

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Public Service Commission of West Virginia
v.
PJM Interconnection LLC

Docket No. EL23-45

**Comments of Public Citizen, And Request To Address RTO Governance
Shortcomings In A Notice of Inquiry of Order 719**

The Public Service Commission of West Virginia regulates the state’s utilities. PJM Interconnection LLC is a private corporation and administrative construct of FERC, tasked with sweeping Federal Power Act authorities of power market oversight. PJM is governed by a FERC-approved tariff that sets rules for the wholesale market covering all or parts of 13 U.S. states with 65 million people. Companies like PJM are public utilities classified as regional transmission organizations (RTOs).

More than 23 years ago, FERC encouraged the formation of RTOs in part to “facilitate lighter handed regulation” and “reduce the need for Commission oversight and scrutiny”.¹ Deregulation of RTO governance, and FERC’s assumption that their internally-managed stakeholder procedures would be fair and transparent, has failed. The result is the privatization of electricity policy making in RTO service territories.

This proceeding nominally involves a request by the Public Service Commission of West Virginia to attend meetings of PJM’s powerful Liaison Committee meetings. PJM arbitrarily restricts access to this and other powerful committees (including the Finance Committee) to PJM members. Not only do state regulators fail to qualify for full membership, but PJM does not permit public interest organizations like Public Citizen to become members. This is a fundamental failing of RTOs: they prioritize the interests of their members—not the public interest.

A Commission order granting state regulators access to PJM’s Liaison Committee will leave unaddressed the fact that other similarly situated non-PJM members (such as Public Citizen) are also denied access to PJM’s Liaison Committee and Finance

¹ FERC Order 2000, at pages 3 and 96, www.ferc.gov/sites/default/files/2020-06/RM99-2-00K_1.pdf

Committee meetings. So as part of any order granting West Virginia’s request, the Commission must initiate a Notice of Inquiry of Order 719 to pursue long-neglected governance reforms.

The intent of Order 719 was “to improve the operation of organized wholesale electric markets in the areas of . . . the responsiveness of RTOs to their customers and other stakeholders, and ultimately to the consumers who benefit from and pay for electricity services” with a requirement “that RTOs and ISOs continue over time to consider customer and other stakeholder needs as the architecture or market environment of the RTO or ISO changes. This criterion is necessary to ensure that responsiveness continues into the future.”²

A recent rate filing altering procedures by which PJM recovers its \$300 million in annual administrative costs featured a dissent by Commissioner Allison Clements, who noted that “[h]aving previously participated in different RTO stakeholder processes, I appreciate the value of clarity in procedures related to ensuring transparency. I am not convinced based on the record compiled to-date that the procedures outlined by PJM will prove adequate.”³

Academic research suggests that governance failures at RTOs like PJM are hindering efforts to not only protect consumers, but address climate change.⁴

Today I am testifying in person before the Maryland Senate Education, Energy, and Environment Committee in support of Delegate Charkoudian’s HB1186, which passed the Maryland House by a vote of 100-35 on March 11.⁵ The legislation requires the state’s utilities to record votes cast in PJM’s stakeholder process. The legislation is necessary because FERC fails to require PJM members to record votes cast in the lower level committees. Currently, tariff reforms and other proposals developed in PJM’s lower level committees allow members to cast votes anonymously, and allow corporate

² At pages 1 and 509, <https://ferc.gov/media/order-no-719>

³ December 1, 2021 *Order Accepting and Suspending Proposed Tariff Revisions, and Establishing Hearing and Settlement Judge Procedures re PJM Interconnection, L.L.C. under ER22-26*.

⁴ Shelley Welton, *Rethinking Grid Governance for the Climate Change Era*, [California Law Review](https://californialawreview.org/print/rethinking-grid-governance/), Volume 109, No. 1, February 2021, <https://californialawreview.org/print/rethinking-grid-governance/>

⁵ <https://mgaleg.maryland.gov/mgaweb/Legislation/Details/HB1186>

members to cast multiple votes on behalf of all of their affiliates.⁶ This means that sprawling utility companies like Exelon and FirstEnergy with numerous affiliates can cast a dozen or more votes, and PJM preserves no record of their votes cast. Meanwhile, organizations like Public Citizen are not permitted any voting rights.

As evidenced by Exhibit A, utility affiliates of Exelon Corp. and FirstEnergy are actively lobbying against HB1186. Powerful PJM members are trying to stop state efforts to improve governance and transparency of PJM operations. It is imperative for FERC to act to protect consumers, and initiate a Notice of Inquiry on Order 719.

Respectfully submitted,

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⁶ Christina Simeone, *PJM Governance: Can Reforms Improve Outcomes?* May 19, 2017. See beginning at printed page 36, <https://kleinmanenergy.upenn.edu/wp-content/uploads/2020/08/PJM-Governance-Reforms-1.pdf>

EXHIBIT A

**OPPOSE – House Bill 1186
HB1186 – Public Service Companies - Annual Report on Votes Cast at Meetings of Regional
Transmission Organizations
Economic Matters Committee
Thursday, March 9, 2023**

Potomac Edison, a subsidiary of FirstEnergy Corp., serves approximately 280,000 customers in all or parts of seven Maryland counties (Allegany, Carroll, Frederick, Garrett, Howard, Montgomery, and Washington Counties). FirstEnergy is dedicated to safety, reliability, and operational excellence. Its ten electric distribution companies form one of the nation's largest investor-owned electric systems, serving customers in Ohio, Pennsylvania, New Jersey, New York, West Virginia, and Maryland.

Unfavorable

Potomac Edison / FirstEnergy **opposes House Bill 1186** – Public Service Companies - Annual Report on Votes Cast at Meetings of Regional Transmission Organizations. HB 1186 would require that a member of a regional transmission organization submit to the Public Service Commission a report each year on votes cast by the public service company at a meeting of the regional transmission organization.

Potomac Edison / FirstEnergy requests an Unfavorable report on HB 1186 for the following reasons.

Requiring utilities to submit reports of all recorded votes cast by the entity at all meetings of PJM would be administratively burdensome and is not in the best interest of the electric transmission and distribution system. The transparencies currently in place for PJM's voting protocols and voting records are there for a reason -- so that there can be more frank communication at lower committee levels without fear of retribution.

HB 1186 appears to be an attempt to thwart open internal discussions between various entities on important issues that are required at lower levels of the PJM organization. Votes at these lower levels are only preliminary to final decisions being made by the organization as a whole. For example, the Markets Implementation Committee (MIC) is considered a junior committee where discussions take place on items related to changes to market rules.

It should be noted that PJM's Federal Energy Regulatory Commission (FERC) jurisdictional tariff requires that all affiliates be consolidated into a single entity that votes in single sector for purposes of voting at the PJM Markets & Reliability Committee (MRC) and Members Committee (MC). This means that FirstEnergy only gets one vote, not the fifteen votes we normally have on junior committees, and this one vote is cast by Mon Power, our West Virginia affiliate, as part of the Transmission Owners sector. Because of this consolidated vote, there are times when FirstEnergy's "vote" is not driven by Potomac Edison or Maryland considerations. Compelling utilities to report and explain their vote in these situations just does not make sense.

Another reason this bill is unnecessary is that while the Public Service Commission has certain residual power to regulate Potomac Edison's Maryland transmission assets and operations, as well as Potomac Edison's participation in the wholesale power markets, FERC has exclusive jurisdiction over transmission rates and operations, wholesale power markets and rates, and "practices affecting" the same. FERC also has broad

jurisdiction over reliability for transmission and certain generation facilities. This essentially means that any attempt by Maryland to regulate utility participation at PJM sooner or later will run into complex legal questions of federal/state jurisdiction – a debate that already consumes too much time and resources at PJM, FERC, and in the federal appellate courts.

Potomac Edison / FirstEnergy is highly regulated in each of the states in which we serve customers. The regulation over companies that distribute electricity already allow for government intervention when decisions are deemed not in the best interest of the public. The type of additional regulation and reporting proposed in HB 1186 is very vague, lacks necessary detail, and will be overburdensome to the utility companies and the Public Service Commission.

For the above reasons, Potomac Edison / FirstEnergy respectfully request an **Unfavorable** report on House Bill 1186.



March 9, 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

Potomac Electric Power Company (Pepco) and Delmarva Power & Light Company (Delmarva Power) respectfully oppose *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 a meeting of the regional transmission organization. The report includes all votes cast by the public service company, be provided to the Maryland Public Service Commission, regardless of whether the vote is disclosed by the regional transmission organization as well as a brief description explaining how each vote cast by the public service company is in the interest of the public.

A Regional Transmission Organization (RTO) is an organization formed at the approval of the Federal Energy Regulatory Commission (FERC) and has exclusive responsibility for grid operations, short-term and long-term reliability, and transmission service within a region. The purpose of a Regional Transmission Organization is to promote economic efficiency, reliability, and non-discriminatory practices.

Pepco and Delmarva Power are members 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. PJM holds regular meetings with stakeholders, including Pepco and Delmarva Power, which are integral to developing and refining PJM's rules, policies, and processes. Additionally, many different subcommittees and groups that are essential to PJM's governance structure for administering an open grid and transparent markets hold 100s of meetings throughout the year. At the lower-level PJM committees and groups, individual company votes are not recorded. This structure is intentional to encourage consensus building and brainstorming. 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.

Requiring a utility to submit information to the Maryland Public Service Commission on every vote taken at PJM's lower-level committee meetings would subvert the collaborative process, stifle innovation and be a significant administrative burden and cost for little to no incremental benefit to the Maryland Public Service Commission in order to exercise its state regulatory jurisdiction and authority. Pepco and Delmarva Power believe that companies would be unwilling to offer innovative or nascent proposals for discussion for fear of retribution on a vote taken and recorded at that level. In addition, providing information as to whether a particular proposal is within the public interest could have the same stifling effect. We believe that companies should be able ideate freely at that level and the transparency provided at the member level is sufficient.

Furthermore, because all companies within the Exelon family of utilities, including those utilities located in Illinois, Pennsylvania, New Jersey, Delaware and the District of Columbia, vote as a single Exelon entity (Exelon Business Services, LLC) at the senior committee levels of PJM, House Bill 1186 overreaches in that it seeks information from non-Maryland regulated companies. Finally, because PJM votes concern Exelon's transmission activities in the PJM region, which are subject to federal regulation, House Bill 1186 would gather information related to federally regulated activities that the state of Maryland cannot regulate. Therefore, its collection is not an efficient use of resources.

Pepco and Delmarva Power oppose House Bill 1186 as it can stifle 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. House Bill 1186 is unnecessary, administratively overburdensome and intrudes upon activity that is exclusively federally regulated. Pepco and Delmarva Power respectfully request that the Committee issue an unfavorable committee report on House Bill 1186.

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OPPOSE
Economic Matters
3/9/2023

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

Baltimore Gas and Electric Company (BGE) opposes *House Bill 1186 – Public Service Companies – Annual Report on Votes Cast at Meetings of 3 Regional Transmission Organizations*. House Bill 1186 requires each public service company that is a member of a regional transmission organization (RTO) to submit annual reports of their votes cast at regional transmission organization meetings description and an explanation of how each vote cast by the public service company is in the interest of the public.

An RTO is an organization formed at the approval of the Federal Energy Regulatory Commission (FERC). In the areas where an RTO is established, it coordinates, controls and monitors the operation of the electrical power system, usually within a single US State, but sometimes encompassing multiple states. PJM Interconnection LLC (PJM) is a regional transmission organization (RTO) in the United States. It is part of the Eastern Interconnection grid operating an electric transmission system serving 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. BGE is a member of PJM.

PJM does not own power lines or generators. Instead, it is a neutral, regulated organization that directs the operation of power lines and generators for many different owners. PJM acts as an agent to provide fair access to the transmission system for competing suppliers and electricity users. The PJM stakeholder process uses the Consensus Based Issue Resolution (CBIR) Process to develop solutions with collaborative input from all stakeholders. The CBIR Process is based on the concept that better solutions come from the minds of many. Each voting company is allowed one primary and three alternate representatives per committee.

There are many different committees that provide a forum for members to share their positions and resolve difficult issues to ensure an open grid and transparent markets. While most committees don't record individual company votes in order to promote robust dialogue and consensus, the votes of the senior most committee, the Members Committee, are recorded by company and are publicly available. Requiring a utility to submit information on every vote taken at lower-level committee meetings would muddle the conversations there, is unnecessary, and would be a significant administrative burden and cost for no incremental benefit. The final information for all votes is readily available and published by PJM.

Finally, House Bill 1186 overreaches and is not an efficient use of resources because it seeks voting records and information on transmission-related activities, all of which are regulated at the federal government level and not by the State of Maryland.

BGE respectfully requests that the Committee issue an unfavorable committee report.