

**PENNSYLVANIA PUBLIC UTILITY COMMISSION
HARRISBURG, PENNSYLVANIA 17120**

MXENERGY ELECTRIC INC.

Public Meeting March 29, 2012
2201860-OSA
Docket No. M-2012-2201861

**JOINT MOTION OF
CHAIRMAN ROBERT F. POWELSON
AND COMMISSIONER WAYNE E. GARDNER**

Before the Commission today for disposition is an Opinion and Order releasing a Settlement Agreement between the Commission's Law Bureau Prosecutory Staff¹ (LBPS) and MXEnergy Electric Inc. (MXEnergy), a licensed electric generation supplier (EGS) for comment. This Settlement Agreement is the result of an LBPS investigation into alleged violations of the Public Utility Code (Code) and Commission Regulations by MXEnergy.

This Commission has made it clear on numerous occasions that it will not tolerate unlawful activity that threatens to harm Pennsylvania's consumers and thereby the burgeoning retail electricity market in Pennsylvania. While we recognize that it is the policy of this Commission to encourage settlements and that none of the allegations made against MXEnergy have been proven, we believe that the Settlement Agreement should be rejected. We note that the Settlement Agreement states that, had this matter been litigated, LBPS would have alleged 22 instances of slamming. In order to address these allegations, MXEnergy agreed to pay an \$11,000 penalty and take certain corrective actions. We simply do not believe that a \$500 per-customer penalty, even when combined with the corrective actions, is enough to remedy this situation or to deter potential future violations of the Code or the Commission's Regulations by an EGS.

We, therefore, do not see any value in issuing the Settlement Agreement for comment; rather, We move that the Settlement Agreement be rejected and that this matter be referred back to LBPS for any further actions they deem to be warranted pursuant to our Regulation at 52 Pa. Code Section 3.113(b).

Lastly, the Settlement Agreement includes the following statement at page 2, footnote 3:

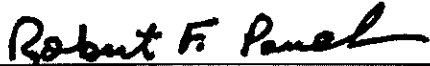
This agreement is between MXEnergy Electric Inc. and the Pennsylvania Public Service Commission [sic] and does not nor should it have any impact on Constellation Energy Corporation or in the future Exelon Corporation if it merges with Constellation Energy Corporation.

¹ The Law Bureau Prosecutory Staff and its functions have since merged with the Commission's Office of Trial Staff to form the Bureau of Investigations and Enforcement.

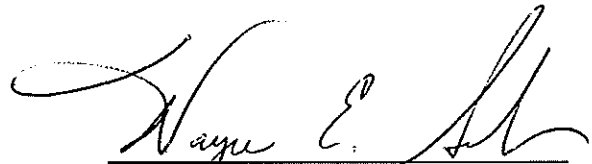
As the Settlement Agreement contemplates, MXEnergy was purchased by Constellation Energy Corporation (Constellation), which subsequently merged with Exelon Corporation. It is not clear to us whether the commitments made in the Settlement Agreement are still in effect since the agreement does not "have any impact" on the new corporate entity. In the event that the parties choose to pursue another settlement agreement, we request that they provide clarity on this issue.

THEREFORE, WE MOVE THAT:

1. The Settlement Agreement be rejected; and
2. The Office of Special Assistants prepare an Opinion and Order consistent with this Motion.



ROBERT F. POWELSON
CHAIRMAN



WAYNE E. GARDNER
COMMISSIONER

DATE: March 29, 2012