UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Maryland Energy Administration; Maryland Office of People's Counsel; and Maryland Public Service Commission, *Complainants*, v. Baltimore Gas & Electric Company; Delmarva Power & Light Company; NextEra Energy Transmission MidAtlantic, Inc.; Potomac Edison Company; Potomac Electric Power Company; Transource Maryland LLC; and Valley Link Transmission Maryland, LLC, *Respondents*.	Docket No. EL26-87-000

MOTION TO DISMISS AND ANSWER OF
BALTIMORE GAS AND ELECTRIC COMPANY, POTOMAC ELECTRIC POWER COMPANY, AND DELMARVA POWER & LIGHT COMPANY

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Pursuant to Rules 206(f), 212, and 213 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission ("FERC" or the "Commission"),[1] Baltimore Gas and Electric Company ("BGE"), Potomac Electric Power Company ("Pepco"), and Delmarva Power & Light Company ("Delmarva," and together with BGE and Pepco, the "Exelon Utilities") submit this motion to dismiss and answer (the "Answer") to the Complaint filed on July 2, 2026, by the Maryland Energy Administration, the Maryland Office of People's Counsel ("OPC"), and the Maryland Public Service Commission (together, "the Maryland Parties").[2]

INTRODUCTION

The Exelon Utilities are three multi-state utilities. Pepco owns transmission facilities in Maryland, the District of Columbia, Virginia, and Pennsylvania. Delmarva owns transmission facilities in Maryland, Delaware, Virginia, Pennsylvania, and New Jersey. BGE owns transmission facilities in Maryland and Pennsylvania. Their lines cross state borders in many places, and some facilities sit entirely outside Maryland.[3] Each company has a single Commission-approved return on equity ("ROE") spanning its multi-state system.

The Maryland Parties invoke a state statute they say "mandates" that these multi-state utilities participate in a regional transmission organization ("RTO").[4] They maintain that the state can force these utilities to remain in RTOs and can force the Commission to strike the 50-basis-point RTO Adder—which Congress directed that the Commission "shall" provide "to each" utility "that joins" an RTO[5]—from each company's single, multi-state ROE. The Maryland statute's

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[1] 18 C.F.R. §§ 385.206, 385.212, 385.213.

[2] *Md. Energy Admin. v. Baltimore Gas & Elec. Co.*, Docket No. EL26-87-000, Complaint by the Maryland State Agencies (filed July 2, 2026) ("Compl.").

[3] Ex. 1, Prepared Direct Testimony of David W. Weaver, P.E., on Behalf of Exelon Corporation ¶¶ 6-9. (Aug. 5, 2026) ("Weaver Test.").

[4] Md. Code Ann., Pub. Util. § 7-109; *infra* Background Part V.

[5] 16 U.S.C. § 824s(c).

purpose in targeting the federal rate could not be more express. OPC, a complainant here, said the statute's whole point was to "render [Maryland utilities] ineligible to receive these extra unwarranted profits."[6] The Maryland Parties contend that the Commission's prior decisions have given states *carte blanche* to modify the federal rate whenever states decide that their RTO-member utilities' ROEs should be reduced by 0.5%.

The Maryland Parties are wrong. This case differs in many ways from those the Commission has previously considered, and neither the Commission nor any court has ever confronted what this Complaint presents: a state statute commanding multi-state utilities to surrender a component of an undivided federal rate—and to do so despite evidence, detailed below, affirmatively showing that their ROE is squarely in the middle of the just-and-reasonable range.

First, even taking every one of the Commission's prior adder decisions as a given, the Exelon Utilities remain entitled to the RTO Adder under section 219(c) because the RTO Adder continues to "induce[] some voluntary conduct."[7] The Commission has reasoned that once state law compels membership, nothing voluntary remains to induce. But that reasoning, whatever its merit for single-state systems, is inapplicable here. Each Exelon Utility's single, undivided ROE spans its entire, multi-state system, and the RTO Adder incentivizes each company not to separate out its non-Maryland facilities and operate them outside an RTO—which nothing would formally preclude (costly and difficult though it would be).

The regulations compel the same result—for reasons neither the Commission nor any court has yet considered. The regulation implementing section 219(c) provides that the Commission "will authorize" incentive-based rate treatment "for public utilities that join a Transmission

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[6] Md. Off. of People's Counsel, Testimony on S.B. 386/H.B. 897 at 3 (Feb. 24, 2026).

[7] *Pac. Gas & Elec. Co.*, 187 FERC ¶ 61,167 at P 23 (2024).

Organization."[8] "[W]ill authorize" is categorical, as is "public utilities," and nothing permits denying the RTO Adder because a state purports to mandate membership. The prior decisions construed preambulatory language from Order No. 679. But "it is the codified provisions that control."[9]

Second, the Complaint fails to satisfy section 206's core requirements. The Maryland Parties bear the burden of showing the existing rate unjust and unreasonable, which requires "some basis to question the reasonableness of the overall rate level," "not just" the challenged component.[10] They do not even try to do so, and this failure is particularly fatal for multi-state utility systems like these. That would strip the RTO Adder for facilities whose PJM participation is indisputably voluntary, without any showing that the overall ROE, inclusive of the RTO Adder, falls outside the just-and-reasonable range. It would also ignore the very real benefits that the RTO Adder provides—offsetting the substantial burdens of RTO membership for transmission owners and incentivizing everyone to put in the substantial work required to help RTOs succeed.

The Exelon Utilities also present evidence no transmission owner has put forward in any prior adder proceeding: Even with the RTO Adder, each company's ROE sits nearly exactly where the Commission would place it under section 206. The replacement rate for an unlawful transmission ROE is the median of a composite zone of reasonableness.[11] Dr. John S. Thompson's accompanying testimony demonstrates that, conservatively applied, that methodology yields medians nearly identical to the Exelon Utilities' existing 10.50% ROEs.[12] The Complaint therefore

[8] 18 C.F.R. § 35.35(e).

[9] *AT&T Corp. v. FCC*, 970 F.3d 344, 351 (D.C. Cir. 2020); *see infra* Answer Part I.B.

[10] *Sithe/Indep. Power Partners, L.P. v. FERC*, 165 F.3d 944, 951 (D.C. Cir. 1999) (quoting *Houlton Water Co.*, 55 FERC ¶ 61,037 at 61,110 (1991)); *see Emera Me. v. FERC*, 854 F.3d 9, 21 (D.C. Cir. 2017).

[11] *Coakley v. Bangor Hydro-Elec. Co.*, Opinion No. 594, 194 FERC ¶ 61,208, at P 394 (2026); *S. Cal. Edison Co. v. FERC*, 717 F.3d 177, 180-82 (D.C. Cir. 2013).

[12] Ex. 2, Direct Testimony of John S. Thompson, PhD at 54-56 (Aug. 5, 2026).

fails at section 206's first step: An ROE sitting at the very median the Commission uses to set just and reasonable returns cannot plausibly be unjust and unreasonable. And if the Commission reached section 206's second step, the Maryland Parties would be entitled to no relief, because the replacement rate would match the existing rate. At minimum, if the Commission removes the RTO Adder, it must set a proper base ROE based on the evidence the Exelon Utilities have presented.

Third, if the Maryland Act means what the Complaint says—locking the Exelon Utilities' systems into an RTO—it is preempted and unconstitutional, and the Commission "cannot give effect to a State law" that interferes with its FPA responsibilities.[13] Again the multi-state character of these systems shows that an RTO mandate is preempted. Courts have sustained state RTO mandates only on the theory that they "primarily regulate[]" *intrastate* transmission.[14] But that theory—again, whatever its merits elsewhere—cannot sustain a statute that regulates interstate and cross-state utility systems. Moreover, courts analyzing field preemption examine "the *target* at which the state law *aims*."[15] And the Commission has never considered a state statute that so transparently targets the federal rate.

That is not all. The Act, as the Maryland Parties interpret it, conflicts with federal rights secured by the filed rate, which carries the force of federal law.[16] PJM's Consolidated Transmission Owners Agreement ("CTOA") preserves the Exelon Utilities' right to withdraw from PJM on ninety days' notice—a right essential to their decisions to join.[17] Maryland cannot limit that right by permitting utilities to withdraw from PJM only if they *simultaneously join*

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[13] *Blair-Vreeland*, Opinion No. 724, 53 FPC 843, 853 (1975), *rev'd on other grounds sub nom. Vreeland v. FPC*, 528 F.2d 1343 (5th Cir. 1976).

[14] *Dayton Power & Light Co. v. FERC*, 126 F.4th 1107, 1129-30 (6th Cir. 2025) ("*Dayton*"), *cert. denied sub nom. Am. Elec. Power Serv. Corp. v. FERC*, 146 S. Ct. 398 (2025).

[15] *Oneok, Inc. v. Learjet, Inc.*, 575 U.S. 373, 385 (2015).

[16] *See Nantahala Power & Light Co. v. Thornburg*, 476 U.S. 953, 966 (1986).

[17] Consolidated Transmission Owners Agreement, Rate Schedule FERC No. 42 § 3.2 ("CTOA").

another RTO. The Act, so read, also conflicts with section 205, which guarantees utilities the right to file new tariffs to provide service outside an RTO—a right not even the Commission can limit, as the D.C. Circuit held in *Atlantic City*,[18] and one states cannot seize, as then-Judge Breyer squarely held.[19] The dormant Commerce Clause independently dooms Maryland's regulation across state lines: Maryland cannot dictate that a Delaware transmission line owned by Delmarva remain under PJM's operational control. And the Act separately violates the Contract Clause, effects an unlawful taking, and imposes unconstitutional conditions.

Fourth, even if the Maryland law was valid, the Complaint would fail because it asks the Commission to adopt an incentives policy that is unjust, unreasonable, unduly discriminatory, and otherwise unlawful. The Maryland Parties ask the Commission to rubberstamp the RTO Adder's removal any time a state enacts an RTO mandate, no matter how transparently targeted at the federal rate or unmoored from any genuine concern with RTO membership *besides* the RTO Adder. That view of the Commission's role cannot be reconciled with the Commission's role under the FPA. A regime in which any state may switch off a component of the federal rate—while exempting favored in-state entities, as Maryland exempted electric cooperatives—would violate the Commission's duties under the FPA and unlawfully subdelegate the Commission's ratemaking authority to the states.[20] The Commission's incentive policy for RTO participation must apply evenhandedly, not based on whether one state or another has decided to enact a gerrymandered RTO mandate aimed at lowering the federal rate for in-state entities targeted for disfavor.

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[18] *Atl. City Elec. Co. v. FERC*, 295 F.3d 1, 9-10 (D.C. Cir. 2002) ("*Atlantic City*").

[19] *Commonwealth of Mass., Dep't of Pub. Utils. v. United States*, 729 F.2d 886, 888-89 (1st Cir. 1984) (Breyer, J.).

[20] *See La. Pub. Serv. Comm'n v. FERC*, 860 F.3d 691, 696 (D.C. Cir. 2017).

For these reasons and others explained below, the Complaint should be rejected. And for these same reasons, the Exelon Utilities could not agree to OPC's request to voluntarily remove the RTO Adder via a section 205 filing.[21] The Exelon Utilities appreciate, and share, OPC's concerns with affordability. But the problem with OPC's proposal is not just that it violates the FPA and the Constitution. It would ultimately harm the very customers that OPC wishes to help. Congress created the RTO Adder precisely because it recognized that RTO membership benefits customers but imposes significant burdens on transmission owners, including by requiring them to turn over operational control of their transmission facilities to the RTO. Removing the RTO Adder would yield weaker utilities, undermine the benefits that customers obtain from well-planned development of the grid, and ultimately increase prices.

BACKGROUND

I. The FPA And The Commission's Jurisdiction Over Interstate Transmission

The FPA gives the Commission "jurisdiction over all facilities" for the transmission of electric energy in interstate commerce, reserving to the states "facilities used . . . only for the transmission of electric energy in intrastate commerce."[22] This authority is "exclusive."[23] Pursuant to this authority, the Commission must ensure that transmission rates are just and reasonable and not unduly discriminatory or preferential.[24]

Under section 205, a utility files its rates—a term that includes the classifications, practices, and terms of service—and may file changes on sixty days' notice; the Commission reviews them

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[21] *See* Letter from David S. Lapp to Tamla Oliver, President and CEO, BGE, et al., *Removal of RTO Participation Adder from BGE Transmission Rates* (June 4, 2026).

[22] 16 U.S.C. § 824(b)(1).

[23] *New Eng. Power Co. v. New Hampshire*, 455 U.S. 331, 340 (1982); *see FPC v. S. Cal. Edison Co.*, 376 U.S. 205, 215-16 (1964).

[24] 16 U.S.C. § 824d(a)-(b).

for justness and reasonableness.[25] Under section 206, a complainant seeking to change an existing rate bears the burden of proving that the rate is unjust and unreasonable, and the Commission must then determine a just and reasonable replacement.[26]

Congress also addressed RTOs specifically, establishing a voluntary model. Section 202(a) directs the Commission to "divide the country into regional districts for the *voluntary* interconnection and coordination of facilities" and "to promote and encourage such interconnection and coordination."[27] The Commission built the modern grid-operator system on that foundation. Order No. 888 encouraged the formation of independent system operators;[28] Order No. 2000 then established the regional transmission organization framework, encouraging—but expressly declining to require—utilities to join RTOs.[29]

Participating in an RTO is a significant step. Under the Commission's regulations, a utility that participates in an RTO "must propose that operational control of that public utility's transmission facilities will be transferred to" the RTO.[30] A member cedes day-to-day operation of facilities representing a large share of its invested capital, and it becomes subject to the planning, operating, and administrative requirements of participating in an RTO.[31]

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[25] *Id.* § 824d(a), (c)-(e).

[26] *Id.* § 824e(a)-(b).

[27] *Id.* § 824a(a) (emphasis added); *see Cent. Iowa Power Coop. v. FERC*, 606 F.2d 1156, 1167-68 (D.C. Cir. 1979) (holding that with Section 202(a), "Congress decided to make such coordination voluntary, with limited exceptions").

[28] *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities*, Order No. 888, FERC Stats. & Regs. ¶ 31,036 (1996), *order on reh'g*, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048, *order on reh'g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part sub nom. Transmission Access Pol'y Study Grp. v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. New York v. FERC*, 535 U.S. 1 (2002).

[29] *Regional Transmission Organizations*, Order No. 2000, FERC Stats. & Regs. ¶ 31,089 at 31,033-35 (1999), *order on reh'g*, Order No. 2000-A, FERC Stats. & Regs. ¶ 31,092 (2000).

[30] 18 C.F.R. § 35.34(f).

[31] Weaver Test. at 12-18 (describing the obligations and burdens of participation as a PJM transmission owner).

II. Section 219 And The RTO Adder

In the Energy Policy Act of 2005, Congress added section 219 to the FPA to promote investment in the transmission grid.[32] Section 219(a) directs the Commission to establish, by rule, "incentive-based . . . rate treatments" for transmission "for the purpose of benefitting consumers by ensuring reliability and reducing the cost of delivered power by reducing transmission congestion." [33] And section 219(c) addresses transmission organizations specifically: the Commission's rule "shall[] . . . provide for incentives to each transmitting utility or electric utility that joins a Transmission Organization," a defined term that includes Commission-approved RTOs.[34] The Commission's system of incentives must be "just and reasonable and not unduly discriminatory or preferential."[35]

The Commission implemented section 219 in Order No. 679. The Commission established an incentive adder to the return on equity—in practice, 50 basis points—for utilities "that join and/or continue to be a member of an ISO, RTO, or other Commission-approved Transmission Organization."[36] Under the regulation the Commission promulgated, 18 C.F.R. § 35.35(e), "[t]he Commission will authorize an incentive-based rate treatment … for public utilities that join a Transmission Organization, if the applicant demonstrates that the proposed incentive-based rate treatment is just and reasonable and not unduly discriminatory or preferential."[37] The preamble explained that an entity "will be presumed to be eligible for the incentive if it can demonstrate that

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[32] Energy Policy Act of 2005, Pub. L. No. 109-58, § 1241, 119 Stat. 594, 961 (codified at 16 U.S.C. § 824s).

[33] 16 U.S.C. § 824s(a).

[34] 16 U.S.C. § 824s(c); *see id.* § 796(29).

[35] *Id.* § 824s(d).

[36] *Promoting Transmission Investment Through Pricing Reform*, Order No. 679, FERC Stats. & Regs. ¶ 31,222 at PP 326-31 (2006), *order on reh'g*, Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 (2006), *order on reh'g*, Order No. 679-B, 119 FERC ¶ 61,062 (2007).

[37] 18 C.F.R. § 35.35(e).

it has joined an RTO, ISO, or other Commission-approved Transmission Organization, and that its membership is on-going."[38] The Commission identified the "basis for the incentive" as "the benefits that flow from membership" as well as "the fact [that] continuing membership is *generally* voluntary."[39] And because the benefits of RTO membership to customers are ongoing, the Commission determined that "entities that have already joined, and that remain members of" an RTO "are eligible to receive this incentive"—because the "best way to ensure those benefits are spread to as many consumers as possible is to provide an incentive that is widely available."[40]

Congress and the Commission thus recognized that RTO membership yields substantial benefits for consumers—in the Commission's words, "increased efficiency through regional transmission pricing and the elimination of rate pancaking; improved congestion management; . . . more efficient planning for transmission and generation investments; . . . improved grid reliability; and fewer opportunities for discriminatory transmission practices."[41] These benefits, however, flow only because transmission owners undertake the obligations of membership. Congress and the Commission, in a later notice of proposed rulemaking, also recognized that membership imposes real burdens on the transmission owner: the "loss of operational control of transmission facilities to a third party; an obligation to build new transmission facilities at the direction of the RTO/ISO; diminished decision-making control over assets while retaining the responsibility of

[38] Order No. 679 at P 327.

[39] *Id.* at P 331 (emphasis added).

[40] *Id.*; Order No. 679-A at P 86 & n.141.

[41] *Reg'l Transmission Orgs.*, Order No. 2000, FERC Stats. & Regs. ¶ 31,089 at 31,024 (1999) (citation omitted), *order on reh'g*, Order No. 2000-A, FERC Stats. & Regs. ¶ 31,092 (2000), *aff'd sub nom. Pub. Util. Dist. No. 1 of Snohomish Cnty. v. FERC*, 272 F.3d 607 (D.C. Cir. 2001).

maintaining the system; . . . obligations to obey RTO/ISO rules; and an obligation to provide electric service even when foundational agreements can change."[42]

III. The Exelon Utilities Voluntarily Joined PJM And Preserved Withdrawal And Filing Rights.

This case concerns membership in PJM Interconnection, L.L.C. ("PJM"). Each of the Exelon Utilities is a longstanding transmission-owning member of PJM. Each joined voluntarily—a business judgment made by each company, weighing the benefits and burdens of membership. BGE joined the entity that became PJM in 1956—indeed, BGE's entry is what converted the Pennsylvania-New Jersey Interconnection into the Pennsylvania-New Jersey-Maryland Interconnection.[43] Pepco joined in 1965, and Delmarva joined in 1981.[44] And when PJM became a Commission-approved independent system operator in 1997, and again when PJM became an RTO in 2001, each company voluntarily chose to participate.[45]

The Exelon Utilities' participation as transmission owners is governed by the Consolidated Transmission Owners Agreement ("CTOA"), a contract among the participating transmission owners that is also a Commission-approved rate schedule. The CTOA preserves each transmission owner's right to withdraw from PJM. Section 3.2 provides that "[a]ny Party may withdraw from this Agreement upon ninety (90) days advance written notice to PJM and the other Parties," subject to enumerated reliability and regulatory conditions, including "a filing with the FERC under section 205 of the Federal Power Act to withdraw from this Agreement."[46]

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[42] *Elec. Transmission Incentives Pol'y Under Section 219 of the Fed. Power Act*, 170 FERC ¶ 61,204 at P 96 (2020).

[43] Weaver Test. at 9.

[44] *Id.*

[45] *Id.*

[46] CTOA § 3.2 ("Any Party may withdraw from this Agreement upon ninety (90) days advance written notice to PJM and the other Parties; provided that such withdrawal shall not be effective until the withdrawing Party has: (i) if its Transmission Facilities do not comprise an entire Control Area, satisfied

The Exelon Utilities could not have been compelled to join PJM or to give up their ability to file a tariff to provide service outside of PJM. The D.C. Circuit held in *Atlantic City* that the Commission itself lacks power to strip transmission owners of their section 205 rights: a utility "has the right . . . to change its rates . . . [at] will, unless it has undertaken by contract not to do so," and FERC "ha[s] no power to force public utilities to file particular rates unless it first finds the existing filed rates unlawful."[47] The D.C. Circuit also held that the Commission has no power to approve RTO withdrawals under section 203.[48] RTO participation therefore rests on the transmission owners' *voluntary* cession of specified rights, on terms the owners agreed to and the Commission approved—including the preserved rights to withdraw and to file.

The Exelon Utilities entered FERC-approved rate settlements that expressly authorized the companies to seek transmission incentives.[49] The Commission granted BGE the RTO Adder in 2007, concurrent with the implementation of Order No. 679.[50] The same year, it granted the RTO Adder to Pepco and Delmarva.[51] Each award has been carried forward in the Exelon Utilities'

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all applicable standards of NERC and the Applicable Regional Reliability Council for operating a Control Area or being included within an existing Control Area; (ii) put in place alternative arrangements for satisfaction of the FERC's requirements with respect to comparable transmission services; and (iii) made a filing with the FERC under Section 205 of the Federal Power Act to withdraw from this Agreement, and such filing has been approved, accepted without suspension, or if suspended, the suspension period has expired before the FERC has issued an order on the merits of the filing.").

[47] *Atlantic City*, 295 F.3d at 9-10 (quoting *United Gas Pipe Line Co. v. Mobile Gas Serv. Corp.*, 350 U.S. 332, 341 (1956)).

[48] *Id.* at 9, 13.

[49] Weaver Test. at 12 & n.2.

[50] *Baltimore Gas & Elec. Co.*, 120 FERC ¶ 61,084 at P 31 (2007).

[51] *Pepco Holdings, Inc.*, 121 FERC ¶ 61,169 at P 15 (2007).

Commission-approved formula rates under the PJM Tariff ever since.[52] Each Exelon Utility's overall ROE—inclusive of the RTO Adder—has been approved by the Commission.[53]

IV. The Exelon Utilities' Transmission Systems In PJM Operate Across State Lines

Pepco, a District of Columbia and Virginia corporation, owns transmission facilities in Maryland, the District of Columbia, Virginia, and Pennsylvania.[54] Delmarva owns transmission facilities in Maryland, Delaware, Virginia, Pennsylvania, and New Jersey.[55] BGE owns transmission facilities in Maryland and Pennsylvania.[56] Each affected Exelon Utility also owns transmission assets that not only are entirely contained within Maryland, but that are entirely within other states and that cross state lines in myriad places.[57] Each Exelon Utility has a single Commission-authorized ROE that applies across its entire system, in every state it serves.[58]

V. Maryland Targets The RTO Adder

This Complaint concerns Maryland's statute targeting the RTO Adder. On May 12, 2026, Maryland enacted the Utility Reducing Energy Load Inflation for Everyday Families ("RELIEF") Act.[59] Effective July 1, 2026, the Act added Section 7-109 to the Public Utilities Article:

> (A) This section does not apply to an electric cooperative.

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[52] PJM Tariff, Attach. H-2A, Note J (BGE); *id.*, Attach. H-9A, Note J (Pepco); *id.*, Attach. H-3D, Note J (Delmarva); *see* Compl. ¶ 24 (acknowledging each authorization).

[53] *Del. Div. of the Pub. Advocate v. Baltimore Gas & Elec. Co.*, 154 FERC ¶ 61,125 at P 6 (2016).

[54] Weaver Test. at 4, 6.

[55] *Id.* at 4-7.

[56] *Id.* at 5-7

[57] *Id.* at 4-9.

[58] *Id.* at 6-8.

[59] Utility RELIEF (Reducing Energy Load Inflation for Everyday Families) Act, H.B. 1532, Reg. Sess. (Md. 2026) (the "Maryland Act" or "Act").

> (B) A person that owns or operates a transmission line that is designed to carry a voltage in excess of 69,000 volts and is located in the State shall participate as a member in a Regional Transmission Organization.[60]

Maryland policymakers were clear in expressing the statute's purpose—targeting the RTO Adder in order to reduce transmission rates. The Department of Legislative Services' fiscal and policy note—the General Assembly's official analysis of House Bill 1532—explained:

> According to OPC, requiring the State's electric companies to participate in an RTO is expected to save Maryland's electric customers — in the aggregate — at least \$20.0 million annually, based on Federal Energy Regulatory Commission (FERC) decisions in similar circumstances in other states. These savings are driven by the likely elimination of the "RTO adder," a transmission rate incentive that FERC offers to encourage RTO participation and for which Maryland's four investor-owned utilities currently qualify as members of PJM Interconnection, LLC. Under FERC precedent, public service companies whose membership in an RTO is mandated by state law are ineligible for the adder.[61]

OPC—a Complainant here—in testimony to the General Assembly, touted, as a benefit of the mandate, the prospect of:

> Requiring the owner or operator of a transmission line to be a member of a regional transmission organization (RTO), like PJM Interconnection, LLC, thereby removing leverage utilities currently exercise over PJM and providing grounds to challenge the 0.5% return "adder" that transmission owners and operators currently receive for voluntarily participating in an RTO.[62]

OPC's testimony pointed back to its earlier advocacy, which had framed the strategy candidly:

> Under FERC precedent, . . . public service companies whose membership in an RTO is required by state law—and, therefore, not voluntary—are ineligible to receive extra unwarranted profits in the form of the RTO adder. Although most all Maryland's electric companies are currently members of PJM, they are not currently required by law to join an RTO and are, therefore, entitled to the RTO adder. [The bill] would require that each electric company be a member of an RTO, which should render them ineligible to receive these extra unwarranted profits. . . .

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[60] Md. Code Ann., Pub. Util. § 7-109.

[61] Md. Dep't of Legis. Servs., Fiscal & Policy Note, H.B. 1532, Reg. Sess., at 13 (2026).

[62] Md. Off. of People's Counsel, Testimony on S.B. 386/H.B. 897 (Feb. 24, 2026).

> [W]e estimated that a state-law requirement for RTO membership could save customers around $20 million per year. . . . [T]he savings would be even greater today, given that the adder is calculated based on the size of the utilities' transmission rate bases, which have increased since 2024.[63]

Maryland thus did not legislate to shape the structure of its electric industry nor to improve reliability. Nor did Maryland legislate to compel some utilities that were not RTO members to join an RTO: every targeted utility was *already* a PJM member. Maryland legislated solely to change a Commission-jurisdictional transmission rate in a federal tariff.

VI. The Complaint

On July 2, 2026, one day after the Maryland Act took effect, the Maryland Parties filed this Complaint under FPA section 206 against seven transmission owners, including the three Exelon Utilities. The Complaint acknowledges that the Maryland Act targets the federal rate, explaining that the RTO mandate's purpose was to "lower energy bills."[64] The Complainants assert that "[b]ecause Maryland mandates participation in an RTO, … Respondents' inclusion of the RTO Adder in their ROEs is unjust and unreasonable as the incentive RTO Adder no longer incentivizes any action."[65] The Complaint does not try to show that overall ROEs are unjust and unreasonable and instead asks the Commission to order the RTO Adder removed from each Respondent's formula rate and to order refunds, with interest, effective July 2, 2026.[66]

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[63] Md. Off. of People's Counsel, Testimony on S.B. 386/H.B. 897 at 3.

[64] Compl. ¶ 22.

[65] *Id.* at 2.

[66] *Id.* at 25-26 (Rule 206(b)(7) statement).

MOTION TO DISMISS AND ANSWER

I. The Complaint Should Be Rejected Because the Exelon Utilities Remain Entitled To The RTO Adder Regardless Of The Maryland Act's Validity And Notwithstanding The Commission's Interpretation Of The Federal Adder Statute.

The Commission can reject this complaint without assessing the constitutionality of the Maryland Act or revisiting its interpretation that section 219(c) of the Federal Power Act requires the RTO Adder only when a transmission owner has engaged in "voluntary" conduct. *First*, even under the Commission's voluntariness framework, the RTO Adder continues to incentivize voluntary conduct and hence the Exelon Utilities remain entitled to the RTO Adder. That is so for several reasons the Commission has never considered, including (but not only) due to the multi-state nature of the Exelon Utilities' systems. *Second*, the Commission's regulations require preserving the Exelon Utilities' adder, regardless of whether Maryland has validly mandated RTO membership. None of the prior decisions of the Commission or appellate courts has grappled with the text of those regulations but they, independently from the Federal Power Act itself, require preservation of the RTO Adder and rejection of the Complaint.

A. Even Under The Commission's Voluntariness Framework, The RTO Adder Continues To Incentivize Voluntary Conduct For The Exelon Utilities.

The Commission's stated view is that section 219 requires the RTO Adder only when "the RTO Adder induces some voluntary conduct."[67] Or as the Maryland Parties put it, the question is whether the RTO Adder incentivizes "any action."[68] Here, the RTO Adder does so for all the Exelon Utilities. So, while the Exelon Utilities also maintain that the Commission's interpretation of section 219 is contrary to the statute and otherwise unlawful, the Commission need not reach those points to reject the Complaint.

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[67] *Pac. Gas & Elec. Co.*, 187 FERC ¶ 61,167 at P 23.

[68] Compl. at 2.

First, due to the interstate nature of the transmission systems of all three Exelon Utilities, the RTO Adder continues to incentivize retaining RTO membership and keeping operational control of transmission facilities within an RTO outside of Maryland. Each utility owns and operates integrated transmission systems located not just in Maryland but in other states too.[69] In particular, Delmarva owns transmission assets in Delaware, Virginia, Pennsylvania, and New Jersey.[70] Pepco owns transmission assets in the District of Columbia, Virginia, and Pennsylvania.[71] BGE owns transmission assets in Pennsylvania.[72]

From three basic propositions, it follows from those multi-state systems that the RTO Adder continues to incentivize voluntary conduct.

One, the only theory on which courts have sustained state RTO mandates is that they "primarily regulate[]" *in-state* facilities.[73] No one has ever claimed, or could claim, that one state could lawfully require that facilities outside its borders be turned over to the control of an RTO. Two, each Exelon Utility has a single transmission system, consisting of Maryland and non-Maryland elements, with a single Commission-approved ROE for that undivided system.[74] This means that so long as each Exelon Utility is engaged in voluntary RTO-related conduct *somewhere*, even if not in Maryland, each Exelon Utility's Adder is doing what the Commission has required and incentivizing voluntary conduct. Three, nothing would formally preclude the Exelon Utilities from removing the non-Maryland portions of their systems from an RTO. That step, to be sure, would be extraordinarily burdensome and might require that the Exelon Utilities restructure to

[69] Weaver Test. at 4-8.

[70] *Id.*

[71] *Id.* at 6.

[72] *Id.* at 7.

[73] *Dayton*, 126 F.4th at 1129-30.

[74] Weaver Test. at 8-9.

create Maryland and non-Maryland entities, given the requirement in the Commission's regulations that each transmission-owning RTO member "must propose that operational control of that public utility's transmission facilities will be transferred to" the RTO.[75] But the Commission's established approach asks only whether the RTO Adder incentivizes "some" voluntary conduct, which the RTO Adder here does.

Indeed, these points show that the Complaint must be rejected however the Commission slices the legal issues in this case. If it remains conceptually possible that the Exelon Utilities can remove their non-Maryland facilities from an RTO consistent with the Maryland Act, then the RTO Adder—which, again, applies to the Exelon Utilities' undivided ROE—continues to incentivize some voluntary conduct. And if the Exelon Utilities could not remove their non-Maryland facilities from an RTO consistent with the Maryland Act, that fact would only underscore the Maryland Act's unlawfulness (under both FPA preemption and the dormant Commerce Clause).

Second, the RTO Adder continues to incentivize participation in an RTO *as a transmission owner*. The Commission has only ever granted the RTO Adder to companies that participate in RTOs as transmission owners, consistent with the rationale of incentivizing those owners to turn over operational control of their facilities to RTOs.[76] PJM membership is a defined status under the PJM Operating Agreement, and it is open to entities in several sectors: transmission owners, generation owners, other suppliers, electric distributors, and end-use customers.[77] A person can "participate as a member" in PJM without executing the CTOA and without placing any facility

[75] 18 C.F.R. § 35.34(f); *see id.* § 35.34(j)(3), (k).

[76] Order No. 2000 at 31,024-33; *Elec. Transmission Incentives Pol'y Under Section 219 of the Fed. Power Act*, 170 FERC ¶ 61,204 at P 96 ("Incentive NOPR"); *see* 18 C.F.R. § 35.34(j)(3).

[77] PJM Operating Agreement § 11.6(a)(i).

under PJM's operational control.[78] The RTO Adder thus continues to incentivize "some" voluntary conduct—namely, membership as a transmission owner and the transfer of operational control. The Exelon Utilities could satisfy Section 7-109 while withdrawing as transmission owners under CTOA Section 3.2, resuming operational control of their systems, and maintaining PJM membership in another capacity.[79] Notably, the Maryland Act in this respect differs from both the Ohio and California statutes at issue in the Commission's prior adder decisions.[80] Ohio required that a transmission owner be "a member of, *and transfer[] control of those facilities to*," a qualifying transmission entity.[81] California's mandate was framed as an application of "the commission's regulation of transfers of operational control."[82]

Third, the Maryland Act on its face does not prohibit withdrawal from an RTO. The Ninth Circuit affirmed the Commission's decision concerning the California utilities on the theory that they were not authorized to withdraw.[83] The Ohio statute states that "no entity shall own or control transmission facilities . . . unless" it is a member and has transferred control.[84] The Maryland Act, however, contains no similar prohibition. To say that a person "shall participate" as a member of an RTO is not to say "shall participate *and never leave*." Neither the Commission nor courts will rewrite a statute to add words the legislature could have, but did not, include.[85]

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[78] *See* Md. Code Ann., Pub. Util. § 7-109(B).

[79] CTOA § 3.2.

[80] *Off. of the Ohio Consumers' Counsel*, 181 FERC ¶ 61,214 (2022) ("*OCC*"); *Pac. Gas & Elec. Co.*, 185 FERC ¶ 61,243 (2023), *on reh'g*, 187 FERC ¶ 61,167 (2024).

[81] Ohio Rev. Code § 4928.12(A) (emphasis added).

[82] Cal. Pub. Util. Code § 362(c)-(d).

[83] *Pac. Gas & Elec. Co. v. FERC*, No. 24-2527, 2025 WL 1912363, at *2-3 (9th Cir. July 11, 2025).

[84] Ohio Rev. Code § 4928.12(A).

[85] *See, e.g.*, *Rotkiske v. Klemm*, 589 U.S. 8, 14 (2019).

Nor can the Commission interpret the Maryland Act based on the end its sponsors clearly hoped to achieve—the elimination of the RTO Adder (*i.e.*, by reading the Act to require membership as a transmission owner or to prohibit withdrawal). The question is what the Maryland Act via its text does, not the ultimate effect that the sponsors hoped to achieve (especially when that ultimate effect concerns the federal rate, over which the Commission has exclusive jurisdiction). Even Maryland's own interpretive rules require the narrow readings set out above. Maryland courts "construe a statute to avoid conflict with the Constitution whenever it is reasonably possible to do so, even to the extent of applying a judicial gloss to interpretation that skirts a constitutional confrontation."[86] Given the constitutional infirmities detailed in Part III, that canon forecloses reading Section 7-109 as a perpetual command to keep operational control of the Exelon Utilities' systems in PJM's hands.

Fourth, the Exelon Utilities made the initial decision to join an RTO decades before the Maryland Act existed. Section 219(c) directs incentives to each utility "that joins" a Transmission Organization, and Order No. 679 makes the RTO Adder available to utilities that joined before the incentive existed.[87] A statute enacted in 2026 cannot make a prior voluntary decision to join involuntary.

Nor can a state eliminate that voluntariness by later mandating what the utility already did voluntarily. The Commission has held that a utility "voluntarily" joins an RTO even when it committed to do so as part of a settlement.[88] That situation would not be fundamentally different

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[86] *Ingram v. State*, 197 A.3d 14, 25 (Md. 2018) (quoting *Harrison-Solomon v. State*, 112 A.3d 408, 428 (Md. 2015)).

[87] 16 U.S.C. § 824s(c); Order No. 679 at P 331.

[88] *The New PJM Cos.*, 106 FERC ¶ 63,029 at P 55 (2004); *New PJM Cos.*, 107 FERC ¶ 61,271 at PP 41-44 (2004) (affirming that AEP's commitment to join PJM was "voluntary," although AEP had committed to join an RTO as part of a merger years earlier); *Am. Elec. Power Co.*, 90 FERC ¶ 61,242 at 61,788 (2000).

from this one even if the Maryland Act barred withdrawal. In each, the decision to join was voluntary; having made that decision, the utility is no longer free to leave.[89] Any other conclusion would produce untenable results. A utility that settled with state parties and committed to remain in an RTO would retain the RTO Adder. If the state enacted a statute the next day requiring what the settlement already required, the RTO Adder would vanish. The utility's position would be the same in every respect that matters—a voluntary decision to join, followed by a binding obligation to remain—yet its eligibility would turn on the label attached.

Fifth, the RTO Adder remains warranted because it induces the continuous voluntary conduct on which a functioning RTO depends. The Commission's inquiry, as explained, asks whether the RTO Adder "induces some voluntary conduct" that produces the "reliability and efficiency benefits noted in the statute."[90] Membership alone does not produce those benefits. An RTO works only if its transmission owner members make it work—by dedicating engineering staff to regional planning studies and interconnection analyses; supplying the system models, facility ratings, and operational data on which PJM's planning and real-time operations depend; coordinating maintenance and outage schedules across an interconnected multistate network; constructing, upgrading, and maintaining the facilities assigned to them through PJM's Regional Transmission Expansion Plan; and sustaining the committee and stakeholder processes through which PJM's markets, planning protocols, and operating rules are developed and reformed—among many other things.[91] Recent experience in PJM confirms that none of this is automatic, and that solving the region's problems has demanded constant, proactive engagement from

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[89] *Cf. New PJM Cos.*, 107 FERC ¶ 61,271 at PP 41-44 (affirming that AEP's commitment to join PJM was "voluntary," although AEP had committed to join an RTO as part of a merger years earlier); *Am. Elec. Power Co.*, 90 FERC ¶ 61,242 at 61,788.

[90] *Pac. Gas & Elec. Co.*, 187 FERC ¶ 61,167 at PP 23-24.

[91] Incentive NOPR, 170 FERC ¶ 61,204 at P 96; Weaver Test. at 17.

transmission owners to keep the regional system functional.[92] And even if a state purports to require membership, continued membership will remain tenable—for the state and its consumers—only if transmission owners keep taking the countless voluntary steps that enable RTO participation to deliver its promised benefits. The RTO Adder incentivizes transmission owners to take those steps.

B. The Commission's Regulations Require Preserving The Exelon Utilities' Adder.

The Complaint also fails because the Commission's own regulation implementing section 219(c) entitles the Exelon Utilities to the RTO Adder. The regulation provides: "The Commission will authorize an incentive-based rate treatment … for public utilities that join a Transmission Organization, if the applicant demonstrates that the proposed incentive-based rate treatment is just and reasonable and not unduly discriminatory or preferential."[93] This regulation requires preserving the Exelon Utilities' adder regardless of whether Maryland has purported to mandate RTO participation and regardless of the Commission's reading of section 219(c) itself. Although prior Commission and judicial decisions have addressed Order No. 679's preambulatory language, they have not addressed the regulatory text.[94]

Here, the text is unambiguous, and it leaves no room to deny the Exelon Utilities the RTO adder. "[W]ill authorize" is categorical. "[P]ublic utilities" means all of them. And "that join a Transmission Organization" states the lone eligibility criterion: joining. The remainder of paragraph (e) addresses sundry other issues, like specifying that the applicant "must make a filing with the Commission under section 205" and that joining utilities may also "recover prudently

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[92] *E.g.*, Weaver Test. at 17 (discussing recent efforts to modify attachment M-3 of PJM's tariff, which governs asset management and facilities nearing end of life).

[93] 18 C.F.R. § 35.35(e).

[94] *AT&T Corp. v. FCC*, 970 F.3d at 351 ("[W]here … there is a discrepancy between the preamble and the Code [of Federal Regulations], it is the codified provisions that control.").

incurred costs associated with joining."[95] Nowhere, however, does the regulation provide room to deny the RTO Adder simply because a state has purported to mandate RTO membership.[96]

The rest of Section 35.35 confirms that the regulation does not withdraw the RTO Adder simply because RTO participation is involuntary. The RTO Adder is one of a suite of incentives the regulation provides. Paragraph (d) authorizes "incentive-based rate treatment" for transmission infrastructure investment, and defines that term as a menu: a return on equity "sufficient to attract new investment in transmission facilities"; 100 percent of construction work in progress in rate base; recovery of pre-commercial operations costs; hypothetical capital structures; accelerated depreciation; recovery of 100 percent of the costs of facilities "cancelled or abandoned due to factors beyond the control of the public utility"; and deferred cost recovery.[97] Paragraphs (d) and (e) use the same operative terms as the RTO Adder provision—"incentive" and "incentive-based rate treatment." If those phrases implicitly imported a voluntariness requirement, they would do so here as well: Identical words in the same enactment presumptively carry the same meaning.[98]

Here, however, no one has ever thought these other incentives carry an implicit voluntariness requirement. When the Commission adopted these incentives, it "reject[ed] arguments that an applicant must show that, but for the incentives, the expansion would not occur," because "the Final Rule is based on a clear directive from Congress that does not require an applicant to show that it would not build the facilities but for the incentives."[99] The incentives "do

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[95] 18 C.F.R. § 35.35(e).

[96] The paragraph's last clause—the just-and-reasonable proviso—certainly does not do so. It simply confirms that the general commands of Sections 205 and 206 apply to incentive rates, so the overall ROE—Adder included—must remain within the just-and-reasonable range. *See* 16 U.S.C. § 824s(d); 18 C.F.R. § 35.35(c).

[97] 18 C.F.R. § 35.35(d)(1).

[98] *IBP, Inc. v. Alvarez*, 546 U.S. 21, 34 (2005).

[99] Order No. 679 at P 48; *accord id.* at P 82 n.63 ("An applicant would not be required to demonstrate that, but for the incentive, the project would not be completed. Section 219 does not require such a condition.").

not constitute an 'incentive' in the sense of a 'bonus' for good behavior"; each is instead "rationally tailored to the risks and challenges faced in constructing new transmission."[100] Hence, Construction Work in Progress ("CWIP") recovery "remove[d] an impediment—inadequate cash flow—that [the Commission's] current regulations [could] present."[101] Abandoned-plant recovery "reduc[es] a regulatory barrier—the potential lack of recovery of costs—to infrastructure development."[102] None of these rationales asks whether the utility chose to build. A mandated project strains cash flow, faces siting and cancellation risk, and requires capital on the same terms as an elective one.

The Commission has applied these incentives the same way. In PJM, for example, a transmission owner designated to construct a baseline project in the Regional Transmission Expansion Plan "shall construct, own and/or finance such facilities."[103] The obligation is mandatory; the tariff permits a transmission owner to decline only economic projects.[104] Yet the same tariff provides that compensation for designated projects "will include any FERC-approved incentives,"[105] and the Commission grants them. Last year, for example, the Commission awarded the abandoned-plant incentive, 100 percent CWIP, and pre-commercial cost recovery—alongside the RTO Adder—for a multi-billion-dollar portfolio of baseline reliability upgrades selected through PJM's regional plan.[106] Order No. 679 contemplated exactly this: Even for investments marked by "an obligation to construct them and high assurance of recovery of the related costs,"

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[100] *Id.* at P 26.
[101] *Id.* at P 29.
[102] *Id.* at P 28.
[103] PJM Operating Agreement, Schedule 6, § 1.7(a).
[104] *Id.* § 1.7(d).
[105] *Id.* § 1.7(c).
[106] *Valley Link Transmission Md., LLC*, 191 FERC ¶ 61,113 at PP 3-5 (2025).

the Commission explained, "[t]his does not mean that other incentives may not be appropriate for such investments (such as 100 percent CWIP recovery)."[107]

There is zero basis in the regulation to treat the RTO Adder differently. The text, as just explained, is the same in relevant part. And as with these other incentives, the RTO Adder is "rationally tailored to the risks and challenges faced in" RTO membership, regardless of whether RTO membership is voluntary or compelled.[108] As explained above, membership carries continuing burdens: the utility cedes operational control of its facilities, submits its rates to administration under the organization's tariff, and assumes the obligation to construct what the regional transmission planner assigns to it.[109] The RTO Adder addresses those burdens, recognizing the benefits of membership, and it encourages transmission investment inside Transmission Organizations, where regional planning directs capital to its most effective use.[110] The record confirms as much: The RTO Adder steers the Exelon Utilities' scarce capital toward transmission, and toward transmission owners in RTOs, over competing uses—and it would continue to do so even if the Exelon Utilities could never leave an RTO.[111] Neither function depends on how membership began.

The one clause of Section 35.35 that *does* speak in terms of inducement only reinforces the absence of a similar requirement in the RTO Adder provision. Paragraph (d)(1)(i) authorizes "[a] rate of return on equity sufficient to attract new investment in transmission facilities."[112] That text poses a case-specific question—whether a higher return is necessary to "attract" desired

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[107] Order No. 679 at P 94.

[108] *Id.* at P 48.

[109] Weaver Test. at 17.

[110] *Id.* at 18-19.

[111] *Id.*

[112] 18 C.F.R. § 35.35(d)(1)(i).

behavior—and the Commission answered it case-specifically: while some projects may merit the incentive ROE, that is not so for "routine investments made in the ordinary course" because "there is an obligation to construct them and high assurance of recovery of the related costs."[113] The RTO Adder provision, however, contains no similar inducement-type language. The Commission instead defined the incentive as "a return on equity that is higher than the return on equity the Commission might otherwise allow if the public utility did not join," and made it available to "public utilities that join."[114] That distinction makes a difference, and the Commission must give it effect.[115]

This text also shows where the Ninth Circuit went astray when it derived a voluntariness requirement from Order No. 679's observation that "continuing membership is generally voluntary."[116] That statement appears in the preamble, and it describes the world the Commission was regulating. But the rule the Commission codified makes the incentive available to "public utilities that join," full stop. And the preamble, read whole, confirms the categorical design rather than undermines it. Commenters urged the Commission to withhold the incentive from utilities "ordered to join Transmission Organizations by statute."[117] The Commission declined, affirming "that the incentive applies to all utilities joining transmission organizations."[118] The regulation the

[113] Order No. 679-A at PP 51, 60.

[114] 18 C.F.R. § 35.35(e).

[115] *Russello v. United States*, 464 U.S. 16, 23 (1983) ("[W]here Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion.") (quoting *United States v. Wong Kim Bo*, 472 F.2d 720, 722 (5th Cir. 1972)).

[116] *Cal. Pub. Utils. Comm'n v. FERC*, 879 F.3d 966, 974-75 (9th Cir. 2018) (quoting Order No. 679 at P 331) ("*CPUC I*").

[117] Order No. 679-A at P 83; *see* Order No. 679 at P 316.

[118] Order No. 679-A at P 86.

Commission wrote matches the answer it gave. And the Commission is bound by that regulation unless and until it is amended.[119]

The Commission can adopt this reading without revisiting any prior decision. As explained above, no order of the Commission has construed paragraph (e)'s text on this question: the orders adopting a voluntariness requirement rested on Order No. 679's preamble "as interpreted in" *CPUC I.*[120] Nor need the Commission dispute the Sixth Circuit's construction of the statute. *Dayton* held that section 219(c) does not compel the Commission to extend the RTO Adder to utilities whose membership is mandated.[121] It did not hold that the statute forbids the Commission from doing so or displace a binding regulation providing as much.

Recent events confirm that the regulation's categorical approach was prescient. As explained above, six states have now enacted RTO-participation mandates, several—Maryland chief among them—for the express purpose of stripping the RTO Adder from federal transmission rates. A rule that switches the incentive off whenever a state enacts a mandate hands every state a veto over a component of a federal rate and invites exactly the manipulation now underway.

II. The Complaint Must Be Rejected Because the Maryland Parties Have Not Even Tried To Carry Their Burden And Because, Even If They Had, The Replacement Rate Would Be Unchanged.

The Complaint must also be rejected for two reasons specific to section 206. First, section 206 requires complainants to show that the overall rate is unjust and unreasonable, which the Complaint here has not tried to and simply cannot show, especially given that each Exelon Utility

[119] *Ariz. Grocery Co. v. Atchison, T. & S. F. RY. Co.*, 284 U.S. 370, 389 (1932); *see Nat'l Env't Dev. Ass'n's Clean Air Project v. EPA*, 752 F.3d 999, 1009 (D.C. Cir. 2014) ("It is 'axiomatic' … 'that an agency is bound by its own regulations.'") (quoting *Panhandle E. Pipe Line Co. v. FERC*, 613 F.2d 1120, 1135 (D.C. Cir. 1979)).

[120] *See, e.g.*, *Pac. Gas & Elec. Co.*, 187 FERC ¶ 61,167 at P 15; *Dayton Power & Light Co.*, 178 FERC ¶ 61,102 at PP 14-18 (2022).

[121] *Dayton*, 126 F.4th at 1125-26.

owns and operates multi-state systems and has a single undivided ROE across those systems. Second, the Exelon Utilities have submitted with this pleading evidence showing that each Exelon Utility's existing ROE sits very nearly where the Commission would place it if the Commission acted under section 206. The Maryland Parties cannot via section 206 ask the Commission to remove the RTO Adder on a single-issue basis and leave the overall ROE far below what the Commission has identified as the just-and-reasonable replacement rate.

A. The Complaint Fails Under Section 206 Because It Does Not Try To, And Cannot, Show That The Exelon Utilities' Companywide ROEs For Their Multi-State Systems Are Unjust And Unreasonable.

In all cases under section 206, the Commission must first find that an existing rate "is unjust, unreasonable, unduly discriminatory or preferential"; [122] "[o]nly after having made the determination that the utility's existing rate fails that test may FERC exercise its section 206 authority to impose a new rate."[123] And that requires a complainant to "provide some basis to question the reasonableness of the overall rate level, taking into account changes in all cost components and not just the challenged component."[124] The Maryland Parties offer no testimony, financial models, or factual support of any kind to try and demonstrate that the Exelon Utilities' overall rates are unjust and unreasonable.[125] The Complaint can be rejected on this basis alone.

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[122] 16 U.S.C. § 824e(a).

[123] *Emera*, 854 F.3d at 21.

[124] *Sithe/Indep. Power Partners, L.P. v. FERC*, 165 F.3d 944, 951 (D.C. Cir. 1999) (citation modified); *accord Cal. Indep. Sys. Operator, Inc.*, 126 FERC ¶ 61,081 at P 66 (2009); *Ark. Elec. Coop. Corp. v. ALLETE, Inc.*, 156 FERC ¶ 61,061 at P 19 (2016) ("[U]nder section 206, before we may change an ROE we must find it unjust and unreasonable.").

[125] *FPC v. Hope Nat. Gas Co.*, 320 U.S. 591, 602 (1944) ("Under the statutory standard of 'just and reasonable' it is the result reached not the method employed which is controlling."); *see Houlton Water Co. v. Me. Pub. Serv. Co.*, 55 FERC ¶ 61,037 at 61,110 (1991) ("[T]he Commission in setting an overall just and reasonable rate does not look to a single component of the overall rate, but rather looks to all the components, some of which may have gone up over time and some of which may have gone down over time." Accordingly, to challenge an existing rate, a complainant "must provide some basis to question the reasonableness of the overall rate level….")

And even if removal of an RTO Adder on a single-issue basis could in some case be defensible, the ROEs here cannot be dissected in that manner due to the multi-state nature of the Exelon Utilities' systems.

Nothing in the Maryland Act could lawfully preclude the Exelon Utilities from removing those non-Maryland assets from an RTO (although, as explained above, that would be extraordinarily burdensome, would require that the Exelon Utilities restructure to create Maryland and non-Maryland entities, and would only underscore that Maryland is regulating outside its domain). And that means that each Exelon Utility's RTO Adder continues to "induce[] some voluntary conduct."[126] That fact defeats the Complaint on the merits, as explained above.[127] But it also underscores why the Commission cannot do what the Maryland Parties urge and simply remove the RTO Adder on a single-issue basis without showing that the overall ROE, inclusive of the RTO Adder, falls outside the just-and-reasonable range. That would strip the RTO Adder for facilities whose PJM participation is indisputably voluntary—the very conduct Congress directed the Commission to encourage—and give a Maryland statute rate consequences far beyond Maryland's borders, an effect the FPA and the Constitution forbid.[128] Nor can the Commission or Maryland compel what would be required to even begin to make single-issue relief feasible—compelling the Exelon Utilities to reorganize their corporate structures or to carve their integrated systems into state-specific pieces. If the Maryland Parties believe the Maryland Act renders the Exelon Utilities' ROE unjust and unreasonable, they must do what section 206 directs and show

[126] *Pac. Gas & Elec. Co.*, 187 FERC ¶ 61,167 at P 23.

[127] *Supra* Answer Part I.A.

[128] *See infra* Answer Parts III.A, III.C.

that these rates are unlawful based on "all cost components and not just the challenged component."[129]

The Commission has never addressed this issue. In the Ohio proceeding, the Commission emphasized that "Ohio Power and AEP Ohio Transmission are the Ohio-only companies of AEP, and do not own or operate facilities outside of Ohio"—citing their FERC Form 1.[130] Here, none of the Exelon Utilities are Maryland-only companies. And when the Sixth Circuit in *Dayton* affirmed the single-issue treatment of the RTO Adder there, it worried that an overall-rate requirement "would allow a utility to abandon its RTO membership and retain its adder."[131] But that concern is irrelevant where, as here, the Exelon Utilities would be retaining their Adder based on conduct that is—by any measure—voluntary. Indeed, the Commission has itself recognized that single-issue treatment has limits: Where an adder cannot cleanly be excised from the broader rate, the Commission will not "change unilaterally a single aspect" of the rate "absent evidence that the overall ROE has become unjust and unreasonable."[132] True, the Sixth Circuit in *Dayton* disagreed with the Commission's *application* of that principle and found that (contrary to the Commission's conclusion) the black-box settlements of Duke and FirstEnergy incorporated the 50 basis-point adder.[133] The Sixth Circuit, however, did not dispute (and if anything endorsed) the Commission's view that single-issue treatment is inappropriate where the RTO Adder cannot be cleanly removed.[134] Here, no mechanical severance is possible.

[129] *Sithe*, 165 F.3d at 951 (citation modified).

[130] *OCC*, 181 FERC ¶ 61,214 at P 78.

[131] *Dayton*, 126 F.4th at 1132.

[132] *OCC*, 181 FERC ¶ 61,214 at P 64.

[133] *Dayton*, 126 F.4th at 1133.

[134] *Id.* (acknowledging that the Commission's reasoning was "logical at first glance," before disagreeing with the Commission's application).

B. The Complaint Fails Under Section 206 Because The Replacement Rate Would Approximate The Existing Rate.

The Maryland Parties' failure to grapple with their section 206 burden is no mere harmless error. If the Commission finds an existing rate unlawful, it "shall determine the just and reasonable rate . . . to be thereafter observed and in force, and shall fix the same by order."[135] When the Commission finds a transmission rate unlawful, it follows a settled approach to setting the replacement rate. The Commission constructs a composite zone of reasonableness by applying the discounted cash flow and capital asset pricing models, equally weighted, to a proxy group of comparable companies.[136] Where a single ROE applies RTO-wide to a diverse group of transmission owners, the Commission sets the replacement rate at the midpoint of that zone.[137] Where the ROE belongs to a single utility of average risk, the Commission sets the replacement rate at the median.[138] The second approach applies here because each Exelon Utility has its own companywide ROE.

In this proceeding, the Exelon Utilities have done what no respondent in any prior adder case did: The Exelon Utilities have submitted evidence establishing where their existing returns sit within today's zone of reasonableness. This evidence shows that this Commission's current accepted methodology would yield a nearly unchanged ROE. Today, each Exelon Utility has a total ROE of 10.50%, including the RTO Adder.[139] The testimony of John S. Thompson, Ph.D., shows that this figure matches very closely the median of the composite zone. In particular, applying the Commission's two-step DCF and CAPM approach to proxy groups keyed to each

[135] 16 U.S.C. § 824e(a).

[136] *Martha Coakley, Att'y Gen. of Mass. v. Bangor-Hydro Elec. Co.*, Opinion No. 594, 194 FERC ¶ 61,208 at PP 73, 390, 396 (2026).

[137] *Id.* at PP 363, 378.

[138] *Id.* at P 363.

[139] Thompson Test. at 4.

company's credit ratings, Dr. Thompson calculates composite zones of reasonableness of 8.95% to 11.80% for BGE and 8.95% to 13.07% for Delmarva and Pepco, with medians of 10.36% and 10.66%, respectively.[140] Three independent benchmark analyses—a constant-growth DCF, an expected-earnings study, and a risk-premium analysis—corroborate those figures, yielding results of 10.35% to 10.42% (that average 10.39%) for BGE and 10.35% to 11.00% (which average to 10.67%) for Delmarva and Pepco.[141] Each Company's existing total allowed ROE, in other words, matches almost exactly the return the Commission's methodology would select for the base ROE today, without any reliance on the RTO Adder.

Two conclusions follow. First, the Complaint fails at Prong 1 for this reason as well. The Maryland Parties ask the Commission to simply examine the RTO Adder in isolation and declare it unjust and unreasonable. But even if that approach were permissible in other cases (and it is not), it is unsustainable where—as here—the utility has affirmatively shown that its current ROE, including the RTO Adder, is at the heart of the zone of reasonableness. An ROE that sits at the very measure the Commission uses to set just and reasonable returns cannot plausibly be unjust and unreasonable. Under the framework the Commission has applied since Opinion No. 569, an existing ROE that falls near the median of the set forming the zone of reasonableness is presumptively just and reasonable.[142] Here, the Exelon Utilities' ROEs do so. Each utility's 10.50% ROE falls squarely within the just and reasonable range—well inside the composite zones of 8.95% to 11.80% (BGE) and 8.95% to 13.07% (Delmarva and Pepco), and within basis points

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[140] *Id.* at 54-56 & Ex. JT-002.

[141] *Id.* 54-56 & Exs. JT-004, JT-007, JT-008.

[142] *Ass'n of Bus. Advocating Tariff Equity Coal. of MISO Transmission Customers v. Midcontinent Indep. Sys. Operator, Inc.*, Opinion No. 569-A, 171 FERC ¶ 61,154 at PP 155, 171 (2020), *aff'd in relevant part sub nom. MISO Transmission Owners v. FERC*, 45 F.4th 248, 257-60 (D.C. Cir. 2022).

of each zone's median.[143] Because the existing rates fall squarely within that range, they are not unjust and unreasonable, and section 206 supplies no basis to change them.

Second, this evidence shows that even if the Maryland Parties prevailed on every legal argument in the Complaint, they would be entitled to no relief. If the Commission eliminates the RTO Adder, it must then assess the overall replacement ROE—including the base ROE—in setting the replacement rate under Prong 2 based on the evidence in the record. At best for the Maryland Parties, the replacement rate would be very nearly the same as the current rate; indeed, the Exelon Utilities could be entitled to a higher ROE than that currently in effect.

Revisiting the base ROE is especially necessary because, as explained, the base ROEs of the Exelon Utilities were established via Commission-approved settlements that expressly preserved their ability to seek the RTO Adder.[144] Hence, the Commission cannot simply assume that those base ROEs (set long ago) would be the same if the Exelon Utilities could no longer receive the RTO Adder. Nor can the Commission assume that those settlement-era base ROEs reflect today's capital markets. As Dr. Thompson documents, utility bond yields have risen nearly 260 basis points since 2021, Commission-authorized ROEs move together with those yields, and consensus forecasts project long-term yields to remain elevated through at least 2032.[145]

The evidence, as explained, shows that a conservative application of the Commission's preferred models yields base ROEs of 10.36% for BGE and 10.66% for Delmarva and Pepco—nearly exactly the existing 10.50% ROEs.[146] So the Commission should do what it did in New England and set the replacement rate by following Dr. Thompson's models and setting the

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[143] Thompson Test. at 54-56.

[144] Weaver Test. at 12 & n.2; *Del. Div. of the Pub. Advocate v. Balt. Gas & Elec. Co.*, 154 FERC P 61,125 (2016); *id.*, Docket No. EL13-48-001, Offer of Settlement Agreement, Attach. 2 at 5-6 (Nov. 6, 2015).

[145] Thompson Test. at 54-56.

[146] *Id.* at 37.

replacement rate at the resulting median. Those figures, moreover, are conservative and do not account for evidence that the Exelon Utilities may face greater risks than their proxy group (including due to the Maryland statute itself and the risks accompanying forced RTO membership).[147]

What the Maryland Parties instead propose—simply knocking off 50 basis points from the Exelon Utilities' ROE—is unjustifiable. It would leave the Exelon Utilities' ROE far below the rate that settled Commission precedent identifies as appropriate in a section 206 proceeding. The Commission places a single utility's return below the median only on evidence that the utility presents below-average risk.[148] The Maryland Parties do not allege that any Exelon Utility presents below-average risk, and the record is to the contrary.[149] And a below-median return could not be squared with the constitutional floor that returns be "commensurate with returns on investments in other enterprises having corresponding risks" and sufficient "to attract capital"—an acute concern for utilities that must finance substantial ongoing transmission investment.[150] Indeed, the Maryland Act and the Complaint push risk and return in opposite directions. The Act, as the Maryland Parties read it, strips the Exelon Utilities of the ability to protect themselves by withdrawing from PJM—both depriving them of operational flexibility and eliminating the leverage that a credible ability to withdraw provides in PJM's stakeholder process. The Complaint would then cut the compensation the Exelon Utilities receive for bearing the risks of membership.[151]

[147] *Id.*

[148] Opinion No. 569-A at P 18.

[149] Thompson Test. at 20-24.

[150] *Hope*, 320 U.S. at 603; *Bluefield Waterworks & Improvement Co. v. Pub. Serv. Comm'n of W. Va.*, 262 U.S. 679, 692-93 (1923); Thompson Test. at 5.

[151] Weaver Test. at 13-19.

The rating agencies have already confirmed the increased risks that the Exelon Utilities face. S&P downgraded BGE in April 2026, and both S&P and Moody's have tied the Maryland Act to more restrictive cost recovery, greater regulatory lag, and weaker financial performance—with S&P observing that mandatory PJM participation "eliminates a previously available 0.5% return on equity adder" that S&P expects "will marginally weaken financial performance."[152] This hurts customers by increasing the cost of capital. The Commission, for its part, has recognized that transmission investment carries risks at least as great as those of integrated electric utilities, and it has twice concluded that even the midpoint of a DCF-derived zone of reasonableness was too low to satisfy *Hope* and *Bluefield*.[153] A below-median return for utilities bearing these risks would be indefensible.

III. Because The Maryland Act Is Preempted And Unconstitutional, The Commission Cannot Give Effect To It To Deny The Exelon Utilities The RTO Adder.

The Complaint's essential premise is that the Maryland Act requires the Exelon Utilities to participate in an RTO and turn over operational control of their facilities. That is why, per the Complaint, the Exelon Utilities are not engaged in any voluntary conduct by participating in PJM as transmission owners. The Complaint's reading of the Maryland Act is wrong, for reasons explained in Part I.A. But accepting that reading *arguendo*, the Complaint fails because the Maryland Act—so read—is preempted and unconstitutional. As the Sixth Circuit explained, the Commission can and must "interpret the validity of Ohio law as necessary to carry out its ratemaking function."[154] And the Commission has recognized that "[i]t has long been settled that we cannot give effect to a State law when to do so would interfere with the discharge of our

[152] Thompson Test. at 20-21 (quoting S&P and Moody's reports).

[153] *Id.* (discussing Opinion Nos. 531 and 551).

[154] *Dayton*, 126 F.4th at 1127.

responsibilities" under the Commission's authorizing statutes,[155] and that it is "not required to defer to state laws if it would frustrate implementation of federal statutes."[156] Here, Maryland's law is preempted and unconstitutional many times over. And critically, that is so for reasons that did not apply, did not apply as strongly, or were not raised in the Ohio and California litigation—especially the multi-state nature of the Exelon Utilities' systems.

A. The Maryland Act Is Field Preempted.

Congress in section 201(b) of the FPA gave the Commission "jurisdiction over all facilities" for the transmission of electric energy in interstate commerce, while reserving to the states only "facilities used . . . only for the transmission of electric energy in intrastate commerce."[157] That federal authority is exclusive. The Supreme Court held more than forty years ago that the FPA "delegated to the Federal Power Commission, now [FERC], exclusive authority to regulate the transmission . . . of electric energy in interstate commerce,"[158] and it has repeatedly reaffirmed that Congress "dr[ew] a bright line … between state and federal jurisdiction" in this domain.[159] The D.C. Circuit's cases are to the same effect: "interstate transmission" "fall[s] squarely within FERC's exclusive [FPA] authority."[160]

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[155] *Blair-Vreeland*, Opinion No. 724, 53 FPC at 853.

[156] *Stowers Oil & Gas Co.*, Opinion No. 307-A, 48 FERC ¶ 61,23, at 61,819 (1989) (citation omitted).

[157] 16 U.S.C. § 824(b)(1).

[158] *New Eng. Power*, 455 U.S. at 340 (citing *United States v. Pub. Utils. Comm'n of Cal.*, 345 U.S. 295 (1953)).

[159] *Nantahala Power & Light*, 476 U.S. at 966 (quoting *FPC v. S. Cal. Edison Co.*, 376 U.S. 205 (1964)); *see Hughes v. Talen Energy Mktg., LLC*, 578 U.S. 150, 154 (2016) (FERC has "exclusive authority" over interstate wholesale sales).

[160] *Portland Gen. Elec. Co. v. FERC*, 854 F.3d 692, 700 (D.C. Cir. 2017); *accord Orangeburg, S.C. v. FERC*, 862 F.3d 1071, 1086 (D.C. Cir. 2017); *Green Dev., LLC v. FERC*, 77 F.4th 997, 1000 (D.C. Cir. 2023); *S.C. Pub. Serv. Auth. v. FERC*, 762 F.3d 41, 63 (D.C. Cir. 2014) (FERC "possesses greater authority over electricity transmission than it does over sales").

The preemption question here is different from—and the invasion of the federal field more egregious than—what the Commission and the courts of appeals confronted in the Ohio and California proceedings. The Sixth Circuit sustained Ohio's mandate on the theory that it "primarily regulates intrastate transmission," reasoning from the fact that it addressed facilities located in Ohio.[161] Whatever the merits of that theory elsewhere (and the Exelon Utilities maintain it is wrong), it cannot sustain the Maryland Act. That is because the Act expressly regulates both facilities that cross state lines and, indeed, facilities that are entirely out-of-state. By its terms, the Act applies to any "person" that owns or operates a qualifying line in Maryland, and it commands that the *person*—not the Maryland facility—"shall participate as a member" in an RTO.[162] To the extent the Act mandates participation as a transmission-owner member, *cf. supra* Answer Part I.A, it therefore purports to dictate the disposition of the person's facilities wherever located.

All three Exelon Utilities own facilities that cross state lines and, indeed, are entirely outside of Maryland.[163] For example, Delmarva's lines cross from Maryland into Delaware at 18 points, into Virginia at 4, and into Pennsylvania at 1; Pepco's lines cross from Maryland into the District of Columbia in 14 places; and BGE's lines cross into Pennsylvania in about 6 places.[164] And that is in addition to facilities located entirely outside Maryland: Delmarva alone operates more than 125 transmission assets located entirely within Delaware and another 23 in Virginia, and the three companies co-own nearly a dozen 500 kV facilities located in Pennsylvania, Delaware, and New Jersey.[165] Under no definition does this case concern "intra-state"

[161] *Dayton*, 126 F.4th at 1129-30.

[162] Md. Code Ann., Pub. Util. § 7-109(B); *see id.* § 1-101(w) (defining "person").

[163] Weaver Test. at 4-8.

[164] *Id.*

[165] *Id.*

transmission, and no similar facts were put before the Commission in prior proceedings. The Ohio statute, for example, instead required that the owner be "a member of, and transfer[] control of *those facilities* to," a qualifying transmission entity.[166]

The Maryland Act, moreover, strikes at the core of the federal field. It targets any "person that owns or operates a transmission line" above 69,000 volts in Maryland, and it directs that the person "shall participate as a member in a Regional Transmission Organization."[167] And under the Commission's regulations, a utility that participates in an RTO "must propose that operational control of that public utility's transmission facilities will be transferred to" the RTO.[168] That means, as the Complaint acknowledges, that the Exelon Utilities' systems must be "subject to the functional control of PJM, which operates those facilities pursuant to the PJM Tariff."[169] Deciding whether the owner of interstate transmission facilities must cede operational control of them to a third party, and requiring that those facilities be operated within a particular Commission-approved construct, is regulation of interstate transmission by any measure. The courts of appeals have accordingly recognized that FERC's jurisdiction extends to precisely these arrangements—including the terms of RTO membership and withdrawal,[170] the operations and planning decisions of RTOs themselves,[171] and the terms of transmission service.[172] When a state commands utilities

[166] Ohio Rev. Code § 4928.12(A) (emphasis added).

[167] Md. Code Ann., Pub. Util. § 7-109(B).

[168] 18 C.F.R. § 35.34(f); *see id.* § 35.34(j)(3), (k).

[169] Compl. ¶¶ 4-5, 8.

[170] *See Atlantic City*, 295 F.3d at 9-12.

[171] *See Transource Pa., LLC v. DeFrank*, 156 F.4th 351, 357 (3d Cir. 2025) (state veto of RTO-planned transmission project preempted)*; PPL EnergyPlus, LLC v. Solomon*, 766 F.3d 241, 247 (3d Cir. 2014) ("the federal government has exclusive control over interstate rates and transmission").

[172] *See S.C. Pub. Serv. Auth.*, 762 F.3d at 49-50, 63; *AEP Tex. N. Co. v. Tex. Indus. Energy Consumers*, 473 F.3d 581, 584 (5th Cir. 2006); *North Dakota v. Heydinger*, 825 F.3d 912, 921 (8th Cir. 2016) (Loken, J., opinion).

to turn over the operation of federally regulated facilities, the state is asserting jurisdiction over the operation of those facilities—jurisdiction Congress vested exclusively in this Commission.

The "intrastate transmission" theory is wrong in any event (although the Commission need not reach the question to reject this Complaint). Outside ERCOT, Alaska, and Hawaii, electric energy on the interconnected grid "is part of a vast pool of energy that is constantly moving in interstate commerce"—as the Supreme Court has recognized for half a century.[173] The FPA's carve-out for state authority is correspondingly narrow: it reaches facilities "used . . . *only* for the transmission of electric energy in intrastate commerce."[174] No facility governed by the Maryland Act is used "only" for intrastate transmission.

Field preemption follows for another reason: the Maryland Act "aim[s]" directly at the federal field. In *Oneok*, the Supreme Court explained that field preemption turns on "the *target* at which the state law *aims*."[175] Here, the Maryland Act targets the federal field in two ways.

First, the Act targets the federal rate. The Act's official legislative analysis describes its operation as "the likely elimination of the 'RTO adder,' a transmission rate incentive that FERC offers."[176] The Office of People's Counsel—a Complainant here—told the General Assembly that the mandate would "provid[e] grounds to challenge the 0.5% return 'adder,'" would "render [the

[173] *New York v. FERC*, 535 U.S. 1, 7 & n.5 (2002); *FPC v. Fla. Power & Light Co.*, 404 U.S. 453, 466-69 (1972); *Nat'l Ass'n of Regul. Util. Comm'rs v. FERC*, 964 F.3d 1177, 1181 (D.C. Cir. 2020); *North Dakota v. Heydinger*, 825 F.3d at 921 ("electrons flow freely without regard to state borders").

[174] 16 U.S.C. § 824(b)(1) (emphasis added).

[175] *Oneok*, 575 U.S. at 385.

[176] Md. Dep't of Legis. Servs., Fiscal & Policy Note, H.B. 1532, Reg. Sess., at 13.

state's electric companies] ineligible to receive these extra unwarranted profits," and "could save customers around $20 million per year."[177] Under *Oneok*, these statements should end the case.[178]

The Supreme Court has held that a state law "amount[ing] to a regulation of rates and facilities" within federal jurisdiction is preempted, whatever form the law takes.[179] It has held that a state's purposes matter in locating the target of its regulation.[180] As was the case in *Schneidewind*, "[i]n this case we are presented with a state law whose central purpose is to regulate matters that Congress intended FERC to regulate."[181] And it has held—in a case about Maryland—that "States may not seek to achieve ends, however legitimate, through regulatory means that intrude on FERC's authority."[182] Here both the end (a lower federal rate) and the means (compelled participation in a Commission-jurisdictional organization) lie inside the federal field.

Second, and independently, the Act targets interstate facilities. As explained above, the Act's trigger is ownership or operation of "a transmission line . . . designed to carry a voltage in excess of 69,000 volts"—the facilities that constitute the interstate grid—and the Act purports to dictate how those facilities will be operated.[183] This is not a law of general applicability that happens to touch regulated parties, like the blanket antitrust statutes in *Oneok*. It is a statute whose

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[177] Md. Off. of People's Counsel, Testimony on S.B. 386/H.B. 897 at 3 (Feb. 24, 2026); *see* Md. Off. of People's Counsel, Request for a Favorable Committee Report, H.B. 505, at 4 (Feb. 22, 2024) (cited at Compl. n.95).

[178] The Maryland Office of People's Counsel has long tried and failed to persuade the Commission to disallow the RTO Adder for public utilities operating in Maryland. *E.g. Valley Link Transmission Md., LLC*, 191 FERC ¶ 61,113 at PP 157, 159 (2025); *Baltimore Gas & Elec. Co.*, 120 FERC ¶ 61,084 at P 19 (2007). The Act is merely the latest attempt of state advocates to do by legislative fiat what they could not lawfully accomplish before the Commission.

[179] *Schneidewind v. ANR Pipeline Co.*, 485 U.S. 293, 307-09 (1988) (state law preempted where it "amounts to" regulation of rates and facilities committed to FERC).

[180] *Nw. Cent. Pipeline Corp. v. State Corp. Comm'n of Kan.*, 489 U.S. 493, 522 (1989); *Oneok*, 575 U.S. at 385.

[181] *Schneidewind*, 485 U.S. at 308-09.

[182] *Hughes*, 578 U.S. at 164.

[183] Md. Code Ann., Pub. Util. § 7-109(B).

subject is interstate transmission facilities and whose *addressees* are their owners. A law so targeted occupies ground the FPA reserves to the Commission alone.[184]

Indeed, this case is remarkably similar to—and, if anything, is easier than—*Schneidewind* itself. There, Michigan enacted a law that limited security issuances by federally regulated gas transmission pipelines, in order to "keep[] [the] company from raising its equity levels above a certain point" and so "ensure that the company will charge only what Michigan considers to be a 'reasonable rate.'"[185] The Court explained that the law was preempted because "the things Act 144 regulation is directed at, the control of rates and facilities of natural gas companies, are precisely the things over which FERC has comprehensive authority."[186] And while acknowledging that the FPA does not preempt "every state statute that has some indirect effect on rates and facilities of natural gas companies," there the effect was anything but "indirect."[187] The statute's "central purpose [was] to regulate matters that Congress intended FERC to regulate"—namely, the rate effects of particular capital structures.[188] Likewise here, Maryland has sought to regulate RTO membership based on its view that the RTO Adder yields transmission rates that are too high, asserting control over federally regulated "facilities" with the "central purpose" of altering rates under "FERC's exclusive jurisdiction."[189] The Maryland Act is therefore preempted.

B. The Maryland Act Is Conflict-Preempted.

The Act is also conflict preempted. State law must yield where "compliance with both state and federal law is impossible," or where the state law "stands as an obstacle to the accomplishment

[184] *See Schneidewind*, 485 U.S. at 308-09; *Hughes*, 578 U.S. at 166-67; *Transource*, 156 F.4th at 357.
[185] *Schneidewind*, 485 U.S. at 308.
[186] *Id.*
[187] *Id.*
[188] *Id.* at 309.
[189] *Id.* at 308-09.

and execution of the full purposes and objectives of Congress."[190] Here, the Act is conflict-preempted for many reasons, including many reasons that did not apply or were not raised in the Ohio and California proceedings.

1. The Maryland Act Conflicts With Withdrawal Rights Enshrined In The CTOA And Protected By The Filed Rate Doctrine.

The Act, as read by the Maryland Parties, conflicts with the federal filed rate and so is barred. The CTOA is both a contract and a Commission-approved rate schedule, and its withdrawal provisions are terms of the filed rate. Section 3.2 expressly permits any party to withdraw upon ninety days' notice, subject to enumerated conditions.[191] Those withdrawal rights are integral to the voluntary structure the Commission approved. And those bargained-for rights were critical to the Exelon Utilities' decision to voluntarily join PJM in the first place. As detailed by David W. Weaver, RTO membership imposes extraordinary burdens on transmission owners, including—critically—losing operational control over their assets and subjecting themselves to decision making by RTOs and their stakeholder processes concerning those assets.[192] The Exelon Utilities were willing to take on those burdens only because they also retained the ability to leave, and losing that right would proliferate the burdens and risks they face from RTO membership.[193]

Under the filed rate doctrine, a tariff on file with the Commission has the force of federal law, binds the states, and preempts contrary state law; a state "must . . . give effect to Congress' desire to give FERC plenary authority over interstate wholesale rates,"[194] and neither a state nor

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[190] *Oneok*, 575 U.S. at 377 (citation omitted).

[191] CTOA § 3.2 ("Any Party may withdraw from this Agreement upon ninety (90) days advance written notice to PJM and the other Parties; provided that" certain conditions are met).

[192] Weaver Test. at 12-18.

[193] *Id.* at 11-12.

[194] *Nantahala Power & Light*, 476 U.S. at 966; *accord Entergy La., Inc. v. La. Pub. Serv. Comm'n*, 539 U.S. 39, 47 (2003); *Miss. Power & Light Co. v. Miss. ex rel. Moore*, 487 U.S. 354, 371-73 (1988).

the Commission itself may disregard or alter a filed tariff's terms.[195] To the contrary, as the Commission and the courts have recognized, "[u]nder the filed rate doctrine, the terms of the filed tariff are considered to be the law and to therefore conclusively and exclusively enumerate the rights and liabilities of the contracting parties."[196] The Maryland Parties have not challenged the CTOA's withdrawal right under section 206, and the Commission cannot give effect to a state statute that disregards the filed rate.

The Maryland Act is inconsistent with those bedrock principles. The filed rate says the Exelon Utilities *may* withdraw; the Complaint's premise is that the Exelon Utilities *cannot* withdraw. State law would thus prohibit the exercise of a right that a Commission-jurisdictional filed rate confers. A state may not second-guess costs allocated under a filed rate,[197] and it may not nullify a filed rate's operative terms.

Nor does the conflict vanish simply because utilities could, under the Maryland Act, leave PJM and go to another RTO. Even leaving aside the practical impossibility of forming or joining a new RTO, the conflict remains. The CTOA says that PJM members *may* withdraw on ninety days' notice, subject to certain conditions.[198] The Maryland Act says that PJM members *may not* withdraw, unless they satisfy Maryland's additional requirement—that the members simultaneously join a different RTO. That is a far narrower right, and far more difficult to exercise, than the right enshrined in the CTOA. The filed right does much more to protect the Exelon Utilities' interests—which is why they negotiated for the broader right now enshrined in federal law.

[195] *See Old Dominion Elec. Coop. v. FERC*, 892 F.3d 1223, 1230 (D.C. Cir. 2018).

[196] *GreenHat Energy, LLC*, 177 FERC ¶ 61,073 P 29 n.63 (2021) (quoting *Cal. ex rel. Lockyer v. Dynergy, Inc.*, 375 F.3d 831, 839 (9th Cir. 2004)).

[197] *Miss. Power & Light*, 487 U.S. at 373-75.

[198] CTOA § 3.2.

Myriad decisions recognize that where the governing law authorizes a course of conduct under particular conditions, additional requirements cannot be added. The Third Circuit applied that principle in *Transource Pennsylvania, LLC v. DeFrank*.[199] There, PJM deemed a project needed if it met particular criteria set forth in its federal tariff.[200] Pennsylvania, however, determined that it would permit the project to proceed only if it met an additional, more stringent standard for need that it believed state law imposed.[201] The Third Circuit explained that states "cannot impose any inconsistent rate—even when," unlike here, "acting in an area of exclusive state jurisdiction" that conflicts with determinations made in the federal rate.[202] To do so would be to impermissibly "second-guess the reasonableness of FERC tariffs."[203] Many other decisions, in a variety of contexts, have recognized that states may not add their own requirements to federal-law standards authorizing particular conduct.[204] And here, that conclusion is the only one that is consistent with the bedrock principle that "the terms of the filed tariff … conclusively and

[199] 156 F.4th 351.

[200] *Id.* at 364-66.

[201] *Id.* at 368.

[202] *Id.* at 376.

[203] *Id.* (quotation marks omitted).

[204] *U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779, 783 (1995) (state could not add qualifications to the Constitution's requirements for members of the House); *Arizona v. Inter Tribal Council of Arizona, Inc.*, 570 U.S. 1, 20 (2013) (National Voter Registration Act preempted state's attempt to add a documentary-proof-of-citizenship requirement on top of the form's sworn citizenship attestation); *Sperry v. State of Fl. ex rel. The Fl. Bar,* 373 U.S. 379, 385 (1963) (Florida could not require a federally registered patent practitioner to also satisfy state bar admission in order to practice before the Patent Office); *Barnett Bank of Marion Cnty. v. Nelson*, 517 U.S. 25 (1996) (Florida could not add a prohibition on national banks selling insurance where a federal statute authorized it); *Riegel v. Medtronic, Inc.*, 552 U.S. 312, 330 (2008) (states could not add additional requirements for federally approved medical devices); *Arizona v. United States*, 567 U.S. 387, 400-01, 403, 406-407 (2012) (Arizona could not add state penalties on top of the federal alien-registration scheme). Indeed, classic cases like *Mississippi Power & Light*, 487 U.S. 354, and *Nantahala Power & Light Co.*, 476 U.S. 953, apply a similar principle. They hold that states cannot add their own, additional prudence requirements or swap in their own cost-allocation analysis to second-guess rates the Commission has approved. *Miss. Power & Light Co.*, 487 U.S. at 356-57, 372-73; *Nantahala*, 476 U.S. at 965-66.

exclusively enumerate the rights and liabilities of the contracting parties" and cannot be varied by state law.[205]

The conflict is starker still because the CTOA is a contract among PJM and its transmission owners. Under the *Mobile-Sierra* doctrine, even this Commission must presume the terms of such an agreement just and reasonable and may modify them only upon finding that they "seriously harm[] the public interest."[206] Maryland has made no such finding and could not: a state legislature has no authority to modify Commission-jurisdictional agreements at all, under any standard. Nor has Maryland asked the Commission to make such a finding here.

2. The Maryland Statute Is Conflict-Preempted Because It Purports To Limit The Exelon Utilities' Section 205 Filing Rights, As Interpreted In *Atlantic City*.

Section 205 gives every public utility the right to file changes to its rates on sixty days' notice.[207] The "rates" a utility may file include the terms and conditions on which it provides service: the statute reaches "all rates and charges," all "classifications" and "practices," and every "rule, regulation, practice, or contract affecting such rate."[208] As the D.C. Circuit explained, "the public utility, 'like the seller of an unregulated commodity, has the right . . . to change its rates . . . [at] will, unless it has undertaken by contract not to do so.'"[209] The Exelon Utilities accordingly hold a federal statutory right to file tariffs to operate their systems outside PJM or any other RTO, subject only to the Commission's review of the filing for justness and reasonableness. They have

[205] *GreenHat Energy, LLC*, 177 FERC ¶ 61,073 at P 29 n.63 (quoting *Cal. ex rel. Lockyer v. Dynergy, Inc.*, 375 F.3d at 839).

[206] *Morgan Stanley Cap. Grp. Inc. v. Pub. Util. Dist. No. 1 of Snohomish Cnty.*, 554 U.S. 527, 530 (2008).

[207] 16 U.S.C. § 824d(d).

[208] *Id.* §§ 824d(a), (c); *id.* § 824e(a).

[209] *Atlantic City*, 295 F.3d at 10 (quoting *United Gas Pipe Line Co.*, 350 U.S. at 341).

not surrendered that right by contract; to the contrary, the CTOA expressly preserves their withdrawal rights and their "exclusive and unilateral" section 205 filing rights.[210]

Insofar as the Maryland Act purports to abrogate that federal right, section 205 forbids the Commission from giving effect to that Act. On the Maryland Parties' reading, the Exelon Utilities may never file to provide transmission service outside an RTO—no matter how just and reasonable the proposed replacement tariff.[211] But *Atlantic City* holds that even *FERC* "ha[s] no power to force public utilities to file particular rates unless it first finds the existing filed rates unlawful," and "may [not] prohibit public utilities from filing changes in the first instance."[212]

What the federal regulator cannot do in the federal field, a state legislature certainly cannot do. Then-Judge Breyer explained as much, in a case rejecting Massachusetts' attempt to *compel* a utility's FERC filings.[213] Allowing the state to dictate filings "would prevent the utility from choosing among reasonable rate-practice alternatives"; it "threatens confusion, possibly chaos," because nothing would prevent "each state in a multistate service area from requiring the utility to file a *different* set of 'reasonable' rate practices with FERC"; and it would be intolerable "to allow a state to do what FERC itself cannot, namely, to change an *inter*state rate practice that FERC has not found unreasonable."[214] The Commission has enforced the same rule: Section 205 does not "allow[] [a] State to dictate what filings the CAISO will make with the Commission"; "[u]nder the

[210] CTOA §§ 3.2, 7.3.1; *see supra* Background Part III.

[211] The Exelon Utilities show in Part I.A above that this reading is incorrect—but because the Complaint rests on this reading, the Exelon Utilities accept it *arguendo* here.

[212] *Atlantic City*, 295 F.3d at 9-10.

[213] *Mass. Dep't of Pub. Utils.*, 729 F.2d 886 (Breyer, J.).

[214] *Id.* at 888-89.

FPA, public utilities are required to comply with the Commission's directives, not those of [a] State."[215]

This case presents the same defect from the opposite direction: As the Complaint reads it, Maryland law *precludes* section 205 filings. And everything Judge Breyer said applies with equal force. The Act would prevent the Exelon Utilities from choosing among reasonable alternatives that federal law entitles them to propose. It would create regional chaos: if Maryland can require RTO membership, Pennsylvania or Delaware can preclude it, and a multistate utility answers to neither Congress nor the Commission but to a patchwork of state commands. And it would posit that states can do what FERC cannot—rewrite the menu of permissible federal filings without any finding that existing rates are unlawful.

3. The Maryland Act Is Conflict-Preempted For Other Reasons.

The conflicts do not stop there. In FPA section 202(a), Congress "empowered and directed" the Commission "to divide the country into regional districts for the *voluntary* interconnection and coordination of facilities," and made it "the duty of the Commission to promote and encourage such interconnection and coordination."[216] The D.C. Circuit has twice confirmed what that text says: Congress "was not willing to mandate" coordination, and instead left it to the "voluntary action of the utilities."[217]

A state statute making RTO membership *compulsory* is in direct conflict with a federal statute making it *voluntary*. And what then-Judge Breyer said long ago about section 205 rights applies equally here: Congress withheld the power of compulsion from the federal regulator it charged with administering the grid; it would invert the statutory design to say that each of the

[215] *Mirant Delta, LLC*, 100 FERC ¶ 61,271 at P 18 (2002).
[216] 16 U.S.C. § 824a(a) (emphasis added).
[217] *Cent. Iowa Power Coop.*, 606 F.2d at 1168 (citation omitted); *accord Atlantic City*, 295 F.3d at 12.

fifty states nonetheless holds that power.[218] Indeed, the state mandates make it impossible for the Commission to do its own section 202(a) job. If states dictate membership, the Commission cannot administer "voluntary" coordination; it cannot exercise its statutory "judgment" about which regions "can economically be served" by interconnection; and it cannot promote the regional configurations federal policy favors, because states will have imposed their own mandates.[219] More: Congress in this process gave states merely a "reasonable opportunity to present [their] views,"[220] which is the very opposite of the commanding role Maryland has assumed here.

The Maryland Act also conflicts with the specific mechanism for compelled interconnection that Congress *did* authorize, and its defined, limited role for states. Under section 202(b), "upon application of any State commission," the *Commission* "may by order direct a public utility . . . to establish physical connection of its transmission facilities" with other facilities—but only upon federal findings, including that the order serves the public interest and imposes no "undue burden" on the utility.[221] Hence, a state that believes compulsory interconnection or coordination is warranted must petition the Commission, which decides upon statutory findings. Maryland's statute inverts that design—the state commands, and (on the Maryland Parties' theory) that choice must be given effect in Commission-jurisdictional tariffs. But again, states cannot compel what section 202(b) authorizes only the Commission to order, and only in limited circumstances.

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[218] *Mass. Dep't of Pub. Utils.*, 729 F.2d at 888-89; *Cf. Pac. Gas & Elec. Co. v. State Energy Res. Conservation & Dev. Comm'n*, 461 U.S. 190, 212-13 (1983) (preemption turns on whether "the matter on which the state asserts the right to act is in any way regulated by the federal government") (quoting *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 236 (1947)).

[219] 16 U.S.C. § 824a(a).

[220] *Id.* § 824a(a).

[221] *Id.* § 824a(b).

Finally, the Maryland Act conflicts with the incentive scheme created by Congress in section 219 and the Commission in Order No. 679. Section 219 and Order No. 679 both envision that RTO membership will be voluntary.[222] That, indeed, was the *whole premise* of section 219. And the natural inference from section 219 is that Congress believed incentives were necessary because RTO membership was and had to remain a voluntary choice. Conflict preemption protects not only federal ends but federal means: a state law is preempted when it "interferes with the methods by which the federal statute was designed to reach [its] goal."[223] Maryland's mandate does exactly that. Congress selected inducement as the instrument of federal transmission policy; Maryland substitutes compulsion.

C. The Maryland Act Violates The Dormant Commerce Clause.

The Act is unconstitutional for a second, independent set of reasons: it violates the Commerce Clause. Electric transmission is interstate commerce; the interconnected grid is among commerce's channels and instrumentalities.[224] In *Attleboro*, the Supreme Court held that the Commerce Clause forbids states from regulating interstate electricity transactions,[225] and Congress passed the FPA to fill the regulatory gap that holding created—by assigning the field to a federal regulator, not by re-opening it to the states.[226] Maryland has now done just what *Attleboro* forbade: regulated the interstate transmission of electricity, at the border, to lower prices for its own residents. The doctrine has been refined since 1927,[227] but the Act is equally unlawful under

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[222] *Id.* § 824s(c); Order No. 679 at P 331.

[223] *Int'l Paper Co. v. Ouellette*, 479 U.S. 481, 494 (1987); *accord Crosby v. Nat'l Foreign Trade Council*, 530 U.S. 363, 373 (2000).

[224] *New York*, 535 U.S. at 7-8.

[225] *Pub. Utils. Comm'n of R.I. v. Attleboro Steam & Elec. Co.*, 273 U.S. 83, 89-90 (1927).

[226] *New York*, 535 U.S. at 6.

[227] *See Ark. Elec. Coop. Corp. v. Ark. Pub. Serv. Comm'n*, 461 U.S. 375, 390-91 (1983).

modern doctrine—five separate ways. And because the Act violates the Constitution, the Commission cannot give it effect.[228]

First, the Act on its face directly imposes requirements on out-of-state conduct and out-of-state property. Its command runs to the "person": any company owning a qualifying line in Maryland "shall participate as a member" in an RTO.[229] To the extent this command requires participation *as a transmission owner*, *cf. supra* Answer Part I.A, the Act is not limited to such participation *as to Maryland facilities*; rather, it extends to all facilities that the relevant "person" owns.[230] And as explained, the systems of each of the Exelon Utilities cross—and are across—state lines, including Delmarva's in Virginia, Pepco's facilities in the District of Columbia, and BGE's in Pennsylvania (just to name a few).[231] Nor is this some incidental or unexpected effect: Only a handful of companies own or operate transmission facilities in Maryland.[232] That is direct state regulation of commerce and property outside the state's borders, which exceeds "the inherent limits of the enacting State's authority."[233] Maryland could not tell any citizen who drives a car in Baltimore what rules they must follow in the District of Columbia.[234] No more can Maryland

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[228] The Commission must address all the Exelon Utilities' constitutional arguments for the reason the Sixth Circuit explained: It must "interpret the validity of Ohio law as necessary to carry out its ratemaking function." *Dayton*, 126 F.4th at 1127. And the Commission's duty to address the dormant Commerce Clause arguments is especially clear because they are intertwined with the Commission's own authority under the FPA: Congress created the Commission precisely to overcome the limits imposed by the dormant Commerce Clause, and dormant Commerce Clause issues cannot be separated from the Commission's own authority—especially where, as here, those issues arise in the context of ratemaking questions squarely within the Commission's domain. `

[229] Md. Code Ann., Pub. Util. § 7-109(B).

[230] *Id.*

[231] Weaver Test. at 4-8.

[232] *Id.* at 21-22.

[233] *Healy v. Beer Inst., Inc.*, 491 U.S. 324, 336 (1989); *cf. Edgar v. MITE Corp.*, 457 U.S. 624, 642-43 (1982) (plurality op.).

[234] *Healy*, 491 U.S. at 336.

dictate, by order of Annapolis, that a Delaware transmission line owned by Delmarva must remain under RTO operational control.

Nor is *National Pork Producers Council v. Ross* to the contrary. *Ross* limited extraterritoriality claims based on *practical effects*.[235] It upheld a law regulating how pigs sold in California had to be raised, and it rejected claims that the law effectively controlled conduct outside of California based on incidental consequences for out of state production choices.[236] The Maryland Act, however, does not regulate an in-state transaction with out-of-state effects. It imposes a legal obligation that on its face governs out-of-state facilities and out-of-state conduct. Nothing in *Ross* blesses a statute that directly dictates how property in other states must be held and operated.[237]

Second, the Maryland Act impermissibly regulates a channel of interstate commerce itself. The Supreme Court has long recognized that states may not regulate in certain fields where "the need of national uniformity"[238] or the burden on "the flow of interstate goods" demands otherwise.[239] And "transmission lines that are part of an interstate grid" are at the "heartland of interstate commerce."[240] But under the Act, no person may use this channel of interstate commerce unless it satisfies Maryland's conditions. If Maryland posted guards at every transmission crossing and barred electricity from leaving unless the owner joined a state-required organization, the violation of the dormant Commerce Clause would be obvious. The Act is no

[235] 598 U.S. 356, 371-76 (2023).

[236] *Id.* at 363-64.

[237] *Cf. Ass'n for Accessible Meds. v. Frosh*, 887 F.3d 664, 668-73 (4th Cir. 2018) (invalidating a Maryland statute that directly regulated out-of-state transactions).

[238] *S. Pac. Co. v. Ariz. ex rel. Sullivan*, 325 U.S. 761, 767-69, 776 (1945).

[239] *Exxon Corp. v. Governor of Md.*, 437 U.S. 117, 128 (1978).

[240] *NextEra Energy Cap. Holdings, Inc. v. Lake*, 48 F.4th 306, 321 (5th Cir. 2022).

different in substance, and it is equally unlawful. Indeed, in that respect, the Act is tantamount to a tariff or customs duty—"the paradigmatic example of a law discriminating against interstate commerce,"[241] and the thing the dormant Commerce Clause most clearly forbids.[242] Electricity cannot leave Maryland unless the owner pays Maryland's toll: Mandatory RTO membership, while giving up the RTO Adder that federal law provides.

Third, the Maryland Act is tantamount to a price-affirmation or price-control statute of the kind invalidated in *Baldwin*, *Brown-Forman*, and *Healy*.[243] Those statutes tied permissible in-state prices to out-of-state conduct and, as a result, were invalid. The Maryland Act likewise regulates interstate conduct (RTO membership, across the companies' multistate systems) in order to reduce prices for in-state customers.

Fourth, the Act is also impermissibly discriminatory. The antidiscrimination principle "lies at the 'very core' of the dormant Commerce Clause,"[244] and states may not "gain an economic advantage for [their] citizens at the expense of . . . customers" of other states.[245] The dormant Commerce Clause thus presumptively invalidates laws that discriminate on their face or in practical effect, or that are based on a discriminatory purpose.[246]

Here, the Maryland Act is impermissibly discriminatory in all of those respects. It exempts "electric cooperative[s]"—local, member-owned Maryland institutions—while training its

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[241] *West Lynn Creamery, Inc. v. Healy*, 512 U.S. 186, 193 (1994).

[242] *Ross*, 598 U.S. at 372 (quotation marks omitted); *Baldwin v. G.A.F. Seelig, Inc.*, 294 U.S. 511, 521 (1935) (invalidating a law that "set a barrier to traffic between one state and another as effective as if customs duties . . . had been laid").

[243] *Baldwin*, 294 U.S. at 521-27; *Brown-Forman Distillers Corp. v. N.Y. State Liquor Auth.*, 476 U.S. 573, 579-84 (1986); *Healy*, 491 U.S. at 336-40.

[244] *Ross*, 598 U.S. at 369.

[245] *New Eng. Power*, 455 U.S. at 339.

[246] *E.g.*, *Ross*, 598 U.S. at 369; *see Bacchus Imports, Ltd. v. Dias*, 468 U.S. 263, 270 (1984).

mandate, and the rate reduction that is its declared object, on the investor-owned and independent transmission companies, every one of which is out-of-state in key respects: The Exelon Utilities are owned by Exelon (incorporated in Pennsylvania and headquartered in Chicago), FirstEnergy (incorporated in Pennsylvania and headquartered in Ohio), NextEra (incorporated and headquartered in Florida), and the Transource and Valley Link joint ventures (with the first composed of AEP and Evergy and the second AEP, FirstEnergy Transmission, and Dominion).[247] The practical result: Southern Maryland Electric Cooperative, a Maryland cooperative that owns transmission facilities in PJM, keeps its RTO Adder, while the interstate companies lose theirs.[248] Simply put, Maryland is happy to have the RTO Adder's proceeds to continue to flow to *Maryland residents*, but not to what it perceives as out-of-state companies.

The dormant Commerce Clause does not permit that blatant discrimination. Discriminatory laws face "a virtually *per se* rule of invalidity,"[249] and Maryland could not begin to make the showing—no other means to advance a legitimate local purpose—that might save one.[250] Nor does it matter that some disfavored utilities are incorporated or present in Maryland. The Supreme Court rejected that defense in *Dean Milk*, holding it "immaterial that Wisconsin milk from outside the Madison area [wa]s subjected to the same proscription as that moving in interstate

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[247] Md. Code Ann., Pub. Util. § 7-109(A); Compl. ¶¶ 4-10 (describing Respondents' corporate structures and affiliations).

[248] In particular, SMECO sought and received approval to use "Commission-approved ROE for the dominant utility in the SMECO zone – PEPCO, … plus 50 basis points for RTO membership" (*S. Md. Elec. Coop., Inc.*, Docket No. ER17-1916-000, Testimony of Robert C. Smith on Behalf of SMECO at 12 (filed June 27, 2017) ("Smith Test."); it stated that "[i]nclusion of the 50 basis points for RTO membership for SMECO would recognize the SMECO's transfer of operational control of its transmission facilities to PJM." Weaver Test. at 22 (quoting Smith Test. at 12).

[249] *City of Philadelphia v. New Jersey*, 437 U.S. 617, 624 (1978).

[250] *See Dean Milk Co. v. City of Madison*, 340 U.S. 349, 354 (1951); *C & A Carbone, Inc. v. Town of Clarkstown*, 511 U.S. 383, 392-93 (1994).

commerce,"[251] and again in *Carbone*, holding a flow-control ordinance "no less discriminatory because in-state or in-town processors are also covered by the prohibition."[252]

Fifth, the Maryland Act violates the dormant Commerce Clause under the *Pike* test—because it imposes burdens on interstate commerce that are "clearly excessive in relation to the putative local benefits."[253] On the one side, the burdens are severe. The Act regulates the very instrumentalities of interstate commerce, conscripts multistate systems into perpetual membership in a particular organization, and—if permitted here—invites replication by other states in ways that would balkanize the grid. The Supreme Court has invalidated far less intrusive measures on precisely these grounds: a nondiscriminatory train-length limit,[254] a mudguard requirement that conflicted with other states' rules,[255] and truck-length limits out of step with regional practice.[256]

On the other, the Act provides no legitimate local benefit. The Act does not claim to advance reliability, safety, or service quality. Nor could it: All covered companies *already* participate in an RTO. The Act's findings and legislative record instead identify a single benefit—reducing rates this Commission has approved as just and reasonable.[257] But while the Exelon Utilities recognize Maryland's desire to reduce rates, states must "give effect to" federally filed rates; a state has no lawful interest in paying less than the rate on file.[258] And securing in-state

[251] *Dean Milk*, 340 U.S. at 354 n.4.

[252] *C & A Carbone*, 511 U.S. at 391; *see also NextEra*, 48 F.4th at 321-23.

[253] *Pike v. Bruce Church, Inc.*, 397 U.S. 137, 142 (1970).

[254] *S. Pac.*, 325 U.S. at 773-76, 781-82.

[255] *Bibb v. Navajo Freight Lines, Inc.*, 359 U.S. 520, 526-30 (1959).

[256] *Raymond Motor Transp., Inc. v. Rice*, 434 U.S. 429, 430, 435 (1978); *Kassel v. Consol. Freightways Corp. of Del.*, 450 U.S. 662, 671 (1981).

[257] *See supra* Background Part V.

[258] *Nantahala Power & Light*, 476 U.S. at 966; *Entergy*, 539 U.S. at 47.

price advantages is not a legitimate local interest under the dormant Commerce Clause; it is the interest the Clause exists to forbid.[259]

Nor is it any answer to say that the Exelon Utilities could avoid the Maryland Act's out-of-state effects by restructuring their corporate entities and facilities into Maryland and non-Maryland. That does not change the fact that the Maryland Act, on its face, regulates out-of-state conduct.[260] It does not avoid Maryland's regulation of the very channels of interstate commerce.[261] And it, if anything, only underscores the disruption to interstate commerce the Maryland Act threatens: Companies could have addressed the truck-length limit in *Kassel* by switching trucks at the Iowa state line.[262] But the Supreme Court held that this balkanization of interstate commerce only compounded the violation. So, too, here.

D. The Maryland Act Violates The Contract Clause.

The Maryland Act also violates the Contract Clause. It forbids a state to pass "any . . . Law impairing the Obligation of Contracts."[263] The inquiry proceeds in two steps: whether the state law "operate[s] as a substantial impairment of a contractual relationship," and, if so, whether it is "drawn in an appropriate and reasonable way to advance a significant and legitimate public purpose."[264] The Maryland Act fails at both steps.

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[259] *New Eng. Power*, 455 U.S. at 339, 344 (order restricting interstate commerce to reduce in-state rates was "precisely the sort of protectionist regulation that the Commerce Clause declares off limits to the states"); *H.P. Hood & Sons, Inc. v. Du Mond*, 336 U.S. 525, 532-39 (1949); *cf. Transource Pa., LLC v. DeFrank*, 705 F. Supp. 3d 266, 292-99 (M.D. Pa. 2023) (state agency's denial of a PJM-planned interstate project to preserve low in-state prices was per se economic protectionism).

[260] *Healy*, 491 U.S. at 336.

[261] *Baldwin*, 294 U.S. at 521.

[262] *Kassel*, 450 U.S. at 665-66.

[263] U.S. Const. art. I, § 10, cl. 1.

[264] *Sveen v. Melin*, 584 U.S. 811, 819 (2018) (citations omitted); *Energy Reserves Grp., Inc. v. Kan. Power & Light Co.*, 459 U.S. 400, 411-12 (1983).

The impairment is substantial—indeed total, as to the right it targets. The Exelon Utilities' participation in PJM rests on a contract: the FERC-approved CTOA, which includes the right to withdraw on defined terms.[265] The right to end a contract pursuant to its terms is a core contractual entitlement; it undergirds the parties' bargain, shapes their reasonable expectations, and is the ultimate safeguard of their remaining rights.[266] The Act voids that termination right. And that impairment is substantial indeed: A law that converts a terminable contract into a perpetual one.

Nor is the Act an appropriate and reasonable means of advancing a significant and legitimate public purpose. Indeed, the Act serves no legitimate purpose of the kind the Contract Clause credits.[267] Maryland would prefer that its citizens pay lower federally regulated rates—but a state has no legitimate interest in pursuing that preference by extinguishing contract rights so that a component of a federal rate disappears. And where, as here, the state legislates to advance its own financial interest at the expense of contract rights, courts apply "less deference" and more searching scrutiny.[268] Maryland's self-professed object—clawing back roughly $20 million a year from these companies for the benefit of the state's ratepayers—is exactly the self-interested impairment that heightened scrutiny exists to catch.

E. The Maryland Act Effects An Unlawful Taking.

The Takings Clause bars the government from taking private property for public use without just compensation.[269] The Act effects a taking in three ways.

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[265] CTOA § 3.2.

[266] *Cf. Sveen*, 584 U.S. at 819-20 (impairment analysis considers whether the law "undermines the contractual bargain, interferes with a party's reasonable expectations, and prevents the party from safeguarding or reinstating his rights").

[267] *Energy Reserves*, 459 U.S. at 411-12.

[268] *U.S. Trust Co. of N.Y. v. New Jersey*, 431 U.S. 1, 25-26 (1977); *see Energy Reserves*, 459 U.S. at 412 n.14.

[269] U.S. Const. amend. V.

First, the Act effects a physical taking. When government appropriates property rights—for itself or for a third party—a per se taking occurs, regardless of the public interests served.[270] The rights protected include the rights to possess, use, exclude, and dispose.[271] And the government commits a physical taking when it commandeers property to be operated for public purposes, whether it takes title or not.[272] Insofar as the Maryland Act compels the Exelon Utilities to remain in an RTO permanently, it forces them to cede core attributes of ownership of their transmission facilities to the RTO: operational control; the authority to decide who may use the facilities and on what terms; and the final say over what is built on their property, where, and by whom.[273] Commandeering property to be operated for the government's purposes—directly or through an intermediary such as an RTO—is a physical taking.[274]

That the Exelon Utilities once ceded these rights voluntarily—on terms that preserved the right to reclaim them—does not immunize the Act. It is what makes the Maryland Act a taking. So long as an owner invites an occupant and keeps the power to end the arrangement, there is no occupation in the constitutional sense, because "required acquiescence is at the heart of the concept of occupation."[275] Here, the Act converts a terminable grant of control into a permanent, compelled occupation. The Supreme Court has drawn precisely this line, holding that a statute

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[270] *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419, 426, 432-35 (1982); *Cedar Point Nursery v. Hassid*, 594 U.S. 139, 147-49 (2021).

[271] *Cedar Point*, 594 U.S. at 150-52; *Kaiser Aetna v. United States*, 444 U.S. 164, 176 (1979) (the right to exclude is "one of the most essential" property rights).

[272] *United States v. Pewee Coal Co.*, 341 U.S. 114, 115-17 (1951) (plurality op.) (government seizure and operation of a coal mine was a taking although title never passed).

[273] *See supra* Background Part II (Commission's description of membership burdens); Weaver Test. at 12-18.

[274] *E.g.*, *Cedar Point*, 594 U.S. at 149-52.

[275] *FCC v. Fla. Power Corp.*, 480 U.S. 245, 252 (1987) (no taking where utilities "voluntarily" leased pole space and remained free to exit the arrangement).

that "compel[s] a landowner over objection" to submit to occupation of his property, or "to refrain in perpetuity from terminating a tenancy," effects a physical taking.[276]

Second, the Act independently appropriates a discrete, vested property interest: the contractual right of withdrawal. "Valid contracts are property."[277] The Exelon Utilities' rights under the CTOA—including the right to withdraw upon notice—are property in every relevant sense: bargained for, filed with and accepted by the Commission, and held for more than two decades.[278] When a law destroys a specific vested property right of this kind, a taking occurs.[279]

Third, the Act works a regulatory taking under *Penn Central*, which examines the economic impact of the regulation, its interference with reasonable investment-backed expectations, and the character of the governmental action.[280] Here, the economic impact is severe. On the Maryland Parties' telling, the Act's purpose and effect is to strip 50 basis points of return from the Exelon Utilities' entire transmission rate bases.[281] And because the reduction operates on returns from completed investments, the Exelon Utilities cannot avoid it by deploying capital differently going forward. The burden is retroactive.[282]

The Act's interference with investment-backed expectations is as direct as it gets: the Act destroys the exact expectation that federal law created in order to induce the investment. Congress

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[276] *Yee v. City of Escondido*, 503 U.S. 519, 528 (1992); *see id.* at 527 ("[G]overnment effects a physical taking only where it requires the landowner to submit to the physical occupation of his land.").

[277] *Lynch v. United States*, 292 U.S. 571, 579 (1934).

[278] CTOA § 3.2; *see supra* Background Part III.

[279] *Armstrong v. United States*, 364 U.S. 40, 44-49 (1960) (destruction of materialmen's liens was a taking); *Louisville Joint Stock Land Bank v. Radford*, 295 U.S. 555, 594-95, 601-02 (1935) (statute abrogating specific rights of mortgagees effected a taking).

[280] *Penn Cent. Transp. Co. v. City of New York*, 438 U.S. 104, 124 (1978).

[281] *See supra* Background Parts I-II; Compl. ¶ 24 (estimating savings of approximately $20 million per year, and asserting that the true figure is higher).

[282] *See E. Enters. v. Apfel*, 524 U.S. 498, 532-37 (1998) (plurality op.).

enacted section 219 "for the purpose of benefitting consumers by ensuring reliability and reducing the cost of delivered power," and directed the Commission to provide incentives—including for RTO participation.[283] The Commission implemented that directive in Order No. 679, establishing an incentive return for utilities that join and remain in RTOs.[284] And the Commission granted each Exelon Utility the RTO Adder by order, on the strength of its commitment to PJM.[285] The Exelon Utilities then did precisely what the incentive was designed to make them do: they invested. Because the RTO Adder applies to the transmission rate base, every capital-allocation decision the companies have made since receiving it carried the expectation that the invested capital would earn the incentive return.[286] Over roughly two decades, the Exelon Utilities devoted more than $3 billion to transmission additions under that regime.[287] These are the paradigm of investment-backed expectations. Where the government induces private action with an express assurance of a benefit, reliance on that assurance is reasonable, and later government action revoking the assurance after the induced conduct is complete effects a taking.[288]

As to the character of the action, the Act is not an "adjust[ment of] the benefits and burdens of economic life to promote the common good."[289] It compels the permanent transfer of control over private property to a third party—action "character[ized]" by physical invasion, which *Penn*

[283] 16 U.S.C. § 824s(a), (c).

[284] Order No. 679 at PP 326-27; *see supra* Background Part II.

[285] *See supra* Background Part III.

[286] Thompson Test. at 4; Weaver Test. at 18-19.

[287] Weaver Test. at 19.

[288] *Ruckelshaus v. Monsanto Co.*, 467 U.S. 986, 1010-14 (1984) (taking where EPA used data submitted in reliance on an express statutory assurance of confidentiality); *Kaiser Aetna*, 444 U.S. at 179-80 (taking where owner invested in improvements in reliance on government consent); *cf. Cienega Gardens v. United States*, 331 F.3d 1319, 1345-53 (Fed. Cir. 2003) (taking where statute abrogated the regulatory prepayment rights that had induced developers' housing investments).

[289] *Penn Cent.*, 438 U.S. at 124.

Central itself treats as more readily a taking.[290] It operates retroactively, attaching severe new consequences to investment decisions completed long ago.[291] It singles out a handful of companies, exempting cooperatives and imposing burdens on a few companies "alone" rather than on "the public as a whole."[292] And the Act effects a naked transfer: the state's own materials describe the Act as a device for moving dollars from the utilities' investors to ratepayers.[293] In all these ways, the Act is a paradigmatic taking.

F. The Maryland Act Imposes Unconstitutional Conditions.

Even if the Act could be recharacterized as a mere condition on a state-conferred privilege, it would remain invalid. The unconstitutional-conditions doctrine "vindicates the Constitution's enumerated rights by preventing the government from coercing people into giving them up."[294] Government "may not deny a benefit to a person because he exercises a constitutional right"—even a benefit the government could withhold altogether.[295] The doctrine's foundational case involved a public utility.[296] California conditioned private carriers' use of the state's highways on their submitting to regulation as common carriers.[297] The Supreme Court struck the condition

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[290] *Id.*; *see Cedar Point*, 594 U.S. at 149-52.

[291] *Cf. E. Enters.*, 524 U.S. at 532-37 (severe, retroactive liability imposed on completed conduct supported a taking).

[292] *Armstrong*, 364 U.S. at 49 (the Takings Clause "was designed to bar Government from forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole"); *see supra* Background Part V (cooperative exemption).

[293] *See supra* Background Part V.

[294] *Koontz v. St. Johns River Water Mgmt. Dist.*, 570 U.S. 595, 604 (2013).

[295] *Id.* (quoting *Regan v. Taxation With Representation of Wash.*, 461 U.S. 540, 545 (1983)); *Perry v. Sindermann*, 408 U.S. 593, 597 (1972).

[296] *Frost v. R.R. Comm'n of State of Cal.*, 271 U.S. 583 (1926).

[297] *Id.* at 591.

down: "If the state may compel the surrender of one constitutional right as a condition of its favor, it may, in like manner, compel a surrender of all."[298]

Where the condition demands the surrender of property rights, the doctrine imposes two requirements. There must be an "essential nexus" between the condition and a legitimate governmental purpose connected to the regulated activity; otherwise, the condition is "an out-and-out plan of extortion."[299] And the condition's burden must bear "rough proportionality" to the impacts the government may legitimately address, established through "some sort of individualized determination."[300] These requirements apply however the demand is structured—as a condition precedent or subsequent, in kind or in money.[301]

The Act fails every element. As the Maryland Parties read it, the Maryland Act conditions the continued lawful ownership and operation of transmission facilities in Maryland on permanent surrender of the rights described above: a "person that owns or operates a transmission line" above 69,000 volts in the state "shall participate as a member" in an RTO.[302] To keep owning and operating their systems, the Exelon Utilities must permanently cede operational control over the facilities; relinquish the filed contractual right of withdrawal; forgo the section 205 rights that federal law reserves to them[303]; and abandon eligibility for the federal incentive that Congress and the Commission attached to voluntary participation. The only alternative the Act leaves is exit: divest the facilities or cease owning and operating transmission in Maryland.

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[298] *Id.* at 594.

[299] *Nollan v. Cal. Coastal Comm'n*, 483 U.S. 825, 837 (1987) (citation omitted).

[300] *Dolan v. City of Tigard*, 512 U.S. 374, 391 (1994).

[301] *Koontz*, 570 U.S. at 606-19.

[302] Md. Code Ann., Pub. Util. § 7-109(B).

[303] *See supra* Background Part III.

Horne v. Department of Agriculture forecloses any argument that the Exelon Utilities remain free to comply or leave. There, the government defended a raisin-reserve requirement as a condition on the privilege of selling raisins in interstate commerce: growers unwilling to part with their raisins could plant different crops.[304] The Supreme Court rejected the argument. Participating in a lawful market, "although certainly subject to reasonable government regulation," is "not a special governmental benefit that the Government may hold hostage, to be ransomed by the waiver of constitutional protection."[305]

Nor is there any "essential nexus." The nexus inquiry asks whether the condition serves a legitimate purpose connected to the regulated activity—here, some interest that compelled, permanent RTO membership would advance.[306] Here, however, every official explanation of the Act identifies a single objective: stripping the RTO Adder from the utilities' federally filed rates.[307] That is not a legitimate interest.[308] Proportionality fails for the same reason: membership compelled in perpetuity, with no sunset, no waiver, and no individualized determination of any kind is proportionate to nothing except the permanence of the revenue transfer it attempts to secure.[309]

Finally, the same structure confirms that the Maryland Act is invalid for another, independent reason: a state may not use its regulatory leverage to compel the waiver of rights conferred by federal law. The Supreme Court has invalidated state action that penalizes the

[304] *Horne v. Dep't of Agric.*, 576 U.S. 350, 365-66 (2015).
[305] *Id.* at 366; *see id.* at 365 (rejecting "[l]et them sell wine" as an answer to the taking).
[306] *Sheetz v. County of El Dorado*, 601 U.S. 267, 275-76 (2024).
[307] *See supra* Background Part V.
[308] *Hughes*, 578 U.S. at 163; *Miss. Power & Light*, 487 U.S. at 373 (citing *Nantahala*, 476 U.S. at 965-66).
[309] *Dolan*, 512 U.S. at 391.

exercise of federal statutory rights,[310] and the principle applies with greater force where the state conditions the lawful ownership of property on permanent forbearance from exercising such rights.[311] The Act demands exactly that: to continue operating in Maryland, the Exelon Utilities must forswear, in perpetuity, their section 205 filing rights and their filed withdrawal rights.[312] This strand of the doctrine overlaps with—and reinforces—the legal defects described above: States may not directly exercise or preclude section 205 filing rights, and they cannot extract their surrender as the price of continued lawful operation.[313]

IV. It Would Be Unjust And Unreasonable, Unduly Discriminatory, And An Unlawful Subdelegation To Strip The RTO Adder Whenever A State Enacts An RTO Mandate.

Even if the Maryland law was valid, the Complaint would fail for yet another reason. The Maryland Parties ask the Commission to adopt a policy of rubberstamping the RTO Adder's removal any time a state enacts an RTO mandate, no matter how transparently targeted at the federal rate or unmoored from any genuine concern with RTO membership *besides* the RTO Adder. That view of the Commission's role is essential to the Complaint.[314] But it is antithetical to the Commission's role under the FPA. That is because even if section 219(c) did not on its own compel the Commission to retain the RTO Adder here, the Commission would remain obligated to ensure that its incentives system is "just and reasonable and not unduly discriminatory or preferential"[315]—and it would retain the power to grant the RTO Adder as needed to fulfill those

[310] *Nash v. Fla. Indus. Comm'n*, 389 U.S. 235, 239 (1967) ("Florida should not be permitted to defeat or handicap a valid national objective by threatening to withdraw state benefits from persons simply because they cooperate with the Government's constitutional plan.").

[311] *See Horne*, 576 U.S. at 366; *Terral v. Burke Const. Co.*,, 257 U.S. 529, 532 (1922).

[312] *See supra* Background Part III.

[313] *Cf. Frost*, 271 U.S. at 593-94, 599.

[314] Compl. ¶ 25.

[315] 16 U.S.C. § 824s(d).

commands.[316] In three respects, it would be unlawful for the Commission to blindly give effect to the Maryland Act's transparent effect to manipulate the federal rate.

First, the Maryland Parties' approach does not yield a just and reasonable incentive system because it hands control of the federal rate to the states. A state that believes federal transmission returns are too high has a lawful path: file a section 206 complaint and carry the statutory burden of showing the existing rate unjust and unreasonable.[317] Under the Maryland Parties' rule, the state can skip that step by enacting a two-sentence statute. Four states have enacted RTO mandates in roughly a year—Connecticut, Maryland, Rhode Island, and New Jersey—and Pennsylvania is considering similar legislation. A regime in which federal returns are adjusted by state statute, subject only to the Commission's ministerial implementation, shifts ratemaking authority from the Commission to the state legislatures and fragments a uniform federal rate structure into many state-created ones.[318] That is not the FPA's design,[319] and the Commission has never explained why it would be a reasonable exercise of the Commission's own rate authority.

This transparent rate adjustment, moreover, raises a question that the Commission did not squarely have to confront in either Ohio or California. The Ohio statute was enacted in 1999—six years before section 219 existed—as part of a general restructuring law; whatever else may be said of it, it was not designed to manipulate a federal incentive that had not yet been created.[320] While

[316] *Id.*; *see* 16 U.S.C. § 824d(a); Order No. 679, 116 FERC § 61,057 at P 8.

[317] *Emera*, 854 F.3d at 21, 26; *Houlton Water Co.*, 55 FERC ¶ 61,037at 61,110 ("[T]he Commission in setting an overall just and reasonable rate does not look to a single component of the overall rate, but rather looks to all the components[.]").

[318] *See Miss. Power & Light*, 487 U.S. at 373; *Cal. ex rel. Lockyear v. FERC*, 383 F.3d 1006, 1015 (9th Cir. 2004) (holding the Commission improperly treated tariff-related filings as "mere punctilio[:] If the ability to monitor the market, or gauge the 'just and reasonable' nature of the rates is eliminated, then effective federal regulation is removed altogether").

[319] *See New York*, 535 U.S. at 19.

[320] Ohio Rev. Code § 4928.12(A) (1999); *see Dayton*, 126 F.4th at 1129.

the Commission acted in California only after the legislature in 2022 amended its statute to expressly require RTO membership, several California state parties had long claimed that state law had required RTO membership since the 1990s, and the legislature expressly said that it viewed the amendment as merely declarative of existing law.[321] Nothing similar can be said of the Maryland law.

The system of incentives the Maryland Parties propose is also not just and reasonable because it fails to compensate for the very real costs and burdens that RTO membership imposes. Those burdens include, as explained elsewhere, the loss of operational control, limitation on filing rights, an obligation to build, an immense compliance burden, and the need to participate in RTO stakeholder processes.[322] The testimony of David W. Weaver details many more burdens. For example, PJM holds approval rights over the Exelon Utilities' maintenance outages, which must be noticed as much as six to twelve months in advance.[323] Pepco and BGE have absorbed millions of dollars in unrecovered costs when PJM cancelled projects it had directed.[324] And RTO members shoulder compliance regimes—such as Order Nos. 841 and 2222—that apply only to RTO members and whose costs are not always recoverable.[325] It is entirely just and reasonable to provide the RTO Adder to partially offset those immense burdens. [326] As Dr. Thompson explains, the RTO Adder is textbook risk-return compensation: investors must be compensated for the

[321] *Cal. Pub. Utils. Comm'n v. FERC*, 29 F.4th 454, 466 (9th Cir. 2022); *see* Assemb. Bill 209, Stats. 2022, Ch. 251, § 1(a)(2) (Cal. 2021–2022 Reg. Session).

[322] Weaver Test. at 12-18.

[323] *Id.* at 13-14.

[324] *Id.* at 15.

[325] *Id.* at 13-16 (describing outage-approval, project cancellation, and compliance burdens).

[326] Incentive NOPR, 170 FERC ¶ 61,204 at ¶ 96.

surrender of operational flexibility and the added risks of RTO membership, and mandating membership while stripping that compensation would violate the risk-return principle.[327]

Second, the Maryland Parties' approach yields undue discrimination, and also violates the parallel administrative-law requirement that an agency that "treats similar situations differently without reasoned explanation" acts arbitrarily and capriciously.[328]

Here, the Complaint would—first—create discrimination within Maryland. The Act exempts electric cooperatives.[329] Maryland cooperatives own qualifying transmission and participate in PJM; they provide the same transmission service as the Exelon Utilities and bear the same burdens of membership; however, under the Maryland Parties' theory, they keep their Adder while the Exelon Utilities forfeit theirs, solely because Maryland chose to favor them.[330] Indeed, a cooperative like SMECO receives this favorable treatment even though it is within Pepco's transmission zone—underscoring the discrimination.[331] Maryland has effectively decided, via its gerrymandered RTO mandate, that cooperatives should receive a wealth transfer from the customers of investor-owned utilities, including the Maryland utilities subject to Maryland's RTO mandate. This is a feature the Ohio proceedings lacked. The Ohio statute applied to every entity owning or controlling transmission facilities in the state, and the Sixth Circuit's decision nowhere blessed a statute that strips the RTO Adder from some in-state transmission owners while sparing others.[332]

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[327] Thompson Test. at 9.

[328] *Koch Gateway Pipeline Co. v. FERC*, 136 F.3d 810, 815-16 (D.C. Cir. 1998); *accord Burlington N. & Santa Fe Ry. Co. v. Surface Transp. Bd.*, 403 F.3d 771, 777 (D.C. Cir. 2005); *W. Deptford Energy, LLC v. FERC*, 766 F.3d 10, 21 (D.C. Cir. 2014); *Cnty. of L.A. v. Shalala*, 192 F.3d 1005, 1022 (D.C. Cir. 1999).

[329] Md. Code Ann., Pub. Util. § 7-109(A).

[330] Weaver Test. at 21-22

[331] *Id.*

[332] *See The Dayton Power & Light Co.*, 176 FERC ¶ 61,025 at P 5 (2021); *Dayton*, 126 F.4th at 1129.

Moreover, the Complaint would create discrimination across the RTO and the country. Other transmission owners in PJM and not subject to an RTO mandate would retain the RTO Adder while providing the same interstate transmission service and bearing the same burdens of membership. Every RTO member nationwide would retain it, except those a state legislature has targeted. Similarly situated utilities would receive different federal rates based on nothing more than which legislature moved first. As then-Commissioner Chatterjee explained in dissent from the Commission's first order down this path, stripping the RTO Adder from state-targeted utilities creates "an uneven playing field in the competition for investment capital,"[333] and it penalizes the interstate, RTO-based participation that section 219 was enacted to encourage.

Nor is it any answer to say that the Exelon Utilities are differently situated because they are subject to the Maryland Act when (say) SMECO is not. It would be unduly discriminatory for FERC to treat the Exelon Utilities differently and worse simply because Maryland chose to target their Adder.[334] The RTO Adder is part of the federal rate, and the FPA imposes *on the Commission* the duty—and exclusive jurisdiction—to ensure federal rates are just and reasonable and not unduly discriminatory.[335] The Commission cannot abandon that duty by averring that a state (which is not responsible for federal transmission rates) has decided to treat Respondents worse.[336]

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[333] *Dayton Power & Light Co.*, 176 FERC ¶ 61,025 at P 2 n.151 (Chatterjee, Comm'r, dissenting).

[334] *Black Oak Energy, LLC v. FERC*, 725 F.3d 230, 239 (D.C. Cir. 2013) ("disparate treatment between ratepayers" permissible only when based on "a valid reason for the disparity ... relevant to the achievement of permissible policy goals") (citation omitted).

[335] 16 U.S.C. §§ 824d(a); 824e(a).

[336] *See FPC v. Conway Corp.*, 426 U.S. 271, 277 (1976) (rejecting Commission's argument that it could not "consider nor remedy any alleged discrimination resting on a difference between jurisdictional and nonjurisdictional rates" and holding that "[i]f the undue preference or discrimination is *in any way traceable* to the level of the jurisdictional rate, it is plain enough that" the Commission could address it under FPA sections 205 and 206) (emphasis added).

For just this reason, the Maryland Parties also get it exactly backwards when they say that the Commission must strip the Exelon Utilities' adder because to leave it in place would yield a "disparate treatment of Maryland ratepayers" relative to ratepayers in California and Ohio.[337] The California and Ohio statutes are meaningfully different, for reasons explained throughout this pleading. And it is downright absurd for the Maryland Parties to claim that the nondiscrimination principle requires the Commission to rubberstamp arbitrary decisions by states to grant or withhold the RTO Adder based on their own views of proper transmission rates.

Third and relatedly, if the Commission abdicates its duty under the FPA and removes the RTO Adder whenever states enact RTO mandates, it would unlawfully subdelegate its authority. "Federal agencies may not subdelegate their decision-making authority ... to outside entities—private or sovereign—absent affirmative evidence of authority to do so."[338] And when the Commission has previously faced charges that it had unlawfully discriminated by deferring to state-set classifications, it defended against those charges by averring that it would "continue to exercise oversight of the state" decision and would act if "presented sufficient evidence of unjust, unreasonable, unduly discriminatory, or preferential rates."[339] It would violate the prohibition on subdelegation, and the Commission's own prior representation to the D.C. Circuit, to treat the Maryland Act as conclusive of the Exelon Utilities' adder entitlement. The Commission may not bless a regime in which states—not the Commission—decide who receives a federal rate incentive, picking winners and losers among the utilities in the federal domain.[340]

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[337] Compl. at 3.

[338] *La. Pub. Serv. Comm'n*, 860 F.3d at 696 (citation omitted).

[339] *Id.* (quotation marks omitted).

[340] *E.g.*, *N.J. Bd. of Pub. Utils. v. FERC*, 744 F.3d 74, 98 (3d Cir. 2014) (affirming Commission's adoption of rules to "prevent the state's choices from adversely affecting [FERC-jurisdictional] rates"); *PPL Energy Plus, LLC v. Nazarian*, 753 F.3d 467, 476 (4th Cir. 2014) (holding Maryland subsidy preempted by FPA

Indeed, the Maryland Parties' theory also conflicts with Order No. 679's case-specific approach. The Commission committed to evaluate requests "when justified," on a case-by-case basis.[341] And it specifically declined an invitation to make utilities categorically ineligible where state law mandates RTO participation.[342] The Complaint asks the Commission to adopt here the categorical rule it declined to adopt through rulemaking: Any state mandate yields automatic forfeiture, without examination of the mandate's terms, purpose, validity, or effects.[343] A case-specific approach requires the opposite.[344] Under a case-specific approach, the Commission would have to take account (for example) that the Maryland Act's sole justification is to manipulate the federal rate and that the RTO Adder continues to incentivize voluntary membership across the Exelon Utilities' multi-state footprints.

V. The Commission's Reading Of Section 219(c) Is Wrong: The Statute Requires The RTO Adder For Each Utility That Joins An RTO.

The arguments above suffice to deny the Complaint. But the fact remains that section 219(c) contains no voluntariness requirement, and the Commission's contrary reading is wrong. Under *Loper Bright*, the Commission's task is to apply the statute's best reading, not to perpetuate a gloss because prior orders adopted it.[345]

Section 219(c) provides that the Commission "shall, to the extent within its jurisdiction, provide for incentives to each transmitting utility or electric utility that joins a Transmission

because it "effectively supplants the rate generated by the auction with an alternative rate preferred by the state"), *aff'd Hughes*, 578 U.S. 150.

[341] Order No. 679 at P 326.

[342] *Id.* at P 316.

[343] Compl. ¶ 25.

[344] *See* Order No. 679 at P 326.

[345] *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 400 (2024).

Organization."[346] Each operative term forecloses the Commission's reading. "Shall" imposes a mandatory duty.[347] "To each" leaves the Commission no discretion to provide the incentive to some RTO members but not others. And "that joins" directs attention to the fact of joinder—not the reasons for it, and not the legal landscape surrounding it. Nothing in the provision conditions the incentive on the utility's state of mind, its freedom of action, or the content of state law.

To reach the contrary result, the Commission must add a word—"voluntarily"—that Congress did not enact. That is "a limitation Congress could have established," but "did not."[348] Interpreters may "not add words . . . to the statute Congress enacted,"[349] and must "give effect, if possible, to every clause and word."[350] The voluntariness gloss fails both commands at once: it inserts a word Congress omitted, and it erases three phrases Congress included—"shall," "to each," and "that joins." Congress could easily have provided incentives to each utility "that elects to join" or "chooses to join" an RTO. It did not, and the omission controls.[351]

Statutory context confirms the point. Congress enacted section 219 in EPAct 2005. In the same statute, Congress enacted FPA section 217—and there, it expressly conditioned a consequence on whether "the load-serving entity has voluntarily joined the ISO as a participating transmission owner."[352] Congress thus used the precise concept the Commission now reads into section 219(c)—voluntary joinder, in the specific capacity of a transmission owner—a few pages

[346] 16 U.S.C. § 824s(c).

[347] *Me. Cmty. Health Options v. United States*, 590 U.S. 296, 310 (2020).

[348] *Off. of the Ohio Consumers' Couns.*, 181 FERC ¶ 61,214 at P 2 (2022) (Danly, Comm'r, dissenting) ("*OCC*").

[349] *Muldrow v. City of St. Louis*, 601 U.S. 346, 355 (2024).

[350] *Fischer v. United States*, 603 U.S. 480, 486 (2024) (quotation marks omitted).

[351] *Jama v. ICE*, 543 U.S. 335, 341 (2005).

[352] 16 U.S.C. § 824q(f) (emphasis added); *see* Energy Policy Act of 2005, Pub. L. No. 109-58, §§ 1233(a), 1241, 119 Stat. 594, 957-61.

away, in the same public law, addressing the same subject matter. "[W]here Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion."[353] The absence of "voluntarily" from section 219(c) must be given effect.

Section 219 itself points the same way. In section 219(b), Congress directed incentive structures framed in terms of inducement—rates that "promote" capital investment, "attract[] new investment," and "encourage" deployment of new technologies.[354] In section 219(c), addressing RTO membership specifically, Congress used none of those formulations; it required incentives "to each" utility "that joins." When "Congress has enacted a comprehensive scheme and has deliberately targeted specific problems with specific solutions," the "specific governs the general."[355] Congress knew how to condition an incentive on its inducement of conduct. For RTO membership, it chose a categorical command instead.

The Commission has rested its contrary reading on a single word: "incentives," which the Commission has found to require voluntary conduct and to render section 219(c) inapplicable when utilities are subject to state RTO mandates. The word "incentives," however, does not require that result.[356] An incentive is "something that incites or *has a tendency to incite* to determination or action."[357] And what section 219(c) commands is a "rule" that "provide[s] for incentives." A rule of general applicability that provides a widely available adder still tends to

[353] *Russello*, 464 U.S. at 23; *accord Romag Fasteners, Inc. v. Fossil Grp., Inc.*, 590 U.S. 212, 215 (2020) (courts should not "read into statutes words that aren't there," especially where Congress "included the term in question elsewhere in the very same statutory provision").

[354] 16 U.S.C. § 824s(b)(1)-(3).

[355] *RadLAX Gateway Hotel, LLC v. Amalgamated Bank*, 566 U.S. 639, 645 (2012) (quotation marks omitted).

[356] *See also supra* Answer Part I.B (showing that the word "incentives" is sometimes used in the regulations to provide payments for conduct that is not voluntary).

[357] *Incentive*, Merriam-Webster, https://www.merriam-webster.com/dictionary/incentive (emphasis added).

incite RTO membership across its applications, even if some individual utilities face state mandates, just as veterans' benefits provide an incentive to join the military and remain therein even though some recipients were drafted.[358]

The RTO Adder also incites conduct beyond the initial decision to join. It induces the increased transmission investment by RTO members that section 219 exists to promote—the purpose Congress stated in section 219(a) and elaborated in section 219(b).[359] And it induces sustained, resource-intensive participation in RTO processes—planning, markets, reliability compliance—that makes the organization function.[360] Each function persists whether or not a state purports to mandate membership. The Commission's contrary approach does not interpret the word "incentives"; it uses the word to delete "shall," "to each," and "that joins" from the statute.

The historical context confirms that the Exelon Utilities are correct. When Congress enacted section 219(c), state RTO mandates were already on the books—including Ohio since 1999.[361] Congress is presumed "knowledgeable about existing law pertinent to the legislation it enacts," including state law.[362] There are only two ways Congress could have understood that landscape, and the Exelon Utilities prevail under both. If Congress understood such mandates to be preempted, then the preemption arguments in Part III.A are dispositive. If Congress did not, then it legislated against a backdrop of actual, operative mandates—and its command to provide incentives "to each" utility "that joins" cannot be read to mean "to each utility that joins

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[358] *Cf.* Pet. for Cert. at 26-27, *Pac. Gas & Elec. Co. v. FERC*, No. 25-438 (U.S. filed Oct. 7, 2025), 2025 WL 2932723.

[359] 16 U.S.C. § 824s(a), (b).

[360] *See* Incentive NOPR, 170 FERC ¶ 61,204 at P 96; Weaver Test. at 12-13.

[361] Ohio Rev. Code Ann. § 4928.12(A) (1999).

[362] *Goodyear Atomic Corp. v. Miller*, 486 U.S. 174, 184-85 (1988).

voluntarily." Against that backdrop, it becomes even clearer that the categorical language is a deliberate choice.

The Commission originally read the statute the same way. In Order No. 679, it declined comments urging that utilities subject to state RTO mandates be made categorically ineligible for the incentive.[363] And for more than a decade it granted the RTO Adder to RTO members without inquiring into state mandates—including, twice, to AEP's Ohio companies, with the Ohio statute on the books.[364] The Commission changed course only after *CPUC I*—a decision that interpreted Order No. 679, not the statute, and that did not hold California law actually mandated membership.[365] Two former Chairmen dissented from that change of course.[366] A statutory reading the Commission itself rejected for fifteen years, adopted in response to an appellate decision that did not construe the statute, need not be followed now.

The Exelon Utilities' reading also makes practical sense. The RTO Adder is not a bounty for a one-time act. As the Commission has explained, it recognizes the ongoing costs of membership—loss of operational control, obligations to build at the RTO's direction, diminished control over assets, administrative burden—against benefits that flow to customers.[367] Those costs do not disappear when a state purports to mandate membership; they continue, year after year, for as long as the utility bears them. Reading section 219(c) to withdraw the compensation precisely

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[363] Order No. 679 at P 316.

[364] *AEP Serv. Corp.*, 124 FERC ¶ 61,306 at P 22 (2008); *AEP Appalachian Transmission Co.*, 130 FERC ¶ 61,075 at P 21 (2010); *see also PPL Elec. Utils. Corp.*, 123 FERC ¶ 61,068 at P 35 (2008); *Midcontinent Indep. Sys. Operator, Inc.*, 150 FERC ¶ 61,004 at PP 39-44 (2015); *Pac. Gas & Elec. Co.*, 148 FERC ¶ 61,245 at P 30 (2014).

[365] *CPUC I*, 879 F.3d at 974-75, 978 & n.5.

[366] *Elec. Transmission Incentives Pol'y Under Section 219 of the Fed. Power Act*, 175 FERC ¶ 61,035 at P 3 (2021) (Danly, Comm'r, dissenting); *id.* at P 1 (Chatterjee, Comm'r, dissenting); *Off. of the Oh. Consumers' Couns.*, 181 FERC ¶ 61,214 at P 1 (2022) (Danly, Comm'r, dissenting).

[367] Incentive NOPR, 170 FERC ¶ 61,204 at P 96; Order No. 2000 at p. 31,024; Order No. 679-A at P 86.

when the burdens become compulsory attributes to Congress a scheme in which the utilities bearing the heaviest obligations receive the least support, and in which the consumer interest in continued transmission investment is subordinated to state rate strategies. Nothing in the statute's text, context, history, or purpose supports that result. The utilities' reading—the RTO Adder for each utility that joins, full stop—produces no anomalies at all.

SERVICE, COMMUNICATIONS, AND CORRESPONDENCE

The Exelon Utilities request that the persons listed below be included on the official service list for this proceeding:[368]

Max Minzner
SVP & Deputy General Counsel, Corporate
EXELON CORPORATION
701 Ninth St. N.W.
Washington, DC 20001
(202) 934-4740
max.minzner@exeloncorp.com

Bradley R. Perkins
Vice President and Deputy General Counsel
EXELON CORPORATION
Chase Building
10 S. Dearborn, 52nd Floor
Chicago, IL 60603
(312) 394-2632
bradley.perkins@exeloncorp.com

Zachary C. Schauf
Charles R. Corbett
JENNER & BLOCK LLP
1099 New York Ave. NW, Suite 900
Washington, DC 20001
(202) 637-6351
ZSchauf@jenner.com
CCorbett@jenner.com

Attorneys for Baltimore Gas and Electric Company, Potomac Electric Power Company, and Delmarva Power & Light Company

ADMISSIONS AND DENIALS

The Exelon Utilities' admissions and denials regarding the material allegations in the Complaint are set forth by corresponding section below.[369] To the extent the Complaint contains allegations not otherwise enumerated and addressed below, those allegations are specifically denied.

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[368] The Exelon Utilities respectfully request waiver of 18 C.F.R. § 385.203(b)(3) to permit the designation of more than two persons upon whom service is to be made in this proceeding.

[369] *See* 18 C.F.R. § 385.213(c)(2)(i).

1. The Complaint's introductory section contains preliminary legal arguments and Complainants' characterizations concerning historical events and other facts that do not require specific admissions or denials. Without limitation to the foregoing, the Exelon Utilities admit that each participates in PJM and that each includes in its return on equity a Commission-approved 50-basis-point adder for participation in a transmission organization. As discussed in this Answer, the Exelon Utilities deny that their participation in PJM is involuntary, deny that the RTO Adder "no longer incentivizes any action," and deny that inclusion of the RTO Adder renders their rates unjust and unreasonable or "results in disparate treatment of Maryland ratepayers."

2. Section I contains correspondence and communications information that does not require specific admissions or denials.

3. Section II contains descriptions of the parties. The allegations in Paragraphs 1 through 3 and in Paragraphs 6, 7, 9, and 10 describe the Complainants and other Respondents and require no response. The Exelon Utilities admit the allegations in Paragraphs 4, 5, and 8 to the extent those paragraphs describe the corporate status and operations of BGE, Delmarva, and Pepco consistently with the public filings cited therein, and otherwise deny those allegations.

4. Section III.A contains legal arguments that do not require specific admissions or denials. Without limitation to the foregoing, and as discussed in this Answer, the Exelon Utilities dispute Complainants' assertion that "[t]he RTO Adder is only available to utilities that voluntarily participate in a transmission organization."

5. Sections III.B and III.C contain legal arguments and Complainants' characterizations of historical events and other facts that do not require specific admissions or denials. Without limitation to the foregoing, and as discussed in this Answer, the Exelon Utilities

dispute Complainants' characterizations of the Commission's precedent, the Ninth Circuit's analysis in *Pacific Gas & Electric Co.*, and the Sixth Circuit's analysis in *Dayton*.

6. Section IV.A contains Complainants' characterizations of the Maryland Act and legal argument that do not require specific admissions or denials. Without limitation to the foregoing, and as discussed in this Answer, the Exelon Utilities admit that each includes a Commission-approved RTO Adder in its formula rate, as reflected in the PJM Tariff. The Exelon Utilities deny that retention of the RTO Adder would yield "unwarranted profits" or "unjust windfalls."

7. Section IV.B contains Complainants' proposed replacement rate, which does not require specific admissions or denials. Without limitation to the foregoing, and as discussed in this Answer, the Exelon Utilities dispute that removal of the RTO Adder "would establish a just and reasonable replacement rate."

8. Section V contains information required under Commission regulations, which does not require specific admissions or denials.[370]

9. Section VI contains Complainants' prayer for relief, which requires no response. The Exelon Utilities deny that Complainants are entitled to the relief requested or to any relief whatsoever.

AFFIRMATIVE DEFENSES

The Exelon Utilities rely on the following affirmative defenses:

1. The Complaint fails to show that the RTO Adder, or any Exelon Utility's resulting overall return on equity or rate, is unjust, unreasonable, unduly discriminatory, or preferential, as required by FPA section 206.

[370] 18 C.F.R. § 385.206(b).

2. The relief requested is barred by FPA section 205 and the Exelon Utilities' rights thereunder to file rates, including terms and conditions of service.

3. The relief requested is barred by the filed rate doctrine, including the withdrawal provisions of the CTOA on file with the Commission.

4. To the extent the Complaint depends on the premise that the Maryland Act compels the Exelon Utilities' participation in PJM, the Act as so construed is preempted by the FPA and violates the U.S. Constitution, including the Commerce Clause, the Contract Clause, and the Takings Clause, and the Commission may not give it effect.

5. Granting the Complaint would produce unjust, unreasonable, and unduly discriminatory rates, would be inconsistent with Order No. 679 and the Commission's regulations, and would effect an unlawful subdelegation of the Commission's exclusive ratemaking authority.

6. FPA section 219(c) requires the Commission to provide incentives to each transmitting utility or electric utility that joins a Transmission Organization.

The Exelon Utilities reserve the right to raise any additional defenses that arise during the course of any proceedings instituted by the Commission with respect to the Complaint.

RULE 213(C)(4) STATEMENTS

The Exelon Utilities are not aware of specific documents that support this Answer other than those cited herein or in the Complaint and the testimony and other attachments submitted with this Answer. Complainants fail to provide sufficient evidence to support the Complaint, and the issues raised in the Complaint turn primarily on questions of law that are not amenable to resolution through the alternative dispute resolution process. For the reasons stated above, the Exelon Utilities believe the appropriate process for resolving the Complaint is for the Commission to issue an order dismissing or denying the Complaint based upon the pleadings.

CONCLUSION

For the reasons discussed herein, the Exelon Utilities request that the Commission summarily dismiss the Complaint. To the extent the Complaint is not dismissed, it should be denied.

Respectfully submitted

/s/ Zachary C. Schauf
Zachary C. Schauf
Charles R. Corbett
JENNER & BLOCK LLP
1099 New York Ave. NW, Suite 900
Washington, DC 20001
(202) 637-6351
ZSchauf@jenner.com
CCorbett@jenner.com

Attorneys for Baltimore Gas and Electric Company, Potomac Electric Power Company, and Delmarva Power & Light Company

Max Minzner
SVP & Deputy General Counsel, Corporate
EXELON CORPORATION
701 Ninth St. N.W.
Washington, DC 20001
(202) 934-4740
max.minzner@exeloncorp.com

Bradley R. Perkins
Vice President and Deputy General Counsel
EXELON CORPORATION
Chase Building
10 S. Dearborn, 52nd Floor
Chicago, IL 60603
(312) 394-2632
bradley.perkins@exeloncorp.com

On behalf of Baltimore Gas and Electric Company, Potomac Electric Power Company, and Delmarva Power & Light Company

Dated: August 5, 2026

CERTIFICATE OF SERVICE

I certify that, on August 5, 2026, I served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

<u>/s/ Zachary C. Schauf</u>
Zachary C. Schauf