



September 18, 2020

VIA ELECTRONIC MAIL

The PJM Board of Managers  
c/o Dr. Ake Almgren, Chairman  
c/o Mr. Manu Asthana, PJM President and CEO  
PJM Interconnection, L.L.C.  
2750 Monroe Boulevard  
Audubon, Pennsylvania 19408

Dear Dr. Almgren and Mr. Asthana,

Thank you for the opportunity to respond to the recent letter submitted by Public Citizen and Union of Concerned Scientists (collectively, "Commenters") requesting that the Board take the unprecedented action of barring all of Exelon Corporation's (Exelon) PJM Member companies from the PJM stakeholder process for three years. The letter contains factual errors, misleading characterizations, and a misunderstanding of PJM's Operating Agreement. As such, Exelon urges the Board to take no action in response to Commenters' letter.

By way of background, on July 17, 2020, Exelon's subsidiary, Commonwealth Edison Company (ComEd), a regulated distribution utility in northern Illinois, announced that it entered into an Deferred Prosecution Agreement (DPA) with the U.S. Attorney's Office for the Northern District of Illinois to resolve an investigation into ComEd's historical lobbying practices. The conduct at issue in the agreement relates only to ComEd, and the agreement does not contain any allegation of misconduct by Exelon, Exelon Generation (ExGen), or any other Exelon entity. The small number of ComEd senior employees that orchestrated the misconduct no longer work for the company and the ComEd lobbying activities had nothing to do with PJM or any wholesale market or operations issue. While it is convenient for Commenters to conflate ComEd's lobbying activities related to distribution rate policy with ExGen's advocacy in support of clean energy policy, they are misleading the Board when they allege that the conduct described in the DPA was related to the zero emission credits (ZECs) that were adopted in the Future Energy Jobs Act (FEJA). The DPA contained no allegations that ExGen or any other Exelon affiliate engaged in misconduct and made no mention of the ZEC program. Yet Commenters build on this faulty assumption (that the DPA related to the passage of the ZEC program) to make another leap of faith – that the impact of Illinois' clean energy policy on the PJM market justifies a prohibition on all Exelon affiliates participating in the stakeholder governance process.

Commenters' claim that Exelon has negatively impacted the "operation, reliability and economic integrity" of PJM is tied to a series of actions by PJM and FERC related to the Minimum Offer Price Rule (MOPR). Their argument appears to be that because Exelon is the reason Illinois adopted the ZEC program, Exelon is responsible for (i) FERC's finding that the PJM capacity market design is unjust and unreasonable, and (ii) the fact that PJM has yet to receive authorization for tariff revisions to govern the next Reliability Pricing Model (RPM) auction. As noted above, the DPA contains no allegation related to



the ZEC program, nor does it state that Exelon or any of its affiliates had any impact on FEJA or any other legislation. The facts are that FEJA enjoyed bipartisan support following extensive public hearings and testimony, given that it stood to and in fact has provided Illinois consumers with cleaner air and many other benefits. We assume that is why the Union of Concerned Scientists was among the many environmental organizations, labor, business and consumer advocate groups that supported the FEJA legislation. But even if Exelon alone had been responsible for the passage of FEJA, that would not resurrect Commenters' arguments. Litigation over the MOPR has been ongoing for almost a decade, long before the receipt of ZECs by any ExGen-owned resource.<sup>1</sup> The Illinois ZEC program is not the cause of ongoing problems with PJM's capacity market; rather, those problems are the result of the tension between various States' lawful exercise of their authority over generation (including efforts to address climate change) and the federal government's adherence to an outmoded reliability-only market design.

It is a hallmark of PJM's Consensus Based Issue Resolution framework for stakeholder governance that each market participant advocates for improvements in market rules, listens to other stakeholders do the same, and seeks consensus on reforms that will further the goals of the PJM markets. Exelon and all of its affiliates have consistently engaged in stakeholder deliberations in such spirit, offering reasoned views backed by data and evidence. Receiving input from market participants who possess different interests is consistent with the purposes of the PJM stakeholder process in educating stakeholders, exploring different solutions, improving communications, and creating technically sound solutions, and in fact is crucial to the success of the stakeholder process.<sup>2</sup>

PJM has never barred a Member from participating in the stakeholder process, and it lacks the express authority to do so. Although the Operating Agreement indicates that the PJM Board may sanction a market participant for non-compliance with the Operating Agreement, the phrase "including legal or regulatory proceedings as authorized by the PJM Board to enforce the obligations of this Agreement"<sup>3</sup> clearly demonstrates that the purpose of any sanction is to ensure compliance with the Operating Agreement. The Operating Agreement explicitly describes Membership responsibilities for which the cited sanctions might apply.<sup>4</sup> Even a cursory examination of the Operating Agreement provisions outlining Member duties would reveal that they are operational and financial in nature. Commenters have cited no provisions of the PJM Operating Agreement or other governing document that ComEd or any Exelon Member affiliate has violated. Similarly, PJM Manual 34, which governs the PJM stakeholder process, nowhere provides a basis for the requested Board action or authorizes PJM to bar a Member from the stakeholder process as a consequence of external events.<sup>5</sup>

Exelon Corporation and each of its PJM Member affiliates are in compliance with their respective financial and operational obligations set forth in the Operating Agreement and all other PJM governing documents. For decades, Exelon's Member companies have contributed to PJM's mission to

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<sup>1</sup> See, e.g., protests, complaints, petitions, motions, and comments in Docket Nos. ER09-412; ER11-2875; EL11-20; ER12-513; ER13-535; ER15-623; EL15-29; EL15-41; EL16-49; ER16-372; ER16-1103; and EL17-82.

<sup>2</sup> PJM Manual 34: PJM Stakeholder Process, Revision: 09 (2019), p. 19.

<sup>3</sup> PJM Operating Agreement, 1.7.4 (b).

<sup>4</sup> PJM Operating Agreement Sec. 11.3 ("Membership Responsibilities"); see, PJM Operating Agreement Sec. 11.6 ("Membership Requirements"); see also, PJM Operating Agreement, Sec. 17.1 ("Representations and Warranties").

<sup>5</sup> PJM Manual 34: PJM Stakeholder Process, Revision: 09 (2019).



ensure safe and reliable bulk power system operations, and to develop and operate competitive and non-discriminatory power markets. We have productively participated in stakeholder governance in which we have contributed substantially to the marketplace of ideas and often led in developing mutual gains for all stakeholders through active consensus development. It would be counter-productive to exclude Exelon or its Member affiliates from the governance process, especially based on events that have no nexus to it.

Exelon and all of its affiliates are deeply remorseful for the events that transpired at ComEd. We have accepted responsibility for them and have been recognized by the DOJ for our substantial cooperation - including conducting a thorough and expedited internal investigation, proactively identifying issues and facts, and providing the DOJ information that it would not otherwise have had.<sup>6</sup> As part of its remediation, Exelon implemented four new mandatory policies that apply to employees who interact with public officials. These policies set a new standard for compliance and ethics and include specific rules, procedures and tracking mechanisms governing 1) interactions with public officials; 2) vetting and monitoring of lobbyists and political consultants; 3) employment referrals or requests from public officials; and 4) vendor referrals or requests from public officials. We apologize for the past conduct that did not live up to our own values and we will ensure that this cannot happen again.

The PJM Board should and must operate in accordance with the PJM governing agreements, which provide no basis for Board action or authorization for the requested remedies. Thus, we ask that the Board take no action in response to Commenters' baseless request.

Sincerely,

A handwritten signature in blue ink, appearing to read "Kathleen Barrón".

Kathleen Barrón

Senior Vice President  
Government and Regulatory Affairs and Public Policy, Exelon Corporation  
101 Constitution Ave., NW Suite 400 East, Washington, DC 20001  
Office: 202 637 0357 | Mobile: 301 943 7049 | Fax: 202 347 750  
[kathleen.barron@exeloncorp.com](mailto:kathleen.barron@exeloncorp.com)  
[www.exeloncorp.com](http://www.exeloncorp.com)

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<sup>6</sup> Deferred Prosecution Agreement, ¶¶ 6, 7, 12. (<https://www.justice.gov/usao-ndil/press-release/file/1295241/download>).