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December 28, 2018

Via Electronic Mail

U.S. Securities and Exchange Commission
Office of Chief Counsel
Division of Corporation Finance
100 F Street NE
Washington, DC 20549

Re: Exelon Corporation – Shareholder Proposal Submitted by Steven J. Milloy

Ladies and Gentlemen:

This letter is submitted on behalf of Exelon Corporation, a Pennsylvania corporation (“Exelon” or the “Company”), pursuant to Rule 14a-8 of the Securities Exchange Act of 1934 (the “Exchange Act”), to notify the Securities and Exchange Commission (the “Commission”) of Exelon’s intention to exclude from its proxy materials for its 2019 Annual Meeting of Shareholders (the “2019 Annual Meeting”) a shareholder proposal (the “Proposal”) and statement in support thereof received from Steven J. Milloy (the “Proponent”).

Exelon intends to file its definitive proxy materials for the 2019 Annual Meeting on or about March 20, 2019. Pursuant to Staff Legal Bulletin No. 14D (November 7, 2008), this letter and its exhibits are being submitted via email to *shareholderproposals@sec.gov*. A copy of this letter and its exhibits will also be sent to the Proponent.

Exelon hereby respectfully requests confirmation that the staff of the Division of Corporation Finance (the “Staff”) will not recommend to the Commission that enforcement action be taken if Exelon excludes the Proposal from its 2019 Annual Meeting proxy materials for the reasons set forth below.

THE PROPOSAL

The Proposal sets forth the following resolution to be voted on by shareholders at the 2019 Annual Meeting:



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Resolved:

Shareholders request that, beginning in 2019, Exelon publish an annual report of actually incurred company costs and associated actual/significant benefits accruing to shareholders, public health and the environment from the company's environment-related activities that are voluntary and exceed federal/state regulatory requirements. The report should be prepared at reasonable cost and omit proprietary information.

A copy of the Proposal and the supporting statement (the "Supporting Statement"), as well as related correspondence with the Proponent, is set forth in Exhibit A.

BASIS FOR EXCLUSION OF THE PROPOSAL

The Company believes that it may omit the Proposal from its proxy materials for its 2019 Annual Meeting in reliance on (i) Rule 14a-8(i)(3), because it is impermissibly vague and indefinite such that it is inherently misleading in violation of Rule 14a-9; (ii) Rule 14a-8(i)(7), because the Proposal relates to the Company's ordinary business operations; and (iii) Rule 14a-8(i)(10), because the Proposal has been substantially implemented.

I. The Company May Omit the Proposal Pursuant to Rule 14a-8(i)(3) Because It is so Inherently Vague and Indefinite as to be Materially Misleading Under Rule 14a-9.

Under Rule 14a-8(i)(3), a proposal may be excluded if the resolution or supporting statement is contrary to any of the Commission's proxy rules or regulations. The Staff has consistently taken the view that shareholder proposals that are "so inherently vague or indefinite that neither the shareholders voting on the proposal, nor the company in implementing the proposal (if adopted), would be able to determine with any reasonable certainty exactly what actions or measures the proposal requires" are materially false and misleading. Staff Legal Bulletin No. 14B (September 15, 2004). *See also Dyer v. SEC*, 287 F.2d 773, 781 (8th Cir. 1961) ("[I]t appears to us that the proposal, as drafted and submitted to the company, is so vague and indefinite as to make it impossible for either the board of directors or the shareholders at large to comprehend precisely what the proposal would entail.").

The Staff has consistently concurred in the exclusion of proposals that fail to define key terms or that rely on complex external guidelines. For example, in *ExxonMobil Corporation* (Mar. 21, 2011), the Staff concurred with the exclusion of a proposal requesting a report based on the Global Reporting Initiative's ("GRI") sustainability guidelines. Not only did that proposal fail to describe what the GRI guidelines entailed, but the guidelines' sheer complexity meant that both the company and individual shareholders could hold conflicting interpretations of the proposal's

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ultimate meaning. *See also Cisco Systems, Inc.* (Oct. 7, 2016) (permitting exclusion of a proposal where several key terms were left undefined and subject to numerous possible interpretations); *Alaska Air Group, Inc.* (Mar. 10, 2016) (permitting exclusion of a proposal requiring the company to honor shareholder rights “to disclosure identification and contact information” while failing to provide a standard by which to measure those rights); *General Electric Company* (Jan. 15, 2015) (permitting exclusion of a proposal that encouraged the company to follow “SEC Staff Legal Bulletin No. 14C”); *Wendy’s International Inc.* (Feb. 24, 2006) (permitting exclusion of a proposal where the term “accelerating development” was found to be unclear); *Peoples Energy Corporation* (Nov. 23, 2004, recon. denied Dec. 10, 2004) (permitting exclusion of a proposal where the term “reckless neglect” was found to be unclear); and *Exxon Corporation* (Jan. 29, 1992) (permitting exclusion of a proposal regarding board member criteria because vague terms were subject to differing interpretations).

A proposal may also be vague, and thus materially misleading, when it fails to address essential aspects of its own implementation. For example, the Staff has allowed the exclusion of several executive compensation proposals where a crucial term relevant to implementing the proposal was not clear. *See The Boeing Company* (Recon.) (Mar. 2, 2011) (concurring with the exclusion of a proposal requesting, among other things, that senior executives relinquish certain “executive pay rights” because the proposal did not sufficiently explain the meaning of the phrase); *General Electric Company* (Jan. 21, 2011) (proposal requesting that the compensation committee make specified changes was vague because, when applied to the company, neither the shareholders nor the company would be able to determine exactly what actions or measures the proposal required); and *General Electric Company* (Jan. 23, 2003) (proposal seeking an individual cap on salaries and benefits of one million dollars failed to define the critical term “benefits” or otherwise provide guidance on how benefits should be measured for purposes of implementing the proposal).

The Proposal’s request that the Company publish an annual report (the “Report”) on the “associated actual/significant benefits accruing to shareholders, public health and the environment” from the Company’s “environment-related activities” is vague and misleading because it fails to define any of those terms or to provide any guidance or clarity on what should be covered or disclosed. Accordingly, the Company is left unclear on how to implement the Proposal and shareholders uncertain in voting on the Proposal.

The Proposal fails to define “environment-related activities,” which is the main focus of the Report. “Environment-related” may suggest that the activities are undertaken solely, or even primarily, for the purpose of impacting the environment. However, the examples of such activities provided in the Supporting Statement, such as “investing in a ‘cleaner energy future,’” “plans to reduce carbon dioxide (CO₂) emissions,” and divesting from coal and investing in nuclear, wind, solar and hydro-generating capacity, are all efforts by the Company to respond to its customers’ and shareholders’ requests and invest in the future for business purposes. The Company, like its peers,

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makes these investments to address the needs of the customers and communities it serves, to assist with the achievement of state- and city-specific pledges to rely on clean energy sources, to attract capital for its businesses, and to drive value for its investors. These investments by their nature inherently may have environmental ramifications, but are undertaken to position the Company to meet customer and community requests and achieve attractive business results for its shareholders.

The Proposal confuses the meaning of “environment-related” further by stating that the Report is targeting activities that the Supporting Statement asserts are “insincere ‘green’ posturing.” Indeed, the Supporting Statement refers to “greenwashing,” which the Oxford English Dictionary defines as “disinformation disseminated by an organization so as to present an environmentally responsible public image.”¹ While greenwashing is generally a disparaging term that refers to insincere or dishonest efforts so as to appear to be taking steps to protect the environment, even read generously it would also imply public relations efforts related to a company’s stance on environmental issues. The range of meanings of the term “greenwashing” renders the Proposal confusing. The Company cannot be certain whether the Report is designed to be focused on marketing or public image actions regarding the environment, or on business decisions that may happen to have environmental impacts.

Another vague term in the Proposal is the request to discuss the “associated actual/significant benefits” to shareholders as well as the “public health and the environment” from these “environment-related activities.” The Proposal does not define the scope of the “benefits” about which the Company is supposed to provide information. There are a multitude of ways to understand the potential benefits of “environment-related activities.” Some of the benefits to shareholders may be more tangible and easier to measure, such as cost savings and efficiency gains or additional revenue or cash flow. Other benefits to shareholders that arise from these activities, however, are more complex and extremely difficult if not impossible to objectively quantify in any meaningful or accurate way and may include the avoidance of liability, improvement to brand image, alignment with values and policies that shareholders support, employee satisfaction that reduces turnover and goodwill with regulators in assessing corporate compliance with laws.

The “associated actual/significant benefits” that the Report is supposed to describe include those that flow to “public health and the environment.” This phrase is not defined in the Proposal and the possibilities are seemingly endless. They could encompass the impacts of Company programs to minimize harm to the environment, reduce greenhouse gas emissions, conserve water, or any number of other potential impacts of Company actions. In addition, the Company is likely not able to isolate and measure in unambiguous terms, in light of the way these words are used in the Proposal, the effect of its actions within the context of incredibly complex and dynamic systems, such as public health or with respect to large or global environmental conditions.

¹ “Greenwashing,” Oxford English Dictionary (3rd ed., 2002).

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What further compounds the vagueness of the request is that the Proposal fails to identify any metric by which to measure the benefits as well as the relevant time periods to be measured, *e.g.*, costs and benefits and “environment-related activities” analyzed against each other each year, over the course of the life of the activity, or otherwise. A change in time period over which they should be measured would result in meaningful differences, as the benefit of some of the Company’s actions that have an environmental impact may not be fully understood for many years, even decades. As previously stated, the Company’s actions implicated by the Proposal and Supporting Statement are intended to address its customers’ and shareholders’ requests and position the Company for competitive success in the future.

The absence of clarification in the Proposal around (i) the meaning of “environment-related activities” on which the Company is being asked to report costs and benefits, and (ii) specific ways to measure the benefits of such activities, including the types of benefits and the means of measurement, renders the Proposal so vague such that the Company would not be able to implement it, and shareholders would not understand what they were voting on.

For all the reasons stated above, the Company believes the Proposal is properly excludable under Rule 14a-8(i)(3).

II. The Proposal May Be Excluded Under Rule 14a-8(i)(7) Because It Deals with Matters Related to the Company’s Ordinary Business Operations

Under Rule 14a-8(i)(7), a proposal is excludable if it “deals with a matter relating to the company’s ordinary business operations.” In 1998, the Commission explained two central considerations used in determining whether a proposal is excludable under Rule 14a-8(i)(7). The first consideration relates to when a proposal concerns tasks “so fundamental to management’s ability to run a company on a day-to-day basis that they could not, as a practical matter, be subject to direct shareholder oversight.” The second consideration relates to “the degree to which the proposal seeks to ‘micro-manage’ the company by probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment.” *See* SEC Release No. 34-40018 (May 21, 1998) (the “1998 Release”).

It is also important to note that a shareholder proposal that requests a report, such as the Proposal, does not change the nature of the proposal. The Commission has stated that a proposal requesting the dissemination of a report may be excludable under Rule 14a-8(i)(7) if the subject matter of the report is within the ordinary business of the issuer. *See* Exchange Act Release No. 20091 (August 16, 1983) (the “1983 Release”). *See also Johnson Controls, Inc.* (October 26, 1999) (“[Where] the subject matter of the additional disclosure sought in a particular proposal involves a matter of ordinary business... it may be excluded under [R]ule 14a-8(i)(7).”). According to Staff Legal Bulletin No. 14E (October 27, 2009) (“SLB 14E”), a proposal’s request for a review of certain risks

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also does not preclude exclusion if the underlying subject matter of the proposal to which the risks pertain or that gives rise to the risks is ordinary business.

In SLB 14E, the Staff explained that in the context of social issues, proposals would generally not be excludable in those cases in which a proposal's underlying subject matter "transcends the day-to-day business matters of the company and raises policy issues so significant that it would be appropriate for a shareholder vote." However, in the 1998 Release, the Staff indicated that even proposals relating to social policy issues may be excludable in their entirety if they do not transcend the day-to-day business matters discussed in the proposals.

In Staff Legal Bulletin No. 14I (November 1, 2017) ("SLB 14I"), the Staff further explained that a company's board of directors is "well situated to analyze, determine and explain whether a particular issue is sufficiently significant because the matter transcends ordinary business and would be appropriate for a shareholder vote." Staff Legal Bulletin No. 14J (October 23, 2018) ("SLB 14J") further set forth the Commission's views that "a well-developed discussion of the board's analysis of whether the particular policy issue raised by the proposal... is sufficiently significant in relation to the company, in the case of Rule 14a-8(i)(7), can assist the staff in evaluating a company's no-action request." Consistent with the direction provided by the Staff in SLB 14I and SLB 14J, part of the discussion below reflects the analysis of the Company's board of directors (the "Board") and includes a description of the Board's processes in conducting its analysis.

A. The Proposal Micro-Manages the Company's Choice of Technologies

The Staff has noted that proposals related to a company's choice of technologies are generally excludable under Rule 14a-8(i)(7). In a no-action letter granted to FirstEnergy Corp. ("FirstEnergy") on March 8, 2013, the Staff allowed exclusion of a proposal requesting a report on the effect of increasing FirstEnergy's use of renewable energy sources because it concerned the company's choice of technology for its operations. The Staff concurred with FirstEnergy that electricity generation is a complex process that requires management to make complex "choice of technology" decisions about the appropriate mix of electricity generating units (coal-fired, nuclear, hydroelectric, oil and natural gas and wind capacity) and that such decisions are beyond the realm of a shareholder vote. Similarly, in a no-action letter granted to *Dominion Resources, Inc.* ("Dominion") on February 22, 2011, the Staff allowed exclusion of a proposal (the "Dominion Proposal") requesting that Dominion provide customers with the option to purchase electricity from 100% renewable sources by a certain date. The Dominion Proposal related to the significant policy issue of global warming and climate change, but it did not transcend the day-to-day business matters of the company. The Staff accepted Dominion's view that the Dominion Proposal sought to impact the fundamental management function of determining the products and services to provide to customers.

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In this case, the Supporting Statement questions the benefits derived from the Company's decision to invest in a cleaner energy future, reduce carbon dioxide emissions, divest from coal, and invest in nuclear, wind, solar and hydro-generating capacity. At its core, the Company believes the Proposal is intended to encourage the Company to "BURN MORE COAL" — the name of the organization that the Proponent co-founded.²

In this way, the Proposal seeks to micro-manage the decisions of management. The Proposal would involve shareholders in decisions regarding the Company's choice of technologies for generation of electricity now and for its customers in the future. As explained on the Exelon website, Exelon's mission is to be the leading diversified energy company — "by providing reliable, clean, affordable and innovative energy products."³ One of the strategic plan focus areas that the Company developed after analyzing durable industry trends and customer expectations was the creation of a culture of technology and innovation within the Company. Management continually seeks new opportunities to invest in leading edge, clean, new technologies, which are key to positioning the Company for growth and success over the long-term consistent with its stated mission.

As detailed above, the Staff has routinely found that proposals concerning a company's choice of technologies or the sale of particular products and services are generally excludable under Rule 14a-8(i)(7), even if they touch on a significant policy issue, because deciding which products and services to offer and how to do so is particularly within the management function of a company and requires complex analysis beyond the ability of shareholders as a group.

B. The Proposal Micro-Manages How the Company Allocates Specific Resources and Markets its Products and Services

The Staff has permitted the exclusion of proposals under Rule 14a-8(i)(7) that are directed at specific resource allocation choices made by management. *See Comcast Corporation* (Mar. 2, 2017) (proposal requesting report on the company's use of funds on politicized news media); *The Walt Disney Company* (Nov. 20, 2014) (proposal requesting company continue acknowledging the Boy Scouts of America as a charitable organization); and *The Home Depot, Inc.* (Mar. 18, 2011) (proposal requesting the company list recipients of corporate charitable contributions of \$5,000 or more on company website).

Even a proposal that is ostensibly general in scope may be excludable where its supporting statement makes clear that the proponent is seeking to influence the company's financial choices with respect to specific projects. *Pfizer, Inc.* (Feb. 12, 2007) (proposal requesting that the company publish all charitable contributions on its website, where the supporting statement specifically

² See <https://burnmorecoal.com>.

³ <http://www.exeloncorp.com/company/business-strategy>.

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mentioned Planned Parenthood and other charitable groups involved in abortions and same-sex marriages). Relatedly, the Staff has also recognized that management's choices on marketing and public relations are core ordinary business activities and therefore excludable under Rule 14a-8(i)(7). *See Johnson & Johnson* (Jan. 12, 2004) (proposal requesting report on how the company intended to respond to public pressure to reduce drug prices) and *FedEx Corporation* (July 14, 2009) (proposal requesting report addressing company's efforts to disassociate from products or symbols that disparage Native Americans).

The Proposal questions whether there are tangible benefits to be gained from the Company's efforts in investing in alternative energy technologies, or whether corporate assets are being deployed as a "greenwashing" attempt to bolster the Company's public image. Notwithstanding the Proposal's pejorative terminology, the technologies that management decides to use and allocate resources to, and the manner in which management chooses to communicate with investors and the public on environmental issues and new energy or emission-reduction technologies, are both fundamental to the role of management. Shareholders are not in a position to micro-manage management's decisions and strategies in how best to make investment decisions or tailor its marketing and public relations efforts.

C. The Proposal Does Not Transcend the Day-to-Day Business of the Company Despite Touching on an Important Social Issue.

The Company understands that the Proposal touches upon the significant social issue of environmental policy, although the Proponent's focus on "greenwashing" and support of the continued use of coal technologies is an unusual counterpoint to the more typical environmental policy proposals seeking to reduce the use of coal and greenhouse gas emissions generally. The Company also acknowledges that the Staff has made clear that "[i]n those cases in which a proposal's underlying subject matter transcends the day-to-day business matters of the company and raises policy issues so significant that it would be appropriate for a shareholder vote, the proposal generally will not be excludable under Rule 14a-8(i)(7)..." SLB 14E. However, in this case, the Proposal, as explained in its Supporting Statement, is focused on the Company's strategic decisions to invest in alternative sources of energy for its customers and does not sufficiently raise a policy issue that transcends the day-to-day business matters of the Company.

In a no-action letter granted to *EOG Resources, Inc.* ("EOG") on February 26, 2018 (Recon. denied March 12, 2018), the Commission allowed exclusion of a proposal requesting that EOG adopt company-wide, quantitative, time-bound targets for reducing greenhouse gas emissions and issue a report discussing its plans and progress toward achieving these targets. In its no-action request letter, EOG set forth a detailed board analysis to support a conclusion that the proposal was not sufficiently significant to transcend ordinary business. Despite the environmental policy considerations inherent in the proposal, the Commission, in allowing exclusion under 14a-8(i)(7), agreed with EOG, noting

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that the proposal sought to micro-manage the Company by probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment. Similarly, in the no-action letter granted to *Apple Inc.* (“Apple”) on December 5, 2016, the Commission allowed exclusion of a proposal requesting that Apple generate a feasible plan for reaching net-zero greenhouse gas emissions by the year 2030 for all aspects of its business, including major suppliers. Apple acknowledged the social issue inherent in the proposal, noting that Apple devoted significant time and resources to its approach toward climate change and related disclosures, but argued that the proposal went too far. Specifically, Apple argued that the proposal would require its management to replace its own judgments on all aspects of Apple’s business with a course of action directed solely at meeting an arbitrary target. Again, the Commission allowed exclusion of the proposal because it delved too deeply into complex matters upon which shareholders as a group would not be in a position to make an informed judgment.

The Company’s approach to sustainability and its environmental profile links closely with enhancing its reputation as a low carbon leader and its strategies to leverage innovation to grow the business. As such, the Company believes that, similar to the proposals in EOG and Apple discussed above, the Proposal at issue touches on a social issue but does not do so in a way that transcends the ordinary business of the Company, and therefore is not suitable for a shareholder vote on the matter. Rather, the Proposal is focused on strategic decisions regarding the use of specific technologies and the allocation of resources and marketing, which are core to the Company’s business functions and necessarily involve decisions made by management in the ordinary course of managing its operations. This conclusion is further supported by the board analysis provided below.

D. Perspective of the Company’s Board

The Company has long understood its obligation to be a responsible steward of the environment and the communities it serves. The Company is the largest producer of clean energy in the United States, responsible for one-ninth of all clean energy produced.⁴ The Company’s focus on sustainability and environmental performance is integrally aligned with its business strategy. Several leading brands are seeking to enhance their sustainability profile by partnering with Exelon as a sustainability-focused low-carbon supplier. The Company has determined that 96% of its customers believe it is important for the Company to play a role in addressing climate change.

The Board frequently considers and discusses environmental matters. Specifically, the Corporate Governance Committee of the Board received a detailed report on the Company’s environmental strategy in December 2018, which expanded upon previous reports provided annually to the Committee. The recent report focused particularly on the level of investor interest in the Company’s environmental initiatives and the matters discussed in its annual Corporate Sustainability

⁴ See Exelon’s 2017 Corporate Sustainability Report at page 38, attached as Exhibit B.

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Report (“Corporate Sustainability Report”), which is attached to this letter as Exhibit B.⁵ The Corporate Sustainability Report includes, among other information, a discussion of the Company’s environmental performance as well as trends and industry comparisons. It also includes a description of the intended benefits of the Company’s initiatives and the costs of certain investments. Company management also discusses environmental matters arising throughout the year with the Board and its other Board Committees, including environmental risks and the strategies used to manage those risks. As a result, members of the Board are kept apprised of, among other things:

- Management’s discussions and correspondence with the Company’s shareholders regarding environmental issues, including shareholder proposals;
- Management’s discussions with state and federal policy makers and regulators on the development of market-based pricing mechanisms that provide compensation for the provision of environmental attributes, such as state zero emission credit programs;
- Key regulatory developments regarding environmental matters, including emerging and existing issues with respect to air emissions, water usage, and waste disposal, and their effects upon the Company’s current and future operations;
- Relevant environmental litigation or regulatory proceedings to which the Company is a party;
- The Company’s involvement in trade associations and participation in industry initiatives and programs, in each case relating to environmental matters; and
- The Company’s website and other public disclosures, including regular periodic reports filed with the Commission, in each case, regarding environmental matters.

In addition, the Board regularly reviews and assesses the Company’s long-term strategic plans and the principal issues and risks that the Company may face, which include environmental and related regulatory matters, planning relating to future generation and fuel source selection.

In this instance, the Corporate Governance Committee considered the Proposal and whether the Company should provide the report requested in the Proposal. The Corporate Governance Committee met with key members of management, including its Director of Corporate Environmental Strategy, its Senior Vice President, Corporate Strategy and Chief Innovation and Sustainability Officer, as well as its Chief Executive Officer and General Counsel. The Corporate Governance Committee discussed the Proposal with management in the context of the Company’s existing environmental strategy and disclosures.

⁵ The Corporate Sustainability Report is also available at:
[http://www.exeloncorp.com/sustainability/Documents/dwnld_Exelon_CSR%20\(1\).pdf](http://www.exeloncorp.com/sustainability/Documents/dwnld_Exelon_CSR%20(1).pdf).

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The Corporate Governance Committee noted the following as part of its analysis:

- Management has committed to the Company's existing environmental goals and strategies based on a complex and thoughtful analysis of various factors that management considers in all of its decisions regarding the Company's strategy and choice of technologies to provide customers with cost-efficient, reliable energy service at all times. That commitment has been long-standing and is embodied in the Company's current purpose statement: "Powering a cleaner, brighter, future for our customers and communities."
- The Company's existing environmental goals and initiatives, including the intended benefits of such initiatives, are readily disclosed to interested parties in the Company's Corporate Sustainability Report and other disclosures available on the Company's website.
- Management is uniquely positioned to evaluate all of the engineering, technical, reliability, transmission, regulatory and other factors in choosing which technology or technologies to pursue to meet the energy needs of the Company's customers, which is a core business activity.
- Any additional disclosure that the Company may create as a result of the Proposal would not present a meaningful addition to what the Company is already compiling and disclosing to all shareholders. Therefore, the "delta" of what the Proposal is requesting and what the Company is already doing does not present a significant policy issue for the Company.
- The Company regularly engages with its shareholders on topics of mutual interest including, most recently during the past 18 months, environmental and emissions-related initiatives and disclosures by the Company. The Company has engaged with shareholders representing approximately 40% of its outstanding shares on these matters within the past 18 months. Many shareholders have indicated in these discussions, an understanding of, and support for, the Company's business strategy and environmental initiatives.
- The Proponent of the Proposal is the co-founder of a special interest group, "BURN MORE COAL." It is the Company's belief, based on its engagement with shareholders, that the position supported by the Proponent and BURN MORE COAL represents views that do not align with the vast majority of the Company's shareholders.
- The Proponent also runs the website www.junkscience.com and is the author of "*Green Hell: How Environmentalists Plan to Control Your Life and What You Can Do to Stop Them*," among other titles.



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The Company has acted, and continues to act, on the important environmental policy issue touched on by the Proposal through existing policies and procedures and the Company's existing disclosure of its environmental policies, choice of technologies and renewable energy goals, including the costs of certain investments and intended benefits. The Proposal's directive interferes with these day-to-day ordinary business functions of Company's management and does not add meaningful value to shareholders over what is already being disclosed by the Company. The policy issue raised by the Proposal, as presented, does not transcend ordinary business operations. Based on the foregoing and other considerations deemed relevant, the Corporate Governance Committee determined that the Proposal is not in the best interest of the Company and its shareholders and should not be included and the Company should proceed with a no-action request to exclude it.

III. The Company May Omit the Proposal Pursuant to Rule 14a-8(i)(10) As It Has Been Substantially Implemented.

Rule 14a-8(i)(10) permits a company to exclude a shareholder proposal if the company has already substantially implemented the proposal. The Commission has stated that "substantial" implementation under this rule does not require implementation in full or exactly as presented by the proponent. *See SEC Release No. 34-40018* (May 21, 1998, n.30). The Staff has provided no-action relief under Rule 14a-8(i)(10) when a company has substantially implemented and therefore satisfied the "essential objective" of a proposal, even if the company did not take the exact action requested by the proponent, did not implement the proposal in every detail, or exercised discretion in determining how to implement the proposal. *See Wal-Mart Stores, Inc.* (Mar. 25, 2015) (permitting exclusion of a shareholder proposal requesting an employee engagement metric for executive compensation where a "diversity and inclusion metric related to employee engagement" was already included in the company's management incentive plan); *Entergy Corporation* (Feb. 14, 2014) (permitting exclusion of a shareholder proposal requesting a report "on policies the company could adopt... to reduce its greenhouse gas emissions consistent with the national goal of 80% reduction in greenhouse gas emissions by 2050[]" where the requested information was already available in its sustainability and carbon disclosure reports); *Duke Energy Corporation* (Feb. 21, 2012) (permitting exclusion of a shareholder proposal requesting that the company assess potential actions to reduce greenhouse gas and other emissions where the requested information was available in the Form 10-K and its annual sustainability report); *Exelon Corporation* (Feb. 26, 2010) (concurring in the exclusion of a proposal that requested a report on different aspects of the company's political contributions when the company had already adopted its own set of corporate political contribution guidelines and issued a political contributions report that, together, provided "an up-to-date view of the [c]ompany's policies and procedures with regard to political contributions"). "[A] determination that the company has substantially implemented the proposal depends upon whether [the company's] particular policies, practices, and procedures compare favorably with the guidelines of the proposal." *Texaco, Inc.* (Mar. 28, 1991) (permitting exclusion on substantial implementation grounds of a

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proposal requesting that the company adopt the Valdez Principles where the company had already adopted policies, practices and procedures regarding the environment).

Notwithstanding the inherent vagueness and indefiniteness of the Proposal, the core objective of the Proposal appears to be that the Company should report “actually incurred company costs and associated actual/significant benefits ... from the [c]ompany’s environment-related activities.” The Company’s reports and websites that are described below demonstrate that the Company has substantially implemented the Proposal by satisfying this essential objective, and thus the Proposal is excludable under Rule 14a-8(i)(10).

The Company’s recent environmental and climate-related reports provide numerous examples of the Company describing the “costs” and “benefits” of its “environment-related activities.” In particular, the Company annually publishes its Corporate Sustainability Report where the Company discusses the information that the Proposal purports to request. As discussed in the Corporate Sustainability Report, the Company’s utilities invested almost \$5.3 billion in 2017 in electric transmission, electric distribution and gas distribution systems, which has been instrumental in bringing about a wide range of system and customer benefits, such as providing enhanced information to help identify and respond to power outages and better monitor circuit voltage, saving customers money and avoiding excess greenhouse gas emissions. These investments helped customers save over 19.2 million megawatt-hours, which equates to almost 8.7 million metric tons of CO₂ emissions avoided.

The Corporate Sustainability Report also sets forth the Company’s performance data for the years 2015 to 2017, including key metrics relating to its sustainability efforts.

In addition to the Corporate Sustainability Report, the following environmental reports are also publicly available on the Company’s website under the “Sustainability” tab:

- *Exelon Greenhouse Gas Emission Verification Statement*, providing reasonable assurance that the Company’s reported greenhouse gas emissions from January 1, 2017 through December 31, 2017 were verifiable and met the requirements of The Climate Registry’s voluntary program.⁶
- *Exelon Scope Three Greenhouse Gas Emission Verification Statement*, providing limited assurance that the Company’s Scope 3 GHG Emissions for the calendar year 2017 was prepared taking into consideration the Greenhouse Gas Protocol Corporate Value Chain (Scope 3) Standard, the Greenhouse Gas Protocol Technical Guidance

⁶ Available at: http://www.exeloncorp.com/sustainability/Documents/TCR_Verification_Statement.pdf.

for Calculating Scope 3 Emissions and the Company's internal Inventory Management Plan.⁷

- *Exelon Generation CO₂, NO_x and SO₂ Emission Intensity Verification Statement*, providing limited assurance that the Company's air emissions intensity report for calendar year 2017 was prepared in conformance with Exelon's internal procedures and taking into consideration industry best-practices.⁸
- *Exelon Environmental Management System (EMS) Certification*, certifying that the Company was assessed by NSF-International Strategic Registrations and found to be in conformance to ISO 14001:2015 standard(s).⁹
- *Carbon Disclosure Project Climate Change and Water Surveys*, providing additional context relating to the Company's GHG emissions and water management, identifying risks and opportunities associated with such information, as well as the corporate governance systems and strategies in place to manage them.¹⁰

The Proposal does not indicate what information, in addition to, or outside of, the information already disclosed by the Company in the Corporate Sustainability Report and other public documents, would be needed to satisfy it. Substantial implementation does not require implementation in full or exactly as presented by the Proposal. The Staff has found proposals related to climate change excludable pursuant to 14a-8(i)(10) even if the company's actions were not identical to the guidelines of the proposal. Both *Entergy Corporation* and *Duke Energy Corporation* were permitted to exclude shareholder proposals pursuant to 14a-8(i)(10), even though the requested disclosures were not made in precisely the manner contemplated by the proponent. Numerous other letters reinforce this approach. See *Merck & Company, Inc.* (Mar. 14, 2012) (permitting exclusion of a shareholder proposal requesting a report on the safe and humane treatment of animals because the company had already provided information on its website and further information was publicly available through disclosures made to the United States Department of Agriculture); *ExxonMobil Corporation* (Mar. 17, 2011) (permitting exclusion of a shareholder proposal requesting a report on the steps the company had taken to address ongoing safety concerns where the company's "public disclosures compare[d] favorably with the guidelines of the proposal"); and *ExxonMobil*

⁷ Available at:

<http://www.exeloncorp.com/sustainability/Documents/Exelon%20Scope%203%20GHG%20Verification.pdf>.

⁸ Available at:

<http://www.exeloncorp.com/sustainability/Documents/Exelon%20Generation%20Air%20Emission%20Intensity%20Verification.pdf>.

⁹ Available at: <http://www.exeloncorp.com/sustainability/Documents/Exelon-Environmental-Management-System-certification.pdf>.

¹⁰ Available at: http://www.exeloncorp.com/sustainability/Documents/Exelon_Investor_CDP.pdf and at http://www.exeloncorp.com/sustainability/Documents/Exelon_CDP_Water_Response.pdf.

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Corporation (Jan. 24, 2001) (permitting exclusion of a shareholder proposal requesting the review of a pipeline project, the development of criteria for involvement in the project and a report to shareholders because it was substantially implemented by prior analysis of the project and publication of such information on the company's website).

Although the Proposal is vague, its essential objective appears to be for the Company to report "associated actual/significant benefits accruing to shareholders, public health and the environment" from the Company's "environment-related activities" and that objective has been substantially implemented by the Company as explained by the Company reports and websites summarized above. These materials compare favorably with the essence of the Proposal, and thus the Proposal is excludable under Rule 14a-8(i)(10).

CONCLUSION

Based upon the foregoing analysis, we respectfully request that the Staff confirm that it will take no action if the Company excludes the Proposal from its proxy materials for the 2019 Annual Meeting.

We would be happy to provide you with any additional information and answer any questions that you may have regarding this subject. If you have any questions regarding this request or desire additional information, please contact the undersigned at (312) 853-7270 or by email at rastle@sidley.com

Sincerely,

A handwritten signature in black ink, appearing to read "R. Astle", with a stylized flourish at the end.

Richard W. Astle

Attachments

cc: Steven J. Milloy