



**The District of Columbia Government**  
**Board of Ethics and Government Accountability**

**Final Periodic Audit Report on Exelon**

**January 2016**

**Lobbyist Activity Report**

**July 1, 2015 through December 31, 2015**

**December 2016**

**Office of Government Ethics**

## BACKGROUND

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Exelon Corporation ("Exelon") is registered with the Director of Government Ethics ("Director") pursuant to D.C. Official Code §§ 1-1162.27(a) and 1-1162.29(a). Exelon registered on January 14, 2015 to lobby the District of Columbia government regarding matters affecting the energy industry and the Exelon-PHI merger during the 2015 calendar year. Exelon retained the services of Manatt, Phelps & Phillips LLP ("Manatt") and Earle C. Horton III in that regard.<sup>1</sup> On January 8, 2016, Exelon filed a January 2016 Lobbyist Activity Report ("LAR") reflecting lobbying activities performed for the period July 1, 2015 through December 31, 2015. In the January 8, 2016 LAR, Exelon did not disclose any communication (written or oral) with any official in the executive or legislative branch during the applicable reporting period with respect to lobbying activities. However, Exelon filed an amendment to its January 2016 LAR to reflect communications made by the Retail Energy Supply Association ("RESA") on behalf of Exelon.<sup>2</sup>

On February 18, 2016, the Director of Government Ethics, Darrin Sobin, issued an Audit Notification letter to Exelon and requested records to substantiate information disclosed on its January 2016 LAR. Exelon responded that it did not engage in any lobbying activities in the District of Columbia during the six months prior to the filing deadline. On March 4, 2016, in response to the Audit Notification letter, Exelon provided a copy of a \$2,750 invoice from RESA, along with a cancelled check, which was paid to RESA for lobbying activities conducted from July 1, 2015 through December 31, 2015 on Exelon's behalf. According to Exelon, the \$2,750 payment to RESA represented Exelon's portion of a RESA invoice to Exelon for the cost of a "District of Columbia lobbying special project." On December 9, 2015 and December 16, 2015, RESA had email communications with two government officials.<sup>3</sup> It was not clear whether this subject matter was a part of the "District of Columbia lobbying special project" for which Exelon compensated RESA. Under the District's lobbyist registration requirement, any person or entity who receives compensation or expends funds in an amount of \$250 or more in any three consecutive calendar month period for lobbying is required to register with the Director of Government Ethics.<sup>4</sup> Those registrants are required to file bi-annual reports detailing their lobbying activities.<sup>4</sup>

On October 25, 2016, OGE issued a Statement of Findings (Draft Audit Report) to Exelon which presented OGE's audit findings and recommendations. OGE recommended that Exelon should describe in detail the nature and purpose of lobbying activities RESA performed on behalf of Exelon and also include details of any official in the executive or legislative branch that RESA had made direct communications with, whether (oral or written) during this reporting period. OGE also recommended that Exelon amend its LAR to provide further clarification as to the specific matters for which it lobbied the District and also include any person or entity that Exelon paid to lobby the District on its behalf for those specific matters.

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<sup>1</sup> Exelon filed an amendment to its January 8, 2016 LAR on November 7, 2016 to include Retail Energy Supply Association (RESA) as one of its lobbyists.

<sup>2</sup> Specifically, on December 9, 2015 and December 16, 2015, RESA made direct email communications with the Legislative Director for Councilmember Mary Cheh, Nicole Rentz regarding the Solar Energy Amendment Act of 2015. Similarly, on December 10, 2015, RESA had made email communications with Councilmember Mary Cheh regarding the same Solar Energy Amendment Act of 2015.

<sup>3</sup> See D.C. Official Code § 1-1162.27(a).

<sup>4</sup> See D.C. Official Code § 1-1162.30(a).

On November 7, 2016, Exelon provided a response to OGE's Statement of Findings and the Director's letter.<sup>5</sup> Exelon stated that "RESA – on behalf of the RESA Association and not specifically on behalf of Exelon conducted email communications regarding the Solar Energy Amendment Act of 2015 with Councilmember M. Cheh and the Legislative Director for Councilmember M.Cheh, N. Rentz [Nicole]." Exelon also noted it amended its 2015 Lobbyist Registration Form to include RESA as its lobbyist and its January 2016 Lobbyist Activity Report to provide further clarification of the activities performed by RESA.

OGE's review of the financial records provided by Exelon corroborate the information provided on its activity report. On its Schedule A portion of the Lobbyist Activity Report, Exelon disclosed a total of \$2,750 compensation made to RESA for this period which is supported by the invoice and cancelled check presented.

## **OBJECTIVE**

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The Office of Government Ethics' objective is to determine the extent to which Exelon is able to demonstrate compliance with the Ethics Act by providing documentation to support information disclosed on its January 2016 Lobbyist Activity Report filed with the Director of Government Ethics.

## **SCOPE**

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The audit procedures performed included examination of source documents and reports filed with the Director of Government Ethics in order to verify the following:

- i. Mathematical accuracy of the lobbyist activity report during the period audited;
- ii. Amount of income reported for lobbying activities;
- iii. Total reported receipts and expenditures and individual transactions;
- iv. Proper categorization of the receipts and expenditures of the filer/registrant- who may be a lobbyist, lobbying entity, or client; and
- v. Other review procedures as deemed necessary under the circumstances.

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<sup>5</sup> The November 7, 2016 letter is available at the Board of Ethics and Government Accountability Office.

### **Audit Risk Factor Rating Scheme**

The Risk Factor (RF) associated with each test is listed in the fourth column of the table and is noted as follows:

RF-H - Risk in this situation is high. It indicates a potential violation of the Ethics Act. It also decreases public confidence in the integrity of government. Please be advised that substantial penalties may be incurred and/or there may be negative media exposure.

RF-M - Risk in this situation is moderate. Under certain conditions, non-compliance may have negative impacts.

RF-L - Risk in this situation is low.

RF-O - There is no risk in this situation.

### **SUMMARY OF AUDIT FINDINGS**

**Finding No. 1:** OGE's review revealed that Exelon conducted what appeared to be lobbying activities when it expended \$2,750 to RESA during the July 1, 2015 through December 31, 2015, filing period without disclosing those activities in its report. It was also unclear from the records submitted by Exelon which specific lobbying activities RESA conducted on Exelon's behalf.

**Finding No. 2:** The nature and purpose of lobbying activities performed by RESA based on the expenditure described in Finding No.1, was not disclosed on Exelon's January 2016 I.AR.

**Finding No. 3:** Exelon filed an inaccurate report because RESA was not listed as a lobbyist on either its 2015 Lobbyist Registration Form or January 2016 Lobbyist Activity Report.

### **Status of Findings from Preceding Draft Audit Report:**

OGE reviewed and monitored the implementation of the recommended actions in OGE's draft audit report and has determined that Exelon satisfactorily addressed the deficiencies noted in the report and took steps to cure them.

<b>Criteria</b> (Substantive Tests Performed )	<b>Conditions</b>	<b>Effects</b> (Material Findings)	<b>Risk Factors</b>	<b>Correction Actions Recommended and/or Taken</b>
<b>Did the Lobbyist provide documentation for key elements?</b>	Yes	None	No Risk (RF-O)	Not Applicable
<b>Did the Lobbyist provide documentation for income earned towards lobbying?</b>	Not Applicable because Exelon is the Client	None	No Risk (RF-O)	Not Applicable
<b>Did the Lobbyist provide documentation for expenses made towards lobbying?</b>	Yes	None	No Risk (RF-O)	Not Applicable
<b>Did the Lobbyist accurately complete its Lobbyist Registration Form?</b>	No	Inaccurate information provided in the LRF because RESA was not listed as a lobbyist retained by Exelon	Low Risk (RF-L)	Exelon filed an Amendment and disclosed RESA in the list of lobbyists that worked for it in the 2015 Calendar year.
<b>Did the Lobbyist file Activity reports online?</b>	Yes	None	No Risk (RF-O)	Not Applicable
<b>Did the Lobbyist timely file Activity Report?</b>	Yes	None	No Risk (RF-O)	Not Applicable
<b>Did the Lobbyist accurately complete its Lobbyist Activity Report?</b>	No	The nature and purpose of lobbying activities performed by RESA based on the expenditure described in Finding No.1, was not disclosed in Exelon's Jan 2016 LAR.	Low Risk (RF-L)	Exelon corrected and amended its January 2016 LAR, and disclosed specific matters and lobbying activities performed by RESA.
<b>Did the Lobbyist timely register pursuant to D.C. Official Code § 1-1162.27(a)?</b>	Yes	None	No Risk (RF-O)	Not Applicable
<b>Did the Lobbyist timely pay its registration fee pursuant to D.C. Official Code § 1-1162.27?</b>	Yes	None	No-Risk (RF-O)	Not Applicable

## AGENCY COMMENTS

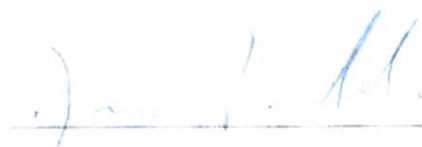
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Based upon the review conducted on Exelon's January 2016 Lobbyist Activity Report for the period July 1, 2015 through December 31, 2015, it is the Office of Government Ethics' opinion, that Exelon is in compliance with the disclosure requirements of the Ethics Act. Exelon disclosed and described the nature and purpose of lobbying activities RESA performed on its behalf and also included information pertaining to the officials with whom RESA made direct communications during this reporting period. Furthermore, the review of Exelon's January 2016 report and the records presented suggests that Exelon's January 2016 LAR accurately represents the financial history of the lobbyist for the applicable reporting period.


## RECOMMENDATION

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OGE, therefore, recommends that the Ethics Board issue this Audit report as the "**Final Periodic Audit Report**" for Exelon. It has been determined that the January 2016 Lobbyist Activity Report filed by Exelon with the Director of Government Ethics is in compliance with the Ethics Act.



DARRIN P. SOBIN  
Director of Government Ethics  
Board of Ethics and Government Accountability

  
Clara O. Olawunmi CFE, CIGA  
Certified Inspector General Auditor

## FINAL PERIODIC AUDIT REPORT APPROVED FOR RELEASE:

  
Robert Spagnolelli, Chairman  
Board of Ethics and Government Accountability

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December 6, 2016  
Board of Ethics and Government Accountability

