

NRG ENERGY, INC.
Form SC 14D9/A
July 08, 2009

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**UNITED STATES SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549**

SCHEDULE 14D-9

**Solicitation/Recommendation Statement
Under Section 14(d)(4) of the Securities Exchange Act of 1934
(Amendment No. 42)**

NRG Energy, Inc.
(Name of Subject Company)

NRG Energy, Inc.
(Name of Person Filing Statement)

Common Stock, par value \$0.01 per share
(Title of Class of Securities)

629377508
(CUSIP Number of Class of Securities)

**Michael R. Bramnick
Senior Vice President and General Counsel
NRG Energy, Inc.
211 Carnegie Center
Princeton, New Jersey 08540
(609) 524-4500**

(Name, address and telephone number of person authorized to receive

With copies to:

**Stephen Fraidin
Thomas W. Christopher
Kirkland & Ellis LLP
153 East 53rd Street
New York, New York 10022
(212) 446-4800**

- Check the box if the filing relates solely to preliminary communications made before the commencement of a tender offer.
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This Amendment No. 42 to Schedule 14D-9 amends and supplements the Solicitation/Recommendation Statement on Schedule 14D-9 (as amended from time to time, the *Statement*) originally filed by NRG Energy, Inc., a Delaware corporation (*NRG*), with the Securities and Exchange Commission (the *SEC*) on November 24, 2008, relating to the unsolicited offer by Exelon Corporation, a Pennsylvania corporation (*Exelon*), through its wholly-owned subsidiary, Exelon Xchange Corporation, a Delaware corporation, to exchange all outstanding shares of NRG common stock for shares of Exelon common stock. Except as specifically noted herein, the information set forth in the Statement remains unchanged.

Item 1. *Subject Company Information.*

Item 1. Subject Company Information Securities on page 2 of the Statement is hereby amended and restated in its entirety as follows:

The title of the class of equity securities to which this Statement relates is NRG's common stock, par value \$0.01 per share (*NRG Common Stock*). As of July 7, 2009, there were 265,300,015 shares of NRG Common Stock outstanding, an additional 12,523,953 shares of NRG Common Stock reserved for issuance under NRG's equity compensation plans, of which 5,201,720 shares of NRG Common Stock were issuable upon the exercise of outstanding options granted pursuant to such plans (of which 2,862,448 were then exercisable), and 1,904,2494 shares of NRG Common Stock were issuable or otherwise deliverable in connection with the exercise or vesting of other equity awards of NRG. In addition, as of July 7, 2009, NRG had 250,000 shares of 3.625% Convertible Perpetual Preferred Stock (the *3.625% Preferred Stock*) and 419,769 shares of 4% Convertible Perpetual Preferred Stock (the *4% Preferred Stock*). Both series of NRG preferred stock are convertible into NRG Common Stock, subject to the terms and conditions applicable to each such series.

Item 2. *Identity and Background of Filing Person.*

Item 2. Identity and Background of Filing Persons Offer on pages 2 to 7 of the Statement is hereby amended and restated in its entirety as follows:

Offer

The Original Offer

On November 12, 2008, Exelon, through its wholly owned subsidiary, Exelon Xchange Corporation (*Exelon Exchange*), commenced an unsolicited offer (the *Original Offer*) to exchange each outstanding share of NRG Common Stock for 0.485 of a share of Exelon common stock, without par value (the *Exchange Ratio*), upon the terms and subject to the conditions set forth in (1) the Preliminary Prospectus/Offer to Exchange, originally dated November 12, 2008 (as amended and supplemented to date, the *Exchange Offer*) and (2) the related Letter of Transmittal. In addition, holders of NRG Common Stock whose shares are exchanged in the Original Offer will receive cash instead of any fractional shares of Exelon Common Stock to which they may be entitled. Exelon and Exelon Xchange filed a Tender Offer Statement on Schedule TO (as amended and supplemented to date, the *Schedule TO*) with the SEC on November 12, 2008 and a Registration Statement on Form S-4 (as amended and supplemented to date, the *Registration Statement*) relating to securities to be issued in connection with the Original Offer, to which the Exchange Offer forms a part. The Original Offer was initially scheduled to expire on January 6, 2009, but Exelon extended the expiration date to February 25, 2009, then to June 26, 2009, and most recently to August 21, 2009.

The Revised Offer

On July 2, 2009, Exelon issued a press release and held a conference call announcing that it had increased the Exchange Ratio to 0.545 of a share of Exelon common stock (the *Revised Offer*). The Revised Offer is otherwise subject to the same terms and conditions as the Original Offer. Either the Original Offer or the Revised Offer is referred to in this Statement as the Offer.

Table of Contents***Purpose of the Offer***

The purpose of the Offer as stated by Exelon is to acquire control of, and ultimately the entire equity interest in, NRG. Exelon has also indicated that it intends, as soon as practicable after the consummation of the Offer, to seek to consummate a merger of Exelon Xchange or another wholly-owned subsidiary of Exelon with and into NRG (the *Second-Step Merger*). Under the Delaware General Corporation Law (*DGCL*), if Exelon acquires, pursuant to the Offer or otherwise, at least 90% of the outstanding shares of each class of capital stock of NRG entitled to vote on the Second-Step Merger, including the 4% Preferred Stock, Exelon would be able to approve the Second-Step Merger without a vote of the board of directors of NRG (the *NRG Board*) or the other stockholders of NRG. If Exelon does not acquire at least 90% of the outstanding shares of each class of capital stock of NRG entitled to vote on the Second-Step Merger, subject to Section 203 of the DGCL, the Second-Step Merger must be approved by the NRG Board and the affirmative vote of stockholders of NRG holding a majority of the outstanding shares of NRG capital stock entitled to vote on such merger, including NRG Common Stock and any shares of NRG preferred stock entitled to vote with NRG Common Stock on such merger. Subject to Section 203 of the DGCL, if Exelon acquired, pursuant to the Offer or otherwise, at least a majority of the outstanding shares of NRG capital stock entitled to vote on the Second-Step Merger, Exelon would, subject to approval of the NRG Board, have sufficient voting power to approve the Second-Step Merger without the affirmative votes of any other stockholder of NRG. Exelon has also indicated that, the Second-Step Merger will be followed by a merger of NRG, the surviving corporation in the Second-Step Merger, with and into Exelon or a wholly-owned subsidiary of Exelon, unless Sidley Austin LLP, counsel to Exelon, is able to render an opinion at the time of the Second-Step Merger that the Offer and the Second-Step Merger, taken together, will qualify as a reorganization within the meaning of Section 368(a) of the Internal Revenue Code.

Conditions to the Offer

According to the Exchange Offer, Exelon's obligation to exchange shares of Exelon common stock for NRG Common Stock pursuant to the Offer is subject to numerous conditions, including the following:

the **Minimum Tender Condition** stockholders of NRG shall have validly tendered and not withdrawn prior to the expiration of the Offer a number of shares of NRG Common Stock that, when added to the shares of NRG Common Stock then owned by Exelon, Exelon Xchange and Exelon's other subsidiaries, shall constitute at least a majority of the then outstanding shares of NRG Common Stock on a fully-diluted basis;

the **Section 203 Condition** the NRG Board shall have approved, in a manner reasonably satisfactory to Exelon, the Offer and the Second-Step Merger or any other business combination between NRG and Exelon (and/or any of Exelon's subsidiaries) pursuant to the requirements of Section 203 of the DGCL or Exelon shall be satisfied that Section 203 of the DGCL does not apply to or otherwise restrict the Offer, the Second-Step Merger or any such business combination;

the **Competition Condition** any applicable waiting period under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (the *HSR Act*), shall have expired or shall have been terminated prior to the expiration of the Offer; further, the Offer shall not be the subject of any injunction or order secured by the Department of Justice, Federal Trade Commission, or any other governmental authority barring the acceptance of shares of NRG Common Stock for exchange in the Offer;

the **Regulatory Approvals Condition** final orders of each of Federal Energy Regulatory Commission under the Federal Power Act, the Nuclear Regulatory Commission under the Atomic Energy Act, the Pennsylvania Public Utility Commission, the New York Public Service Commission, the California Public Utilities Commission and the Public Utility Commission of Texas approving the consummation of the Offer and, in some jurisdictions, the Second-Step Merger, and siting approvals, if required in other states, shall have been

obtained by Exelon prior to the expiration of the Offer;

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the Registration Statement Condition the Registration Statement shall have become effective under the Securities Act of 1933, as amended (the *Securities Act*), no stop order suspending the effectiveness of the Registration Statement shall have been issued and no proceedings for that purpose shall have been initiated or threatened by the SEC and Exelon shall have received all necessary state securities law or blue sky authorizations;

the Shareholder Approval Condition the shareholders of Exelon shall have approved the issuance of shares of Exelon common stock pursuant to the Offer and the Second-Step Merger in accordance with the rules of the New York Stock Exchange (the *NYSE*);

the Preferred Stock Condition Exelon or one of its affiliates shall have made or entered into arrangements that, in the reasonable judgment of Exelon, ensure that at least 662/3% of the shares of NRG's 3.625% Preferred Stock will vote in favor of the Second-Step Merger and/or any other business combination involving NRG and Exelon and/or one of its affiliates or otherwise be reasonably satisfied that none of the shares of NRG's 3.625% Preferred Stock will be outstanding as of the record date to vote on the Second-Step Merger and/or any other business combination involving NRG and Exelon; and

the NYSE Listing Condition the shares of Exelon common stock to be issued to stockholders of NRG in the Offer shall have been authorized for listing on the NYSE, subject to official notice of issuance.

The Exchange Offer states that notwithstanding any other provision of the Offer and in addition to (and not in limitation of) Exelon's and Exelon Xchange's right to extend and amend the Offer at any time, in their discretion, neither Exelon nor Exelon Xchange shall be required to accept for exchange any shares of NRG Common Stock tendered pursuant to the Offer or, subject to any applicable rules and regulations of the SEC (including Rule 14e-1(c) under the Exchange Act (relating to Exelon's and Exelon Xchange's obligation to exchange for or return tendered shares of NRG Common Stock promptly after termination or expiration of the offer)), make any exchange for shares of NRG Common Stock, and may extend, terminate or amend the Offer, if (i) immediately prior to the expiration of the offer, in the reasonable judgment of Exelon, any one or more of the Minimum Tender Condition, the Section 203 Condition, the Competition Condition, the Regulatory Approval Condition, the Preferred Stock Condition or the NYSE Listing Condition shall not have been satisfied, or (ii) at any time on or after November 12, 2008 and prior to the expiration of the Offer, any of the conditions described in paragraphs (a) through (f) below exists:

(a) together with paragraph (c) below, the Legal Condition there shall have been threatened, instituted or be pending any litigation, suit, claim, action, proceeding or investigation before any supra-national, national, state, provincial, municipal or local government, governmental, regulatory or administrative authority, agency, instrumentality or commission or any court, tribunal or judicial or arbitral body or any regional transmission organization (each of which is referred to in this Statement as a *Governmental Authority*): (1) challenging or seeking to make illegal, to delay or otherwise, directly or indirectly, to restrain or prohibit the making of or terms of the Offer, the acceptance for exchange of any or all of the shares of NRG Common Stock by Exelon, Exelon Xchange or any affiliate of Exelon or the terms of any arrangements with holders of NRG's 3.625% Preferred Stock or any actions contemplated thereby; (2) seeking to obtain material damages in connection with the offer or the Second-Step Merger; (3) seeking to, or which in the reasonable judgment of Exelon is reasonably likely to, individually or in the aggregate, prohibit or limit the full rights of ownership or operation by NRG, Exelon or any of their affiliates of all or any of the business or assets of NRG, Exelon or any of their affiliates (including in respect of the capital stock or other equity of their respective subsidiaries) or to compel NRG, Exelon or any of their subsidiaries to dispose of or to hold separate all or any portion of the business or assets of NRG, Exelon or any of their affiliates (other than any shares of NRG Common Stock or any assets that may be divested in accordance with Exelon's regulatory divestiture plan, which contemplates the divestiture of generation plants in ERCOT and PJM East totaling approximately 3,400 MW of generation capacity

and approximately 1,200 MW of generation capacity under power purchase agreements in an effort to address any concern relating to the market power of the combined company); (4) seeking, or

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which in the reasonable judgment of Exelon is reasonably likely to result in, individually or in the aggregate, any significant diminution in the benefits expected to be derived by Exelon, Exelon Xchange or any affiliate of Exelon as a result of the transactions contemplated by the Offer, the Second-Step Merger or any other business combination with NRG; or (5) which in the reasonable judgment of Exelon may otherwise prevent, adversely affect or materially delay consummation of the offer, the Second-Step Merger or the ability of Exelon to conduct the Proxy Solicitation;

(b) the No Diminution of Benefits Condition any final order, approval, permit, authorization, waiver, determination, favorable review or consent of any Governmental Authority shall contain terms that, in the reasonable judgment of Exelon, results in, or is reasonably likely to result in, individually or in the aggregate with such other final orders, approvals, permits, authorizations, waivers, determinations, favorable reviews or consents, a significant diminution in the benefits expected to be derived by Exelon or any affiliate of Exelon as a result of the transactions contemplated by the Offer, the Second-Step Merger or any other business combination with NRG; or (2) any final order, approval, permit, authorization, waiver, determination, favorable review or consent of any Governmental Authority other than those referred to or described in the Registration Statement in the section captioned The Offer Regulatory Approvals shall not have been obtained, and the failure to obtain such final order, approval, permit, authorization, waiver, determination, favorable review or consent, in the reasonable judgment of Exelon, results in, or is reasonably likely to result in, individually or in the aggregate, a significant diminution in the benefits expected to be derived by Exelon or any affiliate of Exelon as a result of the transactions contemplated by the Offer, the Second-Step Merger or any other business combination with NRG;

(c) there shall have been action taken, or any statute, rule, regulation, legislation, order, decree or interpretation enacted, enforced, promulgated, amended, issued or deemed, or which becomes, applicable to (1) Exelon, NRG or any subsidiary or affiliate of Exelon or NRG or (2) the Offer, the Second-Step Merger or any other business combination with NRG, by any legislative body or Governmental Authority with appropriate jurisdiction, other than those referred to or described in the Registration Statement in the section captioned The Offer Regulatory Approvals, that in the reasonable judgment of Exelon is reasonably likely to result, directly or indirectly, individually or in the aggregate, in any of the consequences referred to in clauses (1) through (5) of paragraph (a) above;

(d) the No Material Adverse Effect Condition any event, condition, development, circumstance, change or effect shall have occurred or be threatened that, individually or in the aggregate with any other events, conditions, developments, circumstances, changes and effects occurring after November 12, 2008, that is or may be materially adverse to the business, properties, condition (financial or otherwise), assets (including leases), liabilities, capitalization, stockholders equity, licenses, franchises, operations, results of operations or prospects of NRG or any of its affiliates;

(e) the No Material Change Condition NRG or any of its subsidiaries has (1) split, combined or otherwise changed, or authorized or proposed the split, combination or other change of, the shares of NRG Common Stock or its capitalization, (2) acquired or otherwise caused a reduction in the number of, or authorized or proposed the acquisition or other reduction in the number of, outstanding shares of NRG Common Stock or other securities, (3) issued, distributed or sold, or authorized or proposed the issuance, distribution or sale of, any additional shares of NRG Common Stock, shares of any other class or series of capital stock, other voting securities or any securities convertible into, or options, rights or warrants, conditional or otherwise, to acquire, any of the foregoing (other than the issuance of shares of NRG Common Stock pursuant to, and in accordance with, the publicly disclosed terms in effect prior to November 12, 2008 of employee stock options or other equity awards or NRG preferred stock, in each case publicly disclosed by NRG as outstanding prior to November 12, 2008), or any other securities or rights in respect of, in lieu of, or in substitution or exchange for any shares of its capital stock, (4) permitted the issuance or sale of any shares of any class of capital stock or other securities of any subsidiary of NRG, (5) other than cash dividends required to be paid on the shares of NRG preferred stock that have been publicly disclosed by NRG as outstanding prior to November 12, 2008, solely as required by the terms of such preferred stock as publicly disclosed prior to November 12, 2008, declared,

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paid or proposed to declare or pay any dividend or other distribution on any shares of capital stock of NRG including by adoption of a stockholders rights plan which has not otherwise been terminated or rendered inapplicable to the Offer and the Second-Step Merger prior to the expiration of the offer, (6) altered or proposed to alter any material term of any outstanding security, issued or sold, or authorized or proposed the issuance or sale of, any debt securities or otherwise incurred or authorized or proposed the incurrence of any debt other than in the ordinary course of business consistent with past practice or any debt containing, in the reasonable judgment of Exelon, burdensome covenants or security provisions, (7) authorized, recommended, proposed, announced its intent to enter into or entered into an agreement with respect to or effected any merger, consolidation, recapitalization, liquidation, dissolution, business combination, acquisition of assets, disposition of assets or release or relinquishment of any material contract or other right of NRG or any of its subsidiaries or any comparable event not in the ordinary course of business consistent with past practice, (8) authorized, recommended, proposed, announced its intent to enter into or entered into any agreement or arrangement with any person or group that, in Exelon's reasonable judgment, has or may have material adverse significance with respect to either the value of NRG or any of its subsidiaries or affiliates or the value of the shares of NRG Common Stock to Exelon or any of its subsidiaries or affiliates, or (9) amended, or authorized or proposed any amendment to, its certificate of incorporation or bylaws (or other similar constituent documents) or Exelon becomes aware that NRG or any of its subsidiaries shall have amended, or authorized or proposed any amendment to, its certificate of incorporation or bylaws (or other similar constituent documents) which has not been publicly disclosed prior to November 12, 2008 and such amendment would adversely affect Exelon's ability to consummate the offer or limit Exelon's full rights of ownership or operation of NRG or one of its subsidiaries following completion of the offer or the second-step merger; or

(f) Exelon or any of its affiliates enters into a definitive agreement or announces an agreement in principle with NRG providing for a merger or other business combination with NRG or any of its subsidiaries or the purchase or exchange of securities or assets of NRG or any of its subsidiaries, or Exelon and NRG reach any other agreement or understanding, in either case, pursuant to which it is agreed that the offer will be terminated.

The Exchange Offer also states that the conditions described above are for the sole benefit of Exelon and Exelon Xchange and may be asserted by Exelon and Exelon Xchange regardless of the circumstances giving rise to any such condition or, other than the Competition Condition, the Regulatory Approval Condition, the Shareholder Approval Condition, the Registration Statement Condition, and the NYSE Listing Condition, may be waived by Exelon or Exelon Xchange in whole or in part at any time and from time to time prior to the expiration of the Offer in its discretion. To the extent Exelon or Exelon Xchange waives any of the conditions described above with respect to one tender, it will waive that condition with respect to all other tenders. The failure by Exelon or Exelon Xchange at any time to exercise any of the foregoing rights shall not be deemed a waiver of any such right; the waiver of any such right with respect to particular facts and other circumstances shall not be deemed a waiver with respect to any other facts and circumstances; and each such right shall be deemed an ongoing right that may be asserted at any time and from time to time until the expiration of the offer. Any determination by Exelon or Exelon Xchange concerning any condition or event described in the Registration Statement shall be final and binding on all parties to the fullest extent permitted by law.

The Exchange Offer further states that for purposes of determining whether any final order, approval, permit, authorization, waiver, determination, favorable review or consent of any Governmental Authority, any litigation, suit, claim, action, proceeding or investigation or any other matter has, or is reasonably likely to result in, individually or in the aggregate, a significant diminution in the benefits expected to be derived by Exelon, Exelon Xchange or any other affiliate of Exelon as a result of the transactions contemplated by the Offer, the Second-Step Merger or any other business combination with NRG, Exelon will not deem any divestitures consistent with the terms of Exelon's regulatory divestiture plan to, in and of themselves, have such a significant diminution; however, Exelon may take such divestitures and the impact thereof into account in determining whether any such divestitures, together with any one or more other final orders, approvals, permits, authorization, waivers, determinations, favorable reviews or

consents of any Governmental Authority,

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litigation, suits, claims, actions, proceedings or investigations or other matters, individually or in the aggregate, have resulted in, or are reasonably likely to result in, such a significant diminution.

Other

The Offer to Purchase states that the principal executive offices of Exelon are located at 10 South Dearborn Street, P.O. Box 805379, Chicago, Illinois 60680-5379.

Item 3. *Past Contacts, Transactions, Negotiations and Agreements.*

Item 3. Past Contacts, Transactions, Negotiations and Agreements on pages 7 to 8 of the Statement is hereby amended and restated in its entirety as follows:

Except as described in this Statement or in the excerpts from NRG's Definitive Proxy Statement on Schedule 14A, dated and filed with the SEC on June 16, 2009, (the *2009 Proxy Statement*), relating to its 2009 Annual Meeting of Stockholders (the *2009 Annual Meeting*), which excerpts are filed as Exhibit (e)(11) to this Statement and incorporated herein by reference, or as otherwise incorporated herein by reference, to the knowledge of NRG after reasonable inquiry, as of the date of this Statement, there are no material agreements, arrangements, or understandings, nor any material actual or potential conflicts of interest, between NRG or its affiliates, on the one hand, and (i) NRG and any of NRG's executive officers, directors or affiliates set forth on Annex A to this Statement or (ii) Exelon, Exelon Xchange and any of their executive officers, directors or affiliates set forth on Schedule I and Schedule II to the Exchange Offer, on the other hand. Exhibit (e)(11) is incorporated herein by reference and includes the following sections of the 2009 Proxy Statement: Voting Stock Ownership of Directors, Named Executive Officers, and Certain Beneficial Owners and Executive Compensation.

Relationship with Exelon

According to the Exchange Offer, as of May 20, 2008 (the date of the most recent amendment to the Registration Statement), Exelon was the beneficial owner of 500 shares of NRG Common Stock and Exelon Xchange was the beneficial owner of 500 shares of NRG Common Stock. The 1,000 shares of NRG Common Stock owned beneficially by Exelon and Exelon Xchange represent less than 1% of the outstanding shares of NRG Common Stock. According to the Exchange Offer, on October 20, 2008, Exelon purchased 1,000 shares of NRG Common Stock at \$24.38 per share through ordinary brokerage transactions on the open market and promptly thereafter, Exelon transferred 500 shares of NRG Common Stock to Exelon Xchange.

NRG and Exelon are involved in power and coal trading activities with each other in the ordinary course of business. In addition, NRG and Exelon are tenants in common of the Keystone and Conemaugh Generating Stations in Pennsylvania. Finally, NRG and Exelon participate in a number of industry groups, including, without limitation, the Association of Electric Companies of Texas, the United States Climate Action Partnership and the Electric Power Supply Association.

On November 24, 2008, NRG purchased 250 shares of Exelon common stock at \$51.08 per share through ordinary brokerage transactions on the open market.

Consideration Payable Pursuant to the Offer and the Second-Step Merger

If NRG's directors and executive officers were to tender any shares of NRG Common Stock they own pursuant to the Revised Offer, they would receive Exelon common stock at the same exchange ratio and on the same terms and conditions as the other stockholders of NRG. If the directors and executive officers set forth on Annex A hereto were

to tender all of the 599,955 shares of NRG Common Stock owned by them as of July 7, 2009 pursuant to the Revised Offer and each such share were exchanged for 0.545 of a share of Exelon common stock, such directors and executive officers would receive an aggregate of 326,975 shares of Exelon common stock. As discussed below under Item 4. The Solicitation or Recommendation, to the knowledge of NRG, none of NRG's directors or executive officers set forth on Annex A hereto currently intends to tender any of their shares of NRG Common Stock for purchase pursuant to the Revised Offer.

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As of July 7, 2009, the directors and executive officers of NRG set forth on Annex A hereto held options to purchase 3,491,423 shares of NRG Common Stock, with exercise prices ranging from \$10.925 to \$44.87 and an aggregate weighted average exercise price of \$23.498 per share, of which 2,173,358 were vested and exercisable as of that date. Immediately upon a change of control of NRG such as would occur if the Revised Offer is consummated, unvested options to purchase 1,318,065 shares of NRG Common Stock and 1,007,587 shares of restricted stock (including restricted stock units, performance units and deferred stock units payable in NRG Common Stock) held by such directors and executive officers will fully vest.

Potential Severance and Change in Control Benefits

NRG's President and Chief Executive Officer, David Crane, pursuant to his employment agreement, and NRG's other named executive officers, pursuant to NRG's Executive and Key Management Change-in-Control and General Severance Plan, also referred to as the CIC Plan, are entitled to severance payments and benefits in the event of termination of employment under certain circumstances in connection with a change in control of NRG, as more fully described in Exhibit (e)(11) to this Statement and incorporated herein by reference. The Revised Offer, if consummated, would constitute a change in control under Mr. David Crane's employment agreement and the CIC Plan.

Item 4. *The Solicitation or Recommendation.*

Item 4. The Solicitation or Recommendation on pages 8-29 of the Statement is hereby amended and restated in its entirety as follows:

Solicitation/Recommendation

As described below, the NRG Board has carefully considered the Revised Offer in consultation with management and NRG's Legal Advisors and Financial Advisors and, based upon the terms and conditions of the Revised Offer, the NRG Board unanimously determined at meetings on July 6 and July 7, 2009 that the Revised Offer is inadequate and not in the best interests of NRG and its stockholders and that, in light of NRG's greater fundamental value and more attractive growth prospects, both in absolute terms and relative to those of Exelon, and in light of the extreme uncertainty of the Revised Offer due to its extraordinary conditionality, the interests of the stockholders will best be served by NRG continuing to pursue its long-term strategic plan. **Accordingly, the NRG Board has unanimously determined to recommend to NRG stockholders that they reject the Revised Offer and not tender their NRG Common Stock in the Revised Offer.**

If you have tendered your shares of NRG Common Stock, you can withdraw them. For assistance in withdrawing your shares, you can contact your broker or NRG's information agent, MacKenzie Partners, Inc., at the address, phone number and email address below.

MacKenzie Partners, Inc.
105 Madison Avenue
New York, NY 10016
Tel: (800) 322-2885 (Toll-Free)
(212) 929-5500 (Collect)
Email: Nrg@mackenziepartners.com

See Reasons for the Recommendation of the NRG Board to Reject the Revised Offer and Not Tender Shares of NRG Common Stock to Offeror in the Revised Offer below for further detail.

Intent to Tender

In light of (i) Exelon's Revised Offer of 0.545 of a share of Exelon common stock for each share of NRG Common Stock and (ii) the NRG Board's recommendation, to NRG's knowledge after making reasonable inquiry, the executive officers and directors of NRG set forth on Annex A hereto do not currently intend to tender shares of NRG Common Stock held of record or beneficially owned by them to Exelon in the Revised Offer.

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Background of the Offer

On January 6, 2009, Exelon extended the expiration date of the Offer to 5:00 p.m., New York City time, on February 25, 2009, unless further extended. On January 7, 2009, Exelon issued a press release announcing that as of the close of business on January 6, 2009, NRG stockholders had tendered 106,338,942 shares of NRG Common Stock in the Offer, representing 45.6% of the then outstanding shares of NRG Common Stock. The Offer was previously scheduled to expire at 5 p.m., New York City time, on January 6, 2009.

On January 30, 2009, Exelon delivered a notice to NRG regarding its intent to (i) nominate a slate of four individuals for election as Class III directors of NRG at its 2009 Annual Meeting, (ii) amend NRG's Bylaws to increase the size of the NRG Board to 19 members, (iii) elect five additional individuals nominated by Exelon to fill five of the seven newly created board seats if the Bylaw amendment is passed, and (iv) repeal any Bylaw amendments adopted by the NRG Board without stockholder approval after February 26, 2008 and prior to the effectiveness of the resolution effecting such repeal. According to the Registration Statement, Exelon intended to make these proposals, among others, in order to facilitate the consideration by the NRG Board of the Offer or a different negotiated business combination between NRG and Exelon.

On February 25, 2009, Exelon extended the expiration date of the Offer to 5:00 p.m., New York City time, on June 26, 2009, unless further extended. On February 26, 2009, Exelon issued a press release announcing the extension of the Offer and that as of 5:00 p.m., New York City time, on February 25, 2009, NRG stockholders had tendered 125,403,103 shares of NRG Common Stock, representing over 51% of the then outstanding shares of NRG Common Stock.

On March 17, 2009, Exelon filed a preliminary proxy statement with the SEC regarding the director nominations and proposals described above.

On March 23, 2009, the NRG Board appointed Mr. Kirbyjon H. Caldwell, a former director of Reliant Energy, Inc., as a Class I director of NRG, thereby increasing the size of the NRG Board to 13 members.

On March 26, 2009, David Crane, President and Chief Executive Officer of NRG, sent a letter to John Rowe, Chairman and Chief Executive Officer of Exelon, calling on Exelon to withdraw its proposal to expand the NRG Board. Mr. Crane's letter read as follows:

March 26, 2009

*Mr. John W. Rowe
Exelon Corporation
P.O. Box 805398
Chicago, IL 60680-5398*

Dear John:

We have reviewed the preliminary proxy statement filed by Exelon Corporation with the Securities and Exchange Commission on March 17, 2009, with respect to the NRG Energy, Inc. 2009 Annual Meeting of Stockholders. In the preliminary proxy statement, Exelon has proposed, among other things, (i) to expand the size of the NRG Board of Directors up to 19 members and (ii) if the Board expansion proposal is approved, to elect five director nominees proposed by Exelon to fill five of the six newly created directorships on the NRG Board. We are writing to you to request that Exelon withdraw both proposals.

As you are aware, under NRG's senior credit agreement and the indentures for its senior notes, the failure of a majority of the NRG directors to be continuing directors (as such term is defined in the indentures and credit agreement) could result in a put right by NRG's bond holders at 101% of par and an event of default under NRG's senior credit agreement which could lead to the immediate acceleration of all of NRG's approximately \$8 billion of corporate-level debt. If Exelon's Board expansion proposal is passed and all of its nominees are elected at the Annual Meeting, the NRG Board will consist of 18 members, nine of whom will be existing NRG directors who qualify as continuing directors and nine of whom will be directors nominated by Exelon who do not qualify as continuing directors, with one vacancy remaining.

Given the current state of the credit market, it would be prohibitively expensive to refinance NRG's existing debt should it be accelerated. In fact, while Exelon has repeatedly stated that financing would not be an obstacle to its proposal to acquire NRG, we have yet to see any evidence of committed financing. In

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addition, even if the NRG Board fills the remaining vacancy on the NRG Board, resulting in current NRG directors holding a one vote majority, the change of control provisions may nonetheless be triggered by future events, such as the departure of any continuing director from the Board, for whatever reason.

We believe that your proposals to expand the Board and elect additional directors are highly irresponsible and could severely damage the interests of NRG and its stockholders. If Exelon fails to withdraw its proposals, the Board of Directors of NRG will act to expand the Board by one director to 14 directors before the Annual Meeting by adding a qualified, independent director. This will reduce, but not eliminate, the risk of NRG's debt acceleration provisions being triggered.

Sincerely,

*David Crane
President and Chief Executive Officer*

*Howard Cosgrove
Chairman of the Board*

*cc: Board of Directors of Exelon Corporation
c/o Corporate Secretary, Exelon Corporation*

In response to Mr. Crane's letter, Mr. Rowe sent the following letter to NRG on the same day:

March 26, 2009

*Mr. Howard Cosgrove,
Chairman of the Board
Mr. David Crane,
President and Chief Executive Officer
NRG Energy, Inc.
211 Carnegie Center
Princeton, NJ 08540*

Dear Howard and David:

I received your letter earlier today requesting that Exelon Corporation withdraw its proposals to expand the size of the NRG Board of Directors. Your statement that a change of control would occur under NRG's senior credit agreement and indentures in the case of the failure of a majority of the NRG directors to be continuing directors (as such term is defined in the indentures and the credit agreement) is a misstatement of the terms of your debt instruments. These instruments actually provide that a change of control would occur if a majority of the members of the Board of Directors of [NRG] are not Continuing Directors (as defined in the indentures and senior credit agreement). An NRG Board of nine NRG incumbent directors and the nine independent nominees proposed by Exelon would not result in a change of control under the NRG indentures or senior credit agreement.

We agree that it would be irresponsible to allow the election of the independent nominees proposed by Exelon to result in a change of control under the NRG indentures and senior credit agreement. Because of our desire to avoid that result, Exelon proposed nominees to fill only five of the seven vacancies resulting from the expansion of the NRG Board with the expectation that NRG would propose a full competing slate. As a result of your appointment of Pastor Caldwell as a Director, the independent nominees proposed by Exelon will, at most, constitute 50.0% of the NRG Board and NOT a majority, even if you do not appoint an additional director.

Given that the election of the independent nominees proposed by Exelon will not constitute a change of control, I submit that it is unfair of you to seek to deprive your shareholders of the right to vote for such nominees.

We look forward to the opportunity to sit down with you and discuss the merits of our transaction and, should there be any remaining doubt, how the election of the independent nominees proposed by Exelon will not cause any acceleration of NRG debt.

Sincerely,

John W. Rowe

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*cc: NRG Board of Directors
Exelon Board of Directors*

On March 27, 2009, Mr. Crane sent the following letter to Mr. Rowe in response to Mr. Rowe's March 26 letter:

March 27, 2009

*Mr. John W. Rowe
Exelon Corporation
P.O. Box 805398
Chicago, IL 60680-5398*

Dear John:

We are in receipt of your March 26, 2009, letter. We believe your interpretation of our senior credit agreement and indentures is imprudent given the potential consequences of an evenly split NRG Board with respect to our debt. Nor do you address the severe harm that Exelon could cause to NRG and its shareholders in the future where NRG's Continuing Directors hold a one vote majority and an inadvertent change of control could occur as the result of the resignation of even one Continuing Director, for whatever reason. However, as it is clear from the direction of your letter that you do not intend to withdraw your Board expansion proposal, we will consider the alternatives within our authority to mitigate to the extent possible the risk to NRG shareholders of the acceleration of approximately \$8 billion of debt.

As we have stated many times, NRG remains entirely focused on protecting shareholder value and creating additional shareholder value. One important way in which we seek to protect shareholder value is by avoiding the substantial economic waste that would be associated with refinancing all or a major portion of our long term debt in this extraordinarily challenging capital market environment. In terms of creating shareholder value, we have been able to take advantage of the opportunity-rich environment to do value-enhancing transactions with eSolar and Reliant Energy and we have achieved further advances with our STP 3 and 4 nuclear development project.

We would be very pleased to sit down with you to explain the value created by NRG over recent weeks and to hear about what Exelon has been doing over that time period to create value. We welcome your recent decision to follow our lead on nuclear development through your selection of ABWR technology and believe we could be helpful to you in avoiding future missteps in this regard. As such, we would encourage you to put forward a new offer that constitutes a real value proposition to NRG shareholders, in contrast to your present offer which attempts to secure a severely unfair proportion of the benefit of the proposed combination for the current shareholders of Exelon.

Sincerely,

*David Crane
President and Chief Executive Officer*

*Howard Cosgrove
Chairman of the Board*

*cc: Board of Directors of Exelon Corporation
c/o Corporate Secretary, Exelon Corporation*

On April 24, 2009, the NRG Board appointed Mr. Gerald Luterman, the former Executive Vice President and Chief Financial Officer of KeySpan Corporation, as a Class II director of NRG. With the appointments of Mr. Caldwell and Mr. Luterman, the NRG Board currently consists of 14 members. If Exelon's Board Expansion Proposal passes, there

would be five newly created board seats on the NRG Board.

On June 5, 2009, NRG announced that its 2009 Annual Meeting will be held on Tuesday, July 21, 2009, with a record date of Monday, June 15, 2009. On June 16, 2009, NRG filed a definitive proxy statement with the SEC concerning its 2009 Annual Meeting.

On June 17, 2009, Exelon filed a definitive proxy statement with the SEC regarding its director nominations and proposals. On the same day, Exelon extended the expiration date of the Offer to 5:00 p.m., New York City time, on August 21, 2009, unless further extended. Exelon announced that as of 4:30 p.m.,

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New York City time, on June 16, 2009, NRG stockholders had tendered 33,028,179 shares of NRG Common Stock, representing over 12% of the then outstanding shares of NRG Common Stock.

In the morning of July 2, 2009, Exelon issued a press release and held a conference call announcing the Revised Offer.

In the afternoon of July 2, 2009, NRG issued a press release advising its stockholders not to take any action pending review of the Revised Offer by the NRG Board.

On July 6 and July 7, 2009, the NRG Board met telephonically with members of management and representatives of NRG's Advisors. At these meetings, NRG management briefed the NRG Board on the principal terms and conditions of the Revised Offer. NRG's Financial Advisors discussed with the NRG Board financial aspects of the Revised Offer and NRG's Legal Advisors reviewed certain other aspects of the Revised Offer. Thereafter, NRG's management recommended to the NRG Board that it reject the Revised Offer. NRG's Financial Advisors concurred with management's recommendation to reject the Revised Offer. NRG's Financial Advisors considered, among other things, the conditionality of the Revised Offer and strategic and tactical issues. The NRG Board asked various questions of management and NRG's Advisors. Upon further deliberation and careful consideration of the terms of the Revised Offer and its fiduciary duties, the NRG Board unanimously determined that the Revised Offer is inadequate and not in the best interests of NRG and its stockholders. **Accordingly, the NRG Board unanimously determined to recommend that NRG stockholders reject the Revised Offer and not tender their NRG Common Stock in the Revised Offer, and approved the filing of this Statement.**

On the morning of July 8, 2009, Mr. David Crane and Mr. Howard Cosgrove delivered the following letter to Mr. Rowe:

July 8, 2009

*Mr. John W. Rowe
Chairman and CEO
Exelon Corporation
P.O. Box 805398
Chicago, IL 60680-5398*

Dear Mr. Rowe:

The Board of Directors of NRG Energy, Inc., in consultation with its financial and legal advisors, has thoroughly reviewed and considered your revised offer, as detailed in your July 2nd news release, which as of yesterday's close represented \$27 per NRG Share. The Board unanimously has rejected your proposal as it determined that the revised offer is not in the best interest of NRG stockholders in that it continues to substantially undervalue NRG. Indeed, by any objective analysis, the increase in your offer fails to adequately compensate NRG stockholders even for the value created by NRG since your original offer was launched. The Board also rejected this proposal due to the revised offer's extraordinary conditionality which remains unchanged from Exelon's original offer made last fall.

While your revised offer is not acceptable as is, it certainly represents a step in the right direction and is a welcome development after more than eight months of the 0.485 offer. The fact that you were able to increase your offer largely through over \$200 million per year of newfound synergies identified by your consultants leaves open the possibility that, if you would properly recognize the value created by NRG itself, you would be able to increase your current 0.545 offer by a substantial amount.

To reiterate, these value creating actions by NRG include, but are not limited to, the following:

NRG's Reliant Energy Acquisition Worth \$4.50 Per Share in Value:

Your economists ascribed less than \$1 per share to the value of Reliant Energy. You will note from NRG's revised guidance for 2009, we expect Reliant's adjusted earnings per share to approach \$1 per NRG share just in the last eight months of 2009. Reliant Energy's contribution to NRG's adjusted EBITDA over the same period is expected to be over \$400 million. The robust countercyclical earnings

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power of Reliant's retail franchise is just one of several reasons why the Reliant acquisition is worth significantly more than \$1 per NRG share. We are confident, based solely on the earnings guidance released today, that Exelon's economists will see it the same way.

NRG's Unique Position in Leading the Nuclear Renaissance:

In your most recent investor presentation, you explicitly ascribe zero value to NRG's nuclear development program. Yet Exelon has spent tens of millions of dollars over the past two years attempting to develop a greenfield nuclear plant in neighboring Victoria County. Surely Exelon, more than most, is in a position to appreciate and properly value our nuclear position in Texas, at the NRC and in the DOE loan guarantee program.

NRG's Repowering Initiative Advances Low and No Carbon Technologies:

Cedar Bayou unit 4, NRG's new 550 megawatt combined cycle plant in ERCOT's Houston Zone, our new wind farms, GenConn and eSolar are just the current lead projects in Repowering NRG and are representative of low carbon, asset-based EBITDA growth of a kind that is absent from the Exelon portfolio.

NRG's Significant Cost and Performance Improvements:

Since 2005, NRG has executed on its FORNRG initiatives NRG's Companywide, multi-year initiative to increase the return on invested capital (ROIC) through operational performance improvements. This project has seen considerable success with over \$150 million of after-tax savings through December 2008 and planned after-tax savings that we expect to result in approximately \$300 million of annual additional recurring free cash flow improvements by 2012.

These value enhancing developments add to NRG's financial strength which your revised offer does not yet appreciate or properly value. NRG is a Company that is on track to produce annual EBITDA for 2009 of \$2.5 billion, which represents a compound annual growth rate in EBITDA over the past six years of 21% with a recurring free cash flow yield of 23%. It is the unanimously held view of NRG's Board of Directors that such a company is worth significantly more than the \$27 per share that your July 2nd offer represents.

As we told you when we first met last September, NRG is open to any proposal that properly reflects NRG's fundamental value and extraordinary growth prospects. If you wish to pursue a possible combination with NRG in a more cooperative fashion, you should increase your July 2nd offer by an amount that properly reflects the specific value of the NRG initiatives, especially in light of the additional information provided today. Our management team then would be pleased to sit down with you or your economists and consultants to validate and quantify the combination synergies summarized in your July 2nd presentation and to demonstrate further the full value of NRG's exceptional operating franchise and its unique growth initiatives so that Exelon could provide a reasonable measure of that value to NRG's stockholders.

Sincerely,

*David Crane
President and Chief Executive Officer*

*Howard Cosgrove
Chairman of the Board*

*cc: Board of Directors of Exelon Corporation
c/o Corporate Secretary, Exelon Corporation*

Reasons for the Recommendation of the NRG Board to Reject the Revised Offer and Not Tender Shares of NRG Common Stock to Exelon in the Revised Offer

The NRG Board has carefully considered the Revised Offer in consultation with management and NRG's Advisors. In reaching the conclusions and making the recommendation described above, the NRG Board took into account a number of factors, including (but not limited to) the ones described in detail below. In view of the number of factors and complexity of these matters, the NRG Board did not find it practicable to, nor did it attempt to, quantify, rank or otherwise assign relative weight to the specific factors it considered.

The NRG Board believes the Revised Offer undervalues NRG as it does not fully reflect the underlying fundamental value of NRG's assets, proven operations and strategic plan, including its strong market position and future growth prospects.

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The Revised Offer Undervalues NRG Stockholders Cash Contribution: Under Exelon's Revised Offer, NRG stockholders would only own approximately 18% of the combined company, yet NRG would be contributing an annual average of 30% of the combined recurring free cash flow any year in the short or long term. The NRG Board believes that 18% ownership in exchange for 30% cash contribution is simply unfair to NRG stockholders.

The Revised Offer fails to adequately compensate NRG stockholders for the significant increase in synergies that Exelon has publicly stated as the rationale for the Revised Offer: Exelon has publicly stated that its estimate of annual synergies has increased over 84% from the Original Offer to a midpoint of \$443 million per year, with a midpoint net present value of \$3.8 billion or \$13.84 per share of NRG Common Stock. Exelon further indicated that all of these synergies would come from cost savings at NRG alone. It is difficult for the NRG Board to understand how it would be possible to achieve these synergies in the combined company because many of Exelon's proposed synergies exceed the total costs for the relevant operating area. Even if these synergies were achievable, because NRG stockholders would own only 18% of the combined company, they would receive only \$2.52 per share of the value resulting from the synergies, which is a highly disproportionate amount, in addition to the already unequal cash contribution implied by the Revised Offer.

The Revised Offer Fails to Adequately Compensate NRG Stockholders for NRG's Numerous Value-Creating Initiatives: In spite of the recession and Exelon's hostile takeover attempt, NRG has successfully executed a number of value-creating initiatives during the eight months since the commencement of the Original Offer, including the following:

NRG's Value and Cash Accretive Acquisition of Reliant Energy Retail: In May 2009, NRG completed its \$287.5 million acquisition of the retail business of Reliant Energy, Inc. (*Reliant*) which provides electricity service to more than 1.7 million customers in Texas. This acquisition has combined the complementary generation and retail portfolios of NRG and Reliant to create a stronger player in the Texas power market. In addition to promoting significant credit and collateral synergies, the Reliant retail acquisition is expected to add more than 15% of EBITDA during the remainder of 2009 and more than 10% to NRG's annual EBITDA on a mid-cycle basis. In addition, based on NRG's conservative estimate, the retail business of Reliant is worth approximately \$4.50 per share of NRG Common Stock (as opposed to approximately \$1.00 per share based on Exelon's estimate).

NRG's Accelerating Value Creation from Leading Nuclear Development of STP 3&4: NRG's nuclear development initiative, South Texas Project 3&4 (STP 3&4), was recently selected as one of only four nuclear development projects advanced by the Department of Energy in its nuclear loan guarantee program (out of 18 total applications). This initiative is being pursued through Nuclear Innovation North America LLC (NINA), NRG's 88%/12% joint venture with Toshiba Corporation.

NRG's Carbon Reduction and Value Creation in Solar Development: NRG has entered into an agreement with eSolar, a leading provider of modular, scalable solar thermal power technology, to develop solar power plants with a total generation capacity of up to 500 megawatts (MW) at sites in California and the Southwest with long term power sales agreements and potential for federal stimulus funding.

NRG's Other Value-Creating Initiatives:

Substantially hedged all baseload generation capacity (on volumetric and price basis) through 2011, largely insulating NRG from the current challenging economic conditions.

Pre-financed the permanent capital needs for the retail business acquired from Reliant, after only three weeks of ownership, through a \$700 million unsecured bond offering that was competitively priced and oversubscribed.

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Sold NRG's 50% ownership interest in MIBRAG, an integrated coal mining and power generating business located in central Germany, for approximately US\$260 million pre-tax, a price which was value accretive to NRG stockholders.

Began construction of the 150MW Langford Wind Project and the 400MW GenConn peakers in Connecticut.

Completed a \$534 million nonrecourse financing of the 400MW GenConn gas peaking facilities co-owned by NRG and United Illuminating.

Completed the Elbow Creek wind project and the Cedar Bayou 4 CCGT project.

The NRG Board strongly believes that the benefit of the numerous value-creating actions implemented by NRG since Exelon launched its Offer belong fully to the NRG stockholders. Based on the closing price for both stocks on June 4, 2009, the Revised Offer represents a premium of only 7.9% to NRG stockholders based on the closing price of NRG Common Stock on July 1, 2009. The NRG Board believes that this low premium fails to reflect either NRG's fundamental value or its demonstrated growth potential.

A combination with Exelon may dilute, and possibly derail, NRG's continued growth.

NRG has a strong development program with recently successful repowering projects in Texas and Connecticut, a thriving wind farm development program, and demonstration projects under development in post-combustion carbon capture technology and plasma gasification, among others. Under Exelon, at best, the benefits of NRG's growth program to its stockholders would likely be severely diluted and, at worst, NRG's growth prospects would be capital-starved as a result of Exelon's preoccupation with maintaining its investment grade rating and with debt repayment. The NRG Board has been unable to discern a track record of successful development of independent power plants either at Exelon or its predecessor utilities. In addition, while NRG is a large and complicated competitive power generation company, Exelon is a very traditional utility holding company and its management team is made up of utility veterans and executives from other industries. As such, the NRG Board has serious concerns as to whether Exelon's current management is best suited to manage NRG's assets. Exelon has failed to publicly disclose its business and management plan for the combined company.

NRG and Exelon have fundamentally different approaches to new nuclear development, which gives the NRG Board serious concerns that Exelon will fail to realize the value of NRG's nuclear development. This concern was magnified on July 1, 2009, when Exelon reported that it would delay plans to build a Texas nuclear plant, citing uncertainties in the economy and its inability to secure Federal loan guarantees. At the same time, NRG is one of only four finalists for receipt of Federal loan guarantees totaling \$18.5 billion for its Texas nuclear development.

The value of the consideration being offered pursuant to the Revised Offer is highly dependent on the value of Exelon common stock and Exelon's performance and outlook has declined.

The value of the consideration to be received by NRG stockholders will decline if the market price of Exelon common stock declines, and there is no floor to such decline because Exelon's Offer is based on a fixed exchange ratio. Over the last eight months, Exelon's stock price has decreased by approximately 7%, resulting in a similar decrease in value for NRG stockholders under the Original Offer. More importantly, even though the Revised Offer presents a higher Exchange Ratio than the Original Offer,

NRG stockholders remain exposed to further deterioration in Exelon's share price performance given the deteriorating prospects for Exelon's core businesses as indicated by the following factors over the past several months:

Exelon's Reduced Earnings Guidance: On March 10, 2009, Exelon provided new disclosures on its 2011 hedge position revealing that it was, in fact, only approximately 30-40% forward contracted, well below the 60-80% position it had previously highlighted. As a result of its reduced hedged position and the greater exposure to lower commodity prices, Exelon

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decreased its estimated 2011 earnings per share from the range of \$5 to \$6 per share to \$4 to \$5 per share, causing several equity analysts to lower earnings estimates, valuation price targets and ratings for Exelon shares.