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VIA EFILING

June 15, 2021

Andrew S. Johnston
Executive Secretary
Maryland Public Service Commission
William Donald Schaefer Tower
6 Saint Paul Street, 16th Floor
Baltimore, Maryland 21202

Re: *In the Matter of the Merger of Exelon Corporation and
Constellation Energy Group, Inc., Case No. 9271*

Dear Executive Secretary Johnston:

On March 11, 2021, Monitoring Analytics, LLC, acting in its capacity as the Independent Market Monitor for PJM (“Market Monitor”), submitted to the Commission a letter and a confidential attached report (“March 11th Report”) pursuant to Order No. 84698, issued in this proceeding February 17, 2012 (“2012 Order”). The 2012 Order approved the referenced merger subject to conditions. One condition was compliance with the terms of a settlement reached between the Market Monitor and the applicants, now Exelon Corporation (“Settlement”).¹ The Commission also included the explicit additional requirement that Exelon remain in PJM.² In its March 11th filing, the Market Monitor, following the

¹ 2012 Order at 5 (“[W]e approve the Merger subject to the following conditions, which we detail at the end of this Order and summarize here: (1) Exelon shall (a) comply with the terms of the IMM Settlement, as modified in this Order...”). The 2012 Order recognized that “by deviating from the terms of the Joint Settlement, the Applicants have reserved the right to walk away from this Merger rather than proceeding to closing.” *Id.* Applicants proceeded to closing, accepting the conditions included in the 2012 Order.

² *Id.* at 63 (“PJM ICC introduced a related issue involving the ability of the Applicants to leave PJM voluntarily, thereby potentially escaping the commitments made in the IMM Settlement. [footnote omitted] We clarify, therefore, that the Applicants’ continued membership in PJM is an implied commitment in the IMM Settlement, and thus *a condition of approval.*” (emphasis added)).

requirements in the 2012 Order, reported on the administration of the Settlement and recommended that the Settlement be continued with certain modifications for an additional ten years, or indefinitely. On May 28, 2021, Exelon Corporation (“Exelon”) submitted a response (“Exelon Response”) opposing the Market Monitor’s recommendation and arguing that the Settlement should terminate in 2022. In 2011, the Commission considered that the interests of Maryland customers would require protection beyond the ten years included in the Settlement. This proceeding now concerns the conditions imposed by the Commission in the 2012 Order, and is about the entire Settlement, including the requirement that Exelon remain in PJM. The Commission should examine Exelon’s ability to exercise market power in Maryland, and decide whether continuation and enhancement of the Settlement, including the Commission’s requirement that Exelon remain in PJM, is in the best interests of Maryland customers.

As the Market Monitor’s March 11th Report shows, Exelon’s market power in Maryland persists.³ Regardless of any relatively small changes in Exelon’s energy market share in the entire PJM market, Exelon retains market power in the energy market and in the capacity market in Maryland.⁴

There is not enough capacity in the BGE LDA to meet the reliability requirement in the BGE LDA.⁵ Since the 2019/2020 RPM BRA, run in 2016, the price of capacity in the BGE LDA has exceeded the price of capacity in the rest of RTO. The clearing price of the BGE LDA in the 2021/2022 RPM BRA (\$200.30 per MW-day) was higher than the net CONE times B offer cap of the BGE LDA (\$180.50 per MW-day).⁶ The clearing price of the BGE LDA in the 2022/2023 RPM BRA (\$126.50 per MW-day) was the highest clearing price in that auction. Exelon is a pivotal supplier of capacity in the BGE LDA.⁷ ⁸ Exelon’s

³ March 11th Report at 12 - 14.

⁴ See Exelon Response at 3 - 4.

⁵ See Monitoring Analytics, LLC “Potential Impacts of the Creation of Maryland FRRs,” <http://www.monitoringanalytics.com/reports/Reports/2020/IMM_Potential_Impacts_of_the_Creation_of_Maryland_FRRs_20200416.pdf> (April 16, 2020).

⁶ See Monitoring Analytics, LLC, “Analysis of the 2021/2022 RPM Base Residual Auction - Revised,” <http://www.monitoringanalytics.com/reports/Reports/2018/IMM_Analysis_of_the_20212022_RPM_BRA_Revised_20180824.pdf> (August 24, 2018).

⁷ The BGE Locational Deliverability Area (LDA), a modeled LDA in the PJM capacity market, does not include all the generation located in the BGE Zone. The PJM definition of the BGE LDA includes only generation and load connected to the 230 kV and lower transmission

generation capacity accounts for nearly 20 percent of the total generation capacity in the BGE LDA.⁹

The increased reliance on natural gas fired resources in Pennsylvania has altered congestion patterns in PJM, contributing to an increase in local market power in BGE. The March 11th Report demonstrated the extent of Exelon's local market power in the BGE Zone and elsewhere in PJM with Three Pivotal Supplier ("TPS") test results.¹⁰ Table 1 shows that congestion in the BGE Zone increased from 2,970 constraint hours in 2012 to 9,491 in 2020.¹¹ Continuation and enhancement of the Settlement is in the best interests of Maryland customers.

system. "PJM Manual 14B: PJM Region Transmission Planning Process," §C.2.2 Current Locational Deliverability Area Definitions, Rev. 48 (October 1, 2020).

⁸ See Monitoring Analytics, LLC "Potential Impacts of the Creation of Maryland FRRs," <http://www.monitoringanalytics.com/reports/Reports/2020/IMM_Potential_Impacts_of_the_Creation_of_Maryland_FRRs_20200416.pdf> (April 16, 2020) at 10.

⁹ See PJM Interconnection L.L.C., PJM existing Capacity Resources for 2022/2023 as of 2/4/2021, (February 9, 2021), <<https://www.pjm.com/-/media/markets-ops/rpm/rpm-auction-info/2022-2023/2022-2023-rpm-resource-model.ashx>>.

¹⁰ See March 11th Filing, Attachment A: Exelon Merger Agreement Compliance at 14. Exelon retired plants in 2020: Notch Cliff and Westport.

¹¹ See Monitoring Analytics, L.L.C., *2020 State of the Market Report for PJM*: Vol. II, Section 3, Table 3-85.

Table 1 Congestion hours resulting from one or more constraints binding for 100 or more hours or from an interface constraint: 2009 through 2020

	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
500 kV System	4,468	6,789	6,109	1,468	3,002	1,596	777	1,487	994	1,120	4,186	2,577
AECO	149	172	234	0	208	0	394	439	0	500	108	0
AEP	1,045	1,636	2,510	0	2,611	2,710	1,274	796	469	1,878	808	1,361
APS	509	1,714	0	206	0	170	167	0	265	246	191	417
ATSI	157	0	0	208	270	489	242	141	1,113	2,856	1,405	306
BGE	152	470	1,041	2,970	1,760	6,255	9,601	11,434	2,178	3,135	812	9,491
ComEd	1,212	2,080	1,134	4,554	5,143	4,119	5,878	7,336	2,257	1,148	457	1,074
DAY	0	0	0	0	0	0	0	0	0	0	0	0
DEOK	0	0	0	109	0	0	112	0	0	0	0	0
DLCO	156	475	206	209	0	223	617	0	0	0	0	0
Dominion	468	905	1,179	1,020	664	0	1,172	459	436	136	196	891
DPL	0	122	0	1,542	639	3,071	2,066	2,719	673	1,117	0	106
EKPC	0	0	0	0	0	0	0	0	0	400	0	0
EXT	0	0	0	0	0	0	0	0	788	0	0	0
JCPL	0	0	0	0	0	0	0	0	0	0	0	0
Met-Ed	0	180	162	0	0	0	222	0	116	1,559	922	1,041
MISO	6,042	5,287	15,637	27,694	18,215	11,460	11,109	11,712	6,297	8,635	9,249	5,673
NYISO	0	0	0	0	167	143	834	2,130	332	0	0	0
OVEC	0	0	0	0	0	0	0	0	0	0	0	0
PECO	247	0	788	386	732	1,953	895	692	1,013	304	0	0
PENELEC	103	284	0	0	176	4,281	1,683	451	3,074	1,648	2,065	2,999
Pepco	149	1	0	143	245	41	0	0	0	0	0	0
PPL	176	118	40	350	452	148	266	936	2,044	436	1,124	891
PSEG	303	549	1,107	913	3,021	4,688	2,665	810	239	226	0	0
RECO	0	0	0	0	0	0	0	0	0	0	0	0

As the Commission recognized in 2011, the Settlement includes important behavioral commitments that protect Maryland customers. Whether or not Exelon recognized the importance of the Settlement to customers in 2011, or does so now, is irrelevant. Contrary to the implication in Exelon's filing, Exelon made the behavioral commitments in the Settlement voluntarily. Exelon does not identify any specific provisions of the Settlement that it finds objectionable. The commitments require nothing more than competitive market behavior, which should not be objectionable. Exelon does not explain which provisions of the Settlement it would violate if the Settlement were terminated.

Exelon misstates the Commission's 2011 assessment of the need to continue the Settlement in 2021.¹² The Commission was clear that a reassessment of the Settlement at 10 years was important in protecting BGE's customers. Exelon continues to have market power, and Maryland customers continue to require the additional protection afforded by behavioral commitments to competitive market offers by Exelon.

Perhaps the most important behavioral commitment in the Settlement is Exelon's commitment to ongoing PJM membership. The Commission stated that Exelon's "continued membership in PJM is an implied commitment in the IMM Settlement, and thus a condition of approval."¹³ The most significant exercise of market power available to Exelon is its ability, as a transmission owner, to leave PJM or to threaten to leave PJM. Exelon is the third largest transmission owner in PJM, with a nearly 20 percent share of high voltage circuit miles.¹⁴ This potential threat provides Exelon with leverage to shape market policy to its benefit. Continued membership in PJM should remain enforced for at least the next 10 years and with a continued option for the Commission to renew.

Exelon's response (at 5–6) misrepresents the status of PJM's market power mitigation. As the Market Monitor has pointed out, market power mitigation rules are not working well in the PJM energy market or the PJM Capacity Market.¹⁵ Two years after the Market Monitor filed its complaint about the market seller offer cap in the capacity market, FERC issued an order accepting the complaint and establishing a process to replace the current market seller offer cap.¹⁶ Exelon's claim that PJM offer caps every resource that fails the three pivotal supplier test in the energy market is not correct as the Market Monitor

¹² See Exelon response at 2. See Commission Order at 64: "Although it is likely that some combination of market rules and market conditions will change in the intervening years, this modification ensures that BGE's customers (and the citizens of our State as a whole) are protected in the perhaps unlikely event that market conditions remain static or even more concentrated for the expected life of these conditions."

¹³ Maryland 2012 Order at 63.

¹⁴ See Exelon Corporation, U.S. Securities and Exchange Commission, Form 10-K (February 24, 2021) and North American Electric Reliability Corporation, Transmission Availability Data System, <<https://www.nerc.com/pa/RAPA/tads/Pages/ElementInventory.aspx>>.

¹⁵ See, e.g., Protest of the Independent Market Monitor for PJM, *Chalk Point Power, LLC*, Docket Nos. Docket No. ER21-573-000, et al. (December 24, 2020); Monitoring Analytics, LLC, *2020 State of the Market Report for PJM*, Vol. 2. (March 11, 2021) at 85–86.

¹⁶ See *PJM Interconnection, L.L.C.*, 174 FERC ¶ 61,212 (2021).

documents in the State of the Market Report.¹⁷ The rules addressing parameter limits and fuel cost policies have been substantially weakened recently through the PJM stakeholder process. Fuel cost policies can now be changed and/or ignored without a review process. Parameter limits do not apply to resources that fail the TPS test if they lower their offer price below their cost. PJM recently filed to further weaken parameter rules by permitting generation owners to use RTVs to override parameters.¹⁸ FERC rejected PJM's filing, stating that PJM's filing would have failed to address the market power issue.¹⁹

The Market Monitor's goal with the Settlement, as it was in 2011, is to address market power issues specific to Exelon. Exelon claims that the Market Monitor's recommendation to extend the Settlement is not really about Exelon's market power, but rather about promoting the Market Monitor's agenda to reform the market power mitigation process. If that were true, the Market Monitor would add all its recommendations for reforming market power mitigation to the Settlement. That is not the case. The two proposed modifications to the Settlement directly address the effectiveness of the behavioral commitments in the original Settlement with respect to Exelon's market behavior. Without the modifications, the Settlement does not meet its initial intent. The initial intent of the behavioral commitment (Settlement term a.i.) was to ensure that Exelon made competitive offers in the capacity market, which equaled the net avoidable cost rate in 2011. The provision must be modified to ensure competitive capacity market offers. The initial intent of behavioral commitment (Settlement term b.iii.) was to ensure competitive offers in the energy market, which require the transparent, verifiable development of fuel costs. The Market Monitor does not agree with Exelon's characterization of the review of Exelon's fuel cost policy. The change to Settlement term b.iii. is necessary to ensure that Exelon submits competitive energy offers. Extending and modifying the Settlement creates no new precedent. It is a positive precedent, and not a dangerous one as asserted by Exelon, for states to assert that they need additional protection from market power based on their unique circumstances. Maryland made a critical filing at FERC in 2005 to strengthen local market power mitigation based on Maryland's position in the PJM markets.²⁰

¹⁷ See the *Quarterly 2021 State of the Market Report for PJM: January through March*, Section 3: Energy Market at 132-134 and 205-208.

¹⁸ See Docket No. ER21-1591-000 (Real Time Values).

¹⁹ *PJM Interconnection, L.L.C.*, 175 FERC ¶ 61,171 at P 31 (2021).

²⁰ See *Maryland Public Service Commission v. PJM Interconnection, L.L.C.*, 123 FERC ¶ 61,169, order on reh'g, 125 FERC ¶ 61,340 (2008) (granting complaint and eliminating the interface and new construction exemptions to mitigation).

Andrew S. Johnston

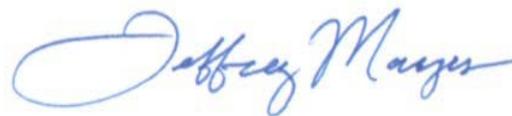
June 15, 2021

Page 7 of 7

The Settlement exists and was approved with a provision for the Commission to extend the Settlement. Nothing that has happened in the interim can give the Commission any comfort that the risk of market power has been eliminated. The terms of the Settlement should be extended as provided for in the 2012 Order because they continue to protect and are otherwise beneficial to Maryland customers.

Please direct any questions about this letter or the Market Monitor Report to Joseph Bowring at (610) 271-8051.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list in Case No. 9271, as revised April 22, 2019.

Dated at Eagleville, Pennsylvania, this 15th day of June, 2021.



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