



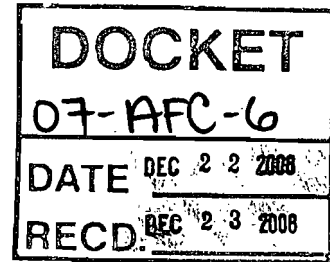
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FOUNDED 1866

December 22, 2008



*By Federal Express and E-Mail*

Melissa Jones  
Executive Director  
California Energy Commission  
1516 Ninth Street  
Sacramento, CA 95814

**Re: Carlsbad Energy Center LLC (07-AFC-06)  
Petition for Approval of Post-Certification Change of Indirect Ownership and Control or,  
in the Alternative, for Determination that Rule 1769(b) is Inapplicable to the Transaction.**

Dear Ms. Jones:

Exelon Corporation and Exelon Xchange Corporation (collectively, "Exelon") submit an original and two courtesy copies of Exelon's request for the Commission's approval of a transfer of the indirect ownership and control of Carlsbad Energy Center LLC ("Carlsbad"), from NRG Energy, Inc. ("NRG") to Exelon, or, in the alternative, a determination that Rule 1769(b) is inapplicable to the subject transaction.

Please contact me if you have any questions or concerns regarding this document.

Sincerely,

Marie L. Fiala

*Attorney for Exelon Corp. and Exelon Xchange Corp.*

cc: Mike Monasmith

Enclosure

**STATE OF CALIFORNIA  
ENERGY RESOURCES CONSERVATION  
AND DEVELOPMENT COMMISSION**

<b>In the matter of:</b>	)	<b>Docket No. 07-AFC-6</b>
	)	
<b>CARLSBAD ENERGY CENTER LLC</b>	)	<b>PETITION FOR APPROVAL OF</b>
	)	<b>POST-CERTIFICATION CHANGE</b>
<b>and</b>	)	<b>OF INDIRECT OWNERSHIP AND</b>
<b>EXELON CORPORATION</b>	)	<b>CONTROL (20 CCR § 1769(b)) OR, IN</b>
<b>EXELON XCHANGE CORPORATION</b>	)	<b>THE ALTERNATIVE, FOR</b>
	)	<b>DETERMINATION THAT RULE 1769(b)</b>
	)	<b>IS INAPPLICABLE TO TRANSACTION</b>

Pursuant to Rule 1769(b) of the Rules of Practice and Procedure of the California Energy Commission (“Commission”), Petitioners Exelon Corporation and Exelon Xchange Corporation (together, “Exelon”) hereby request the Commission’s approval of a transfer of the indirect ownership and control of Carlsbad Energy Center LLC (“Carlsbad”), from NRG Energy, Inc. (“NRG”) to Exelon, or, in the alternative, a determination that Rule 1769(b) is inapplicable to the subject transaction. Exelon Corporation is one of the nation's largest utilities. Exelon Xchange is a wholly-owned subsidiary of Exelon Corporation. As described below, Exelon is engaged in an effort to purchase NRG, which is the indirect owner (through various wholly-owned subsidiaries) of Carlsbad. Ownership and control of the certificated facility will remain vested in Carlsbad, notwithstanding the change in ownership of the ultimate corporate parent. Because Carlsbad will continue as the owner and operator of the facility, Exelon is not seeking to amend the site certificate.

Exelon interprets the requirements of Rule 1769(b) to be inapplicable to the transaction

described below because the transaction will not result in a change of ownership or control of the certificated facility. It is making this Petition to apprise the Commission of the nature of the proposed transaction, to allow the Commission to act on this Petition in the event the Commission deems the transaction to be subject to Rule 1769(b), or, in the alternative, for a Commission determination that the transaction described herein is exempt from the Rule 1769(b) approval requirement.<sup>1</sup>

## **I. Background**

### **A. Description of Stock Acquisition and Merger**

On October 19, 2008, Exelon delivered a letter to NRG setting forth a proposal for a business combination of Exelon and NRG. Under this proposal, Exelon would acquire all of the outstanding shares of NRG common stock at a fixed exchange ratio of 0.485 Exelon shares for each NRG common share. This offer represented a 37 percent premium to NRG stockholders above NRG's closing price on October 17, 2008.

NRG did not respond immediately to Exelon regarding this proposed offer. Instead, on October 20, 2008, NRG issued a press release confirming receipt of Exelon's proposal to acquire all of the outstanding shares of NRG common stock, indicating that NRG's board of directors was reviewing Exelon's proposal with its advisors, and advising NRG stockholders to take no action at that time pending the board's review. However, on November 9, 2008, NRG issued a press release stating that it was rejecting Exelon's proposed offer.

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<sup>1</sup> Commission staff advised counsel for Exelon that it is unclear whether Rule 1769(b) applies to the proposed transaction. Rather than risk delays in regulatory approvals that could occur if Exelon sought an initial determination of the Commission regarding the applicability of Rule 1769(b), Exelon is submitting this Petition in the alternative, with the request that the approval, if deemed necessary by the Commission, be granted no later than May 1, 2009.

On November 12, 2008, Exelon commenced a tender offer for NRG's outstanding common shares. If the tender offer is successful and NRG's management remains opposed to the transaction (and if all necessary regulatory approvals are obtained), Exelon expects to implement the transaction notwithstanding the opposition of NRG's management. The offer is subject to a number of conditions, including a condition that at least 50% of the NRG common stock must be tendered and not withdrawn at the time the offer expires. The current expiration date of the offer is January 6, 2009. However, this expiration date is subject to extension. Exelon will not consummate the transaction until it has received all necessary regulatory approvals.

Through intermediate subsidiaries, NRG is the ultimate parent corporation of Carlsbad. Thus, if the proposed stock purchase is consummated, and if the Commission approves this Petition, indirect control of Carlsbad will transfer to Exelon by virtue of Exelon's acquisition of control over NRG. Once the stock purchase is completed, and assuming that Exelon acquires a controlling interest in the stock of NRG, Exelon proposes to merge an Exelon subsidiary into NRG, then merge the remaining entity into Exelon or a subsidiary. Thus, the ultimate upstream ownership of Carlsbad will transfer from NRG to Exelon.

Ownership and operation of the electric generating facility will not change as a result of these transactions. Only the identity of the ultimate parent corporation will change. Carlsbad will remain the owner and operator of the facility after the stock acquisition and merger are completed, and there will be no impact on its operations and regulatory compliance. Because Carlsbad will continue to be the certificate holder, Exelon is not petitioning to amend the site certificate.

#### **B. Description of Exelon Corporation**

Exelon is a public utility holding company that, through its subsidiaries, is one of the nation's largest electric utilities. Exelon distributes electricity to approximately 5.4 million

customers in Illinois and Pennsylvania, and natural gas to 480,000 customers in the Philadelphia area. Exelon's operations include energy generation, power marketing, and energy delivery. Exelon has one of the industry's largest portfolios of electricity generation capacity, with strong positions in the Midwest and Mid-Atlantic. Exelon's operations include energy generation, power marketing, and energy delivery. Exelon, a utility services holding company, operates through its principal subsidiaries—Exelon Generation Company, LLC, which owns generating facilities selling power into wholesale markets; Commonwealth Edison Company, an electric public utility operating in Illinois; and PECO Energy Company, and electric public utility operating in Pennsylvania.

Exelon has extensive experience owning and operating electric power generating facilities, and marketing wholesale power, throughout the United States. It has an outstanding history of environmental compliance and community service through its existing generating facilities and has the financial resources, expertise, and experience to assure the safe, reliable operation of the electric generating facilities that will come under its indirect control. Acquiring NRG will expand Exelon's role as a leading provider of energy resources in the country.

**C. Description of Exelon Xchange Corporation**

Exelon Xchange Corporation, a newly formed Delaware corporation and direct wholly-owned subsidiary of Exelon, has been organized in connection with this transaction and has not carried on any activities other than in connection with this transaction. It is authorized to transact business in California.

**D. Description of Carlsbad**

Carlsbad presently is a wholly-owned indirect subsidiary of NRG. It owns and operates the Carlsbad Project in the City of Carlsbad, San Diego County, California. The Carlsbad Project will be a high-efficiency, natural gas fired combined-cycle generator with a gross output

of 558 MW. Once completed, the Carlsbad Project will displace generation at the Encina Generating Station, built around 1952, and three generating units at the Encina Generating Station will be shut down. An Application for Certification is presently pending before the Commission in the above-referenced Docket. Exelon does not plan to alter in any way the facility's participation in that proceeding.

## **II. Information Required Pursuant to Rule 1769(b)**

### **A. Discussion of Significant Changes in the Operational Relationship Between the Owner and Operator (§ 1769(b)(1)(A))**

No changes in the operational relationship between the owner and operator will result from the proposed transactions described above. As noted previously, Carlsbad will remain the owner and operator of the facility after the stock acquisition and merger are consummated. Exelon will have indirect control (through subsidiaries) of Carlsbad but will not modify the existing relationships of owner and operator.

### **B. Identity of the Party Responsible for Compliance with the Commission's Conditions of Certification (§ 1769(1)(B))**

After the stock acquisition and merger are completed, Carlsbad will remain the party responsible for complying with the Commission's conditions of certification. Exelon plans no changes in the management of Carlsbad.

### **C. Verification that the New Owner or Operator Understands the Conditions of Certification and Agrees to Comply with those Conditions (§ 1769(1)(C)).**

Because there will be no new owner or operator of the Carlsbad facility, Exelon interprets this requirement to be inapplicable.

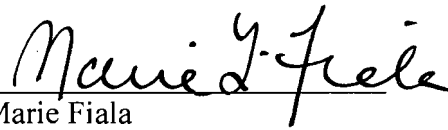
## **III. Request for Commission Action**

Exelon respectfully requests that the Commission approve the transfer of indirect ownership and control of Carlsbad from NRG to Exelon pursuant to 20 CCR 1769(b). Exelon

further requests that the approval be conditioned on the successful completion of the stock acquisition and merger transaction described above. Exelon will not exercise indirect ownership and control over Carlsbad unless the stock acquisition and merger are completed. Exelon requests that the Commission grant its approval no later than May 1, 2009.

In the alternative, Exelon requests that the Commission determine that the transaction described herein is exempt from the approval requirement of Section 1769(b).

Respectfully Submitted,



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BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT  
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1-800-822-6228 – [WWW.ENERGY.CA.GOV](http://WWW.ENERGY.CA.GOV)

APPLICATION FOR CERTIFICATION  
FOR THE **CARLSBAD ENERGY  
CENTER PROJECT**

Docket No. 07-AFC-6  
PROOF OF SERVICE  
(Revised 11/19/2008)

**INSTRUCTIONS:** All parties shall 1) send an original signed document plus 12 copies OR 2) mail one original signed copy AND e-mail the document to the web address below, AND 3) all parties shall also send a printed OR electronic copy of the documents that shall include a proof of service declaration to each of the individuals on the proof of service:

CALIFORNIA ENERGY COMMISSION  
Attn: Docket No. 07-AFC-6  
1516 Ninth Street, MS-15  
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### DECLARATION OF SERVICE

I, Thom Berniazzi, declare that on December 22, 2008, I deposited copies of the attached Petition for Approval in the United States mail at 555 Cal. San Fran with first-class postage thereon fully prepaid and addressed to those identified on the Proof of Service list above.

OR

Transmission via electronic mail was consistent with the requirements of California Code of Regulations, title 20, sections 1209, 1209.5, and 1210. All electronic copies were sent to all those identified on the Proof of Service list above.

I declare under penalty of perjury that the foregoing is true and correct.

