

September 14, 2020

Dr. Ake Almgren  
Chairman of the Board  
PJM Interconnection, LLC.  
Norristown, PA

Dr. Almgren:

Public Citizen and the Union of Concerned Scientists formally call on the Board of PJM Interconnection, LLC. to censure one of its Members for acts of bribery and corrupt influence of state energy policies. Taking this action is a key step to improving the accountability and transparency of PJM's involvement with policies affecting Members and consumers. The Member has accepted responsibility for the actions detailed in the federal bribery charges and agreed to pay a \$200 million fine. The Member's illegal actions have impacted the operation, reliability and economic integrity of the PJM regional transmission organization. The Board should suspend the voting rights of this Member and all of its subsidiaries in the PJM stakeholder process during the three-year deferred prosecution agreement period. The Board should also take steps described below to address the underlying issue of climate impacts from energy use in PJM region.

The admission of wrongdoing by a wholly-owned and controlled subsidiary of Exelon Corp. in the bribery of elected legislators has created negative impacts on PJM. It is imperative that the PJM Board take action to censure Commonwealth Edison, its parent company, Exelon, and all subsidiaries that have membership and voting rights in the PJM stakeholder process. The actions of Exelon's Commonwealth Edison division violate principles delineated in Section 7.7 of the PJM Operating Agreement. We urge that the PJM Board exercise its duties defined in this section of the Operating Agreement. Section 7.7 enables the Board to establish sanctions and even terminate a Member. **To be clear, our request calls for suspending Exelon's rights in the stakeholder process and does not extend to Exelon's participation in the PJM market.**

On July 17, 2020, Exelon's ComEd agreed to pay a \$200 million penalty as part of a deferred prosecution agreement with the U.S. Department of Justice. The terms of the agreement are that Exelon's ComEd "admits, accepts, and acknowledges that it is responsible under United States law" for all facts detailing the company's nearly decade-long scheme whereby the company bribed elected officials in return for legislation that provided financial benefits for Exelon.<sup>1</sup> The agreement lasts for three years, at which point the Department of Justice will

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<sup>1</sup> Deferred Prosecution Agreement, United States of America v. Commonwealth Edison Company, signed by Exelon July 16, 2020 at 2, [www.justice.gov/usao-ndil/press-release/file/1295241/download](https://www.justice.gov/usao-ndil/press-release/file/1295241/download)

formally drop the federal charges as long as Exelon does not commit additional violations during the period.<sup>2</sup>

In testimony before the Illinois regulators, an executive with Exelon Corp stated that ComEd will borrow the \$200 million from Exelon Corp to pay the penalty owed to the U.S. DOJ.<sup>3</sup>

The Board has the responsibility to penalize members who violate the operating agreement. The suspension of voting and other PJM governance membership privileges currently enjoyed by Exelon and its subsidiaries during this three-year period is a reasonable consequence for their illegal actions that gave them undue influence in PJM. That influence has had the impact of penalizing new, clean generation, interfering with state goals to reduce carbon emission. Therefore, the PJM Board should also annually review 1) reports of the greenhouse gas emissions from energy use in the PJM region, and 2) an accounting of the costs to consumers in PJM's region from climate change. These actions will improve the transparency and accountability of the PJM community.

### **Negative Impacts of Exelon's Action on PJM**

PJM has made expressly clear that legislation that is the subject of Exelon's bribery scheme directly impacted PJM market design. The establishment of Zero Emission Credits in Illinois legislation is repeatedly cited by PJM as an initiating cause for PJM to pursue the extension of the Minimum Offer Price Rule ("MOPR") to existing generation/policy supported generation<sup>4</sup>. As the entire PJM stakeholder community is painfully aware, this change in MOPR policy has led to the continuing postponement of the Reliability Pricing Model auctions. Since June 29, 2018 when the Federal Energy Regulatory Commission declared the PJM capacity market rules unjust and unreasonable, PJM has not been able to schedule an auction to secure capacity obligations from resources. Those resources have been unable to secure capacity market revenues. The actions of Exelon initiated the events that delayed the capacity auction originally scheduled for the Spring of 2019 and all subsequent capacity market auctions that are meant to ensure reliability of supply and adequate revenues for resource owners. A full accounting of this harm has not been tallied.

### **Negative Impacts of Exelon's Action on PJM Governance and Public Good Will**

The attack on legislative and governance processes in Illinois affect the trust and credibility of PJM governance. Exelon has crippled the ability of PJM stakeholders and public representatives to work with Exelon in deliberation and negotiation of PJM governance matters. PJM's tolerance of Exelon/ComEd representatives participating in stakeholder votes, advocating for

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<sup>2</sup> Ibid., 4, [www.justice.gov/usao-ndil/press-release/file/1295241/download](http://www.justice.gov/usao-ndil/press-release/file/1295241/download)

<sup>3</sup> "ComEd CEO Says No Ratepayer Funds Involved In Alleged Bribery, Misconduct" Utility Dive July 30, 2020. <https://www.utilitydive.com/news/comed-ceo-says-no-ratepayer-funds-involved-in-alleged-bribery-misconduct/582590/>

<sup>4</sup> PJM filing in ER18-1314 Attachment F, Affidavit of Dr. Anthony Giacomoni on Behalf of PJM Interconnection, L.L.C. ¶ 5

the company's interests, fosters distrust and suspicion. The public's confidence in PJM's administration of markets, governance, and its relations with public representatives cannot be restored while PJM allows Exelon to vote as a Member of the PJM Interconnection corporation.

### **Authority and Necessity of PJM Sanctions**

The admitted actions of Exelon violate Section 7.7 of the PJM Operating Agreement. The Board must recognize the bribery-induced legislation has created an undue influence on PJM, which is not allowed under Section 7.7.<sup>5</sup> The Operating Agreement is the foundational document of PJM, and provides the primary responsibilities for the Board and the obligations for Members such as Commonwealth Edison and Exelon. The Board is the only authority that can sanction a Member for creating an undue influence on PJM, and the only authority that can terminate a Member's rights under the Operating Agreement. The Board has authority under Section 7.7 of the PJM Operating Agreement to sanction behavior that is illegal, impermissible under the Operating Agreement, and in violation of the PJM Code of Conduct.<sup>6</sup>

The negative impacts described above cannot be tolerated as acceptable business conditions for PJM. The Board has discretion to determine the limits of its duties and obligations. Exelon has used bribery to impose laws on PJM and its Members that PJM has declared are interfering with the operation of PJM's core function. Exelon's use of bribery to leverage a change in PJM operations caused PJM to pursue the expansion of the MOPR to existing/policy-supported plants across the region. PJM cannot accept without a sanction the impact of the bribery on

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#### <sup>5</sup> **7.7 Duties and Responsibilities of the PJM Board.**

In accordance with this Agreement, the PJM Board shall supervise and oversee all matters pertaining to the PJM Region and the LLC, and carry out such other duties as are herein specified, including but not limited to the following duties and responsibilities:

As its primary responsibility, ensure that the President, the other officers of the LLC, and Office of the Interconnection perform the duties and responsibilities set forth in this Agreement, including but not limited to those set forth in Sections 9.2 through 9.4 and Section 10.4 in a manner consistent with (A) the safe and reliable operation of the PJM Region, (B) the creation and operation of a robust, competitive, and non-discriminatory electric power market in the PJM Region, and (C) the principle that a Member or group of Members shall not have undue influence over the operation of the PJM Region.

#### <sup>6</sup> **7.7 Duties and Responsibilities of the PJM Board.**

In accordance with this Agreement, the PJM Board shall supervise and oversee all matters pertaining to the PJM Region and the LLC, and carry out such other duties as are herein specified, including but not limited to the following duties and responsibilities:

...

xi) Establish reasonable sanctions for failure of a Member to comply with its obligations under this Agreement;

xvi) **Terminate a Member** as may be appropriate under the terms of this Agreement.

PJM's relations with the States, the public's confidence in the capacity market construct, and even States' support for continued participation in PJM capacity auctions.

### **Upholding Accountability and Legitimacy**

Exelon's behavior affects the most challenging and controversial questions related to PJM stakeholder governance: financial stakes, balance of power, and allocation of financial costs and benefits. The response to Exelon will reflect PJM's view of PJM's need for accountability and legitimacy. The PJM Board must demonstrate that there is no tolerance for Members that pursue illegitimate, undue influence on matters directly relevant to PJM's mission and the business of its Members. The accountability of PJM to its Members, electricity consumers and the public is tested at this time. A failure now would raise concerns that the central governing structure of PJM, the Operating Agreement, is insufficient to address actions by Members that undermine the coherence of PJM's core functions with illegal actions.

Respectfully,

*Tyson Slocum*

Public Citizen

*Angela Anderson*

Union of Concerned Scientists