents that were created or received by the company after the date that is two (2) years prior to the date of the issuance of this CID. Where information, rather than documents, is requested, provide it separately for each year. Where yearly data is not yet available, provide data for the calendar year to date. If calendar year information is not available, supply the Company’s fiscal year data indicating the twelve-month period covered, and provide the Company’s best estimate of calendar year data.
- L. The response to this CID shall be submitted in the following manner:
1. Documents produced shall be complete and, unless privileged, unredacted, submitted as found in the Company’s files (*e.g.*, documents that in their original condition were stapled, clipped, or otherwise fastened together, or maintained in separate file folders, shall be produced in such form). Documents submitted shall be produced in the order in which they appear in the Company’s files and shall not be shuffled or otherwise rearranged.
 2. The Company may submit photocopies (with color photocopies where necessary to interpret the document) in lieu of original hard-copy documents, provided that such copies are accompanied by an affidavit of an officer of the Company stating that the copies are true, correct, and complete copies of the original documents.
 3. Unless otherwise requested by a Department representative, electronic documents (*e.g.*, e-mail) and data shall be produced in electronic form only. Electronic

documents and data shall be produced in a format that allows the Department to access and use them, together with instructions and all other materials necessary to use or interpret the data, including record layouts and data dictionaries. For data submitted electronically, submit a description of the data's source.

4. Mark each page of each document submitted – whether in hard-copy or electronic format – with corporate identification and consecutive document control numbers. Place all documents produced in hard-copy format in file folders. Mark each file folder with the Company's corporate identification, the name of the person whose documents are in the folder and how the original file was labeled. If the Company submits hard copies of electronic documents that have been printed from a common electronic source, such as a central e-mail or document server or a backup disk, such documents must be submitted in file folders that are marked with (a.) a description of the enclosed documents' electronic source (*e.g.*, "Documents from Backup Tape No. 3 for E-mail Server XYZ, 3/1/06 - 3/31/06"); and (b.) the name of each natural person whose electronic documents are contained in that file folder.
5. In lieu of searching backup tapes or other media that are not reasonably accessible, but that may contain information responsive to this CID, the Company may elect to identify and preserve for the duration of the Department's investigation a select subset of such backup and other media, such subset to be approved in writing by Department representatives. In the event that Department representatives determine in their sole discretion that a search of the select subset of backup tapes is necessary, they shall so inform the Company, which will be required to conduct a review of the subset and produce any responsive information contained therein.
6. Hard-copy documents shall be submitted in sturdy boxes not larger than 1.5 cubic feet. Number each box and mark each box with corporate identification and the name(s) of the person(s) whose files are contained in that box.
7. Provide any index of documents prepared by any person in connection with your response to this CID. If the index is available in machine-readable form, provide it in that form.
8. If you intend to utilize any de-duplication software or services when collecting or reviewing information that is stored in the Company's computer systems or electronic storage media in response to this CID, or if the Company's computer systems contain or utilize such software, you must contact the attorneys for the government to determine, with the assistance of the appropriate government technical staff, whether and in what manner the Company may use such software or services.

- M. Before you prepare documents or information for production in electronic form (for example, before you attempt to copy, for your response to this CID, documents or information from an electronically stored source onto a disk or other electronic storage medium), you must contact a Department representative to arrange a meeting or conference call with the Company's personnel who are familiar with the electronic files in which the documents or information are stored, to explain to Department representatives the manner in which the documents or information are stored, and the types of information that are available on the electronic source. Department representatives must approve the format and production method for electronic data in advance of the submission by the Company of its response to this CID.
- N. If search terms were used to conduct all or any part of the search, provide a list of search terms used, along with a glossary of industry and company terminology. In addition, describe the search methodologies and the applications used to execute the search.
- O. Any documents that are withheld in whole or in part from production based on a claim of privilege shall be assigned document control numbers (with unique consecutive numbers for each page of each document), for purposes of this instruction, each attachment to a document shall be treated as a separate document and separately logged, if withheld, and cross referenced, if produced. The Company shall also provide a statement of the claim of privilege and all facts relied upon in support of the decision to withhold each document, in the form of a log that conforms with the requirements set forth below. The Company is encouraged to propose categorical limitations to exclude certain classes of privileged documents from its log.
1. For each document identified on the Company's privilege log, state:
 - a. the document's control numbers;
 - b. all authors of the document;
 - c. all addressees of the document;
 - d. all recipients of the document or of any copies of the document, to the extent not included among the document's addressees;
 - e. the date of the document;
 - f. a description of the subject matter of the document;
 - g. the nature or type of the privilege that the Company is asserting for the document (*e.g.*, "attorney-client privilege");
 - h. the Specification(s) of this CID to which the document is responsive;

- i. the document control number(s) of any attachments to the document, regardless of whether any privilege is being asserted for such attachment(s); and
 - j. whether the document has been produced in redacted form.
- 2. The Company's privilege log shall also conform with all of the following requirements:
 - a. Provide a separate legend containing the full name, title(s), and employer or company affiliation of each author, addressee, and recipient identified on the Company's privilege log.
 - b. All attorneys acting in a legal capacity with respect to the withheld document or communication, and only such attorneys, shall be identified on the privilege log with an asterisk.
 - c. The description of the subject matter of each document shall describe the nature of the document in a manner that, though not revealing information that is itself privileged, provides sufficiently detailed information to enable the Department to assess the applicability of the privilege claimed.
 - d. Attachments to a document should be identified as such and entered separately on the log.
 - e. For each document withheld under a claim that it constitutes or contains attorney work product, also state whether the Company asserts that the document was prepared in anticipation of litigation or for trial and, if so, identify the anticipated litigation or trial upon which the assertion is based.
 - f. Produce all nonprivileged portions of any responsive document (including nonprivileged or redactable attachments) for which a claim of privilege is asserted, except where the only nonprivileged information in the document has already been produced. Note where any redactions in the document have been made.
 - g. The privilege log shall be produced in both hard-copy and electronic form, the electronic form of which shall be both searchable and sortable.
 - h. Documents sent solely between counsel, including in-house counsel acting solely in a legal capacity, and documents authored by the Company's outside counsel that were not directly or indirectly furnished to any third party, such as internal law firm memoranda, may be omitted from the privilege log. However, any attachments to such documents must be included on the privilege log (if a privilege is applicable to such

materials), unless such attachments are addressed and sent solely to counsel.

- P. If the Company is unable to answer any question fully, supply such information as is available. Explain why such answer is incomplete, the efforts made by the Company to obtain the information, and the source from which the complete answer may be obtained. If books and records that provide accurate answers are not available, enter best estimates and describe how the estimates were derived, including the sources or bases of such estimates. Estimated data should be followed by the notation "est." If there is no reasonable way for the Company to make an estimate, provide an explanation.
- Q. If documents responsive to a particular Specification no longer exist for reasons other than the ordinary course of business or the implementation of the Company's document retention policy, state the circumstances under which they were lost or destroyed, describe the documents to the fullest extent possible, state the Specification(s) to which they are responsive, and identify persons having knowledge of the content of such documents.
- R. In order for the Company's response to this CID to be complete, the certification on the reverse of the Civil Investigative Demand form must be executed by the official supervising compliance with this Demand, notarized, and submitted along with the responsive materials.

Any questions you have relating to the scope or meaning of anything in this CID or suggestions for possible modifications thereto should be directed to J. Chandra Mazumdar at (202) 353-1560 or Mark J. Niefer at (202) 307-6318. The response to the CID shall be addressed to the attention of Mr. Mazumdar and delivered between 8:30 a.m. and 5:00 p.m. on any business day to 450 Fifth Street, NW, Suite 4100, Washington, DC, 20001. If you wish to submit your response by United States mail, please call one of the staff listed above for mailing instructions.



U.S. Department of Justice

Antitrust Division

*Liberty Square Building
450 5th Street, NW
Washington, DC 20001*

April 23, 2009

VIA EMAIL & FIRST CLASS MAIL

Jeffrey Mayes
Monitoring Analytics, LLC
2621 Van Buren Avenue, Suite 160
Eagleville, PA 19403

Re: Exelon Corporation's Proposed Acquisition of NRG Energy, Inc.

Dear Mr. Mayes:

This letter memorializes our conversation this morning and my conversations with Joseph Bowring on April 9, 2009, concerning the Civil Investigative Demand ("CID") and CID Schedule issued on March 31, 2009 to Monitoring Analytics, LLC. In those conversations, we discussed certain modifications to the CID.

1. Mr. Bowring requested a modification to Specification 5(b)(vi), which calls for any offer caps, and the calculation type of any cap, for potential capacity resources in PJM's annual Reliability Pricing Model Base Auctions. The Department agrees to the request to exclude the calculation type so that Monitoring Analytics need only provide the offer cap.
2. With respect to the CID return date, you requested an extension to April 27, 2009. The Department agrees to extend the return date from April 14, 2009 to April 27, 2009.

Please feel free to contact me at (202) 353-1560 with any questions.

Sincerely,


J. Chandra Mazumdar

cc: Joseph Bowring