

VIA EFILING

December 30, 2021

Andrew S. Johnston, Esq.
Executive Secretary
Public Service Commission of Maryland
6 St. Paul Street, 16th Floor
Baltimore, MD 21202

Re: Case No. 9271 – In the Matter of the Merger of Exelon Corporation and Constellation Energy Group, Inc.; Settlement Agreement between Exelon Generation Company, LLC and the Market Monitor

Dear Secretary Johnston:

Exelon Generating Company, LLC (“ExGen”) is pleased to submit, on behalf of itself, and Monitoring Analytics, LLC, acting in its capacity as the Independent Market Monitor for PJM (“Market Monitor” or “IMM”)¹ a settlement agreement (“Settlement Agreement”) that, together with revisions to ExGen’s fuel cost policies that are being filed with PJM, resolves all but one of the proposals contained in the Market Monitor’s letter and confidential attached report submitted on March 11, 2021 (“March 11 Report”) and its June 15, 2021 and August 16, 2021 submittals in Case No. 9271. The Settlement Agreement provides for the continuation for a term of ten delivery years of nearly all the behavioral commitments contained in the settlement that was filed in this Case on October 11, 2011 (“October 11 Settlement”). By reason of the Settlement Agreement, the identified behavioral restrictions will apply to offers for the sale of capacity, energy and ancillary services by Exelon Generation Company, LLC (or its successor in interest) for delivery through May 31, 2032. As part of the Settlement, the Market Monitor has agreed that it will not seek any further extension of these behavioral commitments from this Commission.

The Settlement Agreement reflects the following modest changes to the behavioral commitments in the October 11 Settlement, all of which better align the behavioral commitments with the current PJM Market Rules that are applicable to all market participants:

1. Removal of commitment 2.a.ii contained in the October 11 Settlement pertaining to preconditions for the retirement of Exelon’s units;
2. Revisions to the commitment pertaining to uprates at Exelon units;²
3. Revisions to the commitment pertaining to the circumstances under which ExGen may offer a unit or portion of a unit as “Max Emergency”;³

¹ ExGen, ExGen’s parent, Exelon Corporation, and the Market Monitor shall collectively be referred to as the “Parties”.

² Compare Section 2.a.v. in the October 11 Settlement with Section 1.a.iv. of the Settlement.

³ Compare Section 2.b.iv. in the October 11 Settlement with Section 1.b.iv. of the Settlement.

December 30, 2021
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4. A new provision, *l.d.*, which makes clear that, notwithstanding the other commitments, ExGen will be subject to the same rules applicable to any other market participant with respect to co-location of load with generation.

The Settlement Agreement contains two additional substantive changes from its predecessor. First, it contains a provision in Section 3 that allows either party to render the settlement null and void should the Commission condition approval or modify the terms thereof in a manner that is not acceptable to that party. Second, it makes changes to Section 4, which governs the potential modification of the Settlement if there is an extraordinary change in circumstances. The changes to Section 4 are designed to reflect the status quo while acknowledging that the Federal Energy Regulatory Commission docket that governed the Exelon-Constellation merger was closed years ago. Additional minor clarifying changes have been made throughout the Settlement.

With respect to the concerns regarding ExGen's fuel cost policies raised by the Market Monitor in its March 11 Report and June 15, 2021 submittal, ExGen has agreed to file with PJM certain changes to its fuel cost policies that have been reviewed by the Market Monitor and PJM and, if the Settlement Agreement is approved as filed, to refrain from initiating changes inconsistent with these policies for ten years. Together, the agreement reached with respect to the fuel cost policies and the Settlement Agreement, provide a reasonable resolution of all but one of the Market Monitor's proposals raised in the March 11 Report, its June 15, 2021 submittal, and its August 16, 2021 submittal.

The Settlement Agreement does not address the Market Monitor's proposal that Exelon Corporation be required to remain in PJM for another 10 years with a continued option for the Commission to renew. *See* Market Monitor's June 15, 2021 submittal at 5. Despite good faith negotiations, the Market Monitor and Exelon Corporation, which is the parent company of the various transmission-owning utility subsidiaries with assets in the District of Columbia, Maryland, Delaware, New Jersey, Pennsylvania, and Illinois, and of ExGen, have been unable to reach agreement with respect to the Market Monitor's proposal. If the Commission undertakes to consider this IMM proposal, the Parties agree not to oppose a Commission request for briefs on this topic. The Parties, however, reserve all rights with respect to this IMM proposal and related issues, including the right to challenge the Commission's jurisdiction to impose such an obligation.

We respectfully request Commission approval of the Settlement by February 14, 2022. Please not hesitate to contact the undersigned if you have any questions or concerns.

December 30, 2021
Andrew S. Johnston, Executive Secretary

Sincerely yours,



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On behalf of ExGen and Exelon Corporation



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On behalf of the Market Monitor

Revised Settlement Terms and Conditions

The following are the terms and conditions of the agreement (the "Settlement Agreement") between the Independent Market Monitor for PJM ("IMM") and Exelon Generation Company, LLC ("ExGen") to extend the behavioral commitments upon which the Maryland Public Service Commission ("MPSC" or the "Commission") conditioned approval of the Exelon-Constellation merger on February 17, 2012. For the avoidance of doubt, these commitments shall be binding on any successor in interest to Exelon Generation Company, LLC that results from the pending separation of Exelon Corporation into two companies.

1. BEHAVIORAL COMMITMENTS

Sections 1(a), 1(b), 1(c), and 1(d) below apply to generating units owned or controlled by ExGen, and which are either located in PJM or sell into PJM.

a. Capacity/Retirements

- i. Subject to the provision below in Section 1(a)(iv) regarding uprates, for all of its generating units ExGen will calculate its RPM auction Market Seller Offer Caps, as that term is defined in Attachment DD of the PJM Tariff, using the methods set forth in Attachment DD of the PJM Tariff. If ExGen uses a unit-specific Avoidable Cost Rate, ExGen will calculate the Avoidable Project Investment Recovery Rate ("APIR") using actual ExGen-approved capital and outage spend budgets, updated at the time of each auction to reflect the current best information. With respect to all non-APIR elements, ExGen will use the actual expenses for the twelve-month period preceding the month in which the data is due. These estimates will be updated at the time of subsequent RPM incremental auctions as more current data becomes available.
- ii. Absent catastrophic failure or significant regulatory changes which make continued operation of the unit uneconomic, ExGen will provide to PJM and the IMM 18 months written notice before retiring any generating unit owned by ExGen; provided, however, that if after such announcement, PJM determines that there are no reliability issues associated with the retirement of the unit which would cause PJM to request that Exelon enter into a reliability must run agreement, then ExGen may, at its option and in its sole discretion, accelerate the retirement date, if permitted under PJM Market Rules, as defined in the PJM Open Access Transmission Tariff ("Tariff"). Nothing herein shall alter the IMM's Tariff-defined requirement to determine whether there are market power issues associated with the retirement or limit any related actions, as defined in the Market Rules, by the IMM.
- iii. As part of the written notice to PJM and the IMM, ExGen will provide the IMM with ExGen's full economic analysis supporting the retirement decision. In this context, "full economic analysis" means the information presented to the ultimate decisionmaker as to whether to retire a generating unit, including any assumptions or calculations that provide the basis for the information presented.
- iv. Should ExGen wish to uprate a unit, the rules contained in the PJM Market Rules shall control as to whether the uprate is considered to be a Planned Generation Capacity Resource or an Existing Generation Capacity Resource. Any offer for the uprated MW

Revised Settlement Terms and Conditions

shall be subject to the PJM Market Seller Offer Caps, as defined in Attachment DD.

b. Energy Market Offers

- i. Subject to the provisions of Section 2(b)(ii) below, for all non-nuclear units owned or controlled by ExGen, ExGen's post-merger market-based offers will be consistent with the physical capabilities of the units, e.g. actual unit minimum and maximum (no block loading), ramp rates and minimum run times.
- ii. With respect to each non-nuclear unit owned or controlled by ExGen, ExGen will continue to set notification and start up times such that the total amount of time between notice and synchronization to the grid is a function only of the physical capability of each unit. ExGen will not adjust the notification and/or start-up time for any unit based on any factor other than the physical capability of the unit without prior review and approval of the IMM. ExGen also will comply with any new PJM rules applicable to unit notification and start-up time to the extent that such rules are more stringent than the provisions of this Settlement.
- iii. For all peakers owned or controlled by ExGen, in addition to its obligations set forth in the previous Sections 1(b)(i) and 1(b)(ii), ExGen's maximum market-based offers as of the date of the closing of the merger and for the term of this Settlement Agreement will be developed as follows:
 - (1) unit costs determined daily in accordance with Schedule 2 of the PJM Operating Agreement and the PJM Cost Development Guidelines as set forth in PJM Manual No. 15, plus
 - (2) the higher of ten percent of such costs or the applicable percentage of cost permitted under the PJM Market Rules to the extent a unit is a frequently mitigated unit, plus
 - (3) an adder not to exceed \$1.00/MWh.
- iv. No unit or part of a unit will be offered as "Max Emergency" except as necessary to comply with environmental limits or fuel limits as defined by the PJM Market Rules.
- v. Each nuclear unit for which ExGen has the authority to determine offers will be self-scheduled/must run at Economic Maximum ("Ecomax") unless reduced in response to negative prices, physical limitations of the unit, or transmission limitations.
- vi. Conowingo Generation will be scheduled by PJM.

c. Ancillary Services Offers

Absent significant regulatory change that alters the obligation of existing units to make offers into the various reserve markets, ExGen will continue to offer regulation and synchronized reserve ancillary services and reserves from units owned by ExGen as of the date of this Settlement Agreement, in same manner and quantities that have been historically offered into these markets. For the Day-Ahead Scheduling Reserves ("DASR") market, ExGen's market-based offers for nuclear units will be zero dollars, it being understood that ExGen will not forego opportunity costs as provided in the DASR market design.

d. Co-location of load at Generation Stations

Revised Settlement Terms and Conditions

Notwithstanding any other provision of this Section 1, ExGen's units shall be subject to the same rules that are applicable to any other PJM market participant with respect to co-location of load with generation.

2. Applicable Term

This Settlement Agreement shall apply to offers that pertain to all PJM markets including capacity, energy or ancillary services to be delivered in Delivery Years 2021/2022 through 2031/2032 and neither party shall advocate for its extension or renewal.

3. Effectiveness

This Settlement Agreement shall only become effective upon approval by the Commission, which approval shall not be subject to condition or to modification of the terms set forth herein. In the event of a Commission order which conditions approval or modifies the terms of the Settlement Agreement, and either ExGen or the IMM, in its discretion, finds such condition or modification unacceptable, it shall serve notice of unacceptability on the other within three business days following receipt of such Commission order. Upon issuance of such notice (a copy of which shall be filed in Case No. 9271), the Settlement Agreement shall be null and void. Absent such notification, ExGen and the IMM shall be deemed to have waived their respective rights to object to the acceptability of such conditions or modifications contained in the Commission order. The Settlement Agreement does not address the IMM's proposal that Exelon Corporation be required to remain a member of PJM. Accordingly, Commission action or inaction on the IMM's proposal regarding Exelon Corporation's membership in PJM shall not be a cause for either the IMM or ExGen to issue a notice of unacceptability. Nothing in this paragraph consents to conditions or modifications on behalf of, or waives or authorizes the waiver of the rights of, parties other than the IMM or ExGen.

4. Modification

If, at any time during such term, ExGen believes that there is an extraordinary change in circumstances that calls into question whether certain of the commitments made by ExGen in Section 1 should still be required, then ExGen will work in good faith with the IMM to develop an appropriate and mutually agreeable amendment to this Settlement Agreement. Examples of such changes are elimination of the RPM capacity market or elimination of a single market clearing price energy market structure. Should ExGen and the IMM be unable to agree to such an amendment, ExGen can file with MPSC for authorization to implement changes to this Settlement Agreement in light of such extraordinary change in circumstances. Nothing herein shall prevent ExGen from seeking relief with respect to this agreement in such extraordinary circumstances from the Federal Energy Regulatory Commission ("FERC") in addition to the MPSC, provided that ExGen promptly files a copy of any such request to FERC in Case No. 9271).

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Revised Settlement Terms and Conditions

Carrie Hill Allen

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Name

VP + Deputy General Counsel
Title

December 30, 2021
Date

For Exelon Generating Company, LLC



Jeffrey W. Mayes
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General Counsel
Title

December 30, 2021
Date

Monitoring Analytics, the IMM for PJM