BEFORE THE
PUBLIC SERVICE COMMISSION
OF MARYLAND

In the Matter of the Merger	*	
Of Constellation Energy	*	Case No. 9054
And FPL	*	

PETITION TO INTERVENE OF
AFSCME Council 67, Baltimore ACORN, Cleanup Coalition, Florida Consumer Action Network, MaryPIRG, Progressive Maryland, Public Citizen and SEIU 1199E-DC.

February 23, 2006

1. AFSCME Council 67 represents 15,000 city and state workers in Maryland and AFSCME represents 1.1 million members nationwide.

2. Baltimore ACORN is an organization of 4,000 low to moderate income families in the Baltimore region and 5,000 members in FPL's Florida distribution area and 250,000 members nationwide.

3. The Cleanup Coalition conducts outreach, education, legal and technical assistance, and community involvement relating to programs such as brownfield cleanup and redevelopment, air, water and waste permitting, emergency response planning, and community right-to-know.

4. Florida Consumer Action Network (FCAN) is the state's largest consumer group with 40,000 members from Key West to Tallahassee. FCAN works on consumer issues including utilities, insurance, health care, and environmental protection. Founded in 1984, FCAN is the leading voice for consumers in Florida.

5. MaryPIRG (Maryland Public Interest Research Group) is a statewide, non-profit, non-partisan organization that advocates on behalf of the public on issues concerning environmental protection, consumer rights, and the democratic process. MaryPIRG has 12,000 members throughout the Maryland.

6. Progressive Maryland is a grassroots organization of thousands of members strengthened by 50 religious, community, and labor organizations. Through research, public education, and direct political action, Progressive Maryland strives to improve the lives of working families in Maryland.

7. Public Citizen is a nonprofit, nonpartisan consumer rights organization based in Washington, DC with 105,000 dues-paying individual members nationwide. Our Energy Program does extensive work at the federal and state levels to promote energy policies that best protect consumers.

8. SEIU represents 8,000 hospital and health care workers in Maryland.

9. Together, we represent consumers and workers directly impacted by this proposed merger. Our participation in this proceeding is unique and in the public interest, and we will not be adequately represented by any other party to this proceeding. As our organizations and individuals all represent consumers that will impacted by changes in rules regarding affiliate transactions between Constellation and FPL, we request that our petition to intervene and protest in this proceeding be granted, and that we be allowed to participate in the pre-hearing conference of February 28.

APPROVAL OF THE PROPOSED MERGER IS NOT ONLY REQUIRED UNDER THE PUBLIC UTILITY COMPANIES ARTICLE, BUT THE MERGER WILL NEGATIVELY IMPACT BGE AND THEREFORE MUST BE DISAPPROVED.

10. In its January 23, 2006 filing, Baltimore Gas and Electric states that the merger "does not require the [Maryland Public Service] Commission to approve or disapprove the proposed transaction because there is no material effect on the franchise and BGE is not taking any action or entering into any agreements with respect thereto." (at para. 3, *Petition of Baltimore Gas and Electric Company*).

11. We respectfully request that the Maryland Public Service Commission (PSC) deny Constellation's demand. Statements by Constellation executives indicate that the merger will indeed have a material effect on Baltimore Gas & Electric, and therefore requires that the PSC review the merger. **And, because a review of these public statements by Constellation executives reveals that the merger will have an adverse impact on Baltimore Gas & Electric, the PSC must disapprove the proposed merger.**

12. FPL CEO Lewis Hay informed the public during a December 19, 2005 conference call to Wall Street analysts that "the primary driver of this transaction is our mutual desire to build the premier competitive energy business. This will be far and away the most effective and efficient competitor in the deregulated markets of this country."[1] The CEO of the new company makes it clear that the priority will be the unregulated portions of the company, and not strengthening the regulated entities like Baltimore Gas & Electric.

13. This prioritization of the unregulated divisions will come at the direct expense of regulated entities like Baltimore Gas & Electric. Statements made by both Hay and Constellation CEO Mayo Shattuck during the December 19 Wall Street conference call imply that ratepayers of the regulated utilities will be subsidizing the riskier, unregulated portions of the companies' operations.

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[1] George Lobsenz, "FPL-Constellation Deal Powered by Merchant Ambitions," *The Energy Daily*, December 20, 2005, Vol. 33 No. 241.

14. According to the Wall Street Journal, "the fact that Constellation derives so little profit from the Baltimore utility has resulted in a credit rating that is several notches lower than FPL."[2]

15. Another article describes the threat to ratepayers in more detail: "FPL Group Inc. and Constellation energy Group Monday announced an $11 billion combination creating the industry's highest-octane merchant power business *on top of a solid financial foundation provided by steady, cash-generating regulated utilities in Florida and Maryland*…For Constellation, Chairman, President and Chief Executive Officer Mayo Shattuck said the transaction solved his company's looming problem of lacking the financial and generation heft to fully pursue growth in competitive energy markets. He noted that Constellation was financially 'constrained' by concerns expressed by credit rating agencies about the risks of Constellation's reliance on its competitive business, which provides about two-thirds of the Baltimore-based company's revenues. Constellation's unregulated business has been highly profitable, but rating analysts still tend to view such activities with suspicion because they got burned by the Enron Corp. and other energy trading scandals of the recent past. As a result, Constellation has not enjoyed the strong credit ratings awarded to more predictable energy companies that are heavy on regulated operations. 'We've had some concern that the requirements to growth might be constrained by the moving targets of rating agencies.'"[3] [emphasis added]

16. Thus, it is no exaggeration to say that the merger is intended to enlist Florida and Maryland regulated utility ratepayers together in funding the expansion of the merged company's non-utility businesses nationwide. It is for precisely this reason that we respectfully request the PSC to reject Constellation's claim that "there will be no harm to BGE or its customers as a result of the transaction."

17. We also seek more information on the company's claim that "Constellation and FPL Group are committing to maintain their two corporate headquarters for a minimum of five years." (at para. 37). What happens after five years? We request more information on the companies' plans after five years, especially considering the CEO of the new, merged company will be from FPL, and therefore it appears likely that after five years, the merged company will abandon Baltimore in its dual "corporate headquarters."

18. In a recent Federal Energy Regulatory Commission filing[4], the companies argue that the 1,086,000 ratepayers in the service territory of Baltimore Gas & Electric are not "captive" because 30 households out of more than 1 million have switched to an alternative supplier.[5] Therefore, the companies argue, they should not be required to have a code of conduct on file at FERC governing relationships of energy sales from FPL power plants to Constellation Energy. This request will leave BGE ratepayers vulnerable to abusive affiliate transactions, which may lead to price-gouging. We respectfully

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[2] Rebecca Smith, "FPL, Constellation Reach Agreement on $11 Billion Deal," December 19, 2005.
[3] George Lobsenz, "FPL-Constellation Deal Powered by Merchant Ambitions," *The Energy Daily*, December 20, 2005, Vol. 33 No. 241
[4] Docket No. ER97-3359-010 dated January 18, 2006, http://elibrary.ferc.gov/
[5] www.psc.state.md.us/psc/electric/enrollmentrpt.htm

request that the PSC investigate all pre-merger affiliate transactions between FPL and Constellation to ensure that BGE ratepayers are protected.

19. We respectfully request that the PSC investigate the fact that BGE asked for a $53 million rate increase this past year because of essential energy cost increases (it was awarded $35 million) yet it has arranged for up to $90 million in bonuses for top executives as part of this deal impacting ratepayers and shareholders.

20. We respectfully request that the PSC address the inadequate funding of LIHEAP and weatherization programs needed in low and moderate income communities in the wake of potential risks posed to ratepayers because of this merger.

21. Constellation admits that “some positions may be eliminated either in Florida or Maryland to avoid duplication.” (at para. 41). We respectfully request that the PSC investigate what the impact will be to the Baltimore area in terms of job losses as a result of the merger.

22. We respectfully request that the PSC investigate the potential to expanding reliance on renewable, clean energy in Maryland as a result of the merger in addition to acquisitions of renewable merchant generation. For example, mandating a renewable portfolio standard to increase the share of renewable energy delivered to BGE ratepayers will provide great benefits to the air quality and environmental health of Maryland.

23. The companies argue that “given differences in climate between Maryland and Florida, there should be opportunities for complementary mutual support.” (at para. 36). We assume that the companies are referring to the hurricanes that frequently wreak havoc with reliability in Florida Power & Light’s service territory. We respectfully request that the PSC investigate the average weather related costs to reliability in the service territories of BGE and Florida Power & Light. If the weather-related costs in the Florida Power & Light service territory exceed those of BGE’s, then we request that the merger not go forward as BGE ratepayers will be assuming too much risk.

24. We respectfully request that the PSC assess shut-off policies, problematic deposit policies, and other billing issues often raised by our constituents in light of the increased risk BGE ratepayers will bear as a result of this proposed merger.

25. The companies request “that the Commission issue its order with respect to this transaction on or before June 30, 2006” (at para 6). We respectfully request that the PSC not grant this request, as the timetable outlined by Constellation is far too hasty to adequately investigate all of the serious allegations we have raised here, and that we may continue to raise as we learn more information about the numerous risks this merger poses to ratepayers. In addition, a recent report found evidence that Constellation Energy is pursuing an aggressive lobbying strategy to prevent Maryland officials from hindering the companies’ ability to merge quickly.[6]

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[6] Matthew Mosk, “Power Company Lobbying to Keep Maryland Lawmakers Out of Merger,” *The Washington Post*, February 21, 2006, Page B01, www.washingtonpost.com/wp-dyn/content/article/2006/02/20/AR2006022001334.html

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