

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

Atlantic City Electric Company, PJM Interconnection, L.L.C.))	Docket Nos. ER24-2888-000
Baltimore Gas and Electric Company, PJM Interconnection, L.L.C.))	ER24-2889-000
Commonwealth Edison Company, PJM Interconnection, L.L.C.))	ER24-2890-000
Delmarva Power & Light Company, PJM Interconnection, L.L.C.))	ER24-2891-000
PECO Energy Company, PJM Interconnection, L.L.C.))	ER24-2893-000
Potomac Electric Power Company, PJM Interconnection, L.L.C.))	ER24-2894-000
		(not consolidated)

**PROTEST OF THE PJM POWER PROVIDERS GROUP AND THE ELECTRIC
POWER SUPPLY ASSOCIATION**

Pursuant to Rule 211 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (the “Commission” or “FERC”)¹ and in accordance with the Commission’s September 12, 2024 notice in the above-captioned proceedings,² The PJM Power

¹ 18 C.F.R. § 385.211.

² *Notice of Extension of Time*, Docket Nos. ER24-2888-000; ER24-2889-000; ER24-2890-000; ER24-2891-000; ER24-2893-000 and ER24-2894-000 (not consolidated), dated September 12, 2024.

Providers Group (“P3”)³ and the Electric Power Supply Association (“EPSA”)⁴ submit this protest⁵ to the August 28, 2024 tariff filings, pursuant to Section 205 of the Federal Power Act (“FPA”)⁶ and Part 35 of the Commission’s regulations,⁷ by PJM Interconnection, L.L.C. (“PJM”), on behalf of Atlantic City Electric Company; Baltimore Gas and Electric Company; Commonwealth Edison Company; Delmarva Power & Light Company; PECO Energy Company; and Potomac Electric Power Company (collectively “Exelon Companies”), regarding revisions to their respective PJM Open Access Transmission Tariff (“Tariff”) Attachment H rate schedules governing transmission service to address treatment of co-located load (the “Tariff Amendment Filings”).^{8 9} For the reasons set forth herein, the Exelon Companies’ proposed Tariff revisions

³ P3 is a non-profit organization dedicated to advancing federal, state and regional policies that promote properly designed and well-functioning electricity markets in the PJM Interconnection, L.L.C. (“PJM”) region. Combined, P3 members own over 83,000 MWs of generation assets and produce enough power to supply over 63 million homes in the PJM region covering 13 states and the District of Columbia. For more information on P3, visit www.p3powergroup.com.

⁴ EPSA is the national trade association representing competitive power suppliers in the US. EPSA members provide reliable and competitively priced electricity from environmentally responsible facilities using a diverse mix of fuels and technologies. EPSA seeks to bring the benefits of competition to all power customers. This pleading represents the position of EPSA as an organization, but not necessarily the views of any particular member with respect to any issue.

⁵ This Protest represents the position of P3 as an organization, but not necessarily the views of any particular member with respect to any issue.

⁶ 16 U.S.C. § 824d.

⁷ 18 C.F.R. pt. 35 (2023).

⁸ See Atlantic City Electric Company Tariff Filing Modifying PJM OATT Attachment H-1, Atlantic City Electric Company, Docket No. ER24-2888-000 (filed Aug. 28, 2024) (“Atlantic City Filing”); Baltimore Gas and Electric Company Tariff Filing Modifying PJM OATT Attachment H-2, Baltimore Gas and Electric Company, Docket No. ER24-2889-000 (filed Aug. 28, 2024) (“BGE Filing”); Commonwealth Edison Company Tariff Filing Modifying PJM OATT Attachment H-13, Commonwealth Edison Company, Docket No. ER24-2890-000 (filed Aug. 28, 2024); Delmarva Power & Light Company Tariff Filing Modifying PJM OATT Attachment H-3, Delmarva Power & Light Company, Docket No. ER24-2891-000 (filed Aug. 28, 2024); PECO Energy Company Tariff Filing Modifying PJM OATT Attachment H-7, PECO Energy Company, Docket No. ER24-2893-000 (filed Aug. 28, 2024); Potomac Electric Power Company Tariff Filing Modifying PJM OATT Attachment H-9, Potomac Electric Power Company, Docket No. ER24-2894-000 (filed Aug. 28, 2024).

⁹ Exelon requested that PJM submit the Tariff Amendment Filings pursuant to FERC Order No. 714 as part of an XML filing package that purports to conform with the Commission’s regulations. PJM has agreed to make all filings on behalf of the PJM Transmission Owners in order to retain administrative control over the PJM Tariff. Exelon requested that PJM submit the revisions to Attachment H-1 in the eTariff system as part of PJM’s electronic Intra PJM Tariff.

present significant legal and policy implications and are unjust, unreasonable, and unduly discriminatory. The Tariff Amendment Filings, therefore, should be rejected.

INTRODUCTION AND SUMMARY

Exelon Companies' FPA Section 205 Tariff Amendment Filings seek revised rate schedules in Attachment H-1 ("Annual Transmission Rates") for each of the zones of the individually docketed proceedings in order to "confirm" that any transmission service to "co-located load" is Network Integration Transmission Service ("NITS"), as defined in PJM's Tariff, unless the load is designated to receive Point-to-Point service, "in which it would pay charges like any point-to-point customer."¹⁰ This would be the case for all load in the Exelon Companies' zones that is "electrically connected and synchronized when consuming power, regardless of the location of the physical interconnection" to the applicable transmission facilities or whether that connection also uses facilities owned by a third party.¹¹

While the Exelon Companies state that the proposed Tariff amendments do not change any of their own formula rates and will have no impact on their respective revenue requirements, the filings do seek to impose new costs and an obligation to take specific service on any other co-located load – apparently regardless of contract, structure, or arrangement – by seeking "clarification in the Tariff" that "removes any doubt that co-located end-use load will bear its share of the costs of the transmission system it uses and from which it benefits."¹² These filings would erect barriers to flexible, competitive power supply options available to large load customers, stymying economic development at the very time states and federal policymakers are seeking avenues and alternatives to support the addition of needed infrastructure.

¹⁰ *See, for example*, Atlantic City Filing, pp. 1, 4 and 6.

¹¹ *Id.* proposed Attachment H-1, P 5.

¹² *Id.* p. 6.

As outlined below, the Exelon Companies' proposed Tariff revisions are unjust, unreasonable, and unduly discriminatory, and they present significant legal and policy implications. The Tariff Amendment Filings, therefore, should be rejected.

PROTEST

I. The Tariff Amendment Filings Are Not Permissible FPA Section 205 Filings.

PJM's Consolidated Transmission Owners Agreement ("CTOA") allows transmission owners to file certain amendments to their portions of Attachment H to the PJM Tariff as they relate to their own rates and charges.¹³ However, only PJM can change the terms and conditions of the PJM Tariff.¹⁴ Here, the transmission owners do not seek to alter their own rates and terms, but rather seek to impose regulatory and policy changes on a broad set of market participants and stakeholders by seeking to alter the PJM Tariff definition of "Network Load" and forcing a departure from the paradigm that the Network Customer—not the transmission owner—makes determinations regarding Network Load. The CTOA does not authorize individual transmission owners to unilaterally propose such revisions under Section 205 of the Federal Power Act, nor do the transmission owners argue otherwise. To force such a paradigm shift, the transmission owners would need to file a complaint under FPA Section 206 and meet their threshold burden of showing that the existing Tariff provisions are "unjust and unreasonable." The transmission owners have not done so. Therefore, the Tariff Amendment Filings should be dismissed.

Moreover, the Tariff Amendment Filings conflict with PJM's own implementation of its Tariff, are at odds with PJM's co-location guidance document,¹⁵ and run counter to PJM's

¹³ CTOA §§ 7.1.3, 7.3.5.

¹⁴ CTOA § 7.5.1.

¹⁵ PJM Guidance on Co-Located Load (Posted March 22, 2024, Updated April 17, 2024), *available here* <https://www.pjm.com/-/media/markets-ops/rpm/rpm-auction-info/pjm-guidance-on-co-located-load.ashx>.

evidentiary filings in the Susquehanna Amended Interconnection Service Agreement (“ISA”) proceeding (“Susquehanna Proceeding”).¹⁶

Regardless, even if the transmission owners were authorized under the CTOA to seek these reforms under Section 205 of the FPA, such that their only hurdle were to demonstrate that their proposal is just and reasonable, they would fail to clear it, for the reasons set forth below.

II. The Tariff Amendment Filings Are Discriminatory, Unjust And Unreasonable Pursuant To FPA Section 205 And Therefore Must Be Rejected.

In each of these docketed cases, the distribution company at issue (Atlantic City Electric Company; Baltimore Gas and Electric Company; Commonwealth Edison Company; Delmarva Power & Light Company; PECO Energy Company; and Potomac Electric Power Company) is owned by the Exelon Corporation, which also owns the interconnected transmission system of each company.

While each utility states that it is merely seeking to clarify and codify current rules, in reality, the utilities are proposing revisions that newly force behind-the-meter co-location arrangements to take Point-to-Point transmission service or be designated as Network Load—avenues that require that the customer/load be transmission dependent and incur transmission and ancillary service costs, regardless of whether, and to what extent, they are taking such a service. It goes without saying that a company like Exelon, which spun off the majority of its electric generation in 2022 to become a fully regulated transmission and distribution company,¹⁷ would inherently benefit from such a requirement.

¹⁶ PJM Interconnection, L.L.C., *Amendment to ISA, SA No. 1442, Queue No. NQ-123 (amend)*, (filed June 1, 2024), Docket No. ER24-2172-000.

¹⁷ See <https://www.exeloncorp.com/newsroom/exelon-completes-separation-of-constellation>.

The Commission's primary obligation under FPA Section 205 is to protect consumers from excessive rates and charges.¹⁸ While the Exelon Companies state that the proposed Tariff revisions will not change their respective utilities' formula rates and will have no impact on their revenue requirement or rate designs, they are seeking to ensure that all other LSEs, "whomever that might be, bear its share of the costs of transmission services it uses and of the transmission facilities that will interconnect the load as well as the generator to the grid."¹⁹ They seek to impose these costs upon load and LSEs without any explanation of how doing so comports with the Commission's longstanding cost-causation principles. There is simply no showing that the revisions ensure that co-located loads are only paying for the costs they cause and the benefits they receive from the transmission system. The transmission owners are attempting to impose obligations and costs for power supply arrangements without any details or information regarding any actual arrangements. The proposal ignores the fact that there are many ways that co-location arrangements may be structured, instead attempting to hard-wire cost obligations without any accounting for cost causation or defined benefits of the many configurations.

The proposed Tariff revisions appear to be based on the notion that there is a single co-location configuration, and in their presumed configuration the co-located customer would (or must) in most cases be treated as Network Load. That is simply not the case. There are many configurations that could be utilized for co-located loads, based on the specific needs of customers and the technical realities of the configuration. The proposal ignores that reality. Neither the evidence (none of which was provided) nor reality support the Exelon Companies proposed sweeping Tariff changes and, therefore, the proposed changes are unjust and unreasonable.

¹⁸ See *Municipal Light Boards v. FPC*, 450 F.2d 1341, 1348 (D.C. Cir. 1971), cert. denied, 405 U.S. 989 (1972).

¹⁹ Atlantic City Filing, p. 4.

To illustrate the fundamental flaw in Exelon’s proposal, consider how the proposal would work if the co-located load chose to take Point-to-Point transmission service. Point-to-point transmission service requires the transmission customer to designate a Point of Receipt (where power will originate) and a Point of Delivery (where power will be delivered to the customer). It also requires the customer to schedule use of the reserved transmission, designating the quantity of electricity that will flow every interval. Now consider two configurations – the first occasionally takes energy from the grid, the second never takes energy from the grid. The first could designate a point on the grid as the Point of Receipt and schedule the use of transmission service based on the quantity of energy it needs from the grid. The second configuration has no natural Point of Receipt, because it never pulls from the grid. The second configuration also would never schedule use of the transmission service because it is never using grid power. Yet Exelon would impose on both configurations a nearly impossible choice: either commit to receiving network service (and pay the high costs of transmission charges for little, if any, benefit) or commit to purchasing Point-to-Point Transmission service, which is logistically nonsensical.

III. The Exelon Companies Knowingly Seek An End-Run Around Pending FERC Regulatory And Legal Determinations Under Consideration.

In this proceeding, the Exelon Companies state that unless the co-located load is designated to receive Point-to-Point transmission service, *any* service to co-located load is Network Load, “regardless of the location of the physical interconnection.”²⁰ There is no basis to support this position, which ignores the physical realities of the many different co-location configurations that either exist today or could be developed. Yet, Exelon Companies advance this position through Section 205 filings in these docketed proceedings at the same time that they are continuing to

²⁰ Atlantic City Filing, p. 6.

advance this exact policy position in the separate, pending Susquehanna Proceeding.²¹ The Exelon Companies' aim in these docketed proceedings is to impose their litigation position in the Susquehanna Proceeding.²²

IV. The Tariff Amendment Filings Attempt To Make Key Policy Determinations On The Important, Complex Nascent Issues Pertaining To Co-Location.

The Exelon Companies seek significant policy and regulatory changes that would effectively standardize co-location arrangements at a time when Congress, the Commission, and the Regional Transmission Organizations (“RTOs”) and Independent System Operators (“ISOs”) (collectively, “ISOs/RTOs”) are just beginning to grapple with unique, complex and diverse new regional and state-specific co-location arrangements. The Commission should not allow this one-sided, discriminatory set of filings to detract from the important work already underway on several other policy fronts.

For example, on June 4, 2024, the U.S. House Energy, Climate, and Grid Security Subcommittee hearing entitled, “Powering AI: Examining America’s Energy and Technology Future,” examined “the economic, energy, regulatory, and geopolitical considerations of electricity demand growth, including from increasing data center and artificial intelligence (AI) usage.”²³ The subject of co-location of data centers was part of some of the speakers’ presentations and the Committee’s discussions.

²¹ Protest of Exelon Corporation and American Electric Power Service Corporation, p.5, (filed July 24, 2024); *also see* Joint Protest of Exelon Corporation and American Electric Power to PJM Interconnection, L.L.C. Deficiency Response (September 24, 2024).

²² While the Exelon Companies do not acknowledge in this proceeding that their litigation positions are the same in two pending proceedings, they do acknowledge that they are “aware that, in another docket, another utility has taken the position that this type of load is not network load.” *See* Atlantic City Filing, p. 4, fn 3.

²³ U.S. House Energy & Commerce Chair Rodgers Memorandum, Hearing titled, “Powering AI: Examining America’s Energy and Technology Future,” dated May 31, 2024, https://d1dth6e84htgma.cloudfront.net/06_04_24_ENG_Memorandum_ad79a2f028.pdf.

Equally as important, as the Exelon Companies highlight in their Tariff Amendment Filings, on August 2, 2024, the Commission directed a Commissioner-led technical conference to consider the topic and the novel issues raised by this competitive approach to supply large loads. That conference is scheduled for November 1, 2024 (“FERC Co-Location Technical Conference”).²⁴ FERC’s Co-Location Technical Conference will have a panel discussion that will, in part,

[E]xplore potential issues associated with the development and operation of large loads co-located at generating facilities in greater detail, such as (1) various configuration options for large loads co-located with existing or new generation; (2) whether and how large co-located loads receive wholesale market services or benefits from the transmission system, how those benefits vary by configuration, whether and how those benefits can or should be measured for the purposes of cost allocation, what challenges arise in ensuring appropriate cost allocation, and any potential for cross-subsidization; (3) what impact various co-location configurations may have on reliability and resource adequacy; (4) cost and impact of back-up services for large co-located loads; (5) what impact large co-located load arrangements may have on Commission-jurisdictional markets, such as implications for energy, ancillary services, and capacity market prices; and (6) whether any necessary studies on reliability or grid impacts should be conducted by the relevant RTO/ISO or utility.²⁵

The ISOs/RTOs have also been having stakeholder discussions on the various issues implicated with co-location of large load and generation. PJM and stakeholders previously considered tariff changes related to co-located loads that failed in stakeholder voting.²⁶ More recently, the Midcontinent Independent System Operator, Inc. (“MISO”) has been holding

²⁴ Atlantic City Filing, p. 5, citing Large Loads Co-Located at Generating Facilities, *Notice of Commissioner-Led Technical Conference*, Docket No. AD24-11 (August 2, 2024).

²⁵ Large Loads Co-Located at Generating Facilities, *Second Supplemental Notice of Commissioner-Led Technical Conference*, pg. 3, Docket No. AD24-11-000 (September 10, 2024).

²⁶ PJM Issue Tracking, <https://www.pjm.com/committees-and-groups/issue-tracking/issue-tracking-details.aspx?Issue=6897c7e7-d8b7-438e-9e3f-b6099f9dd7ec>; also see PJM Presentation to the Markets and Reliability Committee (“MRC”) (October 25, 2023), <https://www.pjm.com/-/media/committees-groups/committees/mrc/2023/20231025/20231025-item-01---1-capacity-offer-opportunities-for-generation-with-co-located-load---presentation.ashx>; and MRC Voting Results (October 25, 2023), <https://www.pjm.com/-/media/committees-groups/committees/mrc/2023/20231025/20231025-mrc-summarized-voting-results.ashx>.

stakeholder meetings through its Planning Subcommittee (“PSC”) to consider, in part, a proposal by NextEra to address load and generation located behind the same Point of Interconnection. The goal of the discussion is to obtain stakeholder feedback to develop and propose specific MISO Business Practice Manual and/or MISO Tariff changes regarding co-locations.²⁷

Given the importance of more thorough discussions and understanding of the diverse, complex, novel, and often unique arrangements that are occurring for these new co-location projects, it is neither timely nor prudent for the Commission to adopt PJM Tariff changes that will create a standardized design for co-located loads. For all of these reasons, the Tariff Amendment Filings should be rejected.

V. The Tariff Amendment Filings Raise Significant Legal Questions In What Is Styled As Simple Tariff Revisions.

The Tariff Amendment Filings raise significant legal questions, including, but not limited to: (1) whether the proposed Tariff revisions impermissibly mandate federal wholesale market treatment for facilities and arrangements otherwise within state retail rate authority; (2) how the proposed revisions interact with the Public Utility Regulatory Policies Act of 1978 (“PURPA”) with respect to qualifying facilities (“QFs”) and other existing behind the meter and netting arrangements;²⁸ and (3) directly or indirectly interfere with private contractual arrangements of current or pending co-located loads that are otherwise adhering to applicable state and federal law, as well as PJM’s Tariff requirements. The Exelon Utilities’ scantily supported filings fail to address these significant, material legal concerns and, thus, must be rejected by the Commission.

²⁷ MISO PSC, June 5, 2024, meeting, item 6, “Market Participation and Registration of Co-Located Load and Generation – NextEra,” https://cdn.misoenergy.org/20240605%20PSC%20Item%2006%20Market%20Participation%20and%20Registration%20of%20Co-Located%20Load%20and%20Generation_NextEra633171.pdf.

²⁸ On September 27, 2024, the Exelon Companies filed an Answer to the NRDC Limited Protest to clarify treatment of QFs and offered suggested revised tariff language.

VI. CONCLUSION

Given that the Tariff Amendment Filings represent proposed PJM Tariff revisions that are unduly discriminatory, unjust and unreasonable, as well as attempting to establish significant regulatory policy on issues that have yet to be addressed by this Commission and raising numerous legal questions, P3 and EPSA respectfully request that the Commission reject the Exelon Companies' filings without prejudice.

Respectfully submitted,

On behalf of The PJM Power Providers Group

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Dated: October 2, 2024

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the Official Service List compiled by the Secretary in this proceeding.

Dated at Washington, D.C., this 2nd day of October, 2024.

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