



VIA EFILING

December 30, 2021

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

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

Dear Executive Secretary Johnston:

On December 30, 2021, Exelon Corporation and the Independent Market Monitor (“Market Monitor”) filed a partial settlement (“Settlement Agreement”) that addresses the offer behavior of generation owned by Exelon Corporation. The Settlement Agreement extends for ten years, with defined modifications, the Settlement Terms and Conditions between Exelon Corporation and the Market Monitor that were incorporated into the order approving merger subject to conditions issued in 2012 (“Order No. 84698”).¹ Order No. 84698 addressed market power concerns resulting from the merger of Exelon Corporation and Constellation Energy Group. Exelon Corporation is the parent of a number of subsidiaries, including Exelon Generation Company, LLC (“ExGen”). ExGen is expected to become a separate and unaffiliated corporation in 2022. ExGen’s commitments, defined in the Settlement Agreement, will continue post separation.

After the separation of ExGen, Exelon Corporation will continue to own the transmission assets that are essential to ExGen’s ability to meet its commitments under the settlement. It is therefore essential that Exelon Corporation and its transmission assets remain in PJM.

The Commission, on its own initiative, made Exelon Corporation’s commitment to remain in PJM an explicit condition of approval of Exelon Corporation’s 2012 merger with Constellation Energy

¹ See *In the Matter of the Merger of Exelon Corporation and Constellation Energy Group, Inc.*, Order No. 84698, Case No. 9271 (February 17, 2021) (“Order No. 84698”).

Group.² The Settlement Agreement does not address the Market Monitor's recommendation that the Commission make explicit that the Commission's 2012 requirement that Exelon Corporation remain in PJM continues to be a condition of the merger approval.

The Commission included this condition in Order No. 84698 based on its authority to include conditions on its approval of mergers.³ Exelon Corporation accepted this condition in 2012. The Market Monitor recommends that the Commission explicitly require that Exelon Corporation remain in PJM as a continued condition of the merger approval. Nothing has changed since 2012 that would justify lifting this essential protection.

It was reasonable to require that Exelon Corporation remain in PJM indefinitely as a condition of the approval of the merger of Exelon Corporation and Constellation in 2012. The merger resulted in a consolidation of the ownership of generation and transmission assets that made the continued participation of Exelon Corporation in PJM even more critical to the successful functioning of PJM markets, for the benefit of Maryland customers (and all PJM customers) than if Exelon Corporation had not added Constellation assets to its portfolio. Exelon Corporation has further added to its transmission assets since the 2012 merger, making Exelon's continued membership in PJM even more essential to the functioning of PJM markets.⁴

The most important behavioral requirement in Order No. 84698 is the directive that Exelon Corporation remain in PJM. The most significant exercise of market power available to Exelon Corporation is its ability, as a transmission owner, to leave PJM or to threaten to leave PJM. This potential threat provides Exelon Corporation with leverage to shape market policy to its benefit. The Commission should require that Exelon Corporation remain in PJM.

It would be extremely disruptive to the functioning of the PJM markets if Exelon Corporation were to leave PJM. It would be impossible for the Commission to enforce the terms of the proposed Settlement Agreement if Exelon Corporation were to leave PJM, as PJM rules governing generator behavior would no longer control.

This is the only issue raised by the Market Monitor in its ten year review of the conditions included in Order No. 84698 that remains unresolved by the Settlement Agreement and associated changes to Exelon's fuel cost policy. The Market Monitor requests that the Commission

² See *In the Matter of the Merger of Exelon Corporation and Constellation Energy Group, Inc.*, Order No. 84698, Case No. 9271 (February 17, 2021) at 62–63.

³ See *id* at 102, citing PUA § 6-105(g)(3)(ii).

⁴ See *In the Matter of the Merger of Exelon Corporation and Pepco Holdings, Inc.*, Order No. 86990, Case No. 9361 (May 15, 2015).

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rule on this issue and make explicit that the requirement that Exelon Corporation remain in PJM continues to be a condition of merger approval.

Any such decision by the Commission would not be a modification of the Settlement Agreement, which does not address this issue. Any such decision would be a reiteration of the Commission's decision in its Order No. 84698.

If the Commission determines a need for additional information, including a hearing, the Market Monitor is ready to participate.

Respectfully submitted,



Jeffrey W. Mayes
General Counsel
Monitoring Analytics, LLC

cc: Parties of record to Case No. 9271