



March 28, 2023

112 West Street
Annapolis, MD 21401

**Oppose- House Bill 1186- Public Service Companies- Annual Report on Votes Cast at Meetings of
Regional Transmission Organizations**

Exelon respectfully opposes *House Bill 1186- Public Service Companies- Annual Report on Votes Cast at Meetings of Regional Transmission Organizations*. House Bill 1186 requires each public service company that is a member of a regional transmission organization to provide to the Maryland Public Service Commission (PSC) an annual report on votes cast by the public service company at any meeting of the regional transmission organization (RTO). The report includes all votes cast by the public service company, regardless of whether the vote is already disclosed by the RTO, as well as an explanation of how each vote cast by the public service company is in the interest of the public.

Exelon is a member of PJM Interconnection (PJM), the RTO that coordinates the movement of wholesale electricity in all or parts of Delaware, Illinois, Indiana, Kentucky, Maryland, Michigan, New Jersey, North Carolina, Ohio, Pennsylvania, Tennessee, Virginia, West Virginia and the District of Columbia and is responsible for transmission planning to serve that region. PJM is exclusively regulated by the Federal Energy Regulatory Commission (FERC) through the Federal Power Act.

PJM holds regular meetings with stakeholders, which are integral to developing and refining PJM's rules, policies, and processes. Additionally, many different subcommittees and groups that are part of PJM's governance structure and help administer an open grid and transparent market hold 100's of meetings throughout the year. Meetings are open to the public and the press, with few exceptions and many votes are both formal and recorded. At some lower-level PJM stakeholder committee meetings, votes are not recorded because the structure is intentional to encourage consensus building and brainstorming. The stakeholders recognize the unique role of the stakeholder process in exploring, solving and negotiating regional solutions for the RTO and the wholesale power markets.

At the PJM Members Committee, which is the senior most standing committee and through which every major vote is taken, votes are recorded by company and are publicly available and published by PJM. It is **only** at the PJM Members Committee that votes are considered "final" which is why there is a detailed record of how all participating PJM Members voted on a matter.

In addition, the stakeholders understand the importance of transparency of the process to all those affected by it. The PJM Manual requires that all members acknowledge that documents, reports, slide shows, and other written material used are intended to be works in progress and to encourage dialogue, discussion, debate, and preferably, movement towards consensus. Therefore, these work products and discussion should be treated in the spirit to which they are intended, that is not as final or complete documents nor the final position or view of a participant. The current structure of voting accomplishes that goal and is, itself, in the public interest. (See PJM's Manual 34 Section 4.5)

Apart from that, however, House Bill 1186 is preempted by federal law. The rules governing PJM stakeholders' right to vote on PJM committee matters, including the disclosure of those votes and/or the reasoning underlying those votes, are matters that are within FERC's exclusive legal authority over PJM's operating rules and procedures. By requiring a public service company to explain how votes cast at PJM meetings on issues that are completely within the scope of federal jurisdiction are in the *State's* public interest, the bill attempts to regulate areas—the wholesale power market and oversight of regional transmission operators—that Congress has exclusively delegated to the federal government. House Bill 1186 interferes with and intrudes on FERC's exclusive legal authority.

Finally, the proposed statute change would impose a vague “public interest” standard on a private company's activities and votes regarding the interstate wholesale power market and transmission grid which spans multiple states. As a result, House Bill 1186 has the practical effect of impermissibly regulating interstate commerce in violation of the Dormant Commerce Clause. PJM, under the federal regulatory oversight of FERC, operates the regional transmission grid and wholesale power market, which are quintessential areas of interstate commerce. The Dormant Commerce Clause prohibits states from interfering with interstate commerce by interjecting one state's regulatory regime on otherwise interstate conduct. Public service companies vote at PJM on issues related to the interstate wholesale power market and related to their roles as transmission asset owners, not as distribution utilities, since PJM operates as a regional transmission organization. Requiring a company to demonstrate how each of its votes in PJM are in the interest of the public is an impermissible regulation of interstate commerce.

Exelon opposes House Bill 1186 as it is pre-empted by federal law and is in violation of the Dormant Commerce Clause. Not only are there legal implications with the proposed legislation, it is poor policy. This legislation, even were it lawful, has the ability to curb innovation and collaboration at a time when all hands should be on deck considering many novel ideas to help ensure our grid is safe, reliable and resistant to climate change. Exelon understands that some parties are interested in additional transparency beyond the substantial transparency already assured under current law and PJM procedures, however we believe there are other opportunities and options for sharing information and ideas. House Bill 1186 is unnecessary, administratively overburdensome and intrudes upon activity that is exclusively federally regulated. Exelon respectfully requests that the Committee issue an unfavorable committee report on House Bill 1186.

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