

GSE SYSTEMS INC
Form SC 13G/A
February 14, 2014

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

SCHEDULE 13G/A
Under the Securities Exchange Act of 1934
(Amendment No. 3)*

GSE Systems Inc.

(Name of Issuer)

Common Stock; \$.01 par value

(Title of Class of Securities)

36227K106

(CUSIP Number)

December 31, 2013

(Date of Event Which Requires Filing of this Statement)

Check the appropriate box to designate the rule pursuant to which this Schedule is filed:

Rule 13d-1(b)

Rule 13d-1(c)

Rule 13d-1(d)

* The remainder of this cover page shall be filled out for a reporting person's initial filing on this form with respect to the subject class of securities, and for any subsequent amendment containing information which would alter the disclosures provided in a prior cover page.

The information required in the remainder of this cover page shall not be deemed to be filed for the purpose of Section 18 of the Securities Exchange Act of 1934 (Act) or otherwise subject to the liabilities of that section of the Act but shall be subject to all other provisions of the Act (however, see the Notes).

Persons who respond to the collection of information contained in this form are not required to respond unless the form displays a currently valid OMB control number.

1. Names of Reporting Persons.

I.R.S. Identification Nos. of above persons (entities only).

S Squared Technology, LLC 01-0622776

2. Check the Appropriate Box if a Member of a Group (See Instructions)

(a) " (b) "

3. SEC Use Only

4. Citizenship or Place of Organization:

Delaware

5. Sole Voting Power:

Number of

Shares **1,141,800**

6. Shared Voting Power:

Beneficially

Owned by **-0-**

Each 7. Sole Dispositive Power:

Reporting

Person **1,141,800**

8. Shared Dispositive Power:

With

-0-

9. Aggregate Amount Beneficially Owned by Each Reporting Person:

1,141,800

10. Check if the Aggregate Amount in Row (11) Excludes Certain Shares (See Instructions)

11. Percent of Class Represented by Amount in Row (11)

6.38%

12. Type of Reporting Person (See Instructions)

IA

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1. Names of Reporting Persons.

I.R.S. Identification Nos. of above persons (entities only).

Seymour L. Goldblatt

2. Check the Appropriate Box if a Member of a Group (See Instructions)

(a) " (b) "

3. SEC Use Only

4. Citizenship or Place of Organization:

United States

5. Sole Voting Power:

Number of **1,141,800¹**

Shares 6. Shared Voting Power:

Beneficially

Owned by **-0-**
7. Sole Dispositive Power:

Each
Reporting

Person **1,141,800**
With 8. Shared Dispositive Power:

-0-
9. Aggregate Amount Beneficially Owned by Each Reporting Person

1,141,800

10. Check if the Aggregate Amount in Row (11) Excludes Certain Shares (See Instructions)

11. Percent of Class Represented by Amount in Row (11)

6.38%

12. Type of Reporting Person (See Instructions)

IN

- ¹ Represents holdings of S Squared Technology, LLC. Seymour L. Goldblatt disclaims any beneficial ownership interest of the shares held by any funds for which S Squared Technology, LLC acts as an investment adviser, except for that portion of such shares that relates to his economic interest in such shares, if any.

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1. Names of Reporting Persons.

I.R.S. Identification Nos. of above persons (entities only).

Kenneth A. Goldblatt

2. Check the Appropriate Box if a Member of a Group (See Instructions)

(a) " (b) "

3. SEC Use Only

4. Citizenship or Place of Organization:

United States

5. Sole Voting Power:

Number of **1,141,800²**

Shares 6. Shared Voting Power:

Beneficially

Owned by **-0-**
7. Sole Dispositive Power:

Each
Reporting

Person **1,141,800**
With 8. Shared Dispositive Power:

-0-
9. Aggregate Amount Beneficially Owned by Each Reporting Person

1,141,800
10. Check if the Aggregate Amount in Row (11) Excludes Certain Shares (See Instructions)

11. Percent of Class Represented by Amount in Row (11)

6.38%

12. Type of Reporting Person (See Instructions)

IN

- ² Represents holdings of S Squared Technology, LLC. Kenneth A. Goldblatt disclaims any beneficial ownership interest of the shares held by any funds for which S Squared Technology, LLC acts as an investment adviser, except for that portion of such shares that relates to his economic interest in such shares, if any.

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Item 1.

(a) Name of Issuer: **GSE Systems Inc.**

(b) Address of Issuer's Principal Executive Offices: **1332 Londontown Blvd., Suite 200, Sykesville, MD 21784**

Item 2.

(a) **Name of Person Filing: This statement is filed on behalf of S Squared Technology, LLC (SST), a Delaware limited liability company, and Seymour L. Goldblatt (Seymour) and Kenneth A. Goldblatt (Kenneth), both United States citizens. SST is a registered investment adviser. Seymour is the President of SST and owns a majority of the interests in SST. An agreement among SST, Seymour and Kenneth in writing to file this statement on behalf of each of them is attached as Exhibit A hereto. This statement relates to shares held for the accounts of multiple private investment funds for which SST acts as investment adviser.**

(b) Address of Principal Business Office or, if none, Residence: **515 Madison Avenue, New York, NY 10022**

(c) Citizenship: **SST is a Delaware limited liability company, and Seymour and Kenneth are both United States citizens**

(d) Title of Class of Securities: **Common Stock; \$.01 par value**

(e) CUSIP Number: **36227K106**

Item 3. SST is a registered investment adviser. Seymour and Kenneth are control persons of SST.

Item 4. Ownership

Provide the following information regarding the aggregate number and percentage of the class of securities of the issuer identified in Item 1.

(a) Amount beneficially owned: **1,141,800**

(b) Percent of class: **6.38%**

(c) Number of shares as to which the person has:

(i) Sole power to vote or to direct the vote: **1,141,800**

(ii) Shared power to vote or to direct the vote: **-0-**

(iii) Sole power to dispose or to direct the disposition of: **1,141,800**

(iv) Shared power to dispose or to direct the disposition of: **-0-**

Instruction. For computations regarding securities which represent a right to acquire an underlying security *see* §240.13d3(d)(1).

Item 5. Ownership of Five Percent or Less of a Class

If this statement is being filed to report the fact that as of the date hereof the reporting person has ceased to be the beneficial owner of more than five percent of the class of securities, check the following [].

Instruction: Dissolution of a group requires a response to this item.

Item 6. Ownership of More than Five Percent on Behalf of Another Person

The limited partners of (or investors in) each of private investment funds for which SST acts as investment adviser have the right to participate in the receipt of dividends from, and proceeds from the sale of, the shares held for the accounts of such funds in accordance with their respective limited partnership interest (or investment percentages) in such funds.

Item 7. Identification and Classification of the Subsidiary Which Acquired the Security Being Reported on By the Parent Holding Company

Item 8. Identification and Classification of Members of the Group

If a group has filed this schedule pursuant to §240.13d-1(b)(1)(ii)(J), so indicate under Item 3(j) and attach an exhibit stating the identity and Item 3 classification of each member of the group. If a group has filed this schedule pursuant to §240.13d-1(c) or §240.13d-1(d), attach an exhibit stating the identity of each member of the group.

Item 9. Notice of Dissolution of Group

Notice of dissolution of a group may be furnished as an exhibit stating the date of the dissolution and that all further filings with respect to transactions in the security reported on will be filed, if required, by members of the group, in their individual capacity. See Item 5.

Item 10. Certification

(a) The following certification shall be included if the statement is filed pursuant to §240.13d-1(b):
By signing below I certify that, to the best of my knowledge and belief, the securities referred to above were acquired and are held in the ordinary course of business and were not acquired and are not held for the purpose of or with the effect of changing or influencing the control of the issuer of the securities and were not acquired and are not held in connection with or as a participant in any transaction having that purpose or effect.

SIGNATURES

After reasonable inquiry and to the best of my knowledge and belief, I certify that the information set forth in this statement is true, complete and correct.

Dated: February 13, 2014

S Squared Technology, LLC

By: /s/ Seymour L. Goldblatt
Seymour L. Goldblatt
President

/s/ Seymour L. Goldblatt
Seymour L. Goldblatt

/s/ Kenneth A. Goldblatt
Kenneth A. Goldblatt

The original statement shall be signed by each person on whose behalf the statement is filed or his authorized representative. If the statement is signed on behalf of a person by his authorized representative other than an executive officer or general partner of the filing person, evidence of the representative's authority to sign on behalf of such person shall be filed with the statement, provided, however, that a power of attorney for this purpose which is already on file with the Commission may be incorporated by reference. The name and any title of each person who signs the statement shall be typed or printed beneath his signature.

NOTE: Schedules filed in paper format shall include a signed original and five copies of the schedule, including all exhibits. *See* §240.13d-7 for other parties for whom copies are to be sent.

Attention: Intentional misstatements or omissions of fact constitute Federal criminal violations

(See 18 U.S.C. 1001)

EXHIBIT INDEX

Exhibit A Agreement among SST, Seymour and Kenneth to file this statement jointly on behalf of each of them.

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"1"> 1.8% 10,193 38.9% 26,202 1,875 10,676 40.8% 2,018 143

Houston Zone

S_P \$75 349 1.5% 9,426 39.4% 23,932 1,977 9,776 40.9% 2,092 115

Houston Zone

S_OP \$65 184 0.9% 7,034 33.1% 21,262 1,639 7,217 33.9% 1,696 57

Houston Zone

W_SP \$90 519 1.9% 9,905 35.8% 27,711 1,667 10,424 37.6% 1,801 134

Houston Zone

W_P \$60 217 1.1% 3,429 17.9% 19,200 1,138 3,646 19.0% 1,178 40

Houston Zone

W_OP \$55 217 1.1% 3,431 17.9% 19,200 1,140 3,649 19.0% 1,180 40

Houston Zone

SH_SP \$100 504 2.0% 9,012 36.0% 25,037 1,668 9,516 38.0% 1,813 145

Houston Zone

SH_P \$70 243 1.1% 7,792 35.0% 22,249 1,696 8,035 36.1% 1,773 76

Houston Zone

SH_OP \$50 228 1.6% 2,541 18.2% 13,993 1,193 2,769 19.8% 1,252 59

Note: Imports into ERCOT market includes 820 MW from the SPP DC tie and 286 MW from the CFE DC tie.

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Exhibit J-11

Exelon-NRG Merger: DPT Results in CSWS**CSWS Market - Economic Capacity**

Market	Period	Price	Exelon		Pre-Merger NRG		Market Size	HHI	MW	Post-Merger (Pre-Mitigation)		HHI Chg
			MW	Share	MW	Share				MW	Share	
CSWS	S_SP1	\$ 250	521	3.8%	15	0.1%	13,557	4,517	536	4.0%	4,517	1
CSWS	S_SP2	\$ 130	521	3.9%	15	0.1%	13,528	4,517	536	4.0%	4,518	1
CSWS	S_P	\$ 80	521	4.0%	15	0.1%	13,153	4,410	536	4.1%	4,411	1
CSWS	S_OP	\$ 50	522	5.9%	20	0.2%	8,848	2,930	542	6.1%	2,933	3
CSWS	W_SP	\$ 90	514	3.8%	24	0.2%	13,392	4,053	539	4.0%	4,054	1
CSWS	W_P	\$ 65	516	4.3%	24	0.2%	12,018	3,707	541	4.5%	3,709	2
CSWS	W_OP	\$ 40	2	0.0%	43	1.0%	4,357	5,484	45	1.0%	5,484	
CSWS	SH_SP	\$ 90	484	3.9%	28	0.2%	12,497	3,976	513	4.1%	3,978	2
CSWS	SH_P	\$ 70	487	4.1%	32	0.3%	11,886	3,860	519	4.4%	3,862	2
CSWS	SH_OP	\$ 40	2	0.1%	57	1.4%	4,221	4,891	59	1.4%	4,891	

CSWS Market - Available Economic Capacity

Market	Period	Price	Exelon		Pre-Merger NRG		Market Size	HHI	MW	Post-Merger (Pre-Mitigation)		HHI Chg
			MW	Share	MW	Share				MW	Share	
CSWS	S_SP1	\$ 250	540	12.9%	17	0.4%	4,186	2,869	556	13.3%	2,879	10
CSWS	S_SP2	\$ 130	536	12.8%	16	0.4%	4,186	2,862	552	13.2%	2,871	10
CSWS	S_P	\$ 80	535	9.1%	15	0.3%	5,889	2,275	549	9.3%	2,279	5
CSWS	S_OP	\$ 50	533	12.8%	48	1.2%	4,153	2,809	582	14.0%	2,839	30
CSWS	W_SP	\$ 90	530	8.6%	22	0.4%	6,185	2,064	552	8.9%	2,070	6
CSWS	W_P	\$ 65	546	8.8%	28	0.5%	6,227	2,060	574	9.2%	2,068	8
CSWS	W_OP	\$ 40	14	1.7%	204	23.8%	857	892	218	25.5%	972	80
CSWS	SH_SP	\$ 90	513	10.2%	40	0.8%	5,050	1,960	553	11.0%	1,976	16
CSWS	SH_P	\$ 70	517	8.1%	29	0.5%	6,378	2,069	547	8.6%	2,077	7
CSWS	SH_OP	\$ 40	17	1.7%	209	20.8%	1,005	795	226	22.5%	866	71

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Exhibit K

Exhibit K: Maps

A Map of the properties owned by Exelon and NRG is provided below.

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Exhibit L: Status of Regulatory Actions and Orders

Approvals from the following state and federal approvals are required for the Transaction. As of the date of this Application, no such approvals have been obtained.

State Approvals

1. Certain elements of the Transaction must be approved by Pennsylvania Public Utility Commission the scope of the PAPUC's jurisdiction depends on the Transaction structure ultimately adopted.
2. The New York Public Service Commission
3. The California Energy Commission
4. The California Public Utilities Commission
5. The Public Utility Commission of Texas
In addition, the applicability of the newly amended Massachusetts statute to the Transaction is under review with the Massachusetts Department of Public Utilities may be required. The need for this approval has not yet been definitively determined.

Federal Approvals

1. Nuclear Regulatory Commission
2. Clearance from the Department of Justice under the Hart-Scott-Rodino Antitrust Improvements Act.
3. Approval from the Federal Communications Commission for the transfer of certain licenses.

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Exhibit M: Cross Subsidization

Cross subsidization are addressed in the attached Affidavits of Elizabeth A. Moler and Susan B. Abbott.

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UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Exelon Corporation

) Docket No. EC09-_____
AFFIDAVIT OF SUSAN D. ABBOTT

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Q. Please state your name, occupation and employer.

A. My name is Susan D. Abbott. I am a managing director with New Harbor Incorporated. New Harbor is an investment-banking firm engaged in strategic advisory services for the electric, gas and water utilities sectors.

Q. What is the purpose of your testimony?

A. Exelon Corporation (Exelon) has asked me to explore and explain the concept of ring-fencing, what it is, what constitutes effective ring-fencing, and whether the steps Exelon proposes to take to ring-fence Commonwealth Edison Company (ComEd) and PECO Energy Company (PECO) will effectively insulate them from the financial and business risks of the parent and its non-utility affiliates.

Q. Please summarize your conclusion.

A. I have reviewed and considered the conditions set forth in the Application, and refer the reader to the Application for a detailed understanding of each commitment. It is my opinion that Exelon has committed to take extraordinary steps to create substantial insulation between ComEd and PECO on one hand, and Exelon and its non-utility subsidiaries on the other. These new ring-fencing commitments will be put in place once the acquisition of NRG Energy, Inc. (NRG) is completed, and will provide effective protection for investors in, and customers of, both ComEd and PECO.

Q. What are your qualifications?

A. I have worked in the financial services sector for over 30 years. My first job was as an analyst for Aetna Life and Casualty in its Bond Investment Department where I analyzed and recommended fixed-income offerings of regulated utilities. I worked for 20 years for Moody s Investors Service (Moody s) where, as

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Managing Director, I was responsible for the ratings of all public electric and combination utilities, and project finance deals. Since leaving Moody's and joining New Harbor, I have been involved in strategic advisory and rating agency advisory work, and expert witness testimony on behalf of utility clients. I have an undergraduate degree in Literature from Syracuse University, and an M.B.A. from The University of Connecticut (UConn). I sit on the Advisory Board of the Student Managed Fund at UConn, and am a member of the UConn Business Hall of Fame. I have lectured at UConn, the Wharton Business School, and was a faculty member of the Public Utilities Executive Course at The University of Idaho for 10 years.

Q. How do you define ring-fencing?

A. Ring-fencing involves the imposition of conditions and restrictions that financially separate a subsidiary from its parent company in order to protect investors in, and customers of, the subsidiary from the financial instability or potential bankruptcy of a parent company which may have a different risk profile than the subsidiary. For purposes of this discussion, I will be talking about utilities and not other types of corporations which might have the same issues, but are without the regulatory protections that already partially insulate utilities from their affiliates.

Q. Are there regulatory protections already in place sufficient to protect a utility from the business risks of the parent or its affiliates?

A. Various regulatory requirements, such as regulatory approval for utility security issuances, affiliate transactions, accounting, asset transfers, and so forth, provide significant financial insulation between utilities and their affiliates. These

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protections however, normally are not enough to fully insulate utilities from the business and financial risk of their parents. Shortly after the announcement of Exelon's proposed acquisition of NRG, Standard & Poor's (but not other credit rating agencies) lowered its corporate credit rating on Exelon Corp., Exelon Generation and PECO. The senior secured rating of PECO was lowered from A to A-. I have no basis to know whether the downgrade of PECO was a direct result of the proposed transaction or whether it was the result of other developments such as competitive procurement issues or a change in the ability to receive competition transition charges, or a combination of these and other factors. Whatever the reason for S&P's actions, however, the new commitments being put in place by Exelon will provide significantly more protection of its utility subsidiaries from the business risks at the parent or affiliate companies, and go beyond what the rating agencies require to consider a utility effectively ring-fenced from its parent.

Q. What are the major benefits of ring-fencing?

- A. Ring-fencing accomplishes four important things: it 1) helps a utility avoid credit contamination from its parent, or non-utility affiliates; 2) reduces the possibility of default on financial obligations on the part of the utility; 3) avoids having the utility added to a bankruptcy proceeding involving the parent; and 4) allows the rating agencies to insulate the ratings of the utility subsidiary from those of the parent.

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Q. Has anyone delineated the actions required to achieve effective ring-fencing?

A. Yes. The rating agencies have long considered ring-fencing measures as a means of insulating utilities from the business and financial risks of their parents and non-utility affiliates, and have established various ring-fencing conditions. Rating agencies and regulators approach ring-fencing with the same objective of protecting the utility from financial stress at the parent or affiliate companies, and view the criteria for effective ring-fencing in basically the same way.

Q. Are there specific examples to look to in order to understand what makes for effective ring-fencing?

A. Yes. The Oregon Public Utilities Commission (OPUC) addressed this issue when Enron purchased Portland General Electric. Oregon had the statutes and rules in place that enabled it to put effective ring-fencing provisions in place.

Q. What governs effective ring-fencing?

A. Rating agencies such as Moody s and S&P examine the extent to which ring-fencing provisions are enforceable, and therefore can be relied on. For example, they look to whether ring-fencing covenants are contained in loan documentation, preferably for publicly-listed securities with the longest maturities. They also examine other legal or regulatory requirements that effectively separate the business dealings of the parent and its subsidiaries. Regulatory actions such as those of the OPUC have satisfied the rating agencies as well.

Q. What are the rating agencies conditions?

A. Each rating agency expresses its conditions in a different way. Moody s has been very specific, while S&P has been more general. However, the general theme is consistent. S&P has stated in its Corporate Rating Criteria publication that any action that provides support (whether legal, regulatory, financial or operational) to the utility and/or isolates the utility (most importantly financial obligations) from its parent company will be positive for credit. Moody s delineates four conditions that need to be met for ring-fencing to be considered effective. These conditions appear in a Special Comment written in May 2007 entitled Covenants and Ring-Fencing for Wholly-Owned Subsidiaries.

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Q. What is the first of Moody's four conditions?

- A. The first is that there is a comprehensive suite of ring-fencing covenants. Moody's is looking for clear separation of the financial dealings of the parent and unregulated affiliates from those of the regulated subsidiaries. Key to the restrictions necessary to effectively ring-fence a utility are:

Moody's condition: that there be restrictions on leverage and/or distributions to the parent such that the utility's capital structure is consistent with its rating level.

Exelon proposal: if Exelon's proposed commitments become effective, each utility subsidiary will be required to have at least one independent director, all dividends paid by the utility to the parent must be approved by an independent director, and each utility subsidiary must provide 30 days notice to its respective state regulator before paying dividends on common stock; each utility will use its reasonable best efforts and exercise prudent management as relates to dividends and capital investment in an effort to maintain investment grade ratings.

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Moody's condition: guarantees of debt of the parent or affiliates by the regulated subsidiary are prohibited.

Exelon proposal: Exelon is committing to a prohibition of guarantees by its utility subsidiaries of any parent or affiliate debt, and a reciprocal prohibition on any guarantees of utility subsidiary debt by the parent or any affiliated companies.

Moody's condition: all transactions with the parent and affiliates must be on an arm's length basis, and in the ordinary course of business.

Exelon proposal: Exelon has committed to maintain corporate governance structures, controls and procedures designed to protect against affiliate abuse and foster arm's length transactions.

Moody's condition: no cross-default or cross-acceleration of debt of the parent or an affiliate is allowed.

Exelon proposal: Exelon is agreeing to no cross-defaults among the utility subsidiaries and the parent or other affiliates. In addition, Exelon is going further by agreeing that in ComEd's or PECO's debt or credit agreements there will be no rating agency triggers related to Exelon or its non-utility affiliates.

Q. What is the second Moody's condition?

- A. The second condition is that the ring-fencing protections are enforceable either through covenants contained in financing documents, or through some other means. Moody's expresses the requirement that the ring-fencing covenants [are]

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embedded in [the] capital structure. Normally they evaluate the materiality of ring-fencing commitments in terms of what proportion of debt contains the covenants. In the case of Exelon and its proposed ring-fencing of ComEd and PECO, the covenants are being made with regulators and apply to the entirety of both companies. Therefore, Exelon's proposal meets the materiality test because they are enforceable and they apply across the board to the full range of debt securities as well as to significant business dealings between the utilities and their affiliates.

Q. What is the third Moody's condition?

- A. That there is no financial and/or business dependence reflected through inter-company loans, cash-pooling schemes or common pension funds with large liabilities of the parent that the subsidiary could inherit. This lessens the opportunity for a financially strapped parent or affiliate to absorb financial assets the regulated subsidiary has that should be used for the benefit of its customers and lenders. The ring-fencing commitments Exelon is making prohibit inter-company loans except through the money pool arrangements the companies file with FERC.

Q. What is Moody's last condition?

- A. That there are no substantive consolidation provisions in the jurisdiction in which the company operates, or there is an absence of de-facto circumstances that could trigger substantive consolidation. Substantive consolidation is the situation whereby a parent drags a utility subsidiary into bankruptcy, thereby putting the utility's assets at risk to be used to satisfy obligations of the parent. Any chance that a parent could cause a simultaneous bankruptcy filing needs to be considered

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non-existent. When substantive consolidation provisions exist, law firms are asked to, and will if they find that the necessary protections are in place, provide opinions to the effect that in their legal judgment a bankruptcy judge would not allow the utility's assets to be consolidated with the parent's in bankruptcy. Moody's will give weight to a legal opinion on the risk of substantive consolidation depending, of course, on the content and firmness of the opinion. Exelon has committed to provide a substantive consolidation opinion for each of its utility subsidiaries prepared by well-respected law firms.

Q. Is there anything else that Moody's requires?

A. Yes. All of the above assumes appropriate disclosure for monitoring purposes. Exelon commitments include access to books, records and utility accounts consistent with applicable regulations, and transparent allocation of shared facilities and personnel.

Q. Does S&P require anything different?

A. S&P hasn't been as precise about its specific requirements for ring-fencing as has Moody's, but S&P's practice has been to require a combination of structural, legal and regulatory ring-fencing to provide enough barriers and disincentives that a holding company would be unable to take actions that would disadvantage a subsidiary.

Q. Are there particular restrictions or activities S&P cites as providing insulation?

A. Yes. In its Corporate Ratings Criteria publications S&P specifically cite restrictions of dividends, prohibitions against intercompany loans, and requirements for arms length transactions.

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Q. Why did the OPUC construct ring-fencing conditions for Portland General?

- A. When Enron purchased Portland General in 1996, the OPUC was concerned about the disparity between Enron's business risk profile and appetite, and Portland General's more conservative, service oriented mandate. OPUC determined that it was in the best interest of Portland General, its customers and lenders, to require separation of the utility from its new parent in the event the parent, with its riskier business plan, found itself in financial distress. The OPUC stated that whether via merger conditions or via statutory constructs, it is possible to limit negative influences and protect the utility and ratepayers. That's exactly what happened. Because of the ring-fencing, neither Portland General's customers nor its bondholders suffered the effects of Enron's demise, and the utility was able to maintain a 9 rating notch difference above Enron.

Q. What were the ring-fencing techniques that the OPUC used?

- A. The OPUC utilized a variety of ring-fencing conditions to protect Portland General. These conditions included: prohibition of allocations or direct charges from Enron to Portland General; a requirement that any bankruptcy filing be approved by holders of \$1.00 Golden Share junior preferred; prohibition on PGE making distributions to shareholders that would cause PGE's common equity to fall below 48% of the total PGE capital without regulatory approval; creation of independent directorship; maintenance of separate debt and preferred securities; notification of dividends and distributions to Enron; restrictions on Enron's access to Portland General's assets; review of intercompany transactions; and prohibition on Portland General seeking a higher cost of capital than it would be authorized to absent the merger.

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Q. What is Exelon proposing?

- A. Exelon is suggesting a number of items described in its Application, including separate Boards of Directors with at least one independent director on the boards of its utility subsidiaries; whose vote is required before a utility may file for bankruptcy or pay dividends; maintenance of separate debt and separate credit ratings; no cross-guarantees; neither ComEd nor PECO will lend money to Exelon or any non-utility affiliate except pursuant to money pool arrangements filed with the FERC; arm's length business transactions; notification to regulators of utility dividend payments; and restrictions on the parent's access to the utilities' assets. In addition, ComEd and PECO will each deliver a non-consolidation opinion to each of their respective state regulators and FERC.

Q. How do these proposals compare to the ring-fencing conditions imposed by rating agencies and the OPUC?

- A. Exelon's proposals compare favorably to what both rating agencies have stipulated is required to achieve effective ring fencing. The following chart lays out the rating agencies' requirements against Exelon's proposals. The chart also includes the conditions the OPUC quite successfully placed on Enron. As can be seen, Exelon's proposals compare favorably to the conditions that protected Portland General during the Enron bankruptcy, and go further than the OPUC/Enron conditions in some very important ways that provide barriers to financial transactions that could harm the utilities and their customers and lenders.

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Rating Agency Condition	Exelon Proposal	OPUC/Enron Condition
Leverage and/or dividend restrictions	Action to declare or pay dividends requires the affirmative vote of a majority of the members of the Board of Directors including the vote of at least one independent director; the Utilities must notify their respective state regulators of their intention to declare and pay dividends; each Utility will use its reasonable best efforts and exercise prudent management as relates to dividends and capital investment in an effort to maintain investment grade ratings	Notification of dividends and distributions to parent. Prohibition on PGE making distributions to shareholders that would cause PGE's common equity to fall below 48% of the total PGE capital without regulatory approval.
Prohibition of debt guarantees by utility for parent or affiliates	Prohibition of debt guarantees or granting of mortgages for the benefit of the parent or affiliates without regulatory approval	
Arm's length business transactions	Maintenance of corporate governance structure, controls and procedures designed to protect against affiliate abuse and foster arm's length business transactions	
No cross-default or cross-acceleration	No cross-defaults with or rating agency triggers related to parent or affiliates	
Ring-fencing covenants contained in financing documents	Ring-fencing covenants being made to regulators and apply across the board to a full range of debt securities as well as to significant business dealings between affiliates	
No financial interdependence as expressed through intercompany loans, cash pooling schemes or common pension funds with large liabilities	No intercompany loans except pursuant to money pool arrangements filed with FERC	Review of intercompany transactions
No substantive consolidation	Non-consolidation opinion will be provided	

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Rating Agency Condition	Exelon Proposal <u>Additional Commitments</u>	OPUC/Enron Condition
	Separate Boards of Directors with at least one independent director on each Utility board	Independent directorship created
	Each utility will issue its own long-term debt	Maintain separate debt and preferred stock
	Utility Cost of capital will not reflect any risk adjustment associated with Exelon	Utility not allowed to seek higher cost of capital than it would otherwise be authorized absent the merger
	ComEd and PECO will maintain their own books	Maintain separate accounting systems
	ComEd and PECO will not transfer assets to any other Exelon affiliate without requisite regulatory approval	Restrictions on parent's access to utility's assets
	Bankruptcy is subject to a majority vote of the Board of Directors, including the vote of at least one independent director	Bankruptcy is subject to vote of \$1.00 Golden Share Junior Preferred
	The utilities will be managed by their Boards of Directors in accordance with their status as public utilities. Transparent controls and procedures for cost allocations.	Allocations or direct charges from parent to utility prohibited without Commission permission
	Audit records of Exelon and non-utility affiliates that are relevant to the costs incurred by the regulated utilities	Audit records of parent and unregulated subs that are basis for charges to utility
	Power purchases unless undertaken pursuant to an auction or competitive bidding is subject to a majority vote of the Board of Directors, including the vote of at least one independent director	

Q. Are you satisfied that Exelon's proposals provide effective ring-fencing?

A. I believe that Exelon has satisfied the conditions that the rating agencies employ, and provided an even stronger foundation for protection of the utilities from parent or affiliate financial difficulties than the OPUC provided for Portland General Electric. Since Portland General survived, without loss, Enron's spectacular bankruptcy, I am comfortable that Exelon's proposed provisions will ring-fence ComEd and PECO quite effectively.

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Q. Does that conclude your testimony?

A. Yes it does.

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UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Exelon Corporation) Docket No. EC09-_____
Affidavit of Elizabeth A. Moler on Behalf of Exelon Corporation

1. My name is Elizabeth A. Moler. I am the Executive Vice President, Government and Environmental Affairs at Exelon Corporation. I am providing this affidavit in connection with the Application of Exelon Corporation (Exelon) pursuant to section 203 of the Federal Power Act (FPA) for the approval of a transaction (Transaction) regarding Exelon s acquisition of voting securities of and control over NRG Energy, Inc. and its public utility subsidiaries.

2. Under the amendments to FPA section 203 implemented by EPAct, the Commission shall approve the proposed transaction if it finds that the proposed transaction . . . will not result in cross-subsidization of a non-utility associate company or the pledge or encumbrance of utility assets for the benefit of an associate company, unless . . . the cross-subsidization, pledge, or encumbrance will be consistent with the public interest.

3. In Order Nos. 669, 669-A and 669-B, the Commission identified a four-factor test that applicants must satisfy in order to address the concerns identified in section 203 regarding any possible cross-subsidization, pledge or encumbrance of utility assets associated with the proposed transaction. Under this test, the Commission examines whether a proposed transaction results, at the time of the transaction or in the future, in:

- (1) transfers of facilities between a traditional utility associate company with wholesale or retail customers served under cost-based regulation and an associate company;

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- (2) new issuances of securities by traditional utility associate companies with wholesale or retail customers served under cost-based regulation for the benefit of an associate company;
- (3) new pledges or encumbrances of assets of a traditional utility associate company with wholesale or retail customers served under cost-based regulation for the benefit of an associate company;
- (4) new affiliate contracts between non-utility associate companies and traditional utility associate companies with wholesale or retail customers served under cost-based regulation, other than non-power goods and services agreements subject to review under FPA sections 205 and 206.

4. The purpose of this affidavit is to address each of these factors as they apply to the Transaction. My affidavit is based on the description of the Transaction and the commitments set forth in the Application, on my personal knowledge of the Transaction, and on the facts and circumstances that are reasonably foreseeable as of the date of this affidavit:

A. Transfers of Facilities

The Transaction does not call for any transfers of any facilities of the traditional utility associate companies, Commonwealth Edison Company (ComEd), PECO Energy Company (PECO) (collectively, the Regulated Companies), either at the time of the Transaction or in the future.

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B. New Issuance of Securities

No new securities will be issued by the Regulated Companies in connection with the Transaction at the time of the Transaction, and no issuances associated with the Transaction are contemplated in the future.

C. New Pledge or Encumbrance

The Regulated Companies will not enter into any new pledges or encumbrances in connection with the Transaction at the time of the Transaction, and there are no plans to do so in the future.

D. New Affiliate Contracts

No new contracts between either Regulated Company and any affiliates are contemplated by the Transaction, either at the time of the Transaction or in the future.

5. Based on the above, it is clear that the Transaction satisfies the Commission's four-part test.

6. Further, affiant sayeth not.

Washington, District of Columbia

Elizabeth A. Moler hereby states that the statements contained in the foregoing testimony are true and correct to the best of his knowledge and belief.

Elizabeth A. Moler

SUBSCRIBED AND SWORN TO BEFORE ME, this ____ day of December, 2008

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UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Exelon Corporation

) **Docket No. EC09-_____**
NOTICE OF FILING

(____, 2008)

Take notice that on December 18, 2008, Exelon Corporation and its subsidiaries that are public utilities subject to the Commission's jurisdiction (collectively, Exelon) filed an application pursuant to Section 203 of the Federal Power Act and Part 33 of the Commission's regulations requesting that the Commission approve a transaction (the Transaction) that includes: (1) Exelon's acquisition of voting securities of NRG Energy, Inc. (NRG Energy); (2) Exelon's acquisition of control over NRG Energy and its subsidiaries that are public utilities subject to the Commission's jurisdiction (collectively, NRG); and (3) the subsequent restructuring and consolidation of Exelon and NRG to establish a more efficient corporate structure for the combined company. Exelon requests that the Commission grant its approval no later than May 1, 2009.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.211 and 18 C.F.R. § 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Magalie R. Salas
Secretary

Comment Date: []