

169 FERC ¶ 61,027  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;  
Richard Glick and Bernard L. McNamee.

Exelon Fitzpatrick, LLC

Docket No. ER17-2201-001

ORDER DENYING REHEARING

(Issued October 17, 2019)

1. On July 31, 2017, pursuant to section 205 of the Federal Power Act (FPA),<sup>1</sup> Exelon Fitzpatrick, LLC (Exelon Fitzpatrick) filed an application for market-based rate authority with an accompanying tariff providing for the sale of electric energy, capacity, and ancillary services at market-based rates. On September 28, 2017, the Commission granted Exelon Fitzpatrick market-based rate authority, effective September 29, 2017.<sup>2</sup>
2. Public Citizen, Inc. (Public Citizen) requests rehearing of the September Order. As discussed below, we deny rehearing.

**I. Background**

3. In the September Order, the Commission found, among other things, that Exelon Fitzpatrick satisfied the Commission's requirements for market-based rates regarding horizontal market power and vertical market power, and determined that waiver of the affiliate restrictions was appropriate.<sup>3</sup>
4. Public Citizen protested Exelon Fitzpatrick's application for market-based rate authority on the basis that the application was incomplete because it did not include the

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<sup>1</sup> 16 U.S.C. § 824d (2012).

<sup>2</sup> *Exelon Fitzpatrick, LLC*, 160 FERC ¶ 61,136 (2017) (September Order). In the September Order, the Commission also granted Exelon Fitzpatrick's request for waivers, as well as finding that it met the criteria for a Category 2 seller in the Northeast region and a Category 1 seller in all other regions. *Id.*

<sup>3</sup> See September Order, 160 FERC ¶ 61,136 at PP 21, 27, 29.

New York Zero Emission Credit (ZEC) in its horizontal market power analysis. In the September Order, the Commission disagreed with the arguments raised in Public Citizen's protest because Public Citizen failed to demonstrate how the ZEC was a required component of the horizontal market power analysis. Specifically, the Commission stated that it evaluates horizontal market power using the wholesale market share and pivotal supplier screens, and that both screens are based on the generation capacity owned or controlled by the seller and its affiliates. The Commission found that, "because the ZEC does not affect the amount of generation capacity owned or controlled by [Exelon Fitzpatrick] or its affiliates, it was appropriate for [Exelon Fitzpatrick] not to include the ZEC in its horizontal market power analysis."<sup>4</sup> Accordingly, the Commission found that the arguments set forth in Public Citizen's protest were without merit.<sup>5</sup>

## II. Request for Rehearing

5. Public Citizen claims that, in the September Order, the Commission ignored its argument that the combination of market-based rate authority with the economic impact of the ZEC will result in a windfall for Exelon Fitzpatrick, and lead to unjust and unreasonable rates.<sup>6</sup> Public Citizen states that the overarching goal of the FPA is to protect consumers against unjust and reasonable rates, and thus it was improper for the Commission to grant Exelon Fitzpatrick such authority. Additionally, Public Citizen states that, in the September Order, the Commission does not deny that Exelon Fitzpatrick will receive a financial windfall, or that the New York Independent System Operator, Inc. does not have a mitigation strategy for Exelon Fitzpatrick in place in its tariff.<sup>7</sup>

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<sup>4</sup> September Order, 160 FERC ¶ 61,136 at P 20. *See also Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities*, Order No. 697, 119 FERC ¶ 61,295, *clarified*, 121 FERC ¶ 61,260 (2007), *order on reh'g*, Order No. 697-A, 123 FERC ¶ 61,055, at PP 17-18, *clarified*, 124 FERC ¶ 61,055, *order on reh'g*, Order No. 697-B, 125 FERC ¶ 61,326 (2008), *order on reh'g*, Order No. 697-C, 127 FERC ¶ 61,284 (2009), *order on reh'g*, Order No. 697-D, 130 FERC ¶ 61,206 (2010), *aff'd sub nom. Mont. Consumer Counsel v. FERC*, 659 F.3d 910 (9th Cir. 2011), *cert. denied*, 133 S. Ct. 26 (2012).

<sup>5</sup> September Order, 160 FERC ¶ 61,136 at P 21.

<sup>6</sup> Request for Rehearing of Public Citizen, Inc., Docket No. ER17-2201-001, at 1-2 (filed Oct. 27, 2017) (Rehearing Request).

<sup>7</sup> Rehearing Request at 2.

### III. Discussion

6. We deny rehearing. Public Citizen states in its Rehearing Request that “[u]nder normal circumstances the horizontal and vertical market power screens the Commission utilizes to determine whether applicants qualify for market-based rate authority may be considered sufficient[,] . . . [b]ut [that] Exelon Fitzpatrick’s application is not normal because of the massive financial impact of the third-party ZEC payment.”<sup>8</sup> However, on rehearing Public Citizen has not demonstrated that the ZEC is a required component of the Commission’s horizontal market power analysis, or, more specifically, the market power screens described in Order No. 697-A.<sup>9</sup> As the Commission explained in the September Order, because the ZEC does not affect the amount of generation capacity owned or controlled by Applicant or its affiliates, it was appropriate for Applicant not to include the ZEC in its horizontal market power analysis.<sup>10</sup> Thus, we find no merit in Public Citizen’s argument that Exelon Fitzpatrick’s application should have been analyzed differently.

7. Public Citizen argues that the ZEC, when combined with market-based rate authority, will give Exelon Fitzpatrick a windfall that will lead to unjust and unreasonable rates. However, the issue before the Commission in this proceeding is whether Exelon Fitzpatrick satisfies the Commission’s requirements for market-based rate authority. In the market-based rate context, the Commission ensures that rates are just and reasonable under the FPA by only granting market based rate authority to applicants who have demonstrated that they do not possess or have adequately mitigated market power.<sup>11</sup> The Commission found in the September Order that Exelon Fitzpatrick demonstrated that it does not have market power. That Exelon Fitzpatrick may receive another revenue stream from the state in the form of ZECs has no bearing on the Commission’s market-based rate analysis and therefore does not change the Commission’s determination that Exelon Fitzpatrick lacks market power and therefore may charge market-based rates. Public Citizen conflates its concerns regarding the state-approved ZECs with the Commission’s market power analysis in this proceeding. Accordingly, we deny rehearing.

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<sup>8</sup> *Id.*

<sup>9</sup> *See* Order No. 697-A, 123 FERC ¶ 61,055 at PP 17-18.

<sup>10</sup> September Order, 160 FERC ¶ 61,136 at P 20.

<sup>11</sup> *See* Order No. 697, 119 FERC ¶ 61,295 at P 70.

The Commission orders:

The request for rehearing is denied, as discussed in the body of this order.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.