Nos. 21-2861, 21-2872, 21-2873

IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

SOUTH BRANCH LLC, et al.

Plaintiffs-Appellants,

v.

COMMONWEALTH EDISON COMPANY d/b/a ComEd and EXELON CORPORATION

Defendants-Appellees.

STEVEN BROOKS, et al.

Plaintiffs-Appellants,

v.

COMMONWEALTH EDISON COMPANY d/b/a ComEd and EXELON CORPORATION

Defendants-Appellees.

DAVID CHAVEZ, et al.

Plaintiffs-Appellants,

v.

COMMONWEALTH EDISON COMPANY d/b/a ComEd and EXELON CORPORATION

Defendants-Appellees.

Appeals from the United States District Court for the Northern District of Illinois,
Nos. 1:20-cv-04980, 1:20-cv-04405, 1:20-cv-04555
The Honorable Jorge L. Alonso, District Judge

BRIEF AND REQUIRED SHORT APPENDIX OF PLAINTIFFS-APPELLANTS

Jonathan D. Selbin
Lieff Cabraser Heimann & Bernstein, LLP
250 Hudson Street,
8th Floor
New York, NY 10013
212.355.9500

Matthew J. Piers
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206.623.1900

Interim Class Counsel and Counsel for Appellants

APPEARANCE & CIRCUIT RULE 26.1 DISCLOSURE STATEMENT

Appellate Court No: 21-2861, 21-2872, 21-2873

Short Caption: South Branch LLC, et al./Brooks, et al./Chavez, et al. v. Commonwealth Edison Co., et al.

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(1) The full name of every party that the attorney represents in the case (if the party is a corporation, you must provide the corporate disclosure information required by Fed. R. App. P. 26.1 by completing item #3):

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(3) If the party, amicus or intervenor is a corporation:

i) Identify all its parent corporations, if any; and

N/A

ii) list any publicly held company that owns 10% or more of the party's, amicus' or intervenor's stock:

N/A

(4) Provide information required by FRAP 26.1(b) – Organizational Victims in Criminal Cases:

N/A

(5) Provide Debtor information required by FRAP 26.1 (c) 1 & 2:

N/A

Attorney's Signature: /s/ Jonathan D. Selbin Date: 10/27/2021

Attorney's Printed Name: Jonathan D. Selbin

Please indicate if you are *Counsel of Record* for the above listed parties pursuant to Circuit Rule 3(d). **Yes** ☑ **No** ☐

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250 Hudson Street, 8th Floor, New York, NY 10013

Phone Number: (212) 355-9500 Fax Number: (212) 355-9592

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N/A

Attorney's Signature: /s/ Jason L. Lichtman Date: 10/27/2021

Attorney's Printed Name: Jason L. Lichtman

Please indicate if you are *Counsel of Record* for the above listed parties pursuant to Circuit Rule 3(d). **Yes** ☐ **No** ☑

Address: Lieff Cabraser Heimann & Bernstein, LLP

250 Hudson Street, 8th Floor, New York, NY 10013

Phone Number: (212) 355-9500 Fax Number: (212) 355-9592

E-Mail Address: jlichtman@lchb.com

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N/A

Attorney's Signature: /s/ Kevin R. Budner Date: 10/27/2021

Attorney's Printed Name: Kevin R. Budner

Please indicate if you are *Counsel of Record* for the above listed parties pursuant to Circuit Rule 3(d). **Yes** ☐ **No** ☑

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N/A

(5) Provide Debtor information required by FRAP 26.1 (c) 1 & 2:

N/A

Attorney's Signature: /s/ Andrew R. Kaufman Date: 10/27/2021

Attorney's Printed Name: Andrew R. Kaufman

Please indicate if you are *Counsel of Record* for the above listed parties pursuant to Circuit Rule 3(d). **Yes** ☐ **No** ☑

Address: Lieff Cabraser Heimann & Bernstein, LLP

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E-Mail Address: akaufman@lchb.com

APPEARANCE & CIRCUIT RULE 26.1 DISCLOSURE STATEMENT

Appellate Court No: 21-2861, 21-2872, 21-2873

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TFOCO, as subsidiary of Petiole Asset Management, for TFO Golub Burnham LLC and TFO IT 2.0 LLC

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None

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N/A

Attorney's Signature: /s/ Matthew J. Piers Date: 11/3/2021

Attorney's Printed Name: Matthew J. Piers

Please indicate if you are *Counsel of Record* for the above listed parties pursuant to Circuit Rule 3(d). **Yes** ☑ **No** ☐

Address: Hughes Socol Piers Resnick & Dym, Ltd.

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Phone Number: (312) 580-0100 Fax Number: (312) 580-1994

E-Mail Address: mpiers@hsplegal.com

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Attorney's Signature: /s/ Charles D. Wysong Date: 11/3/2021

Attorney's Printed Name: Charles D. Wysong

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Phone Number: (312) 580-0100 Fax Number: (312) 580-1994

E-Mail Address: cwysong@hsplegal.com

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N/A

Attorney's Signature: /s/ Emily R. Brown Date: 11/3/2021

Attorney's Printed Name: Emily R. Brown

Please indicate if you are *Counsel of Record* for the above listed parties pursuant to Circuit Rule 3(d). **Yes** ☐ **No** ☑

Address: Hughes Socol Piers Resnick & Dym, Ltd.

70 West Madison, Ste 4000, Chicago, IL 60602

Phone Number: (312) 580-0100 Fax Number: (312) 580-1994

E-Mail Address: ebrown@hsplegal.com

APPEARANCE & CIRCUIT RULE 26.1 DISCLOSURE STATEMENT

Appellate Court No: 21-2861, 21-2872, 21-2873

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N/A

Attorney's Signature: /s/ Derek W. Loeser Date: 11/03/2021

Attorney's Printed Name: Derek W. Loeser

Please indicate if you are *Counsel of Record* for the above listed parties pursuant to Circuit Rule 3(d). **Yes** ☑ **No** ☐

Address: Keller Rohrback L.L.P.

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Phone Number: 206-623-1900 Fax Number: 206-623-3384

E-Mail Address: dloeser@kellerrohrback.com

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(5) Provide Debtor information required by FRAP 26.1 (c) 1 & 2:

N/A

Attorney's Signature: /s/ Ryan McDevitt Date: 11/03/2021

Attorney's Printed Name: Ryan McDevitt

Please indicate if you are *Counsel of Record* for the above listed parties pursuant to Circuit Rule 3(d). **Yes** ☐ **No** ☑

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E-Mail Address: rmcdevitt@kellerrohrback.com

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Attorney's Signature: /s/ Gary Gotto Date: 11/03/2021

Attorney's Printed Name: Gary Gotto

Please indicate if you are *Counsel of Record* for the above listed parties pursuant to Circuit Rule 3(d). **Yes** ☐ **No** ☑

Address: Keller Rohrback L.L.P.
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APPEARANCE & CIRCUIT RULE 26.1 DISCLOSURE STATEMENT

Appellate Court No: 21-2861, 21-2872, 21-2873

Short Caption: South Branch LLC, et al./Brooks, et al./Chavez, et al. v. Commonwealth Edison Co., et al.

To enable the judges to determine whether recusal is necessary or appropriate, an attorney for a non-governmental party, amicus curiae, intervenor or a private attorney representing a government party, must furnish a disclosure statement providing the following information in compliance with Circuit Rule 26.1 and Fed. R. App. P. 26.1.

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(1) The full name of every party that the attorney represents in the case (if the party is a corporation, you must provide the corporate disclosure information required by Fed. R. App. P. 26.1 by completing item #3):

Steven Brooks; David Chavez; 1540 Milwaukee LLC d/b/a DSTRKT Bar & Grill; Carmichael Leasing, Co.

(2) The names of all law firms whose partners or associates have appeared for the party in the case (including proceedings in the district court or before an administrative agency) or are expected to appear for the party in this court:

The Bellows Law Group, P.C.; Hughes Socol Piers Resnick & Dym, Ltd.; Keller Rohrback, LLP; LeonardMeyer, LLP; Lieff Cabraser Heimann & Bernstein, LLP; Mason, Lietz & Klinger, LLP

(3) If the party, amicus or intervenor is a corporation:

i) Identify all its parent corporations, if any; and

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ii) list any publicly held company that owns 10% or more of the party's, amicus' or intervenor's stock:

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(4) Provide information required by FRAP 26.1(b) – Organizational Victims in Criminal Cases:

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Attorney's Signature: /s/ Ian R. Bensberg Date: 1/14/2022

Attorney's Printed Name: Ian R. Bensberg

Please indicate if you are *Counsel of Record* for the above listed parties pursuant to Circuit Rule 3(d). **Yes** ☐ **No** ☑

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JURISDICTIONAL STATEMENT

The district court had subject matter jurisdiction under 28 U.S.C. § 1331 and 18 U.S.C. § 1964(c) because Appellants asserted claims arising under a federal statute, the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. §§ 1961-1968. The district court had supplemental subject matter jurisdiction over Appellants' state-law claims under 28 U.S.C. § 1367.

This Court has subject matter jurisdiction under 28 U.S.C. §1291 because these are appeals from final decisions of the district court.

Court of Appeals Docket Number 21-2861: The district court entered final judgment on September 13, 2021 and Appellants filed a notice of appeal on October 12, 2021.

Court of Appeals Docket Number 21-2872: The district court entered final judgment on September 15, 2021 and Appellants filed a notice of appeal on October 12, 2021.

Court of Appeals Docket Number 21-2873: The district court entered final judgment on September 15, 2021 and Appellants filed a notice of appeal on October 12, 2021.

STATEMENT OF ISSUES

1. To plausibly allege proximate causation under the Racketeering Influenced and Corrupt Organizations Act, 18 U.S.C. §§ 1961-1968, must plaintiffs plead facts that rule out all other "innocent alternative causes," *contra Empress Casino Joliet Corp. v. Johnston*, 763 F.3d 723, 733 (7th Cir. 2014), and all other superseding causes, *contra BCS Servs., Inc. v. Heartwood 88, LLC*, 637 F.3d 750, 757 (7th Cir. 2011), where the plaintiffs are the direct, intended, and *only* victims of the conspiracy and seek recovery for their own injuries?

2. Are RICO plaintiffs barred as a matter of law from seeking "damages from a private party for an alleged conspiracy to use the power of state government to take money from them" where the allegation is that defendants bribed "one corrupt official [who] … hijacked this foundational institution of state sovereignty," simply because the purpose (and result) of the bribery was to obtain state legislation? *Contra Empress Casino*, 763 F.3d at 730-31.

INTRODUCTION

When asked why he robbed banks, Willie Sutton (is purported to have) responded, "Because that's where the money is."[1] So, too, here: Appellees Commonwealth Edison Company and Exelon Corporation (together, "ComEd") bribed now former Illinois House Speaker Michael Madigan ("Madigan") because that's where the money was. Or, to be more precise, because ComEd knew that it needed Madigan's support if the Illinois legislature was going to enact legislation through which, by its own admission, ComEd extracted at least $150 million dollars (the actual amount was many multiples higher) from Appellants ("Illinois electricity customers"). None of this is speculation or mere allegation: ComEd *admitted* all of

[1] *Willie Sutton*, Federal Bureau of Investigation, https://www.fbi.gov/history/famous-cases/willie-sutton (last visited Jan. 4, 2022).

this in its deferred prosecution agreement ("DPA") with the United States Attorney. *See* SA-75 to SA-113.

Nevertheless, in the district court, ComEd argued—and the court held as a matter of law—that the Illinois electricity customers did not state a claim for relief for two reasons. Both holdings are reversible error.

First, the district court held that the Illinois electricity customers did not and could not plausibly allege proximate cause—despite their well-pled allegations that ComEd bribed Madigan to obtain passage of legislation as a result of which they improperly took hundreds of millions (likely billions) of dollars from the Illinois electricity customers. These allegations were supported by ComEd's own admissions in the DPA that its bribery scheme occurred and succeeded, *see* SA-5 (complaint), SA-96 to SA-106 (DPA), and ComEd's concession (and the district court's acknowledgement) that this conduct established but-for causation. SA-155.[2] Contrary to settled Seventh Circuit law, the district court held that because "more things had to happen" after the bribery for the laws to pass, the proximate cause chain was broken as a matter of law. SA-156. That ruling contravenes basic tort principles, as well as this Court's opinion in *Empress Casino*, which held that because bribery sounds in intentional tort, a RICO plaintiff need *not* prove that *no* more things had to happen or rule out *all* "innocent alternative causes" to establish proximate causation. 763 F.3d at 733; *see also BCS Servs.*, 637 F.3d at 757 (holding that "the burden of proving an intervening cause—something which snaps the 'causal chain' (that is, operates as a 'superseding cause,' wiping out the defendant's liability) that connects the wrongful act to the defendant's injury—is on the defendant" (internal quotation marks and

[2] The district court entered identical orders on the dockets of Nos. 1:20-cv-04405, 1:20-cv-04555, and 1:20-cv-4980. All three orders are included as docketed in Appellants' short appendix. *See* SA-140, SA-165, SA-190. For the sake of clarity and brevity, this brief cites only to the order entered in No. 4405. Likewise, "Dist. Ct. ECF No." refers to entries on the docket of No. 4405 only.

citation omitted)). Nothing in the law requires ComEd to have bribed each and every legislator (or a majority of them in each house) and the governor where, as here, the allegation is that "one corrupt official, whether the governor or anyone else, hijacked this foundational institution of state sovereignty," thereby directly injuring the Illinois electricity customers. *Empress Casino*, 763 F.3d at 730-31. While the Illinois electricity customers will bear the burden of *proving* this allegation, the district court committed reversible error by denying them the opportunity to do so at the *pleading* stage.

Second, the district court believed this case was categorically barred by the Supreme Court's decision in *Fletcher v. Peck*, 10 U.S. (6 Cranch) 87 (1810), based on the idea that courts should not "in effect" overrule or strike down statutes in the context of a dispute between private parties. SA-158 to SA-161. That holding, too, is reversible error. As with the proximate cause issue, the district court fundamentally misread *Fletcher* and ignored this Court's statement in *Empress Casino* that in the right factual scenario—again, where "one corrupt official, whether the governor or anyone else, hijacked this foundational institution of state sovereignty"—a RICO case for damages *can* proceed notwithstanding *Fletcher*. 763 F.3d at 730-31.

Nor are the Illinois electricity customers seeking to "overrul[e]," strike down, or otherwise nullify a statute. SA-160. They are simply seeking "damages from a private party for an alleged conspiracy to use the power of state government to take money from them," a claim which this Court held merited trial, not summary judgment (and certainly not dismissal on the pleadings). *Empress Casino*, 763 F.3d at 731. This is not a case about "merely unseemly" legislative conduct like "logrolling"; it's a case about bribery, which is illegal. *Id.* at 725. And, like *Empress Casino* and unlike *Fletcher*, this is *not* a case between two parties who have nothing to do with the underlying public corruption. ComEd *is* the public corrupter, the party

that engaged in the bribery that resulted in the legislation it bought by bribing Madigan. The Illinois electricity customers are the direct, intended, and *only* victims of the conspiracy and seek recovery only for their own injuries. Nothing "collateral[]" or "incidental[]" about any of that. *Contra* SA-159 (quoting *Fletcher*).

For these reasons, the Illinois electricity customers respectfully submit that the district court's ruling should be reversed and the case remanded.

STATEMENT OF THE CASE

Plaintiffs-Appellants Steven Brooks, David Chavez, 1549 N. Milwaukee LLC d/b/a DSTRKT Bar & Grill, Lawrence H. Gress, South Branch LLC, TFO Golub Burnham LLC d/b/a/ The Burnham Center, TFO Golub IT 2.0 LLC d/b/a International Tower, and Rockwell on the River LLC filed class actions against Defendants-Appellees Commonwealth Edison Company and its corporate parent, Exelon Corporation, on behalf of a putative class of electric utility ratepayers from whom, as the intended result of an admitted conspiracy to bribe a public official, ComEd obtained, at least, hundreds of millions of dollars. This appeal concerns whether the Illinois electricity customers can pursue their claims for ComEd's conspiracy and bribery under the federal RICO statute.

I. FACTUAL BACKGROUND

The central facts of this case are essentially undisputed. ComEd admits that it criminally bribed the Speaker of the Illinois House of Representatives over a period of years, via payments to a network of loyal associates, in order to obtain hundreds of millions—if not billions—of dollars in earmarked funds, paid directly to ComEd by the Illinois electric customers. Specifically, in its DPA with the United States Department of Justice, ComEd admits that it bribed Michael Madigan, then the Speaker of the Illinois House of Representatives and Chairman of the Illinois Democratic Party, to use his uniquely powerful position to enable and

ensure the passage of three pieces of legislation: the 2011 Energy Infrastructure Modernization Act (EIMA), the 2013 amendments to the EIMA, and the 2016 Future Energy Jobs Act (FEJA). Together, this legislation conferred on ComEd a windfall of hundreds of millions, if not billions, of dollars at the direct expense of the Illinois electricity customers. SA-3 to SA-5.

ComEd is an Illinois corporation and electric utility that provides electricity to approximately 3.8 million customers in Illinois, covering roughly 70 percent of the state's population. ComEd is a subsidiary of Exelon, a Fortune 100 company incorporated in Pennsylvania and the largest electric parent company in the United States by revenue, the largest electric utility in the country, and the largest operator of nuclear power plants. SA-7.

Michael J. Madigan, "one of the most powerful politicians in U.S. history,"[3] was a member of the Illinois House of Representatives from 1971 until his resignation in 2021—on the heels of the bribery scandal that is the subject of this litigation. SA-11 to SA-12. He was Speaker of the Illinois House of Representatives between 1983 and 1995 and again between 1997 and 2021. He was the longest-serving leader of any state or federal legislative body in the history of the United States. *Id.* He was also the Chairman of the Illinois Democratic Party from 1998 until 2021, and the 13th Ward Democratic committeeman from 1969 until 2021. *Id.*

Madigan was no ordinary politician or even legislative leader. He was a "legend" who for nearly four decades he was regularly "recognized as Illinois' most powerful politician."[4] Madigan was uniquely powerful. As Speaker of the House, he was not only the leader of the party with the most votes in the chamber, but also had absolute control over what matters were

[3] Patrick Gleason, *One of the Most Powerful Politicians in U.S. History Leaves Office with His State's Finances in Shambles*, Forbes (Feb. 19, 2021), https://www.forbes.com/sites/patrickgleason/2021/02/19/one-of-the-most-powerful-politicians-in-us-history-leaves-office-with-his-states-finances-in-shambles.

[4] Dave McKinney, *Michael Madigan, a Speaker for the Ages, Ends His Historic Hold on Illinois Politics*, WBEZ Chicago (Jan. 13, 2021), https://www.wbez.org/stories/michael-madigans-legacy-on-illinois-politics/fb347ea5-3577-4c28-87a3-fc7ac941ee5e.

considered by the legislature. The Illinois House had numerous special rules that afforded Madigan unique and outsized control even relative to other legislative leaders. He had the power to select the chair and the majority of the members of the Rules Committee and thereby control over which bills got voted on and which did not. SA-39 to SA-40. ComEd could not even have had its legislation considered without Madigan's permission. As Speaker, Madigan also selected the chairs of all 49 "substantive" committees in the Illinois House, through which bills must pass before they reach the floor. SA-40. At the same time, Madigan was Chairman of the Illinois Democratic Party, which gave him control over the Party's endorsement of candidates, fundraising efforts, and allocations of campaign funds. SA-40 to SA-41. This meant Madigan controlled access to party support and party funds for the election and re-election of nearly every Democrat in the legislature. *Id.* Thus, as Speaker and Chairman, Madigan had unique, unrivaled power to control the success or failure of legislation in the House. As Chairman, he could similarly influence votes in the Illinois Senate. *Id.*

Madigan historically opposed ComEd's efforts to obtain favorable legislation. SA-41. But in or around 2011, he began soliciting and obtaining bribes from ComEd. Thereafter, Madigan used his power to pass legislation ensuring windfall profits to ComEd at the expense of the Illinois electricity consumers. SA-41, SA-43. ComEd *admits* that between 2011 and 2019 it bribed Madigan dozens of times by paying more than $1 million in bribes to three of Madigan's associates; paying unjustified and unjustifiable fees to a law firm that passed some of those funds on as political donations to organizations controlled or led by Madigan; and appointing one of Madigan's allies to its Board of Directors. SA-25, SA-31. These bribes, delivered at the request of Madigan or his lieutenants, enriched Madigan's associates and consolidated his power. SA-26 to SA-27.

The DPA identifies numerous trusted associates of Madigan who delivered messages, carried out Madigan's orders, and accepted bribes on his behalf. SA-13 to SA-19. It also identifies the ComEd employees, executives, and agents who participated in the bribery scheme. SA-19 to SA-24. For example, in discussing a contract that provided for significant indirect (and thus concealed) payments to Madigan's associates for little or no work, one of the conspirators told another, "We had to hire these guys because [Madigan] came to us. It's just that simple." SA-101. Payments to Madigan's allies were concealed in purported contractual payments to a consulting firm that employed these allies as subcontractors "who in fact did little or no work for ComEd." SA-33 to SA-34. Speaking to a ComEd executive, the consultant confirmed this: the Madigan associates receiving payments "keep their mouth shut … . But, do they do anything for me on a day to day basis? No." SA-102. Participants in the bribery scheme further explained that the payments were made "to keep [Madigan] happy, I think it's worth it, because you'd hear otherwise." *Id.* Furthermore, as another participant explained, for decades Madigan "had named individuals to be ComEd employees, such as meter readers, as part of an 'old-fashioned patronage system'"—hires that constituted a bargaining "chip" to be used by ComEd to influence Madigan. *Id.*

Similarly, ComEd retained a law firm connected to Madigan and ensured that it would receive a specified amount of work, some of the fees for which were passed on to Madigan as political contributions. One of Madigan's closest lieutenants ensured that the arrangement would continue, telling ComEd's then-CEO, Anne Pramaggiore, that "I know the drill and so do you. If you do not get involve[d] and resolve this issue of 850 hours for his law firm per year then he will go to our Friend [Madigan]. Our Friend will call me and then I will call you. Is this a drill

we must go through?" SA-105. Pramaggiore replied "Sorry. No one informed me. I am on this." *Id.*

In or around September 2018, Pramaggiore—by then an Exelon executive overseeing aspects of ComEd operations, and now under indictment—assured Madigan's lieutenants that she was continuing the scheme and acknowledged the quid pro quo arrangement. At the time, Pramaggiore agreed to advocate for the appointment of a Madigan ally to ComEd's board of directors, stating: "You take good care of me and so does our friend [Madigan] and I will do the best that I can to, to take care of you." SA-32. After Madigan and his lieutenants sought and obtained these benefits from ComEd, Madigan used his unique power as both Speaker of the House and Chairman of the Illinois Democratic Party to ensure the passage of legislation favorable to ComEd. SA-27.

A. EIMA and the 2013 EIMA Amendments

ComEd's investment first paid off in 2011 with the passage of EIMA. The payoff was handsome. EIMA guaranteed ComEd massive profits in the form of the authorization to spend—and recover from ratepayers, with a guaranteed profit margin—$2.6 billion without meaningful oversight from the Illinois Commerce Commission (ICC), the utility regulatory agency of the State of Illinois. Specifically, EIMA authorized ComEd to spend at least $1.3 billion on so-called "smart meters," without ICC approval, and guaranteed that ComEd could spend at least another $1.3 billion on other capital projects, again without ICC approval. See respectively 220 Ill. Comp. Stat. 5/16-108/5(b)(1)(B) and (b)(1)(A). Furthermore, EIMA guaranteed that ComEd could pass those costs on to consumers, again without ICC approval, with a fixed profit margin of U.S. Treasury bond yields plus 5.8 percent. SA-42.

EIMA dramatically transformed the electric utility rate-setting process by eliminating the power of the responsible regulatory agency—the ICC—to inquire into ComEd's actual expenses

before rubber-stamping guaranteed rate increases and earmarked profit margins set by the legislature. *Id.* This was significant because the ICC had consistently denied ComEd's past requests to increase spending. SA-43. Under EIMA, however, the ICC no longer had discretion to review and approve ComEd's requests for spending, as it previously did. *Compare* 220 Ill. Comp. Stat. 5/9-201(c) *with id.* 5/16-108.5(b-5), (c), (d). ComEd now provides the ICC only cursory, high-level information—in increments of hundreds of millions of dollars—and EIMA specifies that the ICC "shall not … have the authority" to alter the guaranteed spending of, and profits on, the $2.6 billion in earmarks. *Id.* 5/16-108.5(d).

When EIMA first passed in 2011, it was vetoed by the Governor of Illinois. In October 2011, Madigan again used his powers as Speaker of the House and Chairman of the Illinois Democratic Party to first bring a veto override vote to the House floor and then marshal the votes necessary to ensure the veto would be overridden. SA-43 to SA-45. Without Madigan's efforts, EIMA could not and would never have become law.

In 2013, again through Madigan's efforts, ComEd obtained another law that tweaked EIMA even more in its favor to further increase profits. After the passage of EIMA, the ICC had attempted to exercise what little authority it retained to restrain ComEd's higher profits. SA-45 to SA-46. So ComEd again enlisted Madigan to secure amendments to the EIMA that further stripped the ICC of regulatory authority and ensured ComEd could obtain even higher guaranteed profits at the expense of Illinois electricity customers. *Id.* These amendments—which again required Madigan to secure an override of the Governor's veto—gave ComEd higher guaranteed profit rates on planned capital spending for the year, even before expenditures had been made. *Id.* Specifically, the amendments nullified the ICC decisions that were

unfavorable to ComEd, including a 2012 decision to set a profit rate lower than ComEd had requested on certain funds not initially covered by EIMA. *Id.*

B. FEJA

In 2016, Madigan ensured the passage of FEJA. SA-46 to SA-47. FEJA earmarked $2.35 billion in subsidies for ComEd nuclear power plants, paid for by a new fee imposed on consumers. *Id.* FEJA directs the state, through the Illinois Power Agency (IPA), to pay $235 million annually to ComEd for so-called "Zero Emissions Credits" for two nuclear power plants. SA-47; *see also* 20 Ill. Comp. Stat. 3855/1-75(d-5). FEJA then directs the IPA to charge ComEd for the cost of the ZECs, and in turn mandates that ComEd "shall" recover the entire cost, plus an "administrative fee," from its customers. 220 Ill. Comp. Stat. 5/16-108(k). The statute guarantees that the entire amount of $235 million per year, plus fees, comes directly from consumers, through a new charge on their utility bills, and is then paid to ComEd. SA-46 to SA-47. Technically, the charges pass through the ICC, but FEJA prevents the ICC from exercising any regulatory authority over them: the statute specifies that "[t]he costs shall be allocated across all retail customers through a single, uniform cents per kilowatt-hour charge." 220 Ill. Comp. Stat. 5/16-108(k). The ICC merely checks the accounting to ensure that the earmarks dictated by the statute are correctly calculated. 20 Ill. Comp. Stat. 3855/1-75(d-5)(B); SA-46.

Madigan "took the lead in shepherding" FEJA through the Illinois Assembly. SA-48; *see* SA-48 to SA-49. After FEJA passed, Exelon's Chief Strategy Officer reportedly told Madigan's chief lieutenant—who had been "at the forefront" of the effort to pass FEJA—that he had "saved [Exelon] more than hundreds of millions" of dollars. SA-49. By ComEd's admission, the "reasonably foreseeable anticipated benefits" of the legislation it obtained by bribing Madigan and his associates "exceeded $150,000,000." *Id.* (quoting SA-106). But the true amount is

likely much higher—at least $700 million from EIMA alone, according to one estimate, and "billions," according to others. *Id.*; *see* SA-49 to SA-50.

II. PROCEDURAL HISTORY

After several actions were filed in federal court,[5] the Illinois electricity customers filed a consolidated class action complaint on January 5, 2021, asserting a federal statutory claim under RICO, a state statutory claim under the Illinois Consumer Fraud Act, and common law claims for civil conspiracy and unjust enrichment. Dist. Ct. ECF No. 75; SA-1 to SA-138. The Citizens Utility Board (CUB) filed a complaint in intervention on the same day. Dist. Ct. ECF No. 76.

On September 9, 2021, the district court dismissed the RICO claim with prejudice, concluding that because the Illinois electricity customers could not plausibly allege proximate causation and leave to amend would be futile in light of *Fletcher*. Dist. Ct. ECF No. 112; SA-140 to SA-163. The court relinquished supplemental jurisdiction over the remaining state law claims. *Id.* The court likewise dismissed CUB's complaint.[6] *Id.* Judgments in ComEd's favor were entered on September 13 and September 15, 2021. SA-139, SA-164, SA-189. This appeal timely followed.

SUMMARY OF ARGUMENT

The district court committed reversible error by holding as a matter of law that RICO plaintiffs must plead facts that show that nothing more needed to happen for the statutes to become law and rule out all other "innocent alternative causes" to plausibly allege proximate causation. To the contrary, this Court has accepted the principle that, "in an appropriate case, a finding that bribery of a government official proximately caused a plaintiff's injury can rest on

[5] Parallel litigation under Illinois law is proceeding in state court. *In re Commonwealth Edison Co. Ill. Consumer Fraud Litig.*, No. 2020CH05138 (Ill. Cir. Ct. Cook Cnty.). A motion to dismiss was recently granted and a motion to reconsider is pending.

[6] CUB has not joined this appeal nor taken its own.

evidence of that individual's influence over the proceedings." *Empress Casino Joliet Corp. v. Johnston*, 763 F.3d 723, 730 (7th Cir. 2014) (internal quotation marks and brackets omitted). This is just such a case. The Illinois electricity customers are the direct, intended, and *only* victims of ComEd's successful cash-for-statutes scheme. The injuries for which they seek recovery are not collateral or incidental to ComEd's bribery of Madigan; they were its direct result and very purpose.

The district court also committed reversible error by holding that *Fletcher v. Peck*, 10 U.S. (6 Cranch) 87 (1810), barred it from even hearing proof that "one corrupt official … had hijacked th[e] foundational institution of state sovereignty." *Empress Casino*, 763 F.3d at 730-31. Whatever the "outer boundaries of the *Fletcher* holding," *id.* at 731, *Fletcher* does not, as the district court held, categorically preclude RICO claims for damages related to the legislative process. Where, as here, there are "extraordinary" yet plausible—indeed, *admitted*—allegations of bribery of one extraordinarily powerful and extraordinarily corrupt political boss who "hijacked" the legislative process, *id.* at 730, a RICO claim may proceed.

STANDARD OF REVIEW

This Court reviews *de novo* the district court's grant of a motion under Rule 12(b)(6). *O'Boyle v. Real Time Resolutions, Inc.*, 910 F.3d 338, 342 (7th Cir. 2018). The Court likewise reviews *de novo* the district court's determination that amendment of the complaint would be futile. *Id.* at 347.

ARGUMENT

I. THE ILLINOIS ELECTRICITY CUSTOMERS ADEQUATELY PLED RICO PROXIMATE CAUSATION.

The Illinois electricity consumers pled that, by bribing Madigan, ComEd bought off a uniquely powerful political leader whose dual positions as the Speaker of the Illinois House of

Representatives and Chair of the Illinois Democratic Party afforded him wide-ranging direct and indirect control over the entire legislative process in Illinois. ComEd correctly anticipated that securing Madigan's support for its legislation would ensure that legislation's passage. As the direct, anticipated, and intended result of ComEd's bribes, Illinois electricity customers were charged millions or billions of dollars in higher prices and new fees. Under well-established principles of RICO proximate causation, those allegations are sufficient to plead a cause of action. The district court determined otherwise only by misreading this Court's decision in *Empress Casino*.

A. The Illinois Electricity Customers Are the Direct, Intended, and *Only* Victims of ComEd's Bribery.

RICO affords a right of action to anyone injured "by reason of" a violation of its provisions. 18 U.S.C. § 1964(c). The Supreme Court has interpreted the phrase "by reason of" to require both but-for and proximate causation. *Holmes v. Sec. Inv'r Prot. Corp.*, 503 U.S. 258, 268 (1992). Proximate causation seeks to "limit a person's responsibility for the consequences of that person's own acts." *Id.* Put another way, "the proximate-cause requirement generally bars suits for alleged harm that is 'too remote' from the defendant's unlawful conduct." *Lexmark Int'l, Inc. v. Static Control Components, Inc.*, 572 U.S. 118, 133 (2014). Thus, it "demand[s] … some direct relation between the injury asserted and the injurious conduct alleged." *Holmes*, 503 U.S. at 268. But the Supreme Court also repeatedly has emphasized that RICO proximate causation is "a flexible concept that does not lend itself to a black-letter rule that will dictate the result in every case." *Bridge v. Phoenix Bond & Indem. Co.*, 553 U.S 639, 654 (2008) (internal quotation marks omitted).

Here, far from being "remote" or the "wrong" victims, the Illinois electricity customers are the direct and *only* victims of ComEd's bribery. They were not only its foreseeable victims;

they were its *intended* victims. This is not a case where a defendant's actions caused damages to persons far down the causal chain, whose recovery "would dim the primary victim's prospects of obtaining redress for his injury." *BCS Servs., Inc. v. Heartwood 88, LLC*, 637 F.3d 750, 755 (7th Cir. 2011) (reversing summary judgment on proximate causation). This is a case brought by the "primary victims" themselves to recover for their own injuries. The increased profits ComEd earned by reason of its bribery scheme came directly out of the Illinois electricity consumers' pockets.

The Supreme Court's unanimous opinion in *Bridge*—affirming this Court's reversal of an order of dismissal in a RICO case—is very much on point. There, the plaintiffs were participants in a county tax-lien auction where, due to its structure, multiple bids at the lowest level were common. 553 U.S. at 642. To ensure fair apportionment among low bidders, the county allocated parcels on a rotating basis. *Id.* at 642-43. The defendants employed shadow bidders, garnering for themselves a disproportionate share of the liens. *Id.* at 643-44. The Supreme Court had no problem agreeing with this Court that plaintiffs were not too remote to bring suit, noting that, "unlike in *Holmes* … , there are no independent factors that account for respondents' injury, there is no risk of duplicative recoveries by plaintiffs removed at different levels of injury from the violation, and no more immediate victim is better situated to sue." *Id.* at 658.

So, too, here. Like the losing bidders in *Bridge*, the Illinois electricity customers "were the *only* parties injured by [ComEd's bribery]." *Id.* They seek to recover based on their own injuries, not an injury to any third party, and they seek that recovery *directly* from the party engaged in the RICO bribery conspiracy that harmed them: ComEd.

The district court mistakenly thought this case was foreclosed by the Supreme Court's decisions in *Anza v. Ideal Steel Supply Corp.*, 547 U.S. 451 (2006) and *Hemi Group, LLC v. City*

of New York, 559 U.S. 1 (2010) (plurality), but both are inapposite. *See, e.g.*, *Painters & Allied Trades Dist. Council 82 Health Care Fund v. Takeda Pharms. Co. Ltd.*, 943 F.3d 1243, 1250-51 (9th Cir. 2019) (distinguishing *Anza* and *Hemi* because in both "other parties suffered more direct injuries than the plaintiffs" and there was the possibility "of "duplicative recoveries by plaintiffs removed at different levels of injury from the violation."). In *Anza*, the plaintiff steel company alleged the defendant steel company failed to charge required state sales tax, giving it a competitive advantage by allowing it charge lower prices. 547 U.S. at 454. The Court determined proximate cause to be lacking chiefly because the plaintiff's alleged injuries were caused by "a set of actions (offering lower prices) entirely distinct from the alleged RICO violation (defrauding the State)." *Id.* at 458. Here, by contrast, there is only one "set of actions," that was both unlawful and injury-producing: ComEd bribed Madigan to allow it to take more money from the Illinois electricity customers.

Further, in *Anza*, the attenuated connection between wrongdoing and harm made it difficult to ascertain damages: the defendant's committing tax fraud was in itself neither a necessary nor a sufficient condition of the defendant's charging lower prices, and the defendant's charging lower prices was in itself neither necessary nor sufficient to cause the plaintiffs' lost sales. *See id.* at 458-59. Here, the direct connection between ComEd's wrongdoing and the Illinois electricity customers' harm presents no such difficulties, and there were no intervening market forces since ComEd is a regulated monopoly. ComEd bribed Madigan to allow it to collect certain statutorily defined amounts, and the Illinois electricity customers paid them. Finally, "the immediate victim" of the violation in *Anza*—the State—could be "expected to pursue appropriate remedies." *Id.* at 460. Not so here, where there are no other victims.

The plurality opinion in *Hemi* is essentially a straightforward application of *Anza*. There, an online cigarette company (which itself did not owe city taxes) failed to submit customer information to the state, which would have then provided the list to the City (the plaintiff). The City alleged that Hemi's omission hampered its ability to pursue unpaid sales taxes from the company's customers—individuals who had already once failed to pay the City the sales taxes they owed. 559 U.S. at 5-6. The case suffered from both indirectness of causation and prosecution by the wrong plaintiff. As in *Anza*, the cause was indirect because "the conduct directly responsible for the City's harm was the customers' failure to pay their taxes," not the RICO violation of failing to file reports with the state. *Id.* at 11. Further, the cause was brought by the wrong plaintiff, because "[t]he State certainly [was] better situated than the City to seek recovery from [the defendant]." *Id.* at 12. "And the State ha[d] an incentive to sue" for its own cigarette taxes. *Id.* Indeed, causation in *Hemi* was even more remote than in *Anza* because, while "the same party had engaged in the harmful conduct and committed the fraudulent act" in *Anza*, in *Hemi* "the City's theory of liability rest[ed] not just on separate *actions*, but on separate actions carried out by separate *parties*." *Id.* at 11.

Unlike in *Anza* or *Hemi*, this case is not about indirect harms or collateral consequences. Here there is a direct connection between the unlawful conduct (bribery) and the harm (higher amounts paid by consumers): indeed, the entire point of ComEd's conduct was to collect more money and cause the harm. The RICO violation and the harm causation are one and the same. The RICO violator and the harm-causer, too, are one and the same. And there is no better-

situated plaintiff to bring this suit; the Illinois electricity customers are the *only* injured parties.[7] *See Painters & Allied Trades*, 943 F.3d at 1250-51. *Bridge*, not *Anza* or *Hemi*, controls this case.

B. The Illinois Electricity Customers Were Not Required to Disprove Either the Intervention of Superseding Causes or the Possibility of Innocent Alternative Causes, and Neither Breaks the Causal Chain Here.

The district court rightly concluded that the allegations in this case more than satisfied but-for causation. That is because "Madigan had the 'de facto ability to control which bills get voted on and which ones do not.' That is enough to allege the bills would not have passed but-for Madigan." SA-155 (quoting SA-40). Yet the district court concluded that the Illinois electricity customers did not—and could not—plausibly allege RICO *proximate* causation here despite ample allegations—and admissions in the DPA—establishing just that. To reach this conclusion, the district court pointed to the fact that "more things had to happen before the bill became law, and plaintiffs do not allege the bribe of Madigan caused those other things to happen." SA-156. The "more things" the district court required boiled down to two: 1) allegations that Madigan "*improperly* influenced the other legislators who voted to pass the bill," as opposed to engaging in permissible "logrolling," *id.*, and 2) allegations "that the bribery of Madigan caused Governor Rauner to sign FEJA into law." SA-157. Neither of the district court's "more things" is required to plausibly allege proximate cause here.

1. The District Court Adopted Too Narrow a View of Proximate Causation Under Controlling Law.

As an initial matter, the Supreme Court has "repeatedly refused to adopt narrowing constructions of RICO in order to make it conform to a preconceived notion of what Congress

[7] CUB's intervention in the district court does not change this conclusion. *See* note 6, *supra*. As its motion to intervene explained, CUB's statutory mandate is to "represent and protect the interests of Illinois residential and commercial utility consumers." Mot. 1 (Oct. 22, 2020) (internal quotation marks omitted), Dist. Ct. ECF No. 53. In other words, CUB's interest in the case is derivative, not independent, of the Illinois electricity customers' injuries.

intended to proscribe." *Bridge*, 533 U.S. at 659-60. Yet the district court reached its proximate cause conclusion here only by adopting just such a "too narrow … view of causation." *Bieter Co. v. Blomquist*, 987 F.2d 1319, 1326 (8th Cir. 1993).

The fact that "more things had to happen" for FEJA and EIMA to pass and become law is not, as the district court thought, dispositive. That is because "RICO claims sound in tort [and] [t]he alleged bribery … was an intentional tort." *Empress Casino*, 763 F.3d at 733. Under ordinary principles of tort law, the arsonist who sets a fire in a stiff wind, hoping the wind will carry the fire, will not be absolved of liability by raising the independent action of the wind in his defense. *Pollard v. Walton*, 190 S.E. 396, 399 (Ga. Ct. App. 1937) ("It is a general rule that wind, … by which a fire is caused to spread, does not constitute an efficient intervening cause which will relieve the original wrongdoer from liability, especially where the wind is blowing at the time the fire is kindled."); *see also, e.g.*, *Bridge*, 553 U.S. at 656 ("[C]ourts have permitted a plaintiff directly injured by a fraudulent misrepresentation to recover even though it was a third party … who relied on the defendant's misrepresentation."); *Hibma v. Odegaard*, 769 F.2d 1147, 1155 (7th Cir. 1985) (quoting Restatement (Second) of Torts § 435A (Am. Law Inst. 1965)) ("[A] person who commits a tort against another for the purpose of causing a particular harm to the other is liable for such harm if it results, whether or not it is expectable, except where the harm results from an outside force the risk of which is not increased by the defendant's act.").

Conversely, the district court's opinion may be understood as faulting the Illinois electricity customers' complaint for failing to disprove innocent alternative explanations for the passage of ComEd's bills, unrelated to ComEd's bribery of Madigan. But this reading fares no better than the first. This Court considered and *rejected* this very argument in *Empress Casino*. "Like an arsonist who burns down a cabin the day before a natural forest fire, the Racetracks

may be jointly and severally liable for any indivisible injury legally caused by their tortious conduct, *regardless of innocent alternative causes*." 763 F.3d at 733 (internal quotation marks and brackets omitted, emphasis added). That point bears repeating: RICO proximate cause can be shown here *even if the statutes would have passed without ComEd's bribery*. That makes sense: the mere fortuity that the bribed-for action would have occurred anyway—that the statutes may have become law anyway, for reasons unrelated to ComEd's bribery—does not absolve ComEd of its misconduct, just as the fortuity of the unrelated forest fire does not absolve the arsonist. This is particularly true on a motion to dismiss, when inferences must be drawn in favor of the Illinois electricity customers. ComEd clearly did not believe its desired legislation would have passed without its bribery. But speculation as to whether or not ComEd was correct in this regard is irrelevant to the determination of proximate causation at this stage.

Under either reading of its order, the district court here absolved the arsonist, and on a motion to dismiss no less. In addition to conflicting with hornbook tort law and *Empress Casino*, that holding flatly contravenes this Court's holding in *BCS Services* that "the burden of proving an intervening cause—something which snaps the 'causal chain' (that is, operates as a 'superseding cause,' wiping out the defendant's liability) that connects the wrongful act to the defendant's injury—is on the defendant." 637 F.3d at 757 (internal quotation marks and citation omitted). Even at trial, RICO plaintiffs are not required to "prove the nonexistence of potential superseding causes." *Id.* The district court required too much of the Illinois electricity customers and not enough of ComEd when it found causation lacking because "more things had to happen." SA-156.

2. *Empress Casino* Does Not Require Additional Allegations of "Improper Influence."

The district court believed that some additional allegation of "improper influence" was categorically required by this Court's decision in *Empress Casino*. This ignores the Supreme Court's admonition that RICO "proximate cause is generally not amenable to bright-line rules." *Bridge*, 553 U.S. at 659. It also fundamentally misreads *Empress Casino*.

In *Empress Casino*, an appeal from summary judgment, the Court, after "[a] careful look at the record," found no evidence at all that former Governor Blagojevich "push[ed] the '06 Act through the state legislature," the sole basis for liability on one of the two claims at issue. 763 F.3d at 728-30. The problem was not a lack of evidence of "undue influence," but the lack of evidence of *any* "influence," due or undue: "The Casinos have not pointed to evidence that would allow a factfinder to conclude that the Racetracks' alleged bribery scheme caused the legislature to pass the '06 Act." *Id.* at 729. As this Court noted, in that case "[n]o legislator was bribed." *Id.* at 730. Given that, this Court found an inadequate connection between the bribe paid to the governor, who lacked any formal legislative powers, and passage of the statute.

This case is different. The Illinois electricity customers allege (supported by ComEd's admissions in the DPA) exactly what this Court said was required—and missing—in *Empress Casino* as to the RICO claim on which it upheld summary judgment: "that the … alleged bribery scheme caused the legislature to pass" the legislation. *Id.* at 729. The complaint here is replete with concrete allegations regarding Madigan's unprecedented level of influence and control over the Illinois General Assembly, allegations corroborated by the DPA. *See* SA-3, SA-12, SA-27, SA-39 to SA-41, SA-43 to SA-46, SA-48 to SA-49, SA-96. And that is precisely the reason ComEd bribed *Madigan*: it is the very definition of bribery that you pay someone with the intent

"to influence any official act" to your benefit. 18 U.S.C. § 201(b)(1)(A). ComEd did, and it got exactly what it paid for.

To be sure, *Empress Casino* also expressed concern about delineating between political acts that are "merely unseemly," *e.g.*, "logrolling," and those that are "unlawful." 763 F.3d at 725. But as this Court succinctly put it: "Deals are the stuff of legislating. Although logrolling may appear unseemly some of the time, it is not, by itself, illegal. Bribes are." *Id.* That fairly unremarkable statement nonetheless bears repeating: bribes are illegal.

This case presents precisely this distinction. The Illinois electricity customers alleged (and the DPA confirmed) that Madigan had *exclusive* power to decide which bills made it to the floor, and he exercised that power to secure passage of the two statutes as part of a *quid pro quo* in exchange for bribes paid by ComEd. *See* SA-11 to SA-13, SA-27, SA-39 to SA-49, SA-106. This is not a case about ordinary legislative workings, however seemly or unseemly. It is about bribery—bribery ComEd admits.

3. *Empress Casino* Does Not Require Allegations that ComEd Bribed Everyone Involved in the Legislation, Including the Governor.

The district court believed that the Illinois electricity customers would have to allege that ComEd bribed not just Madigan—who it knew and intended could and would and *in fact did* ensure passage—but also a majority of legislators in both legislative houses, as well as the Governor. That is not the law.

As an initial matter, under Illinois law, the governor's signature was *not* in fact required for ComEd's bills to become law once they passed the legislature. *Empress Casino*, 763 F.3d at 732 (quoting Ill. Const. art. IV, § 9(b)) ("Any bill not so returned by the Governor within 60 calendar days after it is presented to him shall become law."). Thus, this Court held in *Empress Casino*, "Nor does it matter that the bill would have become law even if Governor Blagojevich

had neither signed nor vetoed it" as a result of the bribe. *Id.* The district court's requirement that ComEd have bribed the governor too is thus misplaced. Here, as in *Empress Casino*, all it takes is a plausible allegation that "one corrupt official, whether the governor *or anyone else*, hijacked this foundational institution of state sovereignty." *Id.* at 730-31 (emphasis added).

The district court's holding also defies logic and common sense. Why would ComEd repeatedly bribe Madigan if it knew that he lacked the power to deliver what it wanted without also bribing Governor Rauner? We know the answer: it wouldn't. When it did bribe Madigan, it got exactly what it paid for. Nothing in RICO absolves a party bribing public officials simply because after bribing the official with the power to "make it happen," they did not also bribe *each and every* public official on down (or up) the line. Whatever reasons Governor Rauner had for signing EIMA and FEJA—and they are not before the Court—they are unnecessary to the RICO scheme here.

The Eighth Circuit rejected a similarly "too narrow … view of causation in group decisionmaking" cases, because it "not only would undermine RICO as a means of rooting out public corruption, but … would provide a formula to those who seek to achieve private gain through corruption of our democratic processes." *Bieter*, 987 F.2d at 1320, 1326. Like *Empress Casino*—which cited it—*Bieter* involved a grant of summary judgment on RICO proximate causation. There, the plaintiff alleged that defendants bribed city council members to obtain approval of competing developments. The district court granted summary judgment on, among other grounds, failure to establish proximate causation. The Eighth Circuit reversed. It rejected as "too narrow" a reading of proximate causation, like that adopted by the district court here, that RICO plaintiffs must allege that a majority of the council had been bribed or directly influenced:

a proximate cause finding "need not be predicated on any vote-counting done by the fact-finder." *Id.* at 1326–27. The Eighth Circuit concluded,

> A finding that bribery of a councilmember proximately caused a plaintiff's injury can therefore rest on evidence of that individual's influence over the proceedings. A contrary finding would simply encourage potential wrongdoers to place the most efficient bribe possible: one that will reach the desired result without the expense of bribing a majority (or supermajority) of councilmembers.

Id. at 1327. That holding tracks *Empress Casino*'s, and supports reversal here.

In similar circumstances, the Fifth Circuit reversed summary judgment in a RICO case involving much weaker evidence than the facts alleged here. *Waste Management of Louisiana, L.L.C. v. River Birch, Inc.*, 920 F.3d 958 (5th Cir. 2019), *reh'g denied*, 927 F.3d 914 (5th Cir. 2019), *cert. denied*, 140 S. Ct. 628 (2019), involved the alleged bribery of New Orleans mayor Ray Nagin to obtain an order shutting down a landfill. Unlike here, in *Waste Management* there was no "'smoking gun' evidence [or admissions] to show a payment was made to an official to influence the official to perform some act"—evidence the Fifth Circuit noted "is rare in public bribery cases." *Id.* at 968. Instead, there were only "inferences from circumstantial evidence about intent and motives about which reasonable minds could differ." *Id.* Yet the Fifth Circuit held that was precisely the sort of issue to "be sorted out by the jury" rather than decided as a matter of law, and reversed summary judgment. *Id.*

Finally, in *Smith v. FirstEnergy Corp.*, 518 F. Supp. 3d 1118 (S.D. Ohio 2021)—a case involving remarkably similar facts and claims—Judge Sargus of the Southern District of Ohio denied a motion to dismiss on, among other grounds, proximate causation. There, plaintiffs—Ohio electricity ratepayers—alleged that defendant FirstEnergy paid bribes to influence the Speaker of the Ohio House and his associates to pass legislation to bail out the company's nuclear power plants. The claims tracked a federal criminal complaint—there were no admissions of the sort here in the DPA. There, as here, the defendant focused on the fact that

plaintiffs alleged only bribery of legislators on the house side, and that "more things had to happen," i.e., "the bill had to pass in the Ohio House, to pass in the Ohio Senate, to be signed into law by the governor, and to survive a ballot referendum." *Id.* at 1133. But the district court rightly rejected those facts as irrelevant to the analysis: "That these steps had to occur in some sequential order does not necessarily cut off liability for the actors at an earlier stage—here, passage in the Ohio House. Defendants cite no authority for that proposition." *Id. Smith* carefully and faithfully applies both Supreme Court RICO proximate causation and this Court's reading of it. Its holding on almost identical facts is persuasive.

The district court erred in dismissing the Illinois electricity customers' claims on the pleadings for lack of proximate cause.

II. THIS COURT REJECTED THE DISTRICT COURT'S SWEEPING READING OF *FLETCHER V. PECK* IN *EMPRESS CASINO.*

The district court also erred by relying on the 211-year-old Supreme Court decision in *Fletcher* to hold that it had no ability to even entertain these claims as a matter of law. Setting aside the question of whether the general reasoning in *Fletcher*—that courts should not nullify or strike down statutes in the context of purely private disputes for other than constitutional reasons—could possibly alter a very specific statutory prohibition on bribing public officials first enacted some 160 years later, an issue addressed below, *Fletcher* does not bar the damages claims here. This Court's holding in *Empress Casino* makes that clear.

Fletcher was an ordinary land-sale contract case, with the twist that the seller had covenanted that the land had been "legally conveyed" to him by the State of Georgia. 10 U.S. at 129-31. The buyer contended the covenant had been breached because of allegations that "some of the members of the legislature were induced to vote in favour of the [land grant] law … by being promised an interest in it, and that therefore the act is a mere nullity." *Id.* at 131. In a

contract case between two innocent private parties, neither of whom had anything to do with the alleged corruption, the Supreme Court declined to wade into the "solemn question" of whether the statute should be deemed a "nullity" because of undue influence. *Id.* Near the founding of this country, as federalism was just taking shape, the Court thought it "indecent" to "enter into an inquiry respecting the corruption of the sovereign power of a state," an issue wholly "collateral[] and incidental[]" to the dispute before it over "a private contract, between two individuals." *Id.*[8]

Here, of course, one of the parties—ComEd—is no innocent third party like the parties in *Fletcher*. It is *the* party who—again, by its own admission—bribed Madigan to obtain passage of the legislation.

Nor are the Illinois electricity customers seeking to have the courts strike down or nullify EIMA or FEJA. Unlike in *Fletcher*, where one of the claims was that the statute itself was void and thus the original conveyance a nullity, no one here is trying to void any statutes. The point bears repeating: *nothing* about this case requires this or any court to nullify a statute directly or indirectly; it is about victims recovering damages from the party that corrupted the legislative process by bribery.

This Court addressed *Fletcher* at some length in *Empress Casino*. Expressing doubts about the "outer boundaries of the *Fletcher* holding," this Court was careful *not* to hold that RICO claims based on corruption of the legislative process are automatically barred *as a matter of law*, as the district court held here. Instead, it stated in dicta that, "even if the evidence were strong, the cure *may* not lie in civil litigation in the courts," and expressly *declined* to decide that

[8] Indeed, the ultimate issue in *Fletcher* was whether the *subsequent* legislation revoking the land grants (due to the allegations of bribery the first go-round) violated the Contracts Clause. *Id.* at 132, 137-39. That is, it was a Contracts Clause case about, well, contracts; whether the original land grants were tainted by bribery was largely a side-show.

issue. 763 F.3d at 731 (citing *Fletcher*, 10 U.S. at 131) (emphasis added). The word choice—"may not," not "does not"—was precise, presumably intentional, and of great import, as this Court's holding there amply demonstrated. Notwithstanding this statement, moreover, this Court *reversed* summary judgment on one of the two RICO claims by the casinos, noting that plaintiffs merely sought "damages from a private party for an alleged conspiracy to use the power of state government to take money from them," a claim the Court did not find foreclosed by *Fletcher*. *Id.* at 734. That is exactly what the Illinois electricity customers are seeking to do here: they are the parties most directly injured by ComEd's "conspiracy to use the power of state government to take money from them," and they are seeking damages from ComEd, not a ruling striking down or nullifying the statutes.

The district court here misconstrued this Court's holding in *Empress Casino* permitting one of the RICO claims to go forward based upon bribery of a public official (there, the governor). *Id.* The district court stated, without saying why, that a claim involving bribery of a governor at the back end of the legislative process is somehow different than bribery of a singularly powerful legislator who was the gatekeeper to the legislative process. SA-160 n.6. But nothing in *Empress Casino* draws such a distinction; to the contrary, it talks in terms of "one corrupt official, whether the governor *or anyone else*, [who] hijacked this foundational institution of state sovereignty." 763 F.3d at 730-31 (emphasis added). Here, that one corrupt official is Michael Madigan. Whether the Illinois electricity customers can ultimately *prove* that Madigan had the ability to and did "hijack" the legislative process is a matter for trial, not a Rule 12(b)(6)

motion. At this point, it is enough that they more than adequately *pled* that he did, particularly in light of ComEd's admissions in the DPA.[9]

This understanding of *Fletcher* comports with Judge Kennelly's succinct articulation of the issue in his opinion reviewed by the Court in *Empress Casino*:

> Plaintiffs in this case have brought a RICO claim seeking damages, not a facial challenge to the Racing Acts. They do not seek to strike down a law as unconstitutional based on legislative intent. Rather, plaintiffs seek only damages against the defendants who allegedly committed crimes and were enriched to plaintiffs' detriment. Defendants have offered no authority, nor has the Court located any, indicating that *Fletcher* bars such a claim.

Empress Casino Joliet Corp. v. Blagojevich, No. 09 C 3585, 2013 WL 4478741, at *4 (N.D. Ill. Aug. 19, 2013), *rev'd in part on other grounds sub nom. Empress Casino Joliet Corp. v. Johnston*, 763 F.3d 723 (7th Cir. 2014). On that point, Judge Kennelly was, and remains, right.

It is also worth noting that *Fletcher* predated enactment of the RICO statute by some 160 years. That fact alone calls into question its applicability: Congress enacted RICO against the backdrop of *Fletcher*, as it "is presumed to be knowledgeable about existing case law pertinent to any legislation it enacts[.]" *United States v. Phillips*, 19 F.3d 1565, 1581-82 (11th Cir. 1994) (citing *Miles v. Apex Marine Corp.*, 498 U.S. 19, 32 (1990)), *amended*, 59 F.3d 1095 (11th Cir. 1995); *see also Kansas City v. Fed. Pac. Elec. Co.*, 310 F.2d 271, 275 (8th Cir. 1962) ("[I]t is to be assumed that Congress was aware of established rules of law applicable to the subject matter of the statute and thus, upon enactment, the statute is to be read in conjunction with the entire existing body of law.").

[9] The district court's order is all the more remarkable in that it denied leave to amend to even try to allege more in this regard (though more was not necessary). *Contra Runnion ex rel. Runnion v. Girl Scouts of Greater Chi. & Nw. Ind.*, 786 F.3d 510, 519 (7th Cir. 2015) ("Ordinarily, however, a plaintiff whose original complaint has been dismissed under Rule 12(b)(6) should be given at least one opportunity to try to amend her complaint before the entire action is dismissed. We have said this repeatedly.").

Specifically, RICO was enacted in part as "a means of rooting out public corruption." *Bieter*, 987 F.2d at 1320. It "is generally well-known that one of the primary tools in the hands of organized crime is the corruption of public officials and the subversion and undermining of public agencies." *United States v. Lee Stoller Enters., Inc.*, 652 F.2d 1313, 1317 (7th Cir. 1981). Accordingly, in enacting RICO, "Congress used as strong language as it could muster to declare war on crime and the use of those tools corruption, subversion and undermining of public officials." *Id.*

This focus on ending public corruption is evident in the express terms of the statute. Congress defined "racketeering activity" to include "any act or threat involving … bribery" in violation of state law, as well as any violation of the federal bribery statute. 18 U.S.C. § 1961(1). As this Court has recognized, "[b]ribery of local law enforcement and government officials is just the sort of corruption connoted by the term 'racketeering.'" *United States v. Garner*, 837 F.2d 1404, 1418 (7th Cir. 1987). Thus, with respect to state bribery laws, "Congress intended for 'bribery' to be defined generically" and "any statute that proscribes conduct which could be generically defined as bribery can be the basis for a predicate act." *Id.* (citing H.R. Rep. No. 91-1549 (1970), *as reprinted in* 1970 U.S.C.C.A. 4007, 4032 ("State offenses are included by generic designation.")).

Likewise, RICO's legislative history "manifests a serious concern by Congress not merely with a profusion of racketeering activities within private businesses and labor organizations, … but with the potentially devastating effects of organized crime on the nation's political and economic system as a whole." *United States v. Grzywacz*, 603 F.2d 682, 687 (7th Cir. 1979). RICO was enacted as part of the Organized Crime Control Act of 1970,[10] and the

[10] Pub. L. No. 91-452, 84 Stat. 922 (1970).

Supreme Court has interpreted RICO's scope in light of the purposes underlying the OCCA. *United States v. Turkette*, 452 U.S. 576, 589-91 (1981). The statement of findings that prefaced the OCCA explicitly identified as a congressional concern the fact that illegally obtained money and power "are increasingly used … to subvert and corrupt our democratic processes." *Id.* at 588 (quoting 84 Stat. 922-23). "The logical inference from these pronouncements is that Congress intended to frame a widely encompassing enactment to protect both the public and private sectors from the pervasive influences of racketeering." *Grzywacz*, 603 F.2d at 687. *Accord United States v. Angelilli*, 660 F.2d 23, 32 (2d Cir. 1981) (reviewing legislative history in detail).

Congress sought to "encourag[e] civil litigation to supplement Government efforts to deter and penalize" prohibited practices, including public corruption. *Rotella v. Wood*, 528 U.S. 549, 557 (2000). "The object of civil RICO is thus not merely to compensate victims but to turn them into prosecutors, 'private attorneys general,' dedicated to eliminating racketeering activity." *Id.*; *see also Agency Holding Corp. v. Malley-Duff & Assocs., Inc.*, 483 U.S. 143, 151 (1987) (RICO "bring[s] to bear the pressure of 'private attorneys general' on a serious national problem for which public prosecutorial resources are deemed inadequate; the mechanism chosen to reach the objective … is the carrot of treble damages."). Public corruption has often been the target of civil RICO actions brought by private litigants. *See, e.g.*, *H.J. Inc. v. Nw. Bell Tel. Co.*, 492 U.S. 229 (1989); *Empress Casino Joliet Corp. v. Balmoral Racing Club, Inc.*, 831 F.3d 815 (7th Cir. 2016); *Bieter*, 987 F.2d 1319; *see also* Alan Vinegrad, *Government Corruption and Civil Rico: Providing Compensation for Intangible Losses*, 58 N.Y.U.L. Rev. 1530, 1533-34 (1983) (citing numerous "civil RICO suits against public officials and the private parties with whom they were collusively engaged in illegal activity.").

For good reason, there is no case holding that *Fletcher* bars an otherwise adequately pled RICO claim, and neither the district court nor ComEd cited one below. The district court relied heavily on *Empress Casino*, but that case was decided on summary judgment, not a motion to dismiss, and there the Court *permitted* one of two RICO claims to proceed to trial notwithstanding *Fletcher*. The district court's reliance on *Fletcher* was error.

CONCLUSION

As this Court put it in *Empress Casino*, "Deals are the stuff of legislating. Although logrolling may appear unseemly some of the time, it is not, by itself, illegal. Bribes are." 763 F.3d at 725. The district court thought this case was about nothing more than unseemly logrolling, and dismissed it because the Illinois electricity customers' allegations did not rule out "innocent alternative causes," *id.* at 733, and because it thought such cases are barred as a matter of law by *Fletcher v. Peck*. The district court was wrong on both counts, as this Court's holding in *Empress Casino* makes clear. The district court's holding on proximate cause relied on an improper bright-line, narrow reading of RICO proximate causation, while its holding on *Fletcher* swept far too broadly.

This is a case about bribes, bribes paid by ComEd to "one corrupt official" who "hijacked this foundational institution of state sovereignty," thereby directly injuring the Illinois electricity customers, and only them. *Empress Casino*, 763 F.3d at 730-31. Such claims—supported as they are here not only by well-pled and plausible allegations but by ComEd's own admissions in the DPA—are enough to proceed.

The district court's order should be reversed, and the case remanded.

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Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) and Cir. R. 32(c) because it contains 10,199 words, excluding the items in Fed. R. App. P. 32(f), and as measured by Microsoft Word's word-count feature.

2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5)(A), as modified by Cir. R. 32(a), and the type style requirements of Fed. R. App. P. 32(a)(6), because it is prepared in a proportionally spaced typeface using Microsoft Word 2010 in 12-point Times New Roman font.

Dated: January 14, 2022

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ATTACHED REQUIRED SHORT APPENDIX

TABLE OF CONTENTS TO REQUIRED SHORT APPENDIX

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

LAWRENCE H. GRESS, and on behalf of himself and others similarly situated, Plaintiff, v. COMMONWEALTH EDISON COMPANY, an Illinois corporation; and EXELON CORPORATION, Defendants.	Case No. 1:20-cv-04405 **CONSOLIDATED CLASS ACTION COMPLAINT** JURY TRIAL DEMANDED
STEVEN BROOKS, DAVID CHAVEZ, 1540 N. MILWAUKEE LLC d/b/a DSTRKT BAR & GRILL, and CARMICHAEL LEASING CO., INC., for themselves individually and for all class members similarly situated, Plaintiffs, v. COMMONWEALTH EDISON COMPANY, d/b/a ComEd and EXELON CORPORATION, Defendants.	Case No. 1:20-cv-04555
SOUTH BRANCH LLC, TFO GOLUB BURNHAM LLC, d/b/a THE BURNHAM CENTER, TFO GOLUB IT 2.0 LLC, d/b/a INTERNATIONAL TOWER, and ROCKWELL ON THE RIVER LLC, for themselves individually and for all class members similarly situated, Plaintiffs, v. COMMONWEALTH EDISON COMPANY d/b/a ComEd; and EXELON CORPORATION, Defendants.	Case No. 1:20-cv-04980

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CONSOLIDATED CLASS ACTION COMPLAINT

1. This is a case about a corrupt scheme by Defendants Commonwealth Edison Company ("ComEd") and ComEd's corporate parent Exelon Corporation ("Exelon") to generate hundreds of millions of dollars in excessive and unwarranted rates, fees, and profits for themselves. As admitted by ComEd in a Deferred Prosecution Agreement[1] between ComEd and the United States Department of Justice, ComEd over many years bribed Michael. Madigan, the powerful Speaker of the Illinois House of Representatives and Chairman of the Illinois Democratic Party, in "an effort to influence and reward" him to implement ComEd's legislative agenda. Ex. 1 at A-3. In exchange, Madigan wielded his enormous power and influence to ensure passage through the Illinois legislature of bills permitting ComEd to charge higher electric rates, assess new fees, and collect increased profits. ComEd, Exelon, and Madigan were the winners in this scheme. The losers? The public's trust in government; the people of Illinois; and, most pertinent here, ComEd's customers.

2. The scheme was part of a longstanding "pay to play" enterprise (the "Enterprise") headed by Madigan, involving a network of his loyalists as well as Defendants and their individual employees and representatives. The modus operandi of Madigan's Enterprise was simple: Madigan demanded money or "favors," Defendants complied, and in exchange Defendants received Madigan's support for legislation favoring their economic interests. That support was crucial: no bill moves in the Illinois House without Madigan's support.[2]

[1] The Deferred Prosecution Agreement and accompanying documents, including the Statement of Facts, are incorporated into Plaintiffs' Consolidated Class Action Complaint and are attached as Exhibit 1.

[2] As Speaker of the Illinois House of Representatives, Madigan held powers unparalleled in the other 49 states, including enormous influence over the composition of legislative committees and ironclad authority to determine if a bill would even be brought up for a vote. Joe Tabor & Ted Dabrowski, *Madigan's Rules: How Illinois gives its House speaker power to manipulate and control the legislative process*, Illinois Policy Institute (2017), https://www.illinoispolicy.org/reports/madigans-rules-how-illinois-gives-its-house-speaker-power-to-manipulate-and-control-the-legislative-process.

3. In this case, and as admitted in the Deferred Prosecution Agreement, ComEd hired Madigan's associates as "subcontractors," who were paid well (to the tune of more than $1.3 million) for little or no work, appointed another Madigan associate to its Board of Directors (without interviewing or even considering other candidates), and retained a Madigan-connected law firm "with the intent to influence and reward" Madigan. ComEd concealed its illegal payments using off-the-books payment records and fraudulent invoices.

4. The bribes to Madigan paid off handsomely for ComEd and Exelon. Under Madigan's stewardship, the Illinois legislature passed three bills in 2011, 2013, and 2016—the Energy Infrastructure and Modernization Act ("EIMA"), the 2013 EIMA Amendments, and the Future Energy Jobs Act ("FEJA")—each of which dramatically increased costs for consumers and profits for Defendants. This corrupt scheme directly financially injured ComEd's customers, including some 70% of Illinois residents (individuals and businesses, including Plaintiffs, who buy electricity from ComEd) and allowed ComEd to increase its revenues by about $600 million per year, more than doubling its annual profits. The passage of FEJA enabled Exelon to subsidize its failing nuclear facilities with payments of more than $2.3 billion from Illinois residents and businesses.[3]

5. The central allegations in this case are as indisputable as they are shocking. Many of the essential facts are admitted by ComEd in the Deferred Prosecution Agreement. Lest there be any doubt, Defendants' corrupt intent is proven by their efforts to conceal the truth. And the harm to Plaintiffs and the proposed Class is very substantial: *to date, they paid over $5 billion due to legislation that never would have been enacted without the active support of Madigan, procured through Defendants' corrupt scheme*.

[3] Dan Mihalopoulos, Dave McKinney, *The True, High Cost We're All Paying for ComEd's Springfield Corruption*, WBEZ (July 23, 2020), https://www.wbez.org/stories/the-true-high-cost-were-all-paying-for-comeds-springfield-corruption/000f0b8b-3183-4d7b-b5fc-bee3f2c4d99e.

6. In the Deferred Prosecution Agreement, ComEd admitted to the scheme and its purpose:

> Between in or around 2011 and in or around 2019, during the same time frame that ComEd was making payments to Public Official A's associates, and extending other benefits for the purpose of influencing and rewarding Public Official A, ComEd was also seeking Public Official A's support for legislation that was beneficial to ComEd, including EIMA and FEJA, that would ensure a continued favorable rate structure for ComEd. ComEd acknowledges that the reasonably foreseeable anticipated benefits to ComEd of such legislation exceeded $150,000,000.

Ex. 1 at A-12.

7. The facts of this case are extraordinary, but the basic claims for relief are not. As a result of their bribery campaign, Defendants obtained money at Plaintiffs' and the proposed Class' expense. Under straightforward application of the Racketeering Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. §§ 1961-68, as well as Illinois statutory and common law, Defendants must pay damages and repay their wrongfully-obtained windfall.

PARTIES

A. Plaintiffs

8. Plaintiff Lawrence H. Gress is a citizen of the State of Illinois residing in the Village of Downers Grove in DuPage County. At all relevant times, Gress was a residential customer of ComEd.

9. Plaintiff Steven Brooks is a citizen of the State of Illinois residing in the City of Lombard in DuPage County. At all relevant times, Brooks was a residential customer of ComEd.

10. Plaintiff David Chavez is a citizen of the State of Illinois residing in the City of Northlake in Cook County. At all relevant times, Chavez was a residential customer of ComEd.

11. Plaintiff 1540 N. Milwaukee LLC d/b/a DSTRKT Bar & Grill ("DSTRKT") is an Illinois limited liability company with its principal place of business at 1540 N. Milwaukee

Avenue, Chicago, Cook County, Illinois 60622, where it operates a bar and grill. At all relevant times, DSTRKT was provided service by ComEd under the residential category.

12. Plaintiff South Branch LLC ("South Branch") is an Illinois limited liability company that owns a large commercial building at 1200 West 35th Street, Chicago, Cook County, Illinois 60609. At all relevant times, South Branch was a commercial customer of ComEd in the "Large" non-residential load distribution rate class.

13. Plaintiff TFO Golub Burnham LLC d/b/a The Burnham Center ("Burnham Center") is an Illinois limited liability company that owns a large commercial building at 111 West Washington Street, Chicago, Cook County, Illinois 60602. At all relevant times, Burnham Center was a commercial customer of ComEd in the "Very Large" non-residential load distribution rate class.

14. Plaintiff TFO Golub IT 2.0 LLC, d/b/a International Tower, ("International Tower") is an Illinois limited liability company that owns a large commercial building at 8550 West Bryn Mawr Avenue, Chicago, Cook County, Illinois 60631. At all relevant times, International Tower was a commercial customer of ComEd in the "Large" non-residential load distribution rate class.

15. Plaintiff Rockwell on the River LLC ("Rockwell on the River") is an Illinois limited liability company that owns a large commercial building at 3057 North Rockwell Street, Chicago, Cook County, Illinois 60618. At all relevant times, Rockwell on the River was a commercial customer of ComEd in the "Medium" non-residential load distribution rate class.

16. Plaintiff Carmichael Leasing Co., Inc. ("Carmichael") is an Illinois incorporated company with its principal place of business at 2200 South Loomis Street, Chicago, Cook County,

Illinois 60608. At all relevant times, Carmichael was a commercial customer of ComEd in the "Extra Large" non-residential load distribution rate class.

B. Defendants

17. Defendant Commonwealth Edison Company (d/b/a "ComEd") is an Illinois corporation with its principal place of business located at 440 South LaSalle Street, Chicago, Cook County, Illinois, 60605. ComEd conducts substantial business throughout this District and the State as the largest electric utility provider in the State of Illinois, with service territory that covers approximately 11,411 square miles in northern Illinois. During all relevant time periods, ComEd provided electricity delivery services to approximately 3.8 million customer accounts across northern Illinois, which includes about 70% of the population of the State of Illinois. ComEd is a subsidiary of Defendant Exelon and a public utility regulated by the Illinois Commerce Commission ("ICC") pursuant to the Illinois Public Utility Act, 220 ILCS 5/3-105; 220 ILCS 5/1-102, *et seq*.

18. Defendant Exelon Corporation is a Pennsylvania corporation with its principal place of business located at 10 South Dearborn Street, 48th Floor, Chicago, Cook County, Illinois, 60603. Exelon is a Fortune 100 energy company that conducts substantial business throughout this District and the State of Illinois. Exelon generates revenues of approximately $33.5 billion and is the largest electric parent company in the United States by revenue, the largest regulated electric utility in the United States, and the largest operator of nuclear power plants in the United States. Exelon controls ComEd and owns 99.985% of ComEd's shares. There is no public market for ComEd shares.

JURISDICTION AND VENUE

19. This Court has federal question subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 and 18 U.S.C. § 1964(c) because the Plaintiffs assert claims under RICO, 18 U.S.C. § 1961, *et seq*.

20. This Court has supplemental subject matter jurisdiction over the state-law claims in this action pursuant to 28 U.S.C. § 1367.

21. Personal jurisdiction over Defendants is proper because they transact business in the State of Illinois, each has a principal place of business in Illinois, and a substantial number of the events giving rise to the claims alleged herein took place in Illinois.

22. Venue is proper in this judicial District pursuant to 28 U.S.C. § 1391(b)(2) because a substantial part of the events, acts or omissions giving rise to the claims occurred in this judicial District.

FACTS

A. Defendants and third-party co-conspirators formed a corrupt association-in-fact enterprise.

23. For an unknown number of years, including at least the time period between 2011 and the present, an association-in-fact enterprise consisting of ComEd/Exelon, Madigan and his associates, lobbyists, a law firm connected to Madigan and/or ComEd/Exelon, and other individuals and corporate entities pursued the shared goal of exploiting the legislative process for their own gain. The victims of this prolonged scheme are Plaintiffs and the proposed Class of similarly-situated utility customers injured by the legislation unlawfully obtained by the Enterprise's acts.

24. The below facts detail how Defendants violated the Racketeer Influenced and Corrupt Organizations Act ("RICO"). As explained in Count I, a RICO conspiracy requires proof

that: (1) the defendant[s] agreed to participate in the affairs of an association-in-fact enterprise through a pattern of racketeering activity, and (2) the defendant[s] further agreed that someone would commit at least two predicate acts to accomplish these goals.

25. The Enterprise consisted of at least the following individuals and entities:[4]

a. Madigan and his network of loyal allies and associates, including: Michael McClain,[5] Edward Moody, Ray Nice, Frank Olivo, Jr., Michael Zalewski, Victor Reyes, Juan Ochoa, and others; and

b. Defendants ComEd and Exelon and their officers, employees and representatives: Anne Pramaggiore, the former CEO of ComEd and Exelon Utilities (a division of Exelon); John Hooker, ComEd's former Executive Vice President of Legislative and External affairs; Fidel Marquez, ComEd's former Senior Vice President, Governmental and External Affairs; and Jay Doherty, ComEd's contractor, and his company, Jay D. Doherty & Associates.

26. The pattern of racketeering activity includes the solicitation (by Madigan and his allies), payment (by Defendants), and receipt (by Madigan and his allies) of dozens of bribes between 2011 and 2019, and the use of the mail and/or wires to conceal those bribes. Defendants' purpose in making these bribes was to obtain favorable state utility legislation that guaranteed ComEd would increase its profits and subsidize its nuclear plants by passing increased costs to its customers. The criminal statutes implicated by Defendants' racketeering are

[4] Although Plaintiffs cannot identify all the participants in Madigan's corrupt Enterprise without discovery of information possessed by Defendants and other participants, Plaintiffs describe with particularity several key members of the Enterprise, as well as their distinct roles and hierarchical positions in the Enterprise.
[5] As explained more fully below, McClain played a dual role for both Madigan and Defendants.

720 Ill. Comp. Stat. Ann. 5/33-1 & 33-3 (bribery and official misconduct) and 18 U.S.C. §§ 1341, 1343 (mail and wire fraud).

27. The Enterprise is separate from the pattern of racketeering activity and its members. The Enterprise involved members working toward the shared goal of furthering their self-interest in connection with state utility legislation. Some of the enterprise's activities (such as political donations without a quid pro quo) may have been legal and not in violation of RICO. Defendants' bribes, of course, were not legal.

28. The Enterprise is also separate from its members because each member is an individual or corporate entity with an autonomous and separate legal existence, each of which would survive the dissolution of the Enterprise.

29. With respect to conspiracy, the Defendants' agreement to participate in the Enterprise through a pattern of racketeering is confirmed in ComEd's Deferred Prosecution Agreement; in which Defendants admit facts confirming their knowing participation in bribery and mail and/or wire fraud, accept responsibility for bribery in violation of 18 U.S.C. § 666(a)(2), and agree to pay $200 million in fines to the United States Treasury. The conspiracy is also confirmed in the plea agreement of Fidel Marquez, ComEd's Senior Vice President of Governmental and External Affairs, who admitted to conspiring with individuals in the Enterprise to commit bribery. There are dozens of predicate acts, far in excess of the required two; various predicate acts are described at Ex. 1 at A-2–A-12.

30. The RICO activity caused injuries to Plaintiffs and the Class because Defendants' bribes secured favorable legislation that allowed them to dramatically increase their revenues and profits at the expense of the Class of ComEd customers. ComEd has admitted that its benefits

from the favorable legislation procured through its bribes exceeded $150,000,000. Ex. 1 at A-12. As described further below, the actual benefits were substantially greater than $150,000,000.

31. In practice, the Enterprise had a simple modus operandi: Madigan repeatedly delivered demands for favors through his network of allies (often former public officials or campaign workers) to ComEd and Exelon, who desired—and indeed needed—Madigan's assistance to obtain the passage of favorable legislation. These demands often involved requests that ComEd and/or Exelon provide jobs or contracts with income streams to Madigan's associates without meaningful economic justification. Madigan procured these favors to economically reward his associates for their years of service and thereby consolidate his power base by encouraging future loyalty and/or political donations from the recipients and other allies. In exchange, ComEd and Exelon received benefits in the form of Madigan's support for legislation that furthered their economic interests.

1. Michael Madigan

32. Michael Madigan has been a member of the Illinois House of Representatives since 1971. He still holds this office, making him its longest tenured member. Madigan has also been Chairman of the Illinois Democratic Party since 1998. As Chairman, Madigan largely controls the Party's endorsements of candidates for elected office, fundraising operations, and allocation of campaign funds among candidates. Madigan has been the 13th Ward Democratic committeeman since 1969. As committeeman of the 13th Ward, Madigan controls the Democratic Party's local political efforts, including precinct voter registration, voter turnout efforts, community forums, distribution of election materials, and election operations.

33. Madigan was Speaker of the Illinois House of Representatives between 1983 and 1995, and again from 1997 through the present.

34. He is the longest-serving leader of any state or federal legislative body in the history of the United States.

35. Madigan was the leader of the association-in-fact Enterprise that harmed Plaintiffs and the proposed Class of similarly-situated utility customers. Madigan's leadership position stemmed from his extraordinary power as the Speaker of the House and Chairman of the Illinois Democratic Party, described more fully below. These positions enabled him to exert control over all aspects of the legislative process in the General Assembly and made him an invaluable partner for unscrupulous corporations prepared to offer substantial benefits in exchange for favorable legislation.

36. As leader, Madigan often delivered his demands through trusted associates. As explained more fully below, however, the participants in the Enterprise consistently acknowledged that Madigan was the source of various demands for favors and that they were acting at Madigan's behest.

37. The Enterprise closely resembles a patronage system; where a political party, after winning an election, gives government civil service jobs to its supporters, friends, and relatives as a reward for working toward victory, and as an incentive to keep working for the party. Patronage systems like the Enterprise have a long and sordid history in Chicago. The Enterprise is an extension of the patronage systems to the private sector, insofar as Madigan also uses his position to obtain private sector jobs for his supporters, friends, and relatives instead of strictly offering civil service jobs.

38. Madigan is the classic patron. Several of Madigan's associates explicitly describe him as a "father" or "mentor."

39. Madigan previously acknowledged his knowing participation in patronage systems. In 2009, he stated as part of an oral history of the late Chicago mayor Richard Daley: "[I]n those days, when I became the ward committeeman, that was the biggest thing around . . . . I mean, everybody wanted to be a ward committeeman. They knew the power of the patronage system. . . . They wanted a job in the patronage system . . . . I would tell them, 'Yes, we can put you in a job. But you're going to work for the Democratic Party.'"

40. The Office of the Illinois Democratic Party is located in Madigan's Ward—the 13th Ward—at 6500 South Pulaski, Chicago, Illinois 60629. Madigan's District office is next door to the office of the 13th Ward Alderman.

41. ComEd's Deferred Prosecution Agreement refers to Madigan as "Public Official A."

2. Madigan's trusted associates

42. Madigan's associates operated as the arms of the Enterprise. They delivered his messages and carried out his orders in the field when dealing with companies seeking favorable legislation. They include, among others, the following persons:

a. Michael McClain a.k.a. Individual A

43. Michael McClain performed "lobbying" and "political consulting" services for ComEd for many years, at least spanning the time period between 2011 and until the spring of 2019. He was reportedly the point man in the discussions about major ComEd and Exelon legislation for decades.

44. At the same time, McClain served as one of Madigan's longest-tenured and most loyal and close associates.

45. McClain was a member of the Illinois House of Representatives between 1972 and 1982.

46. In 1981, Madigan was the House minority leader and picked McClain to be assistant minority leader.

47. Madigan's chief of staff Tim Mapes reportedly stated in an email to McClain that Madigan was McClain's "number one client," even though McClain was under contract with and received payments from companies that lobby Madigan, including ComEd.

48. In 2016, McClain reportedly remarked to Mapes in another email that Madigan, Madigan's wife, and his family were "intertwined" with McClain and his family.

49. Other emails reportedly show that McClain was allowed to offer edits on Madigan's inaugural addresses. This disturbing level of involvement by an outside lobbyist again confirms Madigan's close ties to McClain.

50. In 2019, federal authorities raided McClain's home for evidence. Upon information and belief, this was done in connection with the investigation leading to ComEd's Deferred Prosecution Agreement. *The Chicago Tribune* also reported in 2019 that federal authorities had tapped McClain's phone line.

51. McClain's role in the Enterprise was primarily to serve as a trusted line of communication between Madigan on the one hand and corporate participants on the other. He performed this role for ComEd and Exelon and, upon information and belief, for other corporate participants in the Enterprise.

52. The ComEd Deferred Prosecution Agreement refers to McClain as "Individual A."

53. On November 18, 2020, the Department of Justice announced the indictment of McClain on eight counts of bribery conspiracy, bribery, and willfully falsifying ComEd books and records. The indictment also charges former ComEd CEO and Exelon Generation Vice

President Anne Pramaggiore, long-time ComEd lobbyist John Hooker, and ComEd consultant and bribery middleman Jay D. Doherty. *See* Indictment, *United States v. McClain, Pramaggiore, Hooker, and Doherty*, 20 CR 812, Doc. 1 (N.D. Ill. Nov. 18, 2020).

b. Edward Moody a.k.a. Associate 1

54. Edward Moody has been the Cook County Recorder of Deeds since December 2018. Prior to that, Moody served as the Worth Township Highway Commissioner and 6th District Cook County Commissioner.

55. Moody is a longtime supporter and associate of Madigan and Illinois Democratic party worker in Madigan's 13th Ward. As a teenager, Moody began working for Madigan by knocking on doors for Madigan's election campaigns. Moody became a Democratic precinct captain in 1988. He served as a precinct captain for Madigan's 13th Ward in 1991 and for at least 25 years thereafter. According to reporting in *The Chicago Sun-Times*, Moody considered Madigan a father figure.

56. Moody served Madigan in Madigan's capacity as chair of the Illinois Democratic Party for many years. Madigan, in turn, rewarded him with economic benefits in the form of payments from ComEd, described in more detail below.

57. Upon information and belief, the ComEd Deferred Prosecution Agreement refers to Moody as "Associate 1."

c. Frank Olivo Jr. a.k.a. Associate 2

58. Frank Olivo Jr. served as alderman of the City of Chicago 13th Ward from 1994 until he retired in 2011.

59. Olivo was a protégé of Madigan. In 2006, he was quoted in *The Chicago Tribune* as describing Madigan as "a neighbor, a friend." The same article described Madigan as Olivo's "mentor."

60. Olivo has deep ties to Madigan's 13th Ward Democratic Organization and Madigan himself. In or around the late 1960s, he became a precinct captain there at the age of 18. Madigan arranged to have him appointed 13th Ward Streets and Sanitation Superintendent. In 1994, at Madigan's request, Mayor Richard M. Daley nominated Olivo to fill the vacant post of 13th Ward Alderman, a position he held for 17 years. Olivo's aldermanic offices and Madigan's 13th Ward offices were next to each other at 6500 South Pulaski.

61. Shortly after leaving office in 2011, Olivo began receiving payments from ComEd, purportedly for services as a lobbyist. He has reportedly received such payments until sometime in 2019.

62. Olivo served Madigan for many years. Madigan, in turn, rewarded him with economic benefits in the form of payments from ComEd, described in more detail below.

63. Upon information and belief, the ComEd Deferred Prosecution Agreement refers to Olivo as Associate 2.

d. Michael Zalewski a.k.a. Associate 3

64. Michael R. Zalewski is a longtime member of the Illinois Democratic party. He was alderman of the 23rd ward of the City of Chicago from May 1995 to his retirement on May 31, 2018.

65. Zalewski's family has significant political power relevant to ComEd's and Exelon's business. His son, Michael J. Zalewski, is a state representative. His daughter-in-law, Carrie Zalewski, is chair of the ICC, ComEd's regulator—a position Madigan helped her secure.

66. Zalewski owns a consulting company called The Z Consulting Group, Inc.

67. Federal authorities searched Zalewski's home in May 2019. Upon information and belief, that was done as part of the investigation into ComEd's bribery scheme.

68. Zalewski served Madigan for many years. Madigan, in turn, rewarded him with economic benefits in the form of payments from ComEd, described in more detail below.

69. Upon information and belief, the ComEd Deferred Prosecution Agreement refers to Zalewski as "Associate 3."

e. Ray Nice a.k.a Individual 13W-2

70. Ray Nice was a longtime campaign operative of Madigan and precinct captain in the 13th Ward. In addition to his work on Madigan's campaigns, Nice's paid political work involved helping other Madigan-endorsed candidates, such as Fred Crespo, a state representative from the northwest suburbs, and Paul Mangieri, who was a circuit judge in western Illinois. Nice was also Deputy Recorder of Deeds for Cook County and held a seat on the state Employment Security Board of Review from 2013 to 2017.

71. Upon information and belief, Nice is identified as "Individual 13W-2" in the November 2020 indictment of McClain, Pramaggiore, Hooker, and Doherty.

72. Beginning in 2015, Nice reported to Cook County ethics officers that he was "sole proprietor" of a "lobbying-consulting" practice, in which he represented ComEd. However, Nice did not list or detail any contacts he had with County officials on behalf of his "client" during that time. In other words, he did not report doing any lobbying activity for ComEd. In each of his disclosures, Nice gave the phone number for the City Club of Chicago as his primary office number.

f. Juan Ochoa a.k.a. Board Member 1

73. Juan Ochoa is CEO of the Miramar Group, an international facilities management firm. Ochoa has occupied this role since 2010. He has close ties to Madigan, and has also served as a special advisor to Chicago Mayor Rahm Emanuel.

74. Ochoa served as the head of the Metropolitan Pier and Exposition Authority between 2007 and 2010. Ochoa was reappointed to the board of the Authority in 2017.

75. Ochoa has publicly admitted that he has carried out Madigan's bidding in the past, at least in part, due to Madigan's political power. A 2014 *Chicago Tribune* article states: "Juan Ochoa . . . said Madigan called him to request a raise for Sherry Brticevich, the daughter of a former state senator from Madigan's Southwest Side neighborhood. 'He made a point to say this was a favor for someone very close to him,' Ochoa said. Ochoa said Brticevich was a hard worker who deserved the raise she received after Madigan's call. 'I didn't feel like he was putting a gun to me but, then again, he is the speaker of the House,' Ochoa said. 'This was someone who is important to the speaker of the House, who to a great extent controlled our legislation and funding.'"

76. Beginning in or around 2017, Madigan sought to have ComEd appoint Ochoa to its Board of Directors. He succeeded—Ochoa was appointed to ComEd's Board of Directors in April 2019 until he resigned from the Board in April 2020. Upon information and belief, he resigned due to the Government investigation that led to the ComEd Deferred Prosecution Agreement and the indictments of McClain, Pramaggiore, Hooker, and Doherty.

77. Ochoa served Madigan for many years and, in turn, he was rewarded with economic benefits in the form of payments from ComEd and a prestigious position on ComEd's board, described in more detail below.

78. Upon information and belief, the ComEd Deferred Prosecution Agreement refers to Ochoa as "Board Member 1."

g. Victor Reyes a.k.a. Attorney 1

79. Victor Reyes is a partner and/or owner of the Chicago-based law firm Reyes Kurson and the lobbying firm The Roosevelt Group.

80. Reyes has been a significant political donor to Madigan and the Illinois Democratic Party. *The Prairie State Wire* reports that Reyes has donated $107,627 to two funds controlled by Madigan: the Democratic Party of Illinois and Friends of Michael Madigan. The same article reports Reyes has made $920,452 in political donations since 2005, 96% of which went to the Democratic Party.

81. Reyes donated money to the Illinois Democratic Party and to Madigan. Madigan, in turn, rewarded him with economic benefits in the form of payments from ComEd, described in more detail below.

82. The federal grand jury subpoena served upon Madigan in July 2020 seeks documents relating to Reyes, the Reyes Kurson law firm, and The Roosevelt Group.

83. Upon information and belief, the ComEd Deferred Prosecution Agreement refers to Reyes as "Lawyer A" and Reyes Kurson as "Law Firm A."

3. ComEd, Exelon, and Their Employees and Representatives

84. ComEd and Exelon, and their officers, employees and agents joined the Enterprise for the purpose of obtaining favorable legislation that financially benefits their business. They knowingly participated in the corrupt acts of the Enterprise by providing financial rewards in the form of unearned jobs, appointments, and income to Madigan's associates in exchange for the favorable legislation they sought.

85. Exelon and ComEd have participated in the Enterprise in this manner for many years, spanning at least the time period between 2011 and 2019. ComEd admits its motive to affect legislation in the Deferred Prosecution Agreement:

> As a utility, ComEd is subject to extensive regulation by the State of Illinois. The State of Illinois regulates the rates that ComEd may charge its customers, as well as the rate of return ComEd may realize from its business operations. The legislative branch of the State of Illinois, known as the Illinois General Assembly, has routinely considered bills and has passed legislation that has had a substantial

> impact on ComEd's operations and profitability, including legislation that affects the regulatory process ComEd uses to determine the rates ComEd charges its customers for the delivery of electricity. In order for legislation to become law, it must be passed by both houses of the Illinois General Assembly—the Illinois House of Representatives and the Illinois Senate.

86. Because corporations like Exelon and ComEd cannot act without the involvement of their individual representatives, several individual employees and representatives of Exelon and ComEd have participated in the Enterprise in the same manner. Several of these individuals are described in more detail in this subsection.

a. John Hooker a.k.a. Lobbyist 1

87. John Hooker was an employee of ComEd for 44 years. In 2012, he retired as Executive Vice President of Legislative and External Affairs. After retiring and until 2019, he continued to lobby for the utility, working for outside firms with McClain and later Michael Kasper, an attorney with longstanding connections to Madigan.

88. Upon information and belief, the ComEd Deferred Prosecution Agreement and Fidel Marquez's Plea Agreement refer to Hooker as "Lobbyist 1."

89. On September 28, 2020, Fidel Marquez admitted that he agreed with Hooker, among others, to arrange for Madigan's associates to obtain jobs, vendor subcontracts, and monetary payments—even in instances where the associates performed little or no work that they were purportedly hired to perform for ComEd—for the purpose of influencing and rewarding Madigan and to assist ComEd with respect to legislation affecting ComEd and its business.

90. On November 18, 2020, Hooker was indicted in the Northern District of Illinois on charges of conspiracy, bribery, and willfully falsifying ComEd books and records. The indictment, alleged, *inter alia*, that ComEd, Hooker, and others corruptly arranged for jobs, vendor contracts and subcontracts, as well as monetary payments to be provided to various

associates of Madigan with the intent to influence and reward Madigan and promote the passage of legislation that affected ComEd.

b. Anne Pramaggiore a.k.a. CEO-1

91. Anne Pramaggiore was the Chief Executive Officer of ComEd between in and around March 2012 and May 2018.

92. From June 1, 2018 to October 15, 2019, Pramaggiore served as Senior Executive Vice President and CEO of Exelon Utilities, and had oversight authority over ComEd's operations. On information and belief, Pramaggiore resigned from her position at Exelon because of the federal investigation that led to the ComEd Deferred Prosecution Agreement.

93. Pramaggiore's role in the Enterprise was to effectuate ComEd's and Exelon's participation by complying with Madigan's demands as rewards for Madigan ensuring the passage of legislation that mandated huge increases in income and profits for ComEd and Exelon.

94. Upon information and belief, the ComEd Deferred Prosecution Agreement and Fidel Marquez's Plea Agreement refer to Pramaggiore as "CEO-1."

95. On September 28, 2020, Fidel Marquez admitted that he agreed with Pramaggiore, among others, to arrange for Madigan's associates to obtain jobs, vendor subcontracts, and monetary payments—even in instances where the associates performed little or no work that they were purportedly hired to perform for ComEd—for the purpose of influencing and rewarding Madigan and to assist ComEd with respect to legislation affecting ComEd and its business.

96. On November 18, 2020, Pramaggiore was indicted in the Northern District of Illinois on charges of conspiracy, bribery, and willfully falsifying ComEd books and records. The indictment alleged, *inter alia*, that ComEd, Pramaggiore, and others corruptly arranged for

jobs, vendor contracts and subcontracts, as well as monetary payments to be provided to various associates of Madigan with the intent to influence and reward Madigan and promote the passage of legislation that affected ComEd.

c. Fidel Marquez a.k.a. Senior Executive 1

97. Fidel Marquez was ComEd's Senior Vice President for Legislative and External Affairs from in or around March 2012 until he resigned from ComEd in or around September 2019. He was a ComEd employee for nearly 40 years.

98. Upon information and belief, he resigned because of the federal investigation that led to the ComEd Deferred Prosecution Agreement, and his own indictment and guilty plea.

99. Marquez's role in the Enterprise was to effectuate ComEd's and Exelon's participation by complying with Madigan's demands as rewards for Madigan ensuring the passage of valuable utility legislation.

100. Upon information and belief, ComEd's Deferred Prosecution Agreement refers to Marquez as "Senior Executive 1."

101. On September 28, 2020, Marquez entered a Plea Agreement in the Northern District of Illinois to the charge of conspiracy to commit bribery. Marquez admitted that he agreed with Hooker, Pramaggiore, and Jay Doherty to arrange for Madigan's associates to obtain jobs, vendor subcontracts, and monetary payments—even in instances where the associates performed little or no work that they were purportedly hired to perform for ComEd—for the purpose of influencing and rewarding Madigan and to assist ComEd with respect to legislation affecting ComEd and its business.

102. As the admitted facts were phrased in Marquez's plea agreement, attached as Exhibit 2:

> MARQUEZ agreed with others, including but not limited to CEO-1, Lobbyist 1, Consultant 1, and Individual 1, to arrange for various associates of Public Official A, including Public Official A's political allies and individuals who performed political work for Public Official A, to obtain jobs, vendor subcontracts, and monetary payments associated with those jobs and subcontracts from ComEd, even in instances where certain political allies and workers performed little or no work that they were purportedly hired to perform for ComEd. These acts were taken for the purpose of influencing and rewarding Public Official A in connection with his official duties as Speaker of the Illinois House of Representatives, and to assist ComEd with respect to legislation affecting ComEd and its business that had a value of over $150,000,000.

Ex. 2 at 6.

d. Jay Doherty a.k.a. Consultant 1

103. Jay Doherty is a lobbyist and owner of a company named Jay D. Doherty & Associates.

104. For many years, including the time period between 2011 and 2019, Doherty was a lobbyist for ComEd. Doherty's work for ComEd ceased in the fall of 2019. Upon information and belief, the federal investigation that led to ComEd's Deferred Prosecution Agreement and criminal charges against Doherty is the reason for this development.

105. Doherty was President of the City Club of Chicago for 27 years. The City Club is an influential public affairs forum. Its website touts this quote from *The New York Times*: "The City Club of Chicago, a who's who of businesspeople and political leaders and a required stop for most anyone who wants to win office around here."[6] Doherty resigned his presidency of the City Club in 2019, shortly after he ceased lobbying for ComEd. Upon information and belief, Doherty resigned as a result of the federal investigation that led to ComEd's Deferred Prosecution Agreement and the criminal charges against Doherty.

106. ComEd reportedly paid Jay D. Doherty & Associates $3.1 million between 2011 and 2018.

[6] https://www.cityclub-chicago.org/about.

107. Upon information and belief, ComEd's Deferred Prosecution Agreement and Fidel Marquez's Plea Agreement refer to Doherty as "Consultant 1" and Jay D. Doherty & Associates as "Company 1."

108. On September 28, 2020, Fidel Marquez admitted that he agreed with Doherty, among others, to arrange for Madigan's associates to obtain jobs, vendor subcontracts, and monetary payments—even in instances where the associates performed little or no work that they were purportedly hired to perform for ComEd—for the purpose of influencing and rewarding Madigan and to assist ComEd with respect to legislation affecting ComEd and its business.

109. On November 18, 2020, Doherty was indicted in the Northern District of Illinois on charges of conspiracy, bribery, and willfully falsifying ComEd books and records. The indictment alleged, *inter alia*, that ComEd, Doherty, and others corruptly arranged for jobs, vendor contracts and subcontracts, as well as monetary payments to be provided to various associates of Madigan with the intent to influence and reward Madigan and promote the passage of legislation that affected ComEd.

110. As explained more fully below, Doherty's role in the Enterprise was to use Jay D. Doherty & Associates as a pass-through vehicle for ComEd's payments to Madigan's associates. Doherty was an agent of ComEd charged with implementing transactions with Madigan and his associates and concealing them from discovery.

4. Madigan's Enterprise existed separately from its members and from their criminal activities.

111. The members of the Enterprise have a separate existence from the Enterprise itself. The individuals, for example, in addition to separate legal personhoods, each have their own positions in public and private institutions. Likewise, the corporate participants have corporate structures and lines of business that can continue to exist outside the Enterprise, albeit

less profitably. Each of the participants can and would continue to exist autonomously if the Enterprise ceased to exist.

B. Defendants engaged in a pattern of racketeering.

112. Between 2011 and 2019, Defendants bribed Madigan, his associates, and other members of his political organization dozens of times. Defendants' bribes included jobs, contracts, and money to Madigan's associates, which had the dual effect of enriching Madigan's associates and consolidating Madigan's power over his patronage system. Specifically:

a. ComEd paid more than $1 million in bribes from 2011 to 2019 to three of Madigan's loyal associates—Moody, Olivo, and Zalewski[7]—for little or no actual work;

b. ComEd contracted with and paid unjustified fees to Reyes Kurson, a law firm that donated more than $100,000 to funds controlled by Madigan and nearly $1 million to the Democratic Party; and

c. ComEd and Exelon appointed Madigan ally Ochoa to its Board of Directors.

113. For each bribe, Defendants acted on a request by or on behalf of Madigan, frequently delivered by Madigan's lieutenant McClain, who was simultaneously working as a ComEd lobbyist.

114. Defendants and their co-conspirators also committed mail and/or wire fraud to conceal their bribes from public scrutiny.

[7] As explained more fully below, ComEd made these payments using Doherty and Jay D. Doherty & Associates as a pass-through vehicle.

1. To secure Madigan's support for EIMA in 2011, ComEd bribed Madigan by agreeing to Madigan's demands that ComEd pay his associates.

115. In or around 2011, Madigan and his lieutenant McClain sought to obtain from ComEd jobs, vendor subcontracts, and monetary payments associated with jobs and subcontracts for various associates of Madigan. The recipients of these payments were former precinct captains for Madigan's legislative district. These precinct captains—Frank Olivo, Jr., Ray Nice, and Ed Moody—had deep ties to Madigan's Democratic Committee for the 13th Ward dating back as long as 40 years, and served as Madigan's lieutenants for his party's local voter turnout efforts.

116. In or around 2011, McClain and then ComEd Executive Vice President of Legislative and External Affairs John Hooker developed a plan to direct money to three of Madigan's associates—Olivo, Nice, and Moody—by having ComEd pay them indirectly as subcontractors to ComEd consultant Doherty and his company, Jay D. Doherty & Associates. Upon information and belief, this arrangement began in 2011.

117. In or around 2011, ComEd agreed to retain law firm Reyes Kurson, and entered into a contract pursuant to which ComEd agreed to provide Reyes Kurson with payment for a minimum of 850 hours of attorney work per year. ComEd entered into this contract with Reyes Kurson, in significant part, with the intent to influence and reward Madigan in connection with Madigan's official duties and because personnel and agents of ComEd understood that giving this contract to Reyes Kurson was important to Madigan.

118. ComEd maintained a paid internship program. Based on their performance in the internship, participating students could be considered for subsequent summer internships or fulltime jobs with ComEd. To influence Madigan, ComEd set aside positions in the internship program for individuals associated with the 13th Ward who were identified by McClain, and

ComEd waived its minimum academic requirements for certain 13th Ward interns. Upon information and belief, this arrangement began at least as early as 2011.

119. ComEd made these bribes in 2011 to secure the passage by the Illinois legislature of EIMA, a bill of critical importance to ComEd and Exelon. As a quid pro quo for these bribes, Madigan used his power as Speaker to permit EIMA to be voted on by the Illinois House of Representatives in or around May 2011, and used his powers to ensure House members would vote in support. After EIMA was approved by the House and the Illinois Senate, it was vetoed by Illinois' Governor. In or around October 2011, Madigan used his powers and influence as Speaker of the House to permit a vote overriding the veto and to urge support of the override, which succeeded. Absent Madigan's active support, which was the object and result of Defendants' corruption, EIMA would not have become law.

2. To secure favorable legislation, ComEd continued to pay Madigan's associates for little or no work until 2019.

120. Until approximately 2019, ComEd continued to make payments to Olivo, Nice, and Moody through Doherty and Jay D. Doherty & Associates for little or no work. During this time, ComEd also made payments to other subcontracted associates of Madigan for little or no work. Doherty and Jay D. Doherty & Associates did little, if anything, to direct or supervise the activities of Madigan's associates, even though they were subcontracted under and received payments through Jay D. Doherty & Associates.

121. The indictments of McClain, Pramaggiore, Hooker, and Doherty identify specific payments that ComEd made at regular intervals to Jay D. Doherty & Associates to pay Madigan associates during the relevant time period.

122. In or around May 2018, Madigan, through his lieutenant McClain, asked Senior Executive Vice President and CEO of Exelon Utilities Anne Pramaggiore to hire Michael

Zalewski, a political ally of Madigan who was retiring from the Chicago City Council at the end of the month. Pramaggiore, in coordination with ComEd Senior Vice President for Legislative and External Affairs Fidel Marquez and ComEd consultant Jay Doherty, agreed that ComEd would pay Zalewski approximately $5,000 a month indirectly as a subcontractor through Jay D. Doherty & Associates. At the time Pramaggiore approved this arrangement, she was aware that there were other associates of Madigan already being paid as subcontractors through Jay D. Doherty & Associates. She referred to these associates as the "roster." She also agreed that Madigan—rather than an officer or employee of ComEd or Jay D. Doherty & Associates—would advise Zalewski of this new arrangement.

123. In or around June 2018, Jay D. Doherty & Associates' contract with ComEd was revised to include extra funding for the purpose of paying Zalewski. In seeking to justify the extra funding, Doherty claimed that an additional fee of $5,000 a month was necessary under the contract, in part because of Jay D. Doherty & Associates' "expanded role with Cook County Board president's office and Cook County Commissioners and Department Heads," when, in fact, the additional $5,000 a month in compensation was intended for payment to Zalewski. ComEd approved of the additional payments to Jay D. Doherty & Associates, knowing they were intended for Zalewski. Jay D. Doherty & Associates then made monthly payments to Zalewski.

124. Senior executives and agents of ComEd and Exelon, as well as other co-conspirators, were aware that the purpose and intent of ComEd's payments to Madigan's associates was to influence and reward Madigan in connection with Madigan's official duties and to advance ComEd's and Exelon's business interests. For example:

a. On or about May 16, 2018, Madigan's lieutenant McClain explained to ComEd Senior Vice President for Legislative and External Affairs Fidel

Marquez why certain individuals were being paid indirectly through Jay D. Doherty & Associates, by making reference to their utility to Madigan's political operation. McClain identified Moody, one of the several individuals on Jay D. Doherty & Associates' payroll, as "one of the top three precinct captains" who also "trains people how to go door to door . . . so just to give you an idea how important the guy is."

b. On or about February 7, 2019, McClain advised Marquez about how to present information within ComEd concerning the renewal of Jay D. Doherty & Associates' contract for 2019. In the conversation, McClain advised Marquez that, "I would say to you don't put anything in writing," explaining later in the conversation because "all it can do is hurt ya." McClain further advised Marquez that, if asked by a ComEd official why Jay D. Doherty & Associates was being paid, Marquez should explain that the associates of Madigan were former ward committeemen and aldermen, that it was a "favor," and that it would be up to Doherty to prove that Madigan's associates performed work, not ComEd.

c. On or about February 11, 2019, McClain had a conversation with John Hooker, who by that time had retired from ComEd, but had continued to serve as a paid external lobbyist to ComEd. In discussing how the renewal of Jay D. Doherty & Associates' contract—which included significant payments to Jay D. Doherty & Associates to account for indirect payments to Madigan's associates—should be communicated internally, McClain

said, "We had to hire these guys because [Madigan] came to us. It's just that simple." Hooker agreed, and added, "It's, it's clean for all of us."

d. On or about February 13, 2019, Doherty advised ComEd Senior Vice President for Legislative and External Affairs Fidel Marquez that Madigan associates Olivo and Moody had been made "subcontractors" of Jay D. Doherty & Associates at the request of Hooker, and that Madigan associate Zalewski was also currently being paid as a "subcontractor." Doherty emphasized that he had told no one of the arrangement per instructions previously given to him, and cautioned Marquez that ComEd should not tamper with the arrangement because "your money comes from Springfield," and that Doherty had "every reason to believe" that McClain had spoken to Madigan about the retention of Madigan's associates, and knew Hooker had done so. Doherty added that Madigan's associates "keep their mouth shut, and, you know, so. But, do they do anything for me on a day to day basis? No." Doherty explained that these payments were made "to keep [Madigan] happy, I think it's worth it, because you'd hear otherwise."

e. On or about March 5, 2019, McClain and ComEd personnel participated in a meeting during which they discussed Jay D. Doherty & Associates' contract and why the indirect payments to Madigan's associates made under the guise of that contract should be continued for another year. During that meeting, McClain explained that for decades, Madigan had named individuals to be ComEd employees, such as meter readers, as part

of an "old-fashioned patronage system." In response, a ComEd employee acknowledged that such hires could be a "chip" used by ComEd. ComEd renewed Jay D. Doherty & Associates' contract.

f. On or about March 6, 2019, McClain and Hooker discussed the renewal of Jay D. Doherty & Associates' contract. During the conversation, Hooker explained that "with the [Doherty] stuff, you got a little leg up," to which McClain agreed. Hooker later added, "I mean it's uh, unmentioned, but you know, that which is understood need not be mentioned." McClain responded, "Right. Exactly. Exactly."

125. Between in and around 2011 and 2019, indirect payments made to Madigan's associates—who performed little or no work for ComEd—totaled at least $1,324,500. These indirect payments were made not only through Jay D. Doherty & Associates, but through other additional third-party vendors as well. As with Jay D. Doherty & Associates, these other third-party vendors that entered into contracts with ComEd noted that the payments made to these vendors by ComEd were for consulting and related services, when in truth, a substantial portion of the money paid to these vendors was intended for Madigan's associates, who did little or no work for ComEd. These payments, like those made indirectly through Jay D. Doherty & Associates, were intended to influence and reward Madigan in connection with the advancement and passage of legislation favorable to ComEd and Exelon in the Illinois General Assembly.

126. Prior to ComEd's discovery of the federal law enforcement investigation into its illegal activities, Madigan's and McClain's approval was sought by ComEd before payments to certain of Madigan's associates were discontinued, even though these individuals performed little or no work for ComEd. As with the payments made to Madigan's associates through Jay D.

Doherty & Associates, despite the fact that Madigan's associates were subcontracted under and receiving payments through these third-party vendors, no such payments were identifiable in ComEd's vendor payment system. Certain former ComEd and Exelon executives designed these payment arrangements in part to conceal the size of payments made to Madigan's associates, and to assist ComEd in denying responsibility for oversight of Madigan's associates, who performed little or no work for ComEd.

3. In 2017, ComEd further bribed Madigan by agreeing to his request that another of his associates be appointed to the ComEd Board of Directors.

127. Beginning in or around 2017, Madigan sought the appointment of his associate Juan Ochoa to the ComEd Board of Directors. Madigan's request was communicated by Madigan's lieutenant McClain to ComEd CEO Anne Pramaggiore. In or around May 2018, in response to internal company opposition to the appointment of Ochoa, Pramaggiore asked McClain if Madigan would be satisfied if Pramaggiore arranged for Ochoa to receive a part-time job that paid an equivalent amount of money to a board member position, namely, $78,000 a year. McClain told ComEd CEO Pramaggiore that Madigan would appreciate if she would "keep pressing" for the appointment of Ochoa as a board member. Pramaggiore agreed to do so.

128. In or around September 2018, Pramaggiore (who by this time had been promoted to an executive position within Exelon, in which capacity she still maintained oversight authority over ComEd) assured McClain that she was continuing to advocate for the appointment of Ochoa made at Madigan's request because: "You take good care of me and so does our friend [Madigan] and I will do the best that I can to, to take care of you." This was an express acknowledgement of a quid pro quo whereby ComEd and Exelon continued rewarding Madigan for his corrupt support of ComEd's and Exelon's preferred legislation.

129. On or about April 25, 2019, Pramaggiore advised McClain by text message, "Just sent out Board approval to appoint [Ochoa] to ComEd Board." The following day, on April 26, 2019, ComEd filed a notice with the United States Securities and Exchange Commission stating that Ochoa had served as a director of ComEd since April 2019.

130. Although ComEd and Exelon maintained that they had conducted due diligence on Ochoa and determined he was qualified for a Board position, no one at ComEd or Exelon recruited Ochoa for the position and there was internal opposition to his appointment. ComEd did not interview or vet other outside candidates for the vacant board seat. ComEd appointed Ochoa with the intent to influence and reward Madigan in connection with Madigan's official duties.

4. ComEd, Doherty, and Jay D. Doherty & Associates fraudulently used the mail and wires to obfuscate the payments to Madigan and their corrupt nature.

131. According to the Deferred Prosecution Agreement, between 2011 and 2019, Doherty executed written contracts and submitted invoices to ComEd that made it falsely appear that the payments made to Jay D. Doherty & Associates were all in return for Doherty's "advice on 'legislative issues' and 'legislative risk management activities,' and other similar matters," when in fact a portion of the compensation paid to Jay D. Doherty & Associates was intended for ultimate payment to Madigan's associates, "who in fact did little or no work for ComEd." Upon information and belief, these false invoices were submitted using interstate mail and/or wire.

132. On January 8, 2018, in connection with one of Jay D. Doherty & Associates' contract renewals, Pramaggiore signed a "Single Source Justification" in support of the renewal and caused it to be submitted to Exelon Business Services. The document made it falsely appear

that the large amount of money to be paid to Jay D. Doherty & Associates was because the "consultant has specific knowledge that cannot be sourced from another consultant/supplier."[8]

133. Because they were paid indirectly through Jay D. Doherty & Associates, moreover, the payments to Madigan's associates over the course of approximately eight years were not reflected in the vendor payment system used by ComEd, and as a result, despite that Madigan's associates were subcontracted under and receiving payments through Jay D. Doherty & Associates, no such payments were identifiable in ComEd's vendor payment system. Upon information and belief, the purpose of structuring these payment arrangements in this manner was to obfuscate their exorbitance and to avoid scrutiny from the ICC and/or the public as to the corrupt purposes of the payments.

C. ComEd and Exelon knowingly furthered the activities of the corrupt Enterprise.

134. ComEd and Exelon knowingly agreed to facilitate the activities of the Enterprise, which at its core involved providing economic value to Madigan's allies and Madigan in exchange for Madigan's support for legislation that furthered corporate interests. As applied to ComEd and Exelon, the activities of the Enterprise involved an illegal exchange of economic value for Madigan's support for EIMA, the EIMA Amendments, and FEJA, and creation of a false and misleading document trail to conceal the illegal nature of the underlying transactions.

135. ComEd's and Exelon's knowledge of the Enterprise's activities is also demonstrated by several admissions by ComEd that expressly acknowledge that its senior executives willfully participated in the Enterprise's schemes. For example, in the Deferred Prosecution Agreement, ComEd admits the following facts:

[8] *United States v. McClain*, No. 20-cr-812 (N.D. Ill., Nov. 18, 2020), Doc. 1 (Indictment), ¶ 28(v).

a. In or around 2011, ComEd's then Executive Vice President of Legislative and External Affairs John Hooker jointly "developed a plan to direct money" to Madigan's associates Ed Moody and Frank Olivo Jr. Hooker worked with ComEd's outside lobbyist Michael McClain to develop this plan. "Certain senior executives and agents of ComEd were aware of these payments [to Olivo and Moody] from their inception until they were discontinued in or around 2019."

b. ComEd entered into a contract with Reyes Kurson "in part, with the intent to influence and reward Public Official A [Madigan] in connection with Public Official A's official duties and because personnel and agents of ComEd understood that giving this contract to Law Firm A was important to Public Official A."

c. Some ComEd employees attempted to reduce the payments for hourly legal work for Reyes Kurson because the firm provided little or no legal work of value. On January 20, 2016, after attorney Victor Reyes complained to ComEd lobbyist Michael McClain, McClain wrote to ComEd's CEO Anne Pramaggiore: "Individual A [McClain] contacted CEO-1 [Pramaggiore] and wrote, "I am sure you know how valuable [Victor Reyes] is to our Friend [Madigan] . . . . I know the drill and so do you. If you do not get involve [sic] and resolve this issue of 850 hours for his law firm per year then he will go to our Friend [Madigan]. Our Friend [Madigan] will call me and then I will call you. Is this a drill we must go

through?" Pramaggiore replied in writing, "Sorry. No one informed me. I am on this."

d. In May 2018, ComEd CEO Pramaggiore personally "approved" the arrangement whereby ComEd would make payments to Madigan's associate Michael Zalewski. At the time of this approval, she "was aware that there were other associates of [Madigan] that were paid indirectly as subcontractors through [Jay D. Doherty & Associates], which [Pramaggiore] referred to as the 'roster.'"

e. In or around September 2018, Pramaggiore (who by this time had been promoted to an executive position within Exelon, in which capacity she still maintained oversight authority over ComEd) assured McClain that she was continuing to advocate for the appointment of Ochoa made at Madigan's request because: "You take good care of me and so does our friend [Madigan] and I will do the best that I can to, to take care of you."

f. On February 11, 2019, ComEd lobbyist McClain admitted to fellow ComEd lobbyist and former ComEd executive Hooker: "We had to hire these guys [i.e., Madigan's associates Moody, Olivo and Zalewski] because [Madigan] came to us. It's just that simple."

g. On February 13, 2019, ComEd lobbyist Jay Doherty told ComEd Senior Vice President of Governmental and External Affairs Fidel Marquez that "ComEd should not tamper with the arrangement because 'your money comes from Springfield,' and that [Doherty] had 'every reason to believe' that [ComEd lobbyist Michael McClain] had spoken to [Madigan] about

the retention of [Madigan's] associates, and knew [ComEd lobbyist John Hooker] had done so." Doherty further explained to Marquez that Madigan's associates "keep their mouth shut . . . . But, do they do anything for me on a day to day basis? No." Nonetheless, he explained "these payments were made "to keep [Madigan] happy, I think it's worth it, because you'd hear otherwise." Afterwards, ComEd assigned another employee "the task of ensuring [Reyes Kurson]'s contract was renewed because the work provided to [Reyes Kurson] was, in part, designed to influence and reward [Madigan] in connection with [Madigan]'s official duties, including the promotion and passage of FEJA. ComEd agreed in or around June 2016 to renew [Reyes Kurson's] contract with substantially reduced annual hours."

h. On March 5, 2019, ComEd lobbyist Michael McClain explained to ComEd employees that "[Madigan] had named individuals to be ComEd employees, such as meter readers, as part of an 'old-fashioned patronage system.' In response, a ComEd employee acknowledged that such hires could be a 'chip' used by ComEd." McClain made this statement while discussing the renewal of ComEd's contract with Jay D. Doherty & Associates.

136. ComEd's and Exelon's knowledge of the Enterprise's activities is also demonstrated by allegations in the Indictment of McClain, Pramaggiore, Hooker, and Doherty. For example:

a. On or about February 25, 2015, McClain sent a message to Marquez, in which he wrote, "Our Friend's ward? Summer interns? 10 jobs or 12 or what is the ceiling?"

b. On or about April 2, 2015, in response to an email asking whether there was pressure to hire a prospective intern associated with the 13th Ward, or whether the applicant could be "fairly considered" for the position, Marquez wrote an email that said, "There is pressure to hire. Hope she interviews well."

c. On or about April 29, 2015, Marquez forwarded an email to McClain, advising that a candidate McClain had referred for the ComEd Internship Program had been hired.

137. ComEd and Exelon knowingly concealed the unlawful nature of their bribery scheme. For example, they often referred to Madigan as "our Friend" or "a Friend of ours" in all communications rather than using his name.

138. ComEd and Exelon also knowingly structured ComEd's payments to Madigan's associates for the purpose of concealing its activities and protecting the Enterprise. For example, in 2011, ComEd's Executive Vice President of Legislative and External Affairs John Hooker and its lobbyist Michael McClain were jointly responsible for establishing the plan to pay Madigan associates Frank Olivo, Jr. and Ed Moody indirectly through Jay D. Doherty & Associates. Structuring the payments in this manner concealed the details of the ultimate recipients off ComEd's vendor payment system. When discussing the renewal of this arrangement in 2019, Hooker stated regarding this structure: "it's clean for all of us." Upon information and belief, this statement was meant to convey that the arrangement protected ComEd's interests by concealing

the dirty (i.e., illegal) nature of the transaction. In another conversation regarding the arrangement in 2019, Hooker similarly remarked, "I mean it's uh, unmentioned, but you know, that which is understood need not be mentioned." This remark further confirms ComEd's desire to conceal the payments.

139. ComEd also accepted invoices from Jay D. Doherty & Associates between 2011 and 2019 that, by ComEd's admission, "made it falsely appear that the payments made to [Jay D. Doherty & Associates] were all in return for Consultant 1's advice on 'legislative issues' and 'legislative risk management activities,' and other similar matters, when in fact a portion of the compensation paid to [Jay D. Doherty & Associates] was intended for ultimate payment to [Madigan]'s associates, who in fact did little or no work for ComEd." Based on the admissions noted above, ComEd knew these invoices were false and misleading when it made payments on them, and in fact designed the entire scheme to conceal the true nature of the payments.

D. Without the bribery-induced support of Madigan, ComEd and Exelon would not have secured favorable legislation allowing them to increase the revenues and profits obtained from consumers.

140. ComEd admits that the reason it bribed Madigan was to secure his "support for legislation that was beneficial to ComEd, including EIMA and FEJA, that would ensure a continued favorable rate structure for ComEd." Why Madigan? Because "ComEd understood that, as Speaker of the House of Representatives, [Madigan] was able to exercise control over what measures were called for a vote in the House of Representatives and had substantial influence and control over fellow lawmakers concerning legislation, including legislation that affected ComEd."

141. This was true and, if anything, an understatement. According to David Axelrod, long-time Illinois political consultant and Senior Adviser to President Obama, no one in modern Illinois politics wields as much legislative power: "In his domain—in terms of the art of keeping

and exercising power within [the state capitol]—he's incomparable."[9] Madigan is widely considered the most powerful man in Illinois politics, and he wields unparalleled and unprecedented control over the Illinois House of Representatives.

142. As with most Houses of Representatives in the United States, the Speaker of the Illinois House of Representatives is the leader of the party with most of the votes in the chamber. This position gave Madigan substantial influence over a significant number of votes on practically any issue.

143. Moreover, the Illinois House of Representatives has a variety of special rules that allowed Madigan outsized influence in the body. For example, as the Speaker, Madigan wielded the power to select the chair and a majority of the members of the Rules Committee. The Rules Committee, in turn, decides whether to send a bill to a substantive committee, which itself must vote to send the bill to a full House vote before the bill can leave the chamber. Getting around this protocol is exceedingly difficult, meaning that through this provision alone, Madigan has the *de facto* ability to control which bills get voted on and which ones do not.

144. Furthermore, Illinois rules provide Madigan sole discretion to give and take away committee chair positions for all 49 substantive committees. These positions are coveted because they give other legislators more power than they would otherwise have and also provide $10,000 annual stipends. This rule enabled Madigan to use committee chair appointments to reward loyalty or punish disloyalty—yet another tool for consolidating power and controlling votes.[10]

145. Finally, Madigan was Chairman of the Illinois Democratic party for more than twenty years. In that capacity, he controlled the Party's endorsement of candidates, fundraising

[9] Dave McKinney, *The man behind the fiscal fiasco in Illinois*, Reuters (Feb. 8, 2017), https://www.reuters.com/investigates/special-report/usa-illinois-madigan/.
[10] Joe Tabor & Ted Dabrowski, *Madigan's Rules: How Illinois gives its House speaker power to manipulate and control the legislative process*, Illinois Policy Institute (2017), https://www.illinoispolicy.org/reports/madigans-rules-how-illinois-gives-its-house-speaker-power-to-manipulate-and-control-the-legislative-process.

efforts, and allocation of campaign funds. In other words, he controlled access to reelection funds for nearly every Democrat in the Assembly (and the Illinois Senate and for state-wide office).

146. Taken together, these House rules and Madigan's extraordinary consolidation of party power, allowed Madigan to control the outcome of virtually all major legislation in the Assembly as well as the Senate.

147. Madigan did not always use these powers to benefit ComEd and Exelon, however. Indeed, before hatching their corrupt scheme, ComEd and Exelon counted Madigan among their greatest foes. In 2003, for example, Madigan "torpedoed a rate hike that John Rowe, then CEO of ComEd parent Exelon, said was needed to complete his plan to acquire troubled downstate utility Illinois Power."[11]

148. In the four years that followed, Madigan and Rowe engaged in "cold and hot warfare" that culminated in a 2007 rate hike compromise that required ComEd to pay $800 million in rebates to consumers.

149. What followed was a "sustained charm offensive"—consisting of generous campaign donations and, as described above, bribes—to win support for ComEd's and Exelon's legislative agendas.[12]

150. After soliciting and receiving bribes, Madigan's position on ComEd and Exelon changed dramatically, and he used his immense power to ensure the passage of at least three major pieces of legislation that benefitted ComEd and Exelon at the expense of its customers.[13]

[11] Steve Daniels, *How long-ago power plays set ComEd's current woes in motion*, Chicago Business (December 20, 2019), https://www.chicagobusiness.com/utilities/how-long-ago-power-plays-set-comeds-current-woes-motion.
[12] Daniels, *supra*. n.11.
[13] Daniels, *supra*, n.11.

1. EIMA would not have passed without Defendants' corruption and Madigan's support.

151. These efforts bore fruit with EIMA, an ambitious bill that transformed the rate-setting process, with the practical effect of eliminating the ICC's role in approving rates based on scrutinizing ComEd's expenses. Before EIMA, the ICC engaged in the traditional rate-setting process, including the approval of which expenses ComEd could recover through rate increases, and determination of the company's "return on equity" (in this context, akin to profit margin) on those expenses. EIMA replaced the Commission's traditional role in determining rates with "formula rates" that allowed ComEd, in effect, guaranteed rate increases and hefty profits. In other words, EIMA took rate-setting authority away from the ICC and gave it to ComEd.

152. For example, under EIMA, ComEd's return on equity is no longer set by the ICC at all. Rather, the *legislature* set the ComEd return on equity at 5.8 percentage points above the 12-month average of 30-year US Treasury Bill prices, removing ICC discretion entirely.

153. EIMA also *mandated* that the ICC "approve" at least $2.6 billion additional spending on ComEd infrastructure projects, on which ComEd has and will recover profits for years. EIMA required the ICC to pass on to consumers over a billion dollars in ComEd expenditures for "smart meters" and related "smart grid" infrastructure. This permitted ComEd to spend vast amounts of money on smart grid infrastructure, while guaranteeing that ComEd could recover the costs from its customers and preventing the ICC from providing any meaningful review or assurance the infrastructure would actually benefit ComEd's customers. The statute required the ICC to adopt a utility's "Advanced Metering Infrastructure" plan for massive investments, and prohibited the ICC from conducting any prudence review of any investments made under that plan, once adopted.

154. There was a reason ComEd resorted to corruption: the ICC in its traditional role had for many years prior to the passage of EIMA regularly rejected ComEd's efforts to enrich itself at its customers' expense. For example, in 2007 the ICC refused to approve hundreds of millions of dollars in "smart grid" spending that ComEd requested, and instead allowed only a small pilot project. In response, ComEd and Exelon went around the ICC and in EIMA, secured with their bribes, obtained a legislative guarantee that ComEd customers be required to pay over $1 billion to finance costs plus generous profits on smart grid projects. Similarly, in 2010, the ICC denied ComEd's request to have consumers pay for incentive compensation for certain executives; EIMA included a provision permitting ComEd to recover and charge consumers for incentive compensation for its employees and executives. Same story with certain severance expenses: denied by the ICC in 2010, permitted by EIMA.

155. If ComEd had not "played ball" with Madigan by engaging in the Enterprise, Madigan could have killed the bill, as he had done with similar efforts in the past. But ComEd played ball, and so Madigan did not kill the bill. It was clear from the start that any opposition to the bill "was cooked," because it was "the bill th[at Madigan] want[ed]."[14]

156. EIMA was first introduced in the Senate in February 2011. After securing the requisite votes, the bill arrived in the House.

157. Madigan referred the bill to the Rules Committee (over which he exerts control, as described above), which in turn assigned the bill to the Executive Committee (chaired by Daniel Burke, who the *Chicago Sun Times* notes was "closely aligned with Illinois House

[14] Daniels, *supra*. n.11.

Speaker Michael Madigan"[15]). After a series of amendments and debates, the House passed the bill with 67 votes.

158. The bill then returned to the Senate, which approved the amendments with only 31 votes.

159. On September 12, 2011, Illinois Governor Patrick Quinn vetoed EIMA, stating, that it would "guarantee annual rate increases, while eliminating accountability . . . . , strip[] away vital oversight and allow[] these utilities to benefit from unnecessary costs [and] higher corporate profits . . . ." The Attorney General of Illinois supported the veto of EIMA because she believed that the legislation was bad for consumers. The Chairman of the ICC, Doug Scott, supported the veto of the EIMA as bad for consumers as well. Numerous consumer advocacy organizations, including the American Association of Retired Persons and the Citizens Utility Board, also supported the veto of EIMA for the same reason.

160. Governor Quinn, the Attorney General, ICC Chairman Scott, consumer advocacy groups and others opposed the bill for good reason. Instead of holding ComEd responsible for the money it wanted to spend and collect, EIMA allowed ComEd to effectively bypass the ICC, consumer groups, utility customers, and effectively raise their own revenues and gouge customers.

161. The gubernatorial veto of EIMA would have cost ComEd billions of dollars in projected annual revenue and sure-fire path to continually increasing revenues and profits. ComEd and Exelon, refusing to see billions of dollars slip away so easily, turned up the illicit pressure to close the deal.

[15] Robert Herguth, *Leaving Legislature lucrative for Ed Burke brother now drawing $160K in pensions*, Chicago Sun Times (Jan. 25, 2019), https://chicago.suntimes.com/2019/1/25/18404347/leaving-legislature-lucrative-for-ed-burke-brother-now-drawing-160k-in-pensions.

162. During the legislative veto session in October 2011, the General Assembly, through and with direction and support of Speaker Madigan, voted to override Governor Quinn's veto and pass the EIMA. In order to override the veto, Speaker Madigan, ComEd, and Exelon successfully pressured ten members of the House Democratic caucus and four members of the Senate Democratic caucus who had not originally supported the bill to vote to override the veto.

163. Had it not been for ComEd and Exelon's bribery of Speaker Madigan, EIMA would never have become law.

2. The EIMA Amendments of 2013 would not have passed without Defendants' corruption and Madigan's support.

164. In 2013, Madigan, ComEd, and Exelon again passed through the General Assembly another law to amplify the effect of EIMA and further increase Defendants' profits.. Under the original EIMA, ComEd could only charge a profit margin on capital investments as it spent the money throughout the year, and it earned a 3.4% interest rate on its capital investment reconciliations.

165. To make even more money, ComEd and Exelon sought to be paid profits on its total capital spending planned for the year starting January 1 of that year, so that ComEd could start turning a profit in January on investments it would not make until the following December. ComEd and Exelon also insisted on guaranteed profit rates in excess of 6% per year for ComEd investment reconciliations.

166. The ICC refused to give ComEd higher profits on investments it had not yet made (and might not make). Not deterred, ComEd and Exelon simply went back to the General Assembly. In 2013, they purchased amendments to EIMA that further stripped the ICC of regulatory authority and locked in the utility's ability to start running up profits on January 1 and guaranteed the higher ComEd profit margins sought by ComEd and Exelon.

167. Madigan, ComEd, and Exelon got the EIMA Amendments passed in March 2013 to "fix" EIMA formula rates and ensure the utilities' profits. Again, Governor Quinn vetoed ComEd's and Exelon's bill. And again, Madigan provided the votes to override the veto to ensure ComEd and Exelon got paid. The 2013 EIMA Amendments did nothing for consumers; the only impact of them is to ensure ComEd and Exelon gain another hundred million dollars a year in revenue. After the EIMA Amendments were implemented, ComEd distribution revenues jumped nearly 20% in a single year for the average consumer.

3. FEJA would not have passed without Defendants' corruption and Madigan's support.

168. Madigan's role in passing FEJA was also critical to its success.

169. FEJA was an extremely valuable bill to ComEd and Exelon. In addition to ensuring the continued distribution rate increases that were established by the EIMA, FEJA provided an extraordinary $2.35 billion earmarked subsidy for Exelon nuclear power plants located in Clinton and the Quad Cities. This earmark is funded on the backs of utility customers, who pay a specific new fee.

170. The FEJA legislation guarantees that Zero Emissions Credits ("ZECs") will be purchased from Exelon, at a price specified in the bill, and that ComEd will pass the cost of those credits on to its customers using an allocation rate that is also specified in the bill.

171. FEJA set the price of the ZECs at $16.50 per megawatt-hour (MWh) with an escalation clause beginning June 1, 2023. The law also establishes a market price index adjustment for the price of the credits.

172. The legislature directed that the ZEC funds collected be paid to the Exelon power plants each year. No other power plants were eligible to collect the ZECs. The ZECs are simply a mandatory legislative earmark to benefit Exelon.

173. The legislature directed how ZECs are allocated among electricity consumers. The ZECs are paid for through a single flat per kilowatt-hour charge to all retail customers.

174. In addition, in FEJA, the legislature also guaranteed that ComEd shall automatically be entitled to recover all administrative costs associated with the ZECs. ComEd has collected millions in guaranteed administrative costs each year under FEJA.

175. The cost of the ZECs takes an additional $235 million from consumers every year. These credits were represented by ComEd and Exelon as a way to ensure the output of nuclear power as a means to decrease carbon emissions. In reality, they were little more than money-making machines, stuffing over $2 billion into Exelon's pockets as a subsidy for the Clinton and Quad Cities nuclear plants. The Illinois General Assembly guaranteed Exelon this $235 million annual windfall for ten years, for a total of more than $2.3 billion.

176. In addition, FEJA charged consumers for various energy efficiency programs, which let ComEd "have its cake and eat it too" in three ways. First, prior to FEJA, ComEd administered certain energy efficiency programs and simply passed on the costs to consumers. Under FEJA, ComEd could, for the first time, charge ratepayers a ComEd profit margin markup on all energy efficiency programs.

177. FEJA also expanded the energy efficiency programs, which dramatically expanded the base of ComEd "investments" on which ComEd could now charge a profit. Since ComEd is permitted to make a profit on its "investments" for years and years, ComEd profits have increased and those profit margins will continue for years to come.

178. FEJA permits ComEd to charge a profit on incentive compensation, pension, and other post-employment benefits and expenses.

179. According to reports, "Madigan took the lead in shepherding" the legislation through the Assembly.[16] His efforts took root as early as 2014, when he advanced a House Resolution warning of the "dire consequences" of allowing Exelon's nuclear power plants to fail and advocating a "market-based" solution—e.g., rate increases—to bail Exelon out.[17]

180. As described in an independent news report:

> Emails between Madigan's top advisers and McClain show how they worked in tandem to silence dissent on the pro-bailout resolution by hand-picking the lawmakers who would get to vote on it in a legislative committee.
>
> Ahead of the vote, Exelon had identified at least six Democratic members of the committee who were likely to vote against the company's interests. In response, Will Cousineau, a high-ranking member of the speaker's staff, suggested a plan to remove opponents from the committee for this one vote.
>
> The next day the opponents Exelon had identified were substituted from the committee — and the resolution passed 16 to 0. Cousineau's tactic delighted McClain so much, he wrote him, "I love you."
>
> Two years after that resolution was unanimously approved by the House Environment Committee, Exelon won legislative approval for a multi-billion-dollar ratepayer bailout.
>
> Cousineau later left Madigan's staff and became a lobbyist. His clients included ComEd.[18]

181. FEJA was a controversial bill, and it too would not have passed without Madigan's involvement. The bill was introduced in the Senate in February 2016 and arrived in the House in April 2016. The Madigan-controlled Rules Committee assigned the bill to the

[16] Daniels, *supra*. n.11.
[17] *Full Text of HR1146*, Illinois General Assembly, https://ilga.gov/legislation/fulltext.asp?DocName=09800HR1146&GA=98&SessionId=85&DocTypeId=HR&LegID=82396&DocNum=1146&GAID=12&SpecSess=&Session=.
[18] Dave McKinney et al., *Emails Show ComEd Lobbyist's Deep Impact In Madigan's Inner Circle*, WBEZ (Feb. 21 2020), https://www.wbez.org/stories/emails-show-comed-lobbyists-deep-impact-in-madigans-inner-circle/e6397b1f-a88a-4d65-95af-987fd7ae5cd0.

Executive Committee, and after nearly eight months of proceedings, the bill went to a vote. It passed with 63 votes.[19] That same day, the Senate adopted the House amendments with 32 votes.

182. This was a huge win for ComEd and Exelon. It would never have happened without Madigan, or his co-conspirator, close ally, and ComEd lobbyist McClain, who was "at the forefront" of the FEJA "effort." At a party to celebrate the passage of the bill, Exelon Chief Strategy Officer William Von Hoene reportedly told McClain he had "saved [Exelon] more than hundreds of millions" of dollars.[20]

4. EIMA, the EIMA Amendments, and FEJA harmed Plaintiffs and the proposed Class of similarly-situated utility customers.

183. ComEd admits in the Deferred Prosecution Agreement "that the reasonably foreseeable anticipated benefits to ComEd" of the favorable legislation it secured by bribing Madigan was at least "$150,000.000." In reality, it was much, much more.

184. By some accounts, ComEd's revenues increased by more than $700 million under the formula set by EIMA.[21] Other sources estimate that EIMA has added "billions" to the bills of ComEd's electricity customers.[22] Much, if not all, of that increase is attributable directly to EIMA.

185. FEJA has proved similarly lucrative for ComEd and Exelon, resulting in hundreds of millions of dollars of annual revenue increases[23] which, again, would never have been extracted from consumers without Defendants' RICO scheme.[24]

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[19] Madigan himself did not vote, presumably because he had already secured enough supports from the members of the chamber he controlled.
[20] Daniels, *supra*. n.11.
[21] Steve Daniels, *ComEd asks Springfield to force you to make a 13-year bet on interest rates*, Chicago Business (March 15, 2019), https://www.chicagobusiness.com/utilities/comed-asks-springfield-force-you-make-13-year-bet-interest-rates.
[22] Mike O'Boyle, *After Investing Billions, Is Illinois Grid Modernization Paying Off For Utilities And Customers?*, Forbes (Nov. 28, 2017), https://www.forbes.com/sites/energyinnovation/2017/11/28/after-investing-billions-is-illinois-grid-modernization-paying-off-for-utilities-and-customers/#3b4dfb054c56.
[23] O'Boyle, *supra* n.22.

186. Simply put, EIMA, the EIMA Amendments, and FEJA have dramatically increased revenues and profits for ComEd and Exelon at the expense of Plaintiffs and Class Members. ComEd distribution rate revenues have grown by hundreds of millions of dollars since 2014. Under the statutory formula rates and with the FEJA fees, ComEd collects more than $600 million extra each year, and has collected over $4.7 billion more than it would have received without the legislation purchased through bribery. ComEd has made more than $3 billion in profits since EIMA passed. In addition, the fees created by FEJA alone are expected to top $12 billion. ComEd and Exelon's corruption has paid off, and will continue to pay off, handsomely for both Defendants.

STATUTES OF LIMITATIONS—RICO CLAIMS

187. **Discovery Rule**. Plaintiffs' RICO claims did not accrue until July 17, 2020 at the earliest, when the Department of Justice announced the bribery charge against Defendant ComEd and the associated Deferred Prosecution Agreement. Until that date, Plaintiffs did not discover their injuries: that their utility rate and fee structure was wildly inflated due to Defendants' illegal acts. Given the concealed nature of Defendants' bribery scheme, Plaintiffs could not have discovered their injuries before July 17, 2020. Even if Plaintiffs knew or should have known of their injuries before July 17, 2020, they did not know and could not have known Defendants' role in causing those injuries.

188. **Equitable Tolling**. Even if Plaintiffs' RICO claims accrued before July 17, 2020, the statutes of limitations are equitably tolled. Until July 17, 2020, Plaintiffs were unable to discover evidence vital to their RICO claims, namely that Defendants ensured the passage of

Footnote continued from previous page

[24] By some estimates, FEJA cost an average ComEd household approximately $29 in the first year alone. Steve Daniels, *Charges for green power, nuke subsidies hike electric bills*, Chicago Business (June 14, 2017), https://www.chicagobusiness.com/article/20170614/NEWS11/170619959/comed-customers-paying-extra-starting-this-month-to-support-nuclear-renewable-power.

EIMA, EIMA Amendments, and FEJA through bribery. Plaintiffs exercised due diligence by filing this lawsuit promptly after learning the essential facts.

189. **Fraudulent Concealment**. Even if Plaintiffs' RICO claims accrued before July 17, 2020, Defendants are estopped from enforcing the statutes of limitations due to their knowing and active affirmative steps to conceal the corrupt scheme. First, Defendants' illegal payments were by their nature self-concealing. Second, Defendants took additional steps beyond the illegal payments themselves to conceal the misconduct from Plaintiffs, including, for example, by funneling payments to Madigan's associates through a third-party consultant to keep the payments off ComEd's vendor payment system. ComEd also used invoices that falsely presented the purported services for the charges. Although Plaintiffs are not in a position to know, without discovery, the precise content of the payment reporting and invoices, Defendant ComEd has admitted to both types of concealment. The only plausible purpose of this cover-up was to prevent regulators and customers, including Plaintiffs, from discovering the illegal payments. Had ComEd properly recorded the recipients of the payments and the fact that the payments did not reflect any actual services, the illegal nature of the payments would have been discovered by internal whistleblowers or by regulators such as the ICC, with subsequent publicity ensuing. Defendants' successful cover-up accordingly prevented Plaintiffs from knowing of their claims despite due diligence.

STATUTES OF LIMITATIONS—STATE-LAW CLAIMS

190. **Discovery Rule**. Plaintiffs' state-law claims did not accrue until July 17, 2020 at the earliest, when the Department of Justice announced the bribery charge against Defendant ComEd and the associated Deferred Prosecution Agreement. Until that date, Plaintiffs did not and could not reasonably know they had been injured, by whom, or that their injuries were wrongfully caused. All that Plaintiffs knew before that date was that they paid certain utility

rates; information that, standing alone, was not sufficient to apprise a reasonable person of the need for further inquiry to determine whether a legal wrong had been committed.

191. **Continuing Violations**. Even if Plaintiffs' state-law claims accrued before July 17, 2020, those claims are timely because Defendants' violations are of a continuing nature. First, Defendants' participation in the Enterprise, including illegal payments to Madigan's associates, continued at least into 2019. Second, individual incidents of harm to Plaintiffs in the form of inflated utility rates and fees continue to occur to the present. At minimum, even if Plaintiffs' claims accrued upon the first inflated payment, and even if Plaintiffs' claims are not otherwise tolled, Plaintiffs' claims are timely as to any inflated payment within the limitations period measured back from the date of filing.

192. **Equitable Tolling**. Even if Plaintiffs' state-law claims accrued before July 17, 2020, the applicable statutes of limitations are equitably tolled until that date. Until July 17, 2020, Plaintiffs were unable to discover the necessary information to file their claims, namely that Defendants ensured the passage of EIMA, EIMA Amendments, and FEJA through bribery. Plaintiffs exercised due diligence by filing this lawsuit promptly after learning of the essential facts.

193. **Fraudulent Concealment**. Even if Plaintiffs' state-law claims accrued before July 17, 2020, Plaintiffs' claims are timely due to Defendants' fraudulent concealment of the causes of action. *See* 735 Ill. Comp. Stat. § 5/13-215. First, Defendants' illegal payments were by their nature self-concealing. Second, Defendants took additional steps beyond the illegal payments themselves to conceal the misconduct from Plaintiffs, including for example (as Defendant ComEd admits) by funneling payments to Madigan's associates through a third-party consultant to keep the payments off of ComEd's vendor payment system. ComEd also used

invoices that falsely presented the purported services for the charges. Although Plaintiffs are not in a position to know, without discovery, the precise content of the payment reporting and invoices, Defendant ComEd has admitted to both. The only plausible purpose of this cover-up was to prevent regulators and customers, including Plaintiffs, from discovering the illegal payments. Had ComEd properly recorded the recipients of the payments and the fact that the payments did not reflect any actual services, the illegal nature of the payments would have been discovered by internal whistleblowers or by regulators such as the ICC, with subsequent publicity ensuing. Defendants' successful cover-up accordingly prevented Plaintiffs from knowing of their claims despite due diligence.

194. **Equitable Estoppel**. Even if Plaintiffs' state-law claims accrued before July 17, 2020, Defendants are equitably estopped from asserting the statutes of limitations. Defendants misrepresented the purpose of their illegal payments in invoices and concealed those facts by funneling illegal payments through a third-party consultant. Defendants knew that the invoices were false and the payment records concealing when they were created. Plaintiffs were, until at least July 17, 2020, unaware of the fact or nature of Defendants' illegal payments. Defendants intended for Plaintiffs to rely upon the false invoices and payment misdirection. Plaintiffs, by trusting the integrity of the political process that created the rate and fee structure, did rely on Defendants' concealment of material facts. And Plaintiffs will be prejudiced if Defendants are not estopped.

RULE 23 ALLEGATIONS

195. Plaintiffs bring this action on behalf of themselves and all other similarly situated ComEd utility customers under Rule Federal Rule of Civil Procedure 23. Plaintiffs seek to represent a Class defined as:

> All individuals and entities who paid ComEd for electricity since June 1, 2012.

Excluded from the Class are Defendants, their agents, employees, and wholly or partly owned subsidiaries; other members of the Enterprise; Plaintiffs' counsel and their employees; and the Judge and court staff to whom this case is assigned, and their immediate families.

196. The proposed Class satisfies the requirements of Federal Rule of Civil Procedure 23(a) and 23(g):

a. **Numerosity**. The Class consists of more than a million Class members throughout Northern Illinois, making joinder impracticable. Further, ComEd has records that identify each Class member. The Class is thus readily ascertainable.

b. **Commonality**. Numerous common questions exist, the answers to which would drive resolution of the litigation, including: (i) whether Defendants paid bribes; (ii) whether Defendants' bribes increased electricity costs; and (iii) the amount of damages caused by Defendants' bribes.

c. **Typicality**. Plaintiffs' claims are typical of the Class members' claims because they and all Class members were injured through ComEd's and Exelon's uniform misconduct. The claims of Plaintiffs and Class members arise from the same operative facts and are based upon the same legal theories. There are no defenses unique to Plaintiffs.

d. **Adequacy**. Plaintiffs are adequate Class representatives because their interests do not conflict with the interests of the other members of the Class they seek to represent. Plaintiffs have retained counsel competent and experienced in class action litigation, RICO, and complex matters.

197. The proposed Class satisfies the requirements of Federal Rule of Civil Procedure 23(b)(3):

a. **Predominance**. Common questions predominate over any individual questions because the important and prevalent issues in this case concern Defendants' conduct and its effects, which are common to the Class. Individual issues are minor and may be nothing more than damages calculations pursuant to a formula. In addition, the same law applies to all Class members' claims.

b. **Superiority**. A class action is superior to any other available means for the fair and efficient adjudication of this controversy, and no unusual difficulties are likely to be encountered in the management of this class action. The damages suffered by Plaintiffs and Class members, while collectively substantial, are relatively small per Class member compared to the burden and expense required to individually litigate their claims. It would be virtually impossible for Class members individually to seek redress from this complex RICO scheme. Individualized litigation creates a potential for inconsistent or contradictory judgments and increases the delay and expense to all parties and the court system. By contrast, the class action device presents far fewer management difficulties, and provides the benefits of single adjudication, economy of scale, and comprehensive supervision by a single court. Both liability and damages can be determined in one class-wide proceeding.

198. The proposed Class certifies the requirements of Federal Rule of Civil Procedure 23(c)(4) because, if a Class cannot be certified for all issues, it would be appropriate to certify particular common issues concerning Defendants' conduct and its effects.

199. The proposed Class satisfies the requirements of Federal Rule of Civil Procedure 23(b)(2) because Defendants have acted on grounds generally applicable to the Class, thereby making declaratory relief appropriate with respect to the Class as a whole. Specifically, every Class member is equally entitled to a declaration that the profits obtained by ComEd pursuant to its bribery and wrongdoing are illegal.

200. Finally, all members of the proposed Class are readily ascertainable. ComEd has in its own records the names, addresses, and records of amounts paid by all individuals and entities who paid ComEd for electricity. Using this information, Class Members can be identified and ascertained for the purpose of providing notice.

CAUSES OF ACTION

Count I—Violation of the Racketeer Influenced and Corrupt Organizations Act (RICO), 18 U.S.C. § 1962(c)-(d)

A. ComEd's and Exelon's personhood under RICO.

201. ComEd and Exelon are "persons" under 18 U.S.C. § 1961(3) because each was capable of holding "a legal or beneficial interest in property." They can be held liable civilly under RICO.

B. ComEd and Exelon participated in a RICO enterprise.

202. Madigan's Enterprise was an "association-in-fact enterprise" within the meaning of 18 U.S.C. §1962. The purpose of the Enterprise was to enable its members to exploit the democratic legislative process for their own personal gain. Known members of the enterprise include ComEd, Exelon, and the following nonparties: Illinois Speaker of the House Michael

Madigan; ComEd lobbyist Michael McClain, Madigan associate Edward Moody; Madigan associate Frank Olivo Jr.; Madigan associate Michael Zalewski; Madigan associate Ray Nice; Madigan associate Juan Ochoa; Anne Pramaggiore, the former CEO of ComEd and senior officer of Exelon; John Hooker, ComEd's former Executive Vice President of Legislative and External Affairs; Fidel Marquez, ComEd's former Senior Vice President, Governmental and External Affairs; Jay Doherty, ComEd's lobbyist; and Doherty's company, Jay D. Doherty & Associates. Upon information and belief, several other persons also participated in the Enterprise. Discovery would identify them.

C. ComEd and Exelon participated in the conduct of the Enterprise's affairs through a pattern of racketeering activity.

203. The Enterprise engaged in a pattern of racketeering conduct over a period of years, starting at least as early as 2011 and continuing through 2019.

204. Racketeering activity under RICO includes "any act or threat involving . . . bribery . . . which is chargeable under State law and punishable by imprisonment for more than one year." 18 U.S.C. §1961(1). It also includes mail and wire fraud under 18 U.S.C. §§1341, 1343.

205. Between 2011 and 2019, Defendants committed (*see* 18 U.S.C. §1962(c)—and/or conspired with other members of the Enterprise to commit (*see* 18 U.S.C. §1962(d))—dozens (possibly hundreds) of acts of bribery and mail and/or wire fraud.

2. ComEd and Exelon participated in acts involving bribery under Illinois law.

206. The Illinois Criminal Code criminalizes bribery. The Code defines five types of "bribery." 720 Ill. Comp. Stat. Ann. 5/33-1. Each form of bribery under § 33-1 is a Class 2 felony punishable by three to seven years in prison. 730 ILCS 5/5-4.5-35.

207. A person commits bribery under § 33-1(c) when he, "[w]ith intent to cause any person to influence the performance of any act related to the employment or function of any public officer, public employee, juror or witness, he or she promises or tenders to that person any property or personal advantage which he or she is not authorized by law to accept." 720 Ill. Comp. Stat. Ann. 5/33-1(c). ComEd and/or Exelon committed this type of bribery on multiple occasions by offering positions and paying money to at least five of Madigan's associates with the intent to cause them to influence Madigan's support for EIMA, the EIMA Amendments, and FEJA, and for ComEd and Exelon generally, in his official capacity as Speaker of House. Because ComEd made regular payments to these associates over the course of eight years, ComEd likely committed bribery under § 33-1(c) dozens (possibly hundreds) of times. Specifically:

a. With the intent to influence Madigan's support for EIMA, and for ComEd and Exelon generally, in his official capacity as Speaker of the House, ComEd offered a consulting position (i.e., a "personal advantage") to Frank Olivo Jr. in or around 2011.

b. With the intent to influence Madigan's support for EIMA, and for ComEd and Exelon generally, in his official capacity as Speaker of the House, ComEd offered a consulting position (i.e., a "personal advantage") to Ed Moody in or around 2011.

c. With the intent to influence Madigan's support for EIMA, the EIMA Amendments, FEJA, and for ComEd and Exelon generally, in his official

capacity as Speaker of the House, ComEd repeatedly tendered money (i.e., "property") to[25] Frank Olivo Jr. between 2011 and 2019.

d. With the intent to influence Madigan's support for EIMA, the EIMA Amendments and FEJA, and for ComEd and Exelon generally, in his official capacity as Speaker of the House, ComEd repeatedly tendered money (i.e., "property") to[26] Ed Moody between 2011 and 2019.

e. With the intent to influence Madigan's support for EIMA, the EIMA Amendments and FEJA, and for ComEd and Exelon generally, in his official capacity as Speaker of the House, ComEd executed a contract that gave valuable rights (i.e., "property") to Victor Reyes' law firm Reyes Kurson on an annual basis beginning in 2011.

f. With the intent to influence Madigan's general support for ComEd and Exelon in his official capacity as Speaker of the House, ComEd also executed a contract that gave valuable rights (i.e., "property") to Victor Reyes' law firm Reyes Kurson on an annual basis continuing after renewal in 2016.

g. With the intent to influence Madigan's support for EIMA, the EIMA amendments and FEJA, and for ComEd and Exelon generally, in his official capacity as Speaker of the House, ComEd repeatedly tendered money (i.e., "property") to Victor Reyes' law firm Reyes Kurson each year between 2011 and 2019.

[25] The payments passed through Jay D. Doherty & Associates.
[26] The payments passed through Jay D. Doherty & Associates.

h. With the intent to influence Madigan's general support for ComEd and Exelon in his official capacity as Speaker of the House, ComEd offered Zalewski a consulting position (i.e., a "personal advantage") to Michael Zalewski in or around 2018.

i. With the intent to influence Madigan's general support for ComEd and Exelon in his official capacity as Speaker of the House, ComEd repeatedly tendered money (i.e., "property") to[27] Michael Zalewski between 2018 and 2019.

j. With the intent to influence Madigan's general support for ComEd and Exelon in his official capacity as Speaker of the House, ComEd and Exelon offered a seat on the ComEd Board of Directors (i.e., a "personal advantage") to Juan Ochoa in 2019.

k. With the intent to influence Madigan's general support for ComEd and Exelon in his official capacity as Speaker of the House, ComEd tendered money (i.e., "property") to Juan Ochoa in 2019 and 2020.

208. A person commits bribery under § 33-1(a) when he, "[w]ith intent to influence the performance of any act related to the employment or function of any public officer, public employee, juror or witness, he or she promises or tenders to that person any property or personal advantage which he or she is not authorized by law to accept." 720 Ill. Comp. Stat. Ann. 5/33-1(a). ComEd and/or Exelon committed this type of bribery on multiple occasions by tendering Madigan with a personal advantage in the form of rewards for his loyal associates that consolidated his personal power over his "old-fashioned" patronage system. ComEd and/or

[27] The payments passed through Jay D. Doherty & Associates.

Exelon performed these favors for Madigan in response to requests delivered by Madigan's lieutenant Michael McClain with the intent to influence Madigan's support for EIMA, EIMA Amendments, and FEJA, and for ComEd and Exelon generally, in his official capacity as Speaker of House. Each of ComEd's and/or Exelon's bribes under § 33-1(c) noted in the prior paragraph also constituted bribes by ComEd and/or Exelon under § 33-1(a) because each bribe to Madigan's associates also conveyed a "personal advantage" to Madigan and ComEd and/or Exelon harbored the intent to reward Madigan.

209. A person also commits bribery under § 33-1(d) when "[h]e or she receives, retains or agrees to accept any property or personal advantage which he or she is not authorized by law to accept knowing that the property or personal advantage was promised or tendered with intent to cause him or her to influence the performance of any act related to the employment or function of any public officer, public employee, juror or witness." 720 Ill. Comp. Stat. Ann. 5/33-1(d). Non-parties Olivo, Moody, Reyes, Reyes Kurson, Zalewski, and Ochoa committed bribery under § 33(d) for each bribe ComEd made to them under § 33(c) noted above because each received the property or personal advantage described above with the requisite intent (i.e., knowing the property or personal advantage was tendered with intent to cause them to influence Madigan's support for ComEd and Exelon). Specifically:

a. Olivo's knowledge is demonstrated by the fact that he performed no meaningful work for ComEd but still received tens or hundreds of thousands of dollars over the course of eight years. He must have known that the only reason ComEd paid him this money was to influence Madigan, since no rational company would make such large payments for no real work. His knowledge is also inferable based on Madigan's demand

(delivered through McClain) that ComEd hire and pay Olivo. It is highly unlikely Madigan would have made such a request if Olivo had not asked him to do so.

b. Moody's knowledge is demonstrated by the fact that he performed no meaningful work for ComEd but still received tens or hundreds of thousands of dollars over the course of eight years. He must have known that the only reason ComEd paid him this money was to influence Madigan, since no rational company would make such large payments for no real work. His knowledge is also inferable based on Madigan's demand (delivered through McClain) that ComEd hire and pay Moody. It is highly unlikely Madigan would have made such a request if Moody had not asked him to do so.

c. Reyes' knowledge is demonstrated by the fact that Reyes complained to McClain in 2016 when ComEd tried to curtail the contractual hours allotted to his law firm Reyes Kurson. McClain then complained to ComEd's CEO and specifically tied the need to pay Reyes Kurson to Madigan. Reyes had no other credible reason for complaining to McClain other than his widely known ties to Madigan, which in turn demonstrates that he must have known that influencing Madigan was the real reason ComEd retained Reyes Kurson. It is highly unlikely Madigan would have made such a request if Reyes had not asked him to do so.

d. Reyes' knowledge is imputable to Reyes Kurson.

e. Zalewski's knowledge is demonstrated by the fact that he performed no meaningful work for ComEd but still received tens of thousands of dollars over the course of two years. He must have known that the only reason ComEd paid him this money was to influence Madigan, since no rational company would make such large payments for no real work. His knowledge is also inferable based on Madigan's demand (delivered through McClain) that ComEd hire and pay Zalewski. It is highly unlikely Madigan would have made such a request if Zalewski had not asked him to do so.

f. Ochoa's knowledge is demonstrated by the fact that no member of ComEd or Exelon's Board of Directors recruited him. His knowledge is also inferable based on Madigan's demand (delivered through McClain) that ComEd give him a board seat. It is highly unlikely Madigan would have made such a request if Ochoa had not asked him to do so.

210. ComEd and Exelon conspired with Olivo, Moody, Reyes, Reyes Kurson, Zalewski, and Ochoa to commit bribery under § 33(d). As the payor, ComEd was deeply involved in each bribe.

211. Madigan committed bribery under § 33-1(d) for each bribe ComEd or Exelon made to him under § 33(a) noted above because he received each personal advantage described above with the requisite intent (i.e., knowing the property or personal advantage was tendered with intent to influence his support for EIMA, the EIMA amendments, FEJA, and for ComEd and Exelon generally). His knowledge is demonstrated by, among other things, the statements by

his lieutenant Michael McClain expressly linking Madigan's demands to his favorable treatment of ComEd and Exelon.

212. ComEd and Exelon conspired with Madigan to commit bribery under § 33-1(d). As the payor, ComEd was deeply involved in each bribe, and knew of their purpose.

213. A person also commits bribery under § 33-1(e) when "[h]e or she solicits, receives, retains, or agrees to accept any property or personal advantage pursuant to an understanding that he or she shall improperly influence or attempt to influence the performance of any act related to the employment or function of any public officer, public employee, juror or witness." 720 Ill. Comp. Stat. Ann. 5/33-1(e). Non-parties McClain, Doherty, and Jay D. Doherty & Associates committed bribery under this section. Specifically:

a. Aside from the transactions with Reyes Kurson in 2011, McClain solicited each and every transfer of property described in the discussion of § 33-1(c) above. For each solicitation, he solicited the exchange with the understanding that he would inform Madigan of the developments and thereby attempt to influence Madigan on behalf of his client, ComEd.

b. Doherty and Jay D. Doherty & Associates, on the other hand, "receive[d]" the bribes intended for Olivo, Moody, and Zalewski and then passed them along to their intended recipients. ComEd's Deferred Prosecution Agreement confirms that Doherty verbally acknowledged that these Madigan associates did no real work but that at least they kept their mouths shut. He also remarked that the payments were made "to keep [Madigan] happy." These statements alone confirm Doherty's and Jay D. Doherty & Associates' knowledge that the payments were intended to

improperly influence Madigan and were not legitimate commercial transactions.

214. ComEd and Exelon conspired with McClain to commit bribery under § 33-1(e), since his solicitations were made directly to ComEd representatives, including ComEd's and Exelon's CEO, as well as several other ComEd employees.

215. ComEd conspired with Doherty's and Jay D. Doherty & Associates' bribery under § 33-1(e), since ComEd senior executive John Hooker developed the plan to use Doherty and Jay D. Doherty & Associates as a pass-through vehicle with ComEd lobbyist Michael McClain. ComEd's CEO also acknowledged the illicit purpose behind the use of Doherty and Jay D. Doherty & Associates in 2018.

216. A violation of 720 ILCS 5/33-3(a)(4) is a form of "bribery" under RICO's definition of predicate acts. Violation of this act is punishable by two to five years imprisonment. *See* 730 ILCS 5/5-4.5-40. Under §33-3(a)(4), "[a] public officer or employee or special government agent commits misconduct when, in his official capacity or capacity as a special government agent, he or she commits any of the following acts: . . . [s]olicits or knowingly accepts for the performance of any act a fee or reward which he knows is not authorized by law." Between 2011 and 2019, Madigan committed this form of official misconduct on multiple occasions by soliciting rewards from ComEd to influence his support for EIMA, the EIMA Amendments, FEJA, and for ComEd and Exelon generally. Specifically:

a. Madigan solicited rewards in 2011 in the form of consulting jobs for Olivo and Moody in exchange for his official support for EIMA and Defendants generally.

b. Madigan solicited rewards in 2018 in form of a consulting job for Zalewski in exchange for his official support EIMA, the EIMA Amendments, FEJA, and Defendants generally.

c. Madigan solicited rewards in 2019 in form of a ComEd board position for Ochoa in exchange for his official support EIMA, EIMA Amendments, FEJA, and Defendants generally.

217. ComEd and Exelon conspired with Madigan and the Enterprise by acquiescing to all of Madigan's solicitations and providing the requested rewards. Exelon also conspired by acquiescing to the demand for Ochoa's placement on the ComEd board in 2019.

3. ComEd and Exelon committed mail and wire fraud.

218. To carry out or attempt to carry out the scheme to defraud, Defendants also conducted or participated in the conduct of the affairs of the Enterprise through a pattern of racketeering, including mail and wire fraud. 18 U.S.C. §§ 1341, 1343.

219. Specifically, in furtherance of their scheme to defraud, Doherty submitted (and Defendants caused to be submitted) numerous fraudulent invoices to ComEd between 2011 and 2019, which misrepresented the services provided. Although the invoices were purportedly submitted for Doherty's advice on legislative issues and similar matters, the money was in fact intended for ultimate payment to Madigan's associates, who in fact did little or no work for ComEd. Defendants knew this was this case, since ComEd's Executive Vice President of Legislative and External Affairs John Hooker and ComEd's lobbyist Michael McClain jointly devised the scheme with Doherty. At the time, ComEd was aware of the nature of the arrangement.

220. The details of Doherty's fraudulent invoices—including the number of such invoices and how and when they were submitted and paid—are exclusively in Defendants'

control. Upon information and belief, supported in part by commonplace business practices, the invoices and related payments were transmitted using the mail and/or wires.

221. Moreover, because ComEd paid bribes to Moody, Olivo, Nice, and Zalewski indirectly through Jay D. Doherty & Associates, the payments to Madigan's associates over the course of approximately eight years were not reflected in the vendor payment system used by ComEd. As a result, despite the fact that Madigan's associates were subcontracted under and receiving payments through Jay D. Doherty & Associates, no such payments were identifiable in ComEd's vendor payment system. The purpose of structuring these payment arrangements in this manner was to obfuscate their exorbitance and to avoid scrutiny from the ICC and/or public as to the corrupt purposes of the payments.

222. The Defendants also devised and furthered the scheme to defraud by use of the mail, telephone, and internet and transmitted or caused to be transmitted by means of mail and wire communication travelling in interstate or foreign commerce, fraudulent billing statements to Plaintiffs and Class members that were artificially inflated by the conduct of the Enterprise.

D. The Enterprise's conduct directly and proximately injured Plaintiffs' and the Class' business and/or property.

223. As described throughout this complaint, Defendants engaged in a pattern of related and continuous predicate acts spanning multiple years which directly and proximately injured Plaintiffs and Class members. The predicate acts constituted a variety of unlawful activities, each conducted with the common purpose of defrauding Plaintiffs and Class members and obtaining significant monies and revenues from them. The predicate acts also had the same or similar results, participants, victims, and methods of commission. The predicate acts were related and not isolated events.

224. By reason of and as a result of the conduct of Defendants and their pattern of racketeering activity, Plaintiffs and Class members have been injured in their business and/or property.

225. As discussed above, neither EIMA, the EIMA Amendments, nor FEJA would have passed but for Madigan's fraudulently-obtained support, and the passage of EIMA, the EIMA Amendments, and FEJA allowed Defendants to extract hundreds of millions of dollars (if not more) of fraudulently obtained and artificially inflated payments from Plaintiffs and the Class.

226. Moreover, the express aim of the RICO scheme was to reward and provide personal advantage to Madigan and his associates in exchange for legislation authorizing ComEd and Exelon to collect unjust and illegal profits from Illinois electricity customers. In paying more for electricity, Plaintiffs and the Class suffered precisely the sort of injury that would be the expected consequence of Defendants' wrongful conduct.

Count II—Civil Conspiracy

227. Plaintiffs bring this count on behalf of themselves and the Class and repeat and re-allege all previous paragraphs, as if fully included herein.

228. Defendants and the Enterprise participants knowingly and willfully conspired and agreed among themselves to, among other things, defraud Plaintiffs and the Class of money.

229. In furtherance of said conspiracy and agreement, Defendants engaged in fraudulent representations, omissions and concealment of facts, acts of bribery and cover-up, and consumer fraud—all calculated to steal monies from Plaintiffs and the Class.

230. All of the actions of Defendants set forth in the preceding paragraphs, were in violation of the rights of Plaintiffs and the Class and committed in furtherance of the aforementioned conspiracies and agreements.

231. As a direct and proximate result of Defendants' unlawful conduct, EIMA, the EIMA Amendments, and FEJA passed, allowing Defendants to earn illegal and unjust profits. Plaintiffs and Class members have suffered and will continue to suffer injury, ascertainable losses of money or property, and monetary and non-monetary damages, including from overpaying for electricity from Defendants.

232. These acts constituted malicious conduct that was carried on by Defendants with willful and conscious disregard for Plaintiffs' and Class members' rights with the intention of defrauding Plaintiffs and Class of money or otherwise causing injury, and was despicable conduct that subjected Plaintiffs and Class members to unjust hardship so as to justify an award of exemplary and punitive damages. Accordingly, punitive damages should be awarded against Defendants to punish them and deter them and other such persons from committing such wrongful and malicious acts in the future.

Count III—Violation of the Illinois Consumer Fraud Act

233. Plaintiffs bring this count on behalf of themselves and the Class and repeat and re-allege all previous paragraphs as if fully included herein.

234. The Illinois Consumer Fraud and Deceptive Business Practices Act (the "ICFA"), 815 ILCS 505/1, *et seq*., prohibits the use of unfair or deceptive business practices in the conduct of trade or commerce. The ICFA is to be liberally construed to effectuate its purposes. 815 ILCS 505/11a.

235. Defendants are "person[s]" as defined by 815 ILCS 505/1(c).

236. Plaintiffs are "consumers" as defined by 815 ILCS 505/1(c).

237. Defendants engaged in deceptive trade practices in the conduct of their business, in violation of 815 ILCS 510/2(a), by engaging in the acts and practices alleged herein.

238. Defendants' misrepresentations and omissions were material because they were likely to deceive reasonable consumers, including Plaintiffs.

239. Defendants intended Plaintiffs to reply on their omissions and misrepresentations.

240. Defendants also engaged in unfair practices in the conduct of their business, in violation of 815 ILCS 510/2(a), by engaging in the acts and practices alleged herein.

241. The unfair and deceptive practices and acts by Defendant, including, but not limited to, bribing public officials to pass favorable legislation at the expense of Plaintiffs and Class members, were immoral, unethical, oppressive, and unscrupulous. These acts caused substantial injury to Plaintiffs and Class members that they could not reasonably avoid; this substantial injury outweighed any benefits to consumers or to competition.

242. As a direct and proximate result of Defendants' deceptive and unfair acts and practices, Plaintiffs and Class members suffered and will continue to suffer injury, ascertainable losses of money or property, and monetary and non-monetary damages, including from payments to Defendants caused by the corruptly obtained legislation that results in Defendants' obtaining unjust and illegal profits.

243. Plaintiffs and Class members seek all monetary and non-monetary relief allowed by law, including reasonable attorney's fees.

244. Plaintiffs requests that this Court cause Defendants to disgorge this money to Plaintiffs and all Class Members and award Plaintiffs all monetary and non-monetary relief allowed by law, including reasonable attorney's fees. Plaintiffs, the Class, and members of the public will be harmed and/or denied an effective and complete remedy if such an order is not granted.

Count IV—Unjust Enrichment

245. Plaintiffs bring this count on behalf of themselves and the Class and repeat and re-allege all previous paragraphs as if fully included herein.

246. Plaintiffs conferred benefits on Defendants by paying to Defendants directly and indirectly billions of dollars due to legislation Defendants obtained by corruption.

247. Defendants have knowledge of such benefits.

248. Defendants have been unjustly enriched by receiving billions of dollars obtained through corruption and by retaining hundreds of millions of dollars of revenues in the form of illegal and unjust profits to the detriment of Plaintiffs and Class members.

249. Principles of justice, equity, and good conscience demand that Defendants not be allowed to retain these monies.

250. Because Defendants' retention of the non-gratuitous benefits conferred on them by Plaintiffs and members of the Class is unjust and inequitable, and because equity and good conscience requires restitution, Defendants must pay restitution to Plaintiffs and members of the Class for its unjust enrichment, as ordered by the Court.

JURY DEMAND

Plaintiffs demand trial by jury on all claims.

PRAYER FOR RELIEF

Plaintiffs, individually and on behalf of the Class, respectfully pray for the following relief:

a. An order certifying the Class as defined above, appointing Plaintiffs as the representatives of the Class, and appointing their counsel as Class Counsel;

b. An award of all economic, monetary, actual, consequential, compensatory, and punitive damages available under the law, including trebling of economic injury;

c. An award of restitution and disgorgement;

d. An award of all equitable relief requested herein;

e. An award of reasonable litigation expenses and attorneys' fees;

f. An award of pre- and post-judgment interest, to the extent allowable; and

g. Such other further relief that the Court deems reasonable and just.

January 5, 2021

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on January 5, 2021, I served the foregoing document via ECF to all parties of record.

/s/ Jonathan D. Selbin

2105027.3

EXHIBIT 1

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA	)	
	)	No.
v.	)	Hon.
	)	
COMMONWEALTH EDISON COMPANY	)	
	)	

DEFERRED PROSECUTION AGREEMENT

This Deferred Prosecution Agreement between the United States Attorney for the Northern District of Illinois, JOHN R. LAUSCH, JR. (the "government"), and defendant COMMONWEALTH EDISON COMPANY ("ComEd"), by its undersigned representative and attorneys, pursuant to authority granted by the Board of Directors of Exelon Corporation ("Exelon"), is made pursuant to the terms and conditions set forth below.

Criminal Information and Acceptance of Responsibility

1. ComEd acknowledges and agrees that the government will file the accompanying Information in the United States District Court for the Northern District of Illinois charging ComEd with bribery in violation of Title 18, United States Code, Section 666(a)(2). ComEd knowingly waives any right to indictment on this charge, as well as all rights to a speedy trial pursuant to the Sixth Amendment to the United States Constitution, Title 18, United States Code, Section 3161, and Federal Rule of Criminal Procedure 48(b).

2. ComEd admits, accepts, and acknowledges that it is responsible under United States law for the acts of its current and former officers, employees, and agents

as charged in the Information and as set forth in the Statement of Facts, attached as Attachment A and incorporated by reference into this Agreement, and that the facts alleged in the Information and described in the Statement of Facts are true and accurate. Should the government pursue the prosecution that is deferred by this Agreement, ComEd agrees that it will neither contest the admissibility of nor contradict the Statement of Facts in any such proceeding, including any trial, guilty plea or sentencing proceeding.

3. It is further understood that the government shall file this Agreement in a public Court file and may disclose this Agreement to the public.

Term of the Agreement

4. This Agreement shall have a term of three (3) years from the date on which the fully-executed Agreement is filed with the Court (the "Term"), except for specific provisions below that specify a longer period. ComEd agrees, however, that in the event the government determines, in its sole discretion, that ComEd has knowingly violated any provision of this Agreement or has failed to completely perform or fulfill each of its obligations under this Agreement, an extension or extensions of the Term may be imposed by the government, in its sole discretion, for up to a total additional time period of one year, without prejudice to the government's right to proceed as provided in the breach provisions of this Agreement below. Any extension of the Agreement extends all terms of this Agreement, including the terms of the reporting requirement in Attachment C, for an equivalent period. Conversely, in the event the government finds, in its sole discretion, that there exists a change in circumstances sufficient to eliminate the need for the reporting requirement in Attachment C, the Agreement may be

terminated early. In such event, ComEd's cooperation obligations described below shall survive until the date upon which all such investigations and prosecutions are concluded.

Relevant Considerations

5. The government enters into this Agreement based on the individual facts and circumstances presented by this case, including the nature and seriousness of the offense conduct, ComEd's timely notification to the government of an internal investigation after receiving a subpoena and being notified by the government of the nature of the government's investigation, ComEd's ongoing cooperation described more fully below, and its remedial measures and operational improvements also described more fully below.

Cooperation

6. To date, ComEd has provided substantial cooperation, which includes: conducting a thorough and expedited internal investigation; proactively identifying issues and facts that would likely be of interest to the government; making regular factual presentations to the government and sharing information that would not have been otherwise available to the government; and organizing voluminous evidence and information for the government.

7. ComEd shall continue to cooperate fully with the government in any and all matters relating to the conduct described in this Agreement and the attached Statement of Facts and other related conduct under investigation by the government at any time during the Term, until the later of the date the Term ends or the date upon which all investigations and prosecutions arising out of such conduct are concluded. At the request of the government, ComEd shall also cooperate fully with other law enforcement and

regulatory authorities and agencies in any investigation of ComEd, its subsidiaries or affiliates, or any of its present or former officers, directors, employees, agents, lobbyists and consultants, or any other party, in any and all matters relating to the conduct described in this Agreement and the attached Statement of Facts and other related conduct under investigation by the government at any time during the Term. ComEd's cooperation pursuant to this paragraph is subject to applicable law and regulations, as well as valid claims of attorney-client privilege or attorney work product doctrine; however, ComEd must provide to the government a log of any information or cooperation that is not provided based on an assertion of law, regulation, privilege, or attorney work product, and ComEd bears the burden of establishing the validity of any such an assertion. ComEd agrees that its cooperation shall include, but not be limited to, the following:

a. ComEd shall fully and truthfully cooperate in any matter in which it is called upon to cooperate by a representative of the United States Attorney's Office for the Northern District of Illinois.

b. ComEd shall truthfully and in a timely manner disclose all factual information with respect to its activities, those of its subsidiaries and affiliates, and those of its present and former directors, officers, employees, agents, lobbyists and consultants, including any evidence or allegations and internal or external investigations, about which the government may inquire. This obligation of truthful disclosure includes, but is not limited to, the obligation of ComEd to promptly provide to the government, upon request, any non-privileged document, record or other tangible evidence about which the government may inquire.

c. Upon request of the government, ComEd shall designate knowledgeable employees, agents or attorneys to provide to the government the information and materials described above on behalf of ComEd. It is further understood that ComEd must at all times provide complete, truthful, and accurate information.

d. ComEd shall use its best efforts to make available for interviews or testimony, as requested by the government, present or former officers, directors, employees, agents, lobbyists and consultants of ComEd. This obligation includes, but is not limited to, sworn testimony before a federal grand jury or in federal trials, as well as interviews with law enforcement and regulatory authorities. Cooperation shall include identification of witnesses who, to the knowledge of ComEd, may have material information regarding the matters under investigation.

e. With respect to any information, testimony, documents, records or other tangible evidence provided to the government pursuant to this Agreement, ComEd consents to any and all disclosures to other governmental authorities of such materials as the government, in its sole discretion, shall deem appropriate.

f. Should ComEd learn of any evidence or allegation of a violation of U.S. criminal law, ComEd shall promptly report such evidence or allegation to the government. On the date that the Term expires, ComEd, by its Chief Executive Officer and Chief Financial Officer, will certify to the government that ComEd has met its disclosure obligations pursuant to this Agreement. Each certification will be deemed a material statement and representation by ComEd to the executive branch of the United States for purposes of 18 U.S.C. § 1001.

8. ComEd agrees that its obligations to cooperate under the terms set forth in this Agreement will continue even after the three-year term of this Agreement and the dismissal of the Information, and ComEd will continue to fulfill the cooperation obligations set forth in this Agreement in connection with any related investigation, criminal prosecution, or civil proceeding brought by the government related to the conduct set forth in the Information or the Statement of Facts.

Payment of Monetary Penalty

9. The government and ComEd agree that the application of the 2018 U.S. Sentencing Guidelines ("Guidelines") to determine the applicable fine range yields the following:

a. Offense level. Based upon Guidelines § 2C1.1, the total offense level is 44, calculated as follows:

(a)(2) Base Offense Level	12
(b)(1) More than one bribe	+2
(b)(2) Value of the benefit to be received was greater than $150,000,000	+26
(b)(3) Involvement of an elected public official in a high-level decision-making or sensitive position	+4
TOTAL	44

b. Base fine. Based upon Guidelines § 8C2.4, the base fine is $150,000,000.

c. Culpability score. Based upon Guidelines § 8C2.5, the Culpability Score is 8, calculated as follows:

(a) Base Culpability Score	5

(b) ComEd had more than 5000 employees, and high-level personnel participated in and condoned the offense	+5
(g)(2) ComEd fully cooperated in the investigation and clearly demonstrated acceptance of responsibility	-2
TOTAL	8

d. Calculation of Fine Range. Based upon Guidelines § 8C2.6, the fine range is calculated as follows:

Base fine	$150,000,000
Minimum multiplier	1.6
Maximum multiplier	3.2
Fine range	$240,000,000 - $480,000,000

10. The government and ComEd agree, based on the application of the Guidelines, that the appropriate total criminal penalty is $200,000,000. This reflects a discount off the bottom of the applicable United States Sentencing Guidelines fine range for ComEd's substantial remediation and cooperation as set forth in this Agreement. ComEd shall be responsible for paying $100,000,000 to the United States Treasury within thirty (30) days of the filing of this Agreement and the remaining $100,000,000 within ninety (90) days of the filing of this Agreement. Nothing in the Agreement shall be deemed an agreement regarding a maximum penalty that may be imposed in any future prosecution, and the government is not precluded from arguing in any future prosecution that the Court should impose a higher fine, disgorgement or civil or criminal forfeiture, although the government agrees that under those circumstances, it will recommend to the Court that any amount paid under this Agreement should be offset against any fine

imposed as part of a future judgment. ComEd agrees that no tax deduction may be sought in connection with the payment of any part of the fine, and ComEd may not seek to recover any portion of the fine through surcharges, fees or any other charges to customers. ComEd shall not seek or accept directly or indirectly reimbursement or indemnification from any source other than Exelon with regard to the fine amount or any other amount it pays pursuant to any other agreement entered into with an enforcement authority or regulator concerning the facts set forth in the Statement of Facts.

11. The government agrees, except as provided in this Agreement, that it will not bring any criminal or civil case (except for criminal tax violations, as to which the government does not make any agreement) against ComEd or any of its present or former subsidiaries or affiliates relating to any of the conduct described in the attached Statement of Facts or in the documents produced by ComEd to the government during the investigation, or to conduct otherwise disclosed to the government by ComEd in the investigation or to conduct known to the government as of the date of this Agreement. The government, however, may use any information related to the conduct described in the attached Statement of Facts against ComEd: (a) in a prosecution for perjury or obstruction of justice; (b) in a prosecution for making a false statement; or (c) in a prosecution or other proceeding relating to a violation of any provision of Title 26 of the United States Code. This Agreement does not provide any protection against prosecution for any future conduct by ComEd or any of its present or former parents or subsidiaries. In addition, this Agreement does not provide any protection against prosecution of any individuals, regardless of their affiliation with ComEd or with any of its present or former parents or subsidiaries.

Remediation, Corporate Compliance Program, and Reporting

12. ComEd and Exelon have engaged in significant remedial measures to enhance their compliance program, including taking steps to ensure that employees and vendors ComEd identified as responsible for the conduct at issue are no longer employed by or have a relationship with ComEd; revamping the compliance structure including through the creation of the new position of Executive Vice President for Compliance and Audit with a direct reporting line to the Audit Committee of the Exelon Board of Directors and Chief Executive Officer; and drafting and implementing new compliance policies that, among other things: (a) require internal tracking and reporting of anything of value requested, solicited, or provided to public officials, including hiring requests; (b) establish due diligence and ongoing monitoring requirements for all third parties engaged in political consulting or lobbying activities; (c) prohibit subcontracting of third party lobbyists and political consultants; (d) mandate that the hiring of all third party lobbyists and political consultants must be approved by the Chief Compliance and Ethics Officer; and (e) require ongoing monitoring of all third party lobbyists and political consultants to ensure they are providing value to the business.

13. ComEd represents that it has implemented and will continue to implement a compliance and ethics program designed to prevent and detect violations of U.S. law throughout its operations, including those of its subsidiaries, agents, and joint ventures, and those of its contractors and subcontractors (to the extent subcontractors are permitted) whose responsibilities include accounting, financial reporting, lobbying, government relations, consulting, and interactions with ComEd's auditors, including, but not limited to, the minimum elements set forth in Attachment B (Corporate Compliance

Program). In addition, ComEd agrees that it will report to the government annually during the Term regarding remediation and implementation of the compliance measures described in Attachment B. These reports will be prepared in accordance with Attachment C (Corporate Compliance Reporting).

14. To address any compliance deficiencies, ComEd represents that it has undertaken, and will continue to undertake in the future, in a manner consistent with all of its obligations under this Agreement, a review of its existing internal controls, policies, and procedures regarding compliance with U.S. law. Where necessary and appropriate, ComEd agrees to adopt a new compliance program, or to modify its existing one, including internal controls, compliance policies, and procedures to ensure that it maintains a rigorous compliance program that incorporates relevant internal controls, as well as policies and procedures designed to effectively deter and detect violations of U.S. law. The compliance program will include, but not be limited to, the minimum elements set forth in Attachment B.

Deferred Prosecution

15. In consideration of: (a) ComEd's past and future cooperation as described above; (b) ComEd's payment of a monetary penalty of $200,000,000; (c) ComEd's adoption and maintenance of remedial measures, and review and audit of such measures, including the compliance undertakings described in Attachment B, the government agrees to request that the United States District Court for the Northern District of Illinois defer proceedings on the charge in the Information pursuant to Title 18, United States Code, Section 3161(h)(2), for the Term of this Agreement.

16. The government further agrees that if ComEd fully complies with all of its obligations under this Agreement, the government will not continue the criminal prosecution against ComEd described in Paragraph 1. Within thirty (30) days of the successful completion of the Term, the government shall seek dismissal of the Information filed against ComEd.

Breach of the Agreement

17. If, during the Term, (a) ComEd commits any felony under U.S. law; (b) ComEd provides in connection with this Agreement deliberately false, incomplete, or misleading information, including in connection with a disclosure of information about individual culpability; (c) ComEd fails to implement a compliance program as set forth in this Agreement and Attachment B; or (d) ComEd otherwise fails to completely perform or fulfill each of its obligations under the Agreement; or if at any time ComEd fails to cooperate as set forth in this Agreement regardless of whether the government becomes aware of such a breach after the Term is complete, ComEd shall thereafter be subject to prosecution for any federal criminal violation of which the government has knowledge, including, but not limited to, the conduct described in the attached Statement of Facts, which may be pursued by the government in the U.S. District Court for the Northern District of Illinois or any other appropriate venue. Determination of whether ComEd has breached the Agreement and whether to pursue prosecution of ComEd shall be in the government's sole discretion. Any such prosecution may be premised on information provided by ComEd or its personnel. Any such prosecution relating to the conduct described in the attached Statement of Facts or relating to conduct known to the government prior to the date on which this Agreement was signed that is not time-barred

by the applicable statute of limitations on the date of the signing of this Agreement may be commenced against ComEd or its subsidiaries, notwithstanding the expiration of the statute of limitations, between the signing of this Agreement and the expiration of the Term plus one year. Thus, by signing this Agreement, ComEd agrees that the statute of limitations with respect to any such prosecution that is not time-barred on the date of the signing of this Agreement shall be tolled for the Term plus one year. In addition, ComEd agrees that the statute of limitations as to any violation of U.S. law that occurs during the Term will be tolled from the date upon which the violation occurs until the earlier of the date upon which the government is made aware of the violation or the duration of the Term plus five years, and that this period shall be excluded from any calculation of time for purposes of the application of the statute of limitations.

18. In the event the government determines that ComEd has breached this Agreement, the government agrees to provide ComEd with written notice of such breach prior to instituting any prosecution resulting from such breach. Within thirty (30) days of receipt of such notice, ComEd shall have the opportunity to respond to the government in writing to explain the nature and circumstances of such breach, as well as the actions ComEd has taken to address and remediate the situation, which explanation the government shall consider in determining whether to pursue prosecution of ComEd.

19. In the event that the government determines that ComEd has breached this Agreement: (a) all statements made by or on behalf of ComEd or its present or former parents or subsidiaries to the government or to the Court, including the attached Statement of Facts, and any testimony given by ComEd or its present or former parents or subsidiaries before a grand jury, a court, or any tribunal, or at any legislative hearings,

whether prior or subsequent to this Agreement, and any leads or evidence derived from such statements or testimony, shall be admissible in evidence in any and all criminal proceedings brought by the government against ComEd or its present or former parents or subsidiaries; and (b) ComEd or its present or former parents or subsidiaries shall not assert any claim under the United States Constitution, Rule 11(f) of the Federal Rules of Criminal Procedure, Rule 410 of the Federal Rules of Evidence, or any other federal rule that any such statements or testimony made by or on behalf of ComEd or its present or former parents or subsidiaries prior or subsequent to this Agreement, or any leads or evidence derived therefrom, should be suppressed or are otherwise inadmissible. The decision whether conduct or statements of any current director, officer or employee, or any person acting on behalf of, or at the direction of, ComEd or its present or former parents or subsidiaries, will be imputed to ComEd for the purpose of determining whether ComEd has violated any provision of this Agreement shall be in the sole discretion of the government.

Statements by ComEd

20. ComEd expressly agrees that it shall not, through present or future attorneys, officers, directors, employees, agents or any other person authorized to speak for ComEd, make any public statement, in litigation or otherwise, contradicting the acceptance of responsibility by ComEd set forth above or the facts described in the attached Statement of Facts. ComEd agrees that if it or any of its present or former parents or subsidiaries issues a press release or holds any press conference in connection with this Agreement, ComEd shall first consult the government to determine (a) whether the text of the release or proposed statements at the press conference are true and

accurate with respect to matters relating to this Agreement; and (b) whether the government has any objection to the release.

Limitations on Binding Effect of Agreement

21. This Agreement is binding on ComEd and the government but specifically does not bind (i) any component of the Department of Justice other than the United States Attorney's Office for the Northern District of Illinois, (ii) other federal agencies, (iii) any state, local or foreign law enforcement or regulatory agencies, or (iv) any other authorities, although the government will bring the cooperation of ComEd and its compliance with its obligations under this Agreement to the attention of such agencies and authorities if requested to do so by ComEd.

Changes in Corporate Form

22. Except as may otherwise be agreed by the government and ComEd in connection with a particular transaction, ComEd agrees that in the event that, during the term of any of its obligations under this Agreement, it undertakes any change in corporate form, including if it sells, merges, or transfers business operations that are material to ComEd's consolidated operations, as they exist as of the date of this Agreement, whether such change is structured as a sale, asset sale, merger, transfer, or other change in corporate form, it shall include in any contract for sale, merger, transfer, or other change in corporate form a provision binding the purchaser, or any successor in interest thereto, to the obligations described in this Agreement. The purchaser or successor in interest must also agree in writing that the government's ability to determine there has been a breach under this Agreement is applicable in full force to that entity. ComEd agrees that the failure to include this Agreement's breach provisions in

the transaction will make any such transaction null and void. ComEd shall provide notice to the government at least thirty (30) days prior to undertaking any such sale, merger, transfer, or other change in corporate form. The government shall notify ComEd prior to such transaction (or series of transactions) if it determines that the transaction(s) will have the effect of circumventing or frustrating the enforcement purposes of this Agreement. If at any time during the Term ComEd engages in a transaction(s) that has the effect of circumventing or frustrating the enforcement purposes of this Agreement, the government may deem it a breach of this Agreement pursuant to the breach provisions of this Agreement. Nothing herein shall restrict ComEd from indemnifying (or otherwise holding harmless) the purchaser or successor in interest for penalties or other costs arising from any conduct that may have occurred prior to the date of the transaction, so long as such indemnification does not have the effect of circumventing or frustrating the enforcement purposes of this Agreement, as determined by the government.

Notice

23. Any notice to the government under this Agreement shall be given by personal delivery, overnight delivery by a recognized delivery service, or registered or certified mail, addressed to the Chief, Public Corruption and Organized Crime Section, United States Attorney's Office, 219 South Dearborn Street, Fifth Floor, Chicago, IL 60604. Any notice to ComEd shall be given by personal delivery, overnight delivery by a recognized delivery service, or registered or certified mail, addressed to Charles B. Sklarsky, Jenner & Block LLP, 353 North Clark Street, Chicago, IL 60654.

Complete Agreement

24. This Agreement sets forth all the terms of the agreement between ComEd and the government. No amendments, modifications or additions to this Agreement shall be valid unless they are in writing and signed by the government, the attorneys for ComEd, and a duly authorized representative of ComEd.

Date: July 17, 2020

BY: _____

JOHN R. LAUSCH, JR.
United States Attorney
Northern District of Illinois

AMARJEET S. BHACHU
Chief, Public Corruption and
Organized Crime Section
Northern District of Illinois

DIANE MacARTHUR
TIMOTHY J. CHAPMAN
Senior Litigation Counsel
Northern District of Illinois

SARAH E. STREICKER
Deputy Chief, Public Corruption and
Organized Crime Section
Northern District of Illinois

MATTHEW L. KUTCHER
Deputy Chief, General Crimes
Section Northern District of Illinois

MICHELLE KRAMER
Assistant United States Attorney
Northern District of Illinois

AGREED AND CONSENTED TO:

COMMONWEALTH EDISON COMPANY

Date: 7/16/2020 BY: _____
DAVID A. GLOCKNER
Executive Vice President for
Compliance and Audit
Exelon Corporation

Date: 7/16/20 BY: _____
REID J. SCHAR
Jenner & Block LLP
Counsel for Commonwealth Edison
Company

Date: 7/16/20 BY: _____
GAYLE E. LITTLETON
Jenner & Block LLP
Counsel for Commonwealth Edison
Company

CORPORATE OFFICER'S CERTIFICATE

I have read this Agreement and carefully reviewed every part of it with outside counsel for Commonwealth Edison Company ("ComEd"). I understand the terms of this Agreement and voluntarily agree, on behalf of ComEd, to each of its terms. Before signing this Agreement, I consulted outside counsel for ComEd. Counsel fully advised me of the rights of ComEd, of possible defenses, of the Sentencing Guidelines' provisions, and of the consequences of entering into this Agreement.

I have carefully reviewed the terms of this Agreement with the Exelon Corporation ("Exelon") Board of Directors. I have advised and caused outside counsel for ComEd and Exelon to advise the Exelon Board of Directors fully of the rights of ComEd, of possible defenses, of the Sentencing Guidelines' provisions, and of the consequences of entering into the Agreement. No promises or inducements have been made other than those contained in this Agreement. Furthermore, no one has threatened or forced me, or to my knowledge any person authorizing this Agreement on behalf of ComEd, in any way to enter into this Agreement. I am also satisfied with outside counsel's representation in this matter. I certify that I am an officer of Exelon and that I have been duly authorized by ComEd to execute this Agreement on behalf of ComEd.

Date: 7/16/2020 BY: David A. Glockner

DAVID A. GLOCKNER
Executive Vice President for
Compliance and Audit
Exelon Corporation

CERTIFICATE OF COUNSEL

We are counsel for Commonwealth Edison Company ("ComEd") and Exelon Corporation ("Exelon") in the matter covered by this Agreement. In connection with such representation, we have examined relevant ComEd and Exelon documents and have discussed the terms of this Agreement with the Exelon Board of Directors. Based on our review of the foregoing materials and discussions, we are of the opinion that the representative of ComEd has been duly authorized to enter into this Agreement on behalf of ComEd and that this Agreement has been duly and validly authorized, executed, and delivered on behalf of ComEd and is a valid and binding obligation of ComEd. Further, we have carefully reviewed the terms of this Agreement with the Exelon Board of Directors and the Chief Executive Officer of ComEd. We have fully advised them of the rights of ComEd, of possible defenses, of the Sentencing Guidelines' provisions and of the consequences of entering into this Agreement. To our knowledge, the decision of ComEd to enter into this Agreement, based on the authorization of Exelon's Board of Directors, is an informed and voluntary one.

Date: 7/16/20 BY: _____
REID J. SCHAR
Jenner & Block LLP
Counsel for Commonwealth Edison Company

Date: 7/16/20 BY: _____
GAYLE E. LITTLETON
Jenner & Block LLP
Counsel for Commonwealth Edison Company

ATTACHMENT A

STATEMENT OF FACTS

The following Statement of Facts is incorporated by reference as part of the Deferred Prosecution Agreement (the "Agreement") between the United States Attorney's Office for the Northern District of Illinois and Commonwealth Edison Company ("ComEd"). ComEd hereby agrees and stipulates that the following information is true and accurate. ComEd admits, accepts, and acknowledges that it is responsible for the acts of its current and former officers, directors, employees, and agents as set forth below.

I. Background

ComEd is the largest utility company in Illinois. It employs over 6,000 individuals, and delivers electricity to approximately 70% of Illinois's population. It is a majority-owned subsidiary of Exelon Corporation ("Exelon"), and operates from its headquarters located in Chicago.

As a utility, ComEd is subject to extensive regulation by the State of Illinois. The State of Illinois regulates the rates that ComEd may charge its customers, as well as the rate of return ComEd may realize from its business operations. The legislative branch of the State of Illinois, known as the Illinois General Assembly, has routinely considered bills and has passed legislation that has had a substantial impact on ComEd's operations and profitability, including legislation that affects the regulatory process ComEd uses to determine the rates ComEd charges its customers for the delivery of electricity. In order for legislation to become law, it must be passed by both houses of the Illinois General Assembly—the Illinois House of Representatives and the Illinois Senate.

For example, in 2011, the General Assembly passed the Energy Infrastructure and Modernization Act ("EIMA"). EIMA provided for a regulatory process through which ComEd was able to more reliably determine rates it could charge customers and, in turn, determine how much money it was able to generate from its operations to cover, among other things, costs for grid-infrastructure improvements. The passage of EIMA therefore helped improve ComEd's financial stability. EIMA was passed by the Illinois House of Representatives in or around May 2011, and by the Illinois Senate in or around August 2011. EIMA was then vetoed by the Governor of the State of Illinois. Thereafter, in or around October 2011, both houses of the Illinois General Assembly voted to override the Governor's veto. In 2016, the General Assembly passed the Future Energy Jobs Act ("FEJA"), which provided for a renewal of the regulatory process that was beneficial to ComEd. Since the passage of FEJA, ComEd has had a continuing interest in advancing legislation in the General Assembly favorable to its interests, and opposing legislation that was not consistent with its operational and financial success.

Public Official A is the Speaker of the Illinois House of Representatives and the longest serving member of the House of Representatives. ComEd understood that, as Speaker of the House of Representatives, Public Official A was able to exercise control over what measures were called for a vote in the House of Representatives and had substantial influence and control over fellow lawmakers concerning legislation, including legislation that affected ComEd. Public Official A was an agent of the State of Illinois, a State government that during each of the twelve-month calendar years from 2011 to 2019, received federal benefits in excess of $10,000.

Individual A served in the Illinois House of Representatives for approximately ten years beginning in 1972. After Individual A's service in the Illinois House of Representatives, Individual A served as a lobbyist and/or consultant for ComEd until 2019. During that time, Individual A made known to ComEd that Individual A had a close personal relationship with Public Official A.

CEO-1 was the chief executive officer of ComEd between in and around March 2012 and May 2018. From June 1, 2018 to October 15, 2019, CEO-1 served as a senior executive at Exelon Utilities, and had oversight authority over ComEd's operations.

Senior Executive 1 served as ComEd's senior vice president for legislative and external affairs from in or around March 2012 until in or around September 2019.

Lobbyist 1 served as ComEd's executive vice president of legislative and external affairs from in and around 2009 until Lobbyist 1's retirement in and around 2012. From 2012 to 2019, Lobbyist 1 served as an external lobbyist for ComEd.

Consultant 1 was the owner of Company 1, which performed consulting services for ComEd until in and around 2019.

II. Conduct

Overview

From in or around 2011 through in or around 2019, in an effort to influence and reward Public Official A's efforts, as Speaker of the Illinois House of Representatives, to assist ComEd with respect to legislation concerning ComEd and its business, ComEd arranged for various associates of Public Official A, including Public Official A's political allies and individuals who performed political work for Public Official A, to obtain jobs, vendor subcontracts, and monetary payments associated with those jobs and

subcontracts from ComEd, even in instances where certain political allies and workers performed little or no work that they were purportedly hired to perform for ComEd.

Hiring of Public Official A's Associates as Vendor "Subcontractors"
Who Performed Little or No Work for ComEd

ComEd employees and agents, including third-party consultants and lobbyists, were subject to Exelon's Code of Conduct. Exelon's Code of Conduct, applicable beginning in 2015, required employees and agents to: (a) "[k]eep accurate and complete records so all payments are honestly detailed and company funds are not used for unlawful purposes"; (b) "[c]onduct due diligence on all potential agents, consultants or other business partners"; and (c) "[n]ever use a third party to make payments or offers that could be improper." Exelon's Code of Conduct also prohibited bribery and listed as an example of a prohibited bribe: "Providing something of value for the benefit of a public official in a position to make a decision that could benefit the company."

Beginning no later than in or around 2011, Public Official A and Individual A sought to obtain from ComEd jobs, vendor subcontracts, and monetary payments associated with those jobs and subcontracts for various associates of Public Official A, such as precinct captains who operated within Public Official A's legislative district.

In or around 2011, Individual A and Lobbyist 1 developed a plan to direct money to two of Public Official A's associates ("Associate 1" and "Associate 2") by having ComEd pay them indirectly as subcontractors to Consultant 1. Payments to Associate 1 and Associate 2, as well as later payments to other subcontracted associates of Public Official A, continued until in or around 2019, even though those associates did little or no work during that period.

Consultant 1 agreed in 2011 that Public Official A's associates would be identified as subcontractors under Consultant 1's contract and that ComEd's payments to Consultant 1 would be increased to cover payments to those subcontractors. Between in or around 2011 and 2019, Consultant 1 executed written contracts and submitted invoices to ComEd that made it falsely appear that the payments made to Company 1 were all in return for Consultant 1's advice on "legislative issues" and "legislative risk management activities," and other similar matters, when in fact a portion of the compensation paid to Company 1 was intended for ultimate payment to Public Official A's associates, who in fact did little or no work for ComEd. Consultant 1 and Company 1 did little, if anything, to direct or supervise the activities of Public Official A's associates, even though they were subcontracted under and received payments through Company 1. Moreover, because they were paid indirectly through Company 1, the payments to Public Official A's associates over the course of approximately eight years were not reflected in the vendor payment system used by ComEd, and as a result, despite that Public Official A's associates were subcontracted under and receiving payments through Company 1, no such payments were identifiable in ComEd's vendor payment system.

Certain senior executives and agents of ComEd were aware of these payments from their inception until they were discontinued in or around 2019. For example, in or around May 2018, Public Official A, through Individual A, asked CEO-1 to hire a political ally of Public Official A who was retiring from the Chicago City Council at the end of the month ("Associate 3"). CEO-1, in coordination with Senior Executive 1 and Consultant 1, agreed that ComEd would pay Associate 3 approximately $5,000 a month indirectly as a subcontractor through Company 1. At the time CEO-1 approved this arrangement, CEO-

1 was aware that there were other associates of Public Official A that were paid indirectly as subcontractors through Company 1, which CEO-1 referred to as the "roster." CEO-1 also agreed that Public Official A—rather than an officer or employee of ComEd or Company 1—would advise Associate 3 of this new arrangement. In or around June 2018, Company 1's contract was revised to include extra funding for the purpose of paying Associate 3. In seeking to justify the extra funding, Consultant 1 claimed falsely that an additional fee of $5,000 a month was necessary under Company 1's contract, in part because of Company 1's "expanded role with Cook County Board president's office and Cook County Commissioners and Department Heads," when in fact the additional $5,000 a month in compensation was intended for payment to Associate 3. ComEd approved of the additional payments to Company 1, knowing they were intended for Associate 3.

Certain senior executives and agents of ComEd were also aware of the purpose of these payments to Public Official A's associates, namely, that they were intended to influence and reward Public Official A in connection with Public Official A's official duties and to advance ComEd's business interests. For example:

a. On or about May 16, 2018, Individual A explained to Senior Executive 1 why certain individuals were being paid indirectly through Company 1, by making reference to their utility to Public Official A's political operation. Individual A identified Associate 1, one of the several individuals on Company 1's payroll, as "one of the top three precinct captains" who also "trains people how to go door to door . . . so just to give you an idea how important the guy is."

b. On or about February 7, 2019, Individual A advised Senior Executive 1 about how to present information within ComEd concerning the renewal of

Company 1's contract for 2019. In the conversation, Individual A advised Senior Executive 1 that, "I would say to you don't put anything in writing," explaining later in the conversation because "all it can do is hurt ya." Individual A further advised Senior Executive 1 that, if asked by a ComEd official why Company 1 was being paid, Senior Executive 1 should explain that the associates of Public Official A were former ward committeemen and aldermen, that it was a "favor," and that it would be up to Consultant 1 to prove that Public Official A's associates performed work, not ComEd.

c. On or about February 11, 2019, Individual A had a conversation with Lobbyist 1, who by that time had retired from ComEd, but had continued to serve as a paid external lobbyist to ComEd. In discussing how the renewal of Company 1's contract—which included significant payments to Company 1 to account for indirect payments to Public Official A's associates—should be communicated internally, Individual A said, "We had to hire these guys because [Public Official A] came to us. It's just that simple." Lobbyist 1 agreed, and added, "It's, it's clean for all of us."

d. On or about February 13, 2019, Consultant 1 advised Senior Executive 1 that Associate 1 and Associate 2 had been made "subcontractors" of Company 1 at the request of Lobbyist 1, and that Associate 3 was also currently being paid as a "subcontractor." Consultant 1 emphasized that he had told no one of the arrangement per instructions previously given to Consultant 1, and cautioned Senior Executive 1 that ComEd should not tamper with the arrangement because "your money comes from Springfield," and that Consultant 1 had "every reason to believe" that Individual A had spoken to Public Official A about the retention of Public Official A's associates, and knew Lobbyist 1 had done so. Consultant 1 added that Public Official A's

associates "keep their mouth shut, and, you know, so. But, do they do anything for me on a day to day basis? No." Consultant 1 explained that these payments were made "to keep [Public Official A] happy, I think it's worth it, because you'd hear otherwise."

e. On or about March 5, 2019, Individual A and ComEd personnel participated in a meeting during which they discussed Company 1's contract and why the indirect payments to Public Official A's associates made under the guise of that contract should be continued for another year. During that meeting, Individual A explained that for decades, Public Official A had named individuals to be ComEd employees, such as meter readers, as part of an "old-fashioned patronage system." In response, a ComEd employee acknowledged that such hires could be a "chip" used by ComEd. ComEd renewed Company 1's contract.

f. On or about March 6, 2019, Individual A and Lobbyist 1 discussed the renewal of Company 1's contract. During the conversation, Lobbyist 1 explained that "with the [Consultant 1] stuff, you got a little leg up," to which Individual A agreed. Lobbyist 1 later added, "I mean it's uh, unmentioned, but you know, that which is understood need not be mentioned." Individual A responded, "Right. Exactly. Exactly."

Between in and around 2011 and 2019, indirect payments made to Public Official A's associates—who performed little or no work for ComEd—totaled approximately $1,324,500. These indirect payments were made not only through Company 1, but through other additional third-party vendors. As with Company 1, these other third-party vendors entered into contracts with ComEd that noted that the payments made to these vendors by ComEd were for consulting and related services, when in truth, a substantial portion of the money paid to these vendors was intended for Public Official A's associates,

who did little or no work for ComEd. These payments, like those made indirectly through Company 1, were intended to influence and reward Public Official A in connection with the advancement and passage of legislation favorable to ComEd in the Illinois General Assembly. Prior to ComEd's discovery of the federal law enforcement investigation, Public Official A's and Individual A's approval was sought by ComEd before payments to certain of Public Official A's associates were discontinued, even though these individuals performed little or no work for ComEd. As with the payments made to Public Official A's associates through Company 1, despite that Public Official A's associates were subcontracted under and receiving payments through these third party vendors, no such payments were identifiable in ComEd's vendor payment system. Certain former ComEd executives designed these payment arrangements in part to conceal the size of payments made to Public Official A's associates, and to assist ComEd in denying responsibility for oversight of Public Official A's associates, who performed little or no work for ComEd.

Appointment of Board Member 1 as Member of the Board of Directors at the Request of Public Official A

Beginning in or around 2017, Public Official A sought the appointment of an associate to the ComEd Board of Directors (hereinafter referred to as "Board Member 1"). Public Official A's request was communicated by Individual A to CEO-1. In or around May 2018, in response to internal company opposition to the appointment of Board Member 1, CEO-1 asked Individual A if Public Official A would be satisfied if CEO-1 arranged for Board Member 1 to receive a part-time job that paid an equivalent amount of money to a board member position, namely, $78,000 a year. Individual A told CEO-1 that Public Official A would appreciate if CEO-1 would "keep pressing" for the

appointment of Board Member 1, and CEO-1 agreed to do so. In or around September 2018, CEO-1 (who by this time had been promoted to an executive position within Exelon Utilities, in which capacity CEO-1 maintained oversight authority over ComEd) assured Individual A that CEO-1 was continuing to advocate for the appointment of Board Member 1 made at Public Official A's request because "You take good care of me and so does our friend [Public Official A] and I will do the best that I can to, to take care of you."

On or about April 25, 2019, CEO-1 advised Individual A by text message, "Just sent out Board approval to appoint [Board Member 1] to ComEd Board." The following day, April 26, 2019, ComEd filed a notice with the United States Securities and Exchange Commission stating that Board Member 1 had served as a director of ComEd since April 2019. Although ComEd and Exelon conducted due diligence on Board Member 1 and ultimately determined he was qualified for a Board position, no one at ComEd or Exelon recruited Board Member 1 to serve as a director, and ComEd did not interview or vet other outside candidates for the vacant board seat. ComEd appointed Board Member 1, in part, with the intent to influence and reward Public Official A in connection with Public Official A's official duties.

Retention of Law Firm A

In or around 2011, ComEd agreed to retain Law Firm A, and entered into a contract pursuant to which ComEd agreed to provide Law Firm A with a minimum of 850 hours of attorney work per year. This contract was entered into with Law Firm A, in part, with the intent to influence and reward Public Official A in connection with Public Official A's official duties and because personnel and agents of ComEd understood that giving this contract to Law Firm A was important to Public Official A. In 2016, Law Firm

A's contract was up for renewal. As part of renewal discussions, personnel within ComEd sought to reduce the hours of legal work they provided to Law Firm A from the 850 hours specified in the 2011 retention agreement because ComEd paid only for hours worked and there was not enough appropriate legal work to give to Law Firm A to fill 850 annual hours.

Thereafter, an attorney associated with Law Firm A [Lawyer A] complained to Individual A about ComEd's effort to reduce the amount of work provided to Law Firm A. On or about January 20, 2016, Individual A contacted CEO-1 and wrote, "I am sure you know how valuable [Lawyer A] is to our Friend [Public Official A]," and then went on to write, "I know the drill and so do you. If you do not get involve [sic] and resolve this issue of 850 hours for his law firm per year then he will go to our Friend [Public Official A]. Our Friend [Public Official A] will call me and then I will call you. Is this a drill we must go through?" CEO-1 replied in writing, "Sorry. No one informed me. I am on this." Thereafter, CEO-1 tasked a ComEd employee, who was assigned as a "project manager" to assist with the project of obtaining legislative approval of FEJA, to ensure that Law Firm A's contract was renewed. The project manager had no oversight authority over ComEd's legal department and was not otherwise involved in deciding what legal professionals the legal department retained. The project manager was assigned the task of ensuring Law Firm A's contract was renewed because the work provided to Law Firm A was, in part, designed to influence and reward Public Official A in connection with Public Official A's official duties, including the promotion and passage of FEJA. ComEd agreed in or around June 2016 to renew Law Firm A's contract with substantially reduced annual hours.

Internship Program

Beginning no later than 2013, and continuing until in or around 2019, ComEd operated an internship program. As part of the program, ComEd would accept a specified target number of students who primarily resided in a Chicago ward that Public Official A was associated with ("Public Official A's Ward") and that were recommended to ComEd by associates of Public Official A, including Individual A. ComEd hired students from Public Official A's Ward, in part, with the intent to influence and reward Public Official A in connection with Public Official A's official duties.

Benefit to ComEd

Between in or around 2011 and in or around 2019, during the same time frame that ComEd was making payments to Public Official A's associates, and extending other benefits for the purpose of influencing and rewarding Public Official A, ComEd was also seeking Public Official A's support for legislation that was beneficial to ComEd, including EIMA and FEJA, that would ensure a continued favorable rate structure for ComEd. ComEd acknowledges that the reasonably foreseeable anticipated benefits to ComEd of such legislation exceeded $150,000,000.

ATTACHMENT B

CORPORATE COMPLIANCE PROGRAM

Recognizing the remedial measures undertaken by Commonwealth Edison Company ("ComEd") set forth in the Deferred-Prosecution Agreement, ComEd agrees to continue to conduct, in a manner consistent with all of its obligations under this Agreement, appropriate reviews of its existing internal controls, policies, and procedures and to address any deficiencies in its internal controls, compliance code, policies, and procedures regarding compliance with U.S. law.

Where necessary and appropriate, ComEd agrees to modify its compliance program, including internal controls, compliance policies, and procedures to ensure that it maintains an effective system of internal accounting controls designed to ensure the making and keeping of fair and accurate books, records, and accounts, as well as policies and procedures designed to effectively detect and deter violations of U.S. law. At a minimum, this should include, but not be limited to, the following elements to the extent they are not already part of ComEd's existing internal controls, compliance code, policies, and procedures:

High-Level Commitment

1. ComEd will ensure that its directors and senior management provide strong, explicit, and visible support and commitment to its corporate policy against violations of U.S. law and its compliance code.

Policies and Procedures

2. ComEd will develop and promulgate a clearly articulated and visible corporate policy against violations of U.S. law, which policy shall be memorialized in a written compliance code.

3. ComEd will develop and promulgate compliance policies and procedures designed to reduce the prospect of violations of U.S. law and ComEd's compliance code, and ComEd will take appropriate measures to encourage and support the observance of ethics and compliance policies and procedures against violation of U.S. law by personnel at all levels of ComEd. These policies and procedures shall apply to all directors, officers, and employees and, where necessary and appropriate, outside parties including consultants and lobbyists acting on behalf of ComEd. ComEd shall notify all employees that compliance with the policies and procedures is the duty of individuals at all levels of the company.

4. ComEd will ensure that it has a system of financial and accounting procedures, including a system of internal controls, reasonably designed to ensure the maintenance of fair and accurate books, records, and accounts. This system should be designed to provide reasonable assurances that transactions are recorded as necessary to permit preparation of financial statements in conformity with generally accepted accounting principles or any other criteria applicable to such statements, and to maintain accountability for assets.

Periodic Risk-Based Review

5. ComEd will develop these compliance policies and procedures on the basis of a periodic risk assessment addressing the individual circumstances of ComEd.

6. ComEd shall review these policies and procedures no less than annually and update them as appropriate to ensure their continued effectiveness, taking into account relevant developments in the field and evolving international and industry standards.

Proper Oversight and Independence

7. ComEd will assign responsibility to one or more senior corporate executives of ComEd or Exelon for the implementation and oversight of ComEd's compliance code, policies, and procedures. Such corporate official(s) shall have the authority to report directly to independent monitoring bodies, including internal audit, ComEd's and Exelon Corporation's ("Exelon's") Board of Directors, or any appropriate committee of either Board of Directors, and shall have an adequate level of autonomy from management as well as sufficient resources and authority to maintain such autonomy.

Training and Guidance

8. ComEd will implement mechanisms designed to ensure that its compliance code, policies, and procedures are effectively communicated to all directors, officers, employees, and, where appropriate, agents and business partners including consultants and lobbyists. These mechanisms shall include: (a) periodic training for all directors and officers, all employees in positions of leadership or trust, positions that require such training (e.g., internal audit, sales, legal, compliance, finance, and government relations), and, where appropriate, agents and business partners including consultants and lobbyists; and (b) corresponding certifications by all such directors,

officers, employees, agents, and business partners certifying compliance with the training requirements.

9. ComEd will maintain, or where necessary establish, an effective system for providing guidance and advice to directors, officers, employees, and, where necessary and appropriate, agents and business partners including consultants and lobbyists, on complying with ComEd and Exelon's compliance code, policies, and procedures, including when they need advice on an urgent basis.

Internal Reporting and Investigation

10. ComEd will maintain, or where necessary establish, an effective system for internal and, where possible, confidential reporting by, and protection of, directors, officers, employees, and, where appropriate, agents and business partners including consultants and lobbyists concerning violations of U.S. law or ComEd's compliance code, policies, and procedures.

11. ComEd will maintain, or where necessary establish, an effective and reliable process with sufficient resources for responding to, investigating, and documenting allegations of violations of U.S. law or ComEd's compliance code, policies, and procedures.

Enforcement and Discipline

12. ComEd will implement mechanisms designed to effectively enforce its compliance code, policies, and procedures, including appropriately incentivizing compliance and disciplining violations.

13. ComEd will institute appropriate disciplinary procedures to address, among other things, violations of U.S. law and ComEd's compliance code, policies, and

procedures by ComEd's directors, officers, and employees. Such procedures should be applied consistently and fairly, regardless of the position held by, or perceived importance of, the director, officer, or employee. ComEd shall implement procedures to ensure that where misconduct is discovered, reasonable steps are taken to remedy the harm resulting from such misconduct, and to ensure that appropriate steps are taken to prevent further similar misconduct, including assessing the internal controls, compliance code, policies, and procedures and making modifications necessary to ensure the overall compliance program is effective.

Mergers and Acquisitions

14. ComEd will develop and implement policies and procedures for mergers and acquisitions requiring that ComEd conduct appropriate risk-based due diligence on potential new business entities.

15. ComEd will ensure that ComEd's compliance code, policies, and procedures regarding U.S. law apply as quickly as is practicable to newly acquired businesses or entities merged with ComEd and will promptly train the directors, officers, employees, agents, and business partners consistent with Paragraph 8 above on ComEd's compliance code, policies, and procedures.

Monitoring and Testing

16. ComEd will conduct periodic reviews and testing of its compliance code, policies, and procedures designed to evaluate and improve their effectiveness in preventing and detecting violations of U.S. law and ComEd's code, policies, and procedures, taking into account relevant developments in the field and evolving industry standards.

ATTACHMENT C

REPORTING REQUIREMENTS

Commonwealth Edison Company ("ComEd") agrees that it will report to the U.S. Attorney's Office for the Northern District of Illinois (the "government") periodically, at no less than twelve-month intervals during a three-year term, regarding remediation and implementation of the compliance program and internal controls, policies, and procedures described in Attachment B. During this three-year period, ComEd shall: (1) conduct an initial review and submit an initial report, and (2) conduct and prepare at least two follow-up reviews and reports, as described below:

a. By no later than one year from the date this Agreement is executed, ComEd shall submit to the government a written report setting forth a complete description of its remediation efforts to date, its proposals reasonably designed to improve its internal controls, policies, and procedures for ensuring compliance with U.S. law, and the proposed scope of the subsequent reviews. The report shall be transmitted to:

Chief, Public Corruption and Organized Crime Section
U.S. Attorney's Office for the Northern District of Illinois
219 South Dearborn Street, Fifth Floor
Chicago, IL 60604

ComEd may extend the time period for issuance of the report with prior written approval of the government.

b. ComEd shall undertake at least two follow-up reviews and reports, incorporating the views of the government on its prior reviews and reports, to further

monitor and assess whether its policies and procedures are reasonably designed to detect and prevent violations of U.S. law.

c. The first follow-up review and report shall be completed by no later than one year after the initial report is submitted to the government. The second follow-up review and report shall be completed and delivered to the government no later than thirty days before the end of the Term.

d. The reports will likely include proprietary, financial, confidential, and competitive business information. Moreover, public disclosure of the reports could discourage cooperation, impede pending or potential government investigations and thus undermine the objectives of the reporting requirement. For these reasons, among others, the reports and the contents thereof are intended to remain and shall remain non-public, except as otherwise agreed to by the parties in writing, or except to the extent that the government determines in its sole discretion that disclosure would be in furtherance of the government's discharge of its duties and responsibilities or is otherwise required by law.

e. ComEd may extend the time period for submission of any of the follow-up reports with prior written approval of the government.

EXHIBIT 2

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA v. FIDEL MARQUEZ	No. 20 CR 602 Judge Mary M. Rowland

PLEA AGREEMENT

1. This Plea Agreement between the United States Attorney for the Northern District of Illinois, JOHN R. LAUSCH, JR., and defendant FIDEL MARQUEZ, and his attorneys, CHRISTOPHER NIEWOEHNER and WILLIAM R. ANDRICHIK, is made pursuant to Rule 11 of the Federal Rules of Criminal Procedure. The parties to this Agreement have agreed upon the following:

Charge in This Case

2. The information in this case charges defendant with conspiracy to commit bribery, in violation of Title 18, United States Code, Section 371.

3. Defendant has read the charge against him contained in the information, and that charge has been fully explained to him by his attorney.

4. Defendant fully understands the nature and elements of the crime with which he has been charged.

Charge to Which Defendant Is Pleading Guilty

5. By this Plea Agreement, defendant agrees to enter a voluntary plea of guilty to the information, which charges defendant with conspiracy to commit bribery, in violation of Title 18, United States Code, Section 371.

Factual Basis

6. Defendant will plead guilty because he is in fact guilty of the charge contained in the information. In pleading guilty, defendant admits the following facts and that those facts establish his guilt beyond a reasonable doubt:

Beginning no later than in or around early 2012, and continuing through in or around 2019, in the Northern District of Illinois, Eastern Division, and elsewhere, defendant FIDEL MARQUEZ, conspired with Chief Executive Officer 1 ("CEO-1"), Lobbyist 1, Consultant 1, Individual 1, and others, to: (a) corruptly solicit and demand, and to accept and agree to accept from another person things of value, namely, jobs, contracts, and monetary payments associated with those jobs and contracts, for the benefit of Public Official A and his associates, intending that Public Official A, an agent of the State of Illinois, be influenced and rewarded in connection with the business, transactions, and series of transactions involving things of value of $5,000 or more of the State of Illinois, namely, legislation affecting ComEd and its business, in violation of Title 18, United States Code, Section 666(a)(1)(B); and (b) corruptly give, offer, and agree to give things of value, namely, jobs, contracts, and monetary payments associated with those jobs and contracts, for the benefit of Public

Official A and his associates, with intent to influence and reward Public Official A, as an agent of the State of Illinois, in connection with any business, transaction, and series of transactions involving things of value of $5,000 or more of the State of Illinois, namely, legislation affecting ComEd and its business, in violation of Title 18, United States Code, Section 666(a)(2), all in violation to Title 18, United States Code, Section 371.

Background

Between the 1980s and 2019, MARQUEZ was employed in various positions with ComEd, a utility that provided electricity to industrial, commercial and residential customers in northern Illinois, including about 70% of the population of the State of Illinois. ComEd was a majority owned subsidiary of Exelon Corporation, a publicly traded for-profit corporation. The State of Illinois regulated ComEd's business activity, including the rates that ComEd charged its customers for electricity, as well as the rate of return ComEd realized from its business operations. Legislation that passed through the Illinois General Assembly and became law had the potential to impact ComEd's business activity.

In early 2012, MARQUEZ became ComEd's Senior Vice-President of Governmental and External Affairs. In that position, MARQUEZ oversaw ComEd's lobbying activity before the Illinois General Assembly (in both the House of Representatives and Senate), the Illinois Governor's Office, and various Illinois administrative agencies. ComEd's lobbying team consisted of both full-time ComEd

employees ("internal lobbyists") and third-party individuals and firms under contract to perform lobbying services for ComEd ("external lobbyists"). At times, ComEd also contracted with individuals and companies for the provision of political consulting services for ComEd. Under ComEd's internal corporate structure, such political consultants, like the internal and external lobbyists, were supposed to be under MARQUEZ's authority.

At the time MARQUEZ assumed his governmental affairs position, CEO-1 was the chief executive officer of ComEd. CEO-1 remained the chief executive officer of ComEd until on or about June 1, 2018, at which time CEO-1 became a senior executive at Exelon Utilities, which was the Exelon subsidiary with oversight of all of Exelon's utilities, including ComEd. CEO-1 remained a senior executive at Exelon Utilities until in or around October 2019.

Lobbyist 1 became ComEd's Executive Vice-President of Legislative Affairs from in or around 2009, although he served in a similar role prior to that date and continued in that job until Lobbyist 1's retirement in or around early 2012. In that position, Lobbyist 1 was responsible for ComEd's lobbying activity before the Illinois General Assembly, the Illinois Governor's Office, and various Illinois administrative agencies. Soon after Lobbyist 1's retirement from ComEd, ComEd contracted Lobbyist 1 (through a company controlled by Lobbyist 1) to serve as an external lobbyist for ComEd. Lobbyist 1 remained a contract lobbyist for ComEd until some point in 2019.

Consultant 1 was the owner of Company 1, which performed consulting services for ComEd until in or around 2019.

At the time MARQUEZ assumed the position of Senior Vice-President of Governmental and External Affairs, and continuing throughout the remainder of MARQUEZ's employment with ComEd, Public Official A was the Speaker of the Illinois House of Representatives. As Speaker, Public Official A had the ability, using procedural mechanisms in the House of Representatives, to prevent legislation that Public Official A opposed from moving forward. Conversely, Public Official A could also serve as a very powerful and persuasive force to move legislation forward.

At the time MARQUEZ assumed his governmental affairs position, Individual 1 was serving as an external lobbyist for ComEd. Individual 1 was a former member of the Illinois House of Representatives and a licensed Illinois attorney who, along with Individual 1's spouse, operated an entity ("Individual 1's Firm") that provided lobbying services. Based upon his discussions with Individual 1 and others, MARQUEZ knew that Individual 1 had a close personal relationship with Public Official A and, among other things, sometimes communicated on behalf of Public Official A. After Individual 1 retired from lobbying at or near the end of 2016, ComEd contracted Individual 1 to provide political consulting services to ComEd.

Hiring of Public Official A's Associates as Vendor "Subcontractors"
Who Performed Little or No Work for ComEd

MARQUEZ agreed with others, including but not limited to CEO-1, Lobbyist 1, Consultant 1, and Individual 1, to arrange for various associates of Public Official A, including Public Official A's political allies and individuals who performed political work for Public Official A, to obtain jobs, vendor subcontracts, and monetary payments associated with those jobs and subcontracts from ComEd, even in instances where certain political allies and workers performed little or no work that they were purportedly hired to perform for ComEd. These acts were taken for the purpose of influencing and rewarding Public Official A in connection with his official duties as Speaker of the Illinois House of Representatives, and to assist ComEd with respect to legislation affecting ComEd and its business that had a value of over $150,000,000.

One of the ways ComEd bestowed benefits upon Public Official A's associates was by directing payments to them through third-party intermediaries. In certain instances, Public Official A's associates were characterized as "subcontractors" for the third-party intermediaries, but, in fact, the associates of Public Official A often did little or no work for ComEd or the third-party intermediaries in return for the payments they were receiving from ComEd. The ComEd payments intended for Public Official A's associates were added to any existing amount due to the third-party intermediary in return for its otherwise contracted services. The fact that third-party intermediaries were being used as conduits for payments to Public Official A's

associates, for the purpose of influencing and rewarding Public Official A, was not accurately presented or disclosed in the contracts and other internal company documents utilized to arrange for and authorize these payments.

One instance of such an arrangement was the provision of payments to political associates of Public Official A through Consultant 1's company, Company 1. The use of Company 1 as a third-party intermediary for ComEd payments to Public Official A's associates began prior to the time that MARQUEZ assumed his role as ComEd's Senior Vice-President of Governmental and External Affairs, and it continued into in or around 2019.

In or around 2013, MARQUEZ learned from Individual 1 that associates of Public Official A were receiving payments through Company 1. In particular, at that time, Individual 1's Firm was serving as a third-party intermediary to funnel ComEd payments to an associate of Public Official A. Individual 1 requested of ComEd that the payments to that associate of Public Official A be shifted from Individual 1's Firm to Company 1; in other words, Individual 1 asked that the associate of Public Official A be switched from being a "subcontractor" of Individual 1's Firm to being a "subcontractor" of Company 1. In conversation, Individual 1 told MARQUEZ that two other associates of Public Official A were already receiving payments from ComEd through Company 1. Individual 1 did not describe any work that the Public Official A associates were doing; rather, Individual 1 described their importance in terms of how close they were to Public Official A. MARQUEZ agreed to facilitate the shift and

took steps to effect Individual 1's request and shift the associate of Public Official A from Individual 1's Firm to Company 1.

Later, in or around 2016, MARQUEZ facilitated the movement of the "subcontract" for the same associate of Public Official A who had been paid through Individual 1's Firm and later Company 1, from Company 1 to another third-party intermediary.

In or around Spring 2018, CEO-1 told MARQUEZ that Individual 1 contacted CEO-1 and asked that another associate of Public Official A be hired by ComEd, meaning that the associate would begin to receive a stream of monthly payments from ComEd, in the same manner by which other associates of Public Official A were receiving payments from Company 1. CEO-1, Consultant 1, and MARQUEZ agreed to facilitate the payments by agreeing to amend Company 1's contract to include money intended as payment to the associate of Public Official A. As with the ComEd payments being made to other associates of Public Official A through third-party intermediaries, as MARQUEZ understood, these payments were made to influence and reward Public Official A concerning legislation affecting ComEd.

On or about July 30, 2018, MARQUEZ caused a payment of $37,500 to be sent to Company 1, a substantial portion of which was intended for associates of Public Official A.

In each calendar year from 2011 through 2019, the State of Illinois annually received in excess of $10,000 in federal benefits.

7. The foregoing facts are set forth solely to assist the Court in determining whether a factual basis exists for defendant's plea of guilty, and are not intended to be a complete or comprehensive statement of all the facts within defendant's personal knowledge regarding the charged crime and related conduct.

Maximum Statutory Penalties

8. Defendant understands that the charge to which he is pleading guilty carries the following statutory penalties:

a. A maximum sentence of 5 years' imprisonment. This offense also carries a maximum fine of $250,000, or twice the gross gain or gross loss resulting from that offense, whichever is greater. Defendant further understands that the judge also may impose a term of supervised release of not more than three years.

b. Pursuant to Title 18, United States Code, Section 3013, defendant will be assessed $100 on the charge to which he has pled guilty, in addition to any other penalty or restitution imposed.

Sentencing Guidelines Calculations

9. Defendant understands that in determining a sentence, the Court is obligated to calculate the applicable Sentencing Guidelines range, and to consider that range, possible departures under the Sentencing Guidelines, and other sentencing factors under 18 U.S.C. § 3553(a), which include: (i) the nature and circumstances of the offense and the history and characteristics of the defendant; (ii) the need for the sentence imposed to reflect the seriousness of the offense, promote

respect for the law, and provide just punishment for the offense, afford adequate deterrence to criminal conduct, protect the public from further crimes of the defendant, and provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner; (iii) the kinds of sentences available; (iv) the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct; and (v) the need to provide restitution to any victim of the offense.

10. For purposes of calculating the Sentencing Guidelines, the parties agree on the following points:

a. **Applicable Guidelines**. The Sentencing Guidelines to be considered in this case are those in effect at the time of sentencing. The following statements regarding the calculation of the Sentencing Guidelines are based on the Guidelines Manual currently in effect, namely the November 2018 Guidelines Manual.

b. **Offense Level Calculations**.

i. Pursuant to § 2X1.1, the base offense level is determined based on the Sentencing Guidelines calculations applicable to the underlying offenses, 18 U.S.C. § 666(a)(1)(B) and (2)), which are grouped pursuant to Guideline § 3D1.2(c) and (d).

ii. Pursuant to Guideline § 2C1.1(a)(2), the base offense level is 12.

iii. Pursuant to Guideline § 2C1.1(b)(1), a 2-level increase is appropriate because the offense involved more than one bribe.

iv. Pursuant to Guideline §§ 2C1.1(b)(2) and 2B1.1(b)(1)(N), a 26-level increase is appropriate, because the value of the benefit obtained in exchange for the payments exceeded $150,000,000.

v. Pursuant to Guideline § 2C1.1(b)(3), a 4-level increase is appropriate because the offense involved an elected public official.

vi. Defendant has clearly demonstrated a recognition and affirmative acceptance of personal responsibility for his criminal conduct. If the government does not receive additional evidence in conflict with this provision, and if defendant continues to accept responsibility for his actions within the meaning of Guideline § 3E1.1(a), including by furnishing the United States Attorney's Office and the Probation Office with all requested financial information relevant to his ability to satisfy any fine that may be imposed in this case, a two-level reduction in the offense level is appropriate.

vii. In accord with Guideline § 3E1.1(b), defendant has timely notified the government of his intention to enter a plea of guilty, thereby permitting the government to avoid preparing for trial and permitting the Court to allocate its resources efficiently. Therefore, as provided by Guideline § 3E1.1(b), if the Court determines the offense level to be 16 or greater prior to determining that defendant

is entitled to a two-level reduction for acceptance of responsibility, the government will move for an additional one-level reduction in the offense level.

c. **Criminal History Category**. With regard to determining defendant's criminal history points and criminal history category, based on the facts now known to the government, defendant's criminal history points equal zero and defendant's criminal history category is I.

d. **Anticipated Advisory Sentencing Guidelines Range**. Therefore, based on the facts now known to the government, the anticipated offense level is 41, which, when combined with the anticipated criminal history category of I, results in an anticipated advisory sentencing guidelines range of 324 to 405 months' imprisonment, in addition to any supervised release, fine, and restitution the Court may impose. Pursuant to Guideline § 5G1.1(a), because the offense of conviction carries a maximum term of imprisonment of 60 months, the guidelines sentence is 60 months' imprisonment.

e. Defendant and his attorney and the government acknowledge that the above guidelines calculations are preliminary in nature, and are non-binding predictions upon which neither party is entitled to rely. Defendant understands that further review of the facts or applicable legal principles may lead the government to conclude that different or additional guidelines provisions apply in this case. Defendant understands that the Probation Office will conduct its own investigation and that the Court ultimately determines the facts and law relevant to sentencing,

and that the Court's determinations govern the final guideline calculation. Accordingly, the validity of this Agreement is not contingent upon the probation officer's or the Court's concurrence with the above calculations, and defendant shall not have a right to withdraw his plea on the basis of the Court's rejection of these calculations.

f. Both parties expressly acknowledge that this Agreement is not governed by Fed. R. Crim. P. 11(c)(1)(B), and that errors in applying or interpreting any of the sentencing guidelines may be corrected by either party prior to sentencing. The parties may correct these errors either by stipulation or by a statement to the Probation Office or the Court, setting forth the disagreement regarding the applicable provisions of the guidelines. The validity of this Agreement will not be affected by such corrections, and defendant shall not have a right to withdraw his plea, nor the government the right to vacate this Agreement, on the basis of such corrections.

Cooperation

11. Defendant agrees he will fully and truthfully cooperate in any matter in which he is called upon to cooperate by a representative of the United States Attorney's Office for the Northern District of Illinois. This cooperation shall include providing complete and truthful information in any investigation and pre-trial preparation and complete and truthful testimony in any criminal, civil, or administrative proceeding. Defendant agrees to the postponement of his sentencing until after the conclusion of his cooperation.

Agreements Relating to Sentencing

12. At the time of sentencing, the government shall make known to the sentencing judge the extent of defendant's cooperation. If the government determines that defendant has continued to provide full and truthful cooperation as required by this Agreement, then the government shall move the Court, pursuant to Guideline § 5K1.1, to depart downward from the low end of the applicable guideline range, and shall recommend a sentence that does not include a term of imprisonment as a component of the sentence. Defendant shall be free to recommend any sentence. Defendant understands that the decision to depart from the applicable guideline range rests solely with the Court.

13. If the government does not move the Court, pursuant to Guideline § 5K1.1, to depart from the applicable guideline range, as set forth above, the preceding paragraph of this Agreement will be inoperative, both parties shall be free to recommend any sentence, and the Court shall impose a sentence taking into consideration the factors set forth in 18 U.S.C. § 3553(a) as well as the Sentencing Guidelines without any downward departure for cooperation pursuant to § 5K1.1. Defendant may not withdraw his plea of guilty because the government has failed to make a motion pursuant to Guideline § 5K1.1.

14. It is understood by the parties that the sentencing judge is neither a party to nor bound by this Agreement and may impose a sentence up to the maximum penalties as set forth above. Defendant further acknowledges that if the Court does

not accept the sentencing recommendation of the parties, defendant will have no right to withdraw his guilty plea.

15. Regarding restitution and fine, the parties agree that the issues of restitution and a fine will be determined at sentencing and each party will be free to present arguments for the Court's consideration on these issues. Defendant agrees that he will not take a position regarding restitution that is contrary to or inconsistent with his acceptance of responsibility or the information provided as part of his cooperation with the government.

16. Restitution shall be due immediately and paid pursuant to a schedule to be set by the Court at sentencing. Defendant acknowledges that pursuant to Title 18, United States Code, Section 3664(k), he is required to notify the Court and the United States Attorney's Office of any material change in economic circumstances that might affect his ability to pay restitution.

17. Defendant agrees to pay the special assessment of $100 at the time of sentencing with a cashier's check or money order payable to the Clerk of the U.S. District Court.

18. Defendant agrees that the United States may enforce collection of any fine or restitution imposed in this case pursuant to Title 18, United States Code, Sections 3572, 3613, and 3664(m).

Acknowledgments and Waivers Regarding Plea of Guilty

Nature of Agreement

19. This Agreement is entirely voluntary and represents the entire agreement between the United States Attorney and defendant regarding defendant's criminal liability in case 20 CR 602.

20. This Agreement concerns criminal liability only. Except as expressly set forth in this Agreement, nothing herein shall constitute a limitation, waiver, or release by the United States or any of its agencies of any administrative or judicial civil claim, demand, or cause of action it may have against defendant or any other person or entity. The obligations of this Agreement are limited to the United States Attorney's Office for the Northern District of Illinois and cannot bind any other federal, state, or local prosecuting, administrative, or regulatory authorities, except as expressly set forth in this Agreement.

Waiver of Rights

21. Defendant understands that by pleading guilty he surrenders certain rights, including the following:

a. **Right to be charged by indictment**. Defendant understands that he has a right to have the charge prosecuted by an indictment returned by a concurrence of twelve or more members of a grand jury consisting of not less than sixteen and not more than twenty-three members. By signing this Agreement, defendant knowingly waives his right to be prosecuted by indictment and to assert at

trial or on appeal any defects or errors arising from the information, the information process, or the fact that he has been prosecuted by way of information.

b. **Trial rights**. Defendant has the right to persist in a plea of not guilty to the charge against him, and if he does, he would have the right to a public and speedy trial.

i. The trial could be either a jury trial or a trial by the judge sitting without a jury. However, in order that the trial be conducted by the judge sitting without a jury, defendant, the government, and the judge all must agree that the trial be conducted by the judge without a jury.

ii. If the trial is a jury trial, the jury would be composed of twelve citizens from the district, selected at random. Defendant and his attorney would participate in choosing the jury by requesting that the Court remove prospective jurors for cause where actual bias or other disqualification is shown, or by removing prospective jurors without cause by exercising peremptory challenges.

iii. If the trial is a jury trial, the jury would be instructed that defendant is presumed innocent, that the government has the burden of proving defendant guilty beyond a reasonable doubt, and that the jury could not convict him unless, after hearing all the evidence, it was persuaded of his guilt beyond a reasonable doubt. The jury would have to agree unanimously before it could return a verdict of guilty or not guilty.

iv. If the trial is held by the judge without a jury, the judge would find the facts and determine, after hearing all the evidence, whether or not the judge was persuaded that the government had established defendant's guilt beyond a reasonable doubt.

v. At a trial, whether by a jury or a judge, the government would be required to present its witnesses and other evidence against defendant. Defendant would be able to confront those government witnesses and his attorney would be able to cross-examine them.

vi. At a trial, defendant could present witnesses and other evidence in his own behalf. If the witnesses for defendant would not appear voluntarily, he could require their attendance through the subpoena power of the Court. A defendant is not required to present any evidence.

c. At a trial, defendant would have a privilege against self-incrimination so that he could decline to testify, and no inference of guilt could be drawn from his refusal to testify. If defendant desired to do so, he could testify in his own behalf.

d. **Waiver of appellate and collateral rights**. Defendant further understands he is waiving all appellate issues that might have been available if he had exercised his right to trial. Defendant is aware that Title 28, United States Code, Section 1291, and Title 18, United States Code, Section 3742, afford a defendant the right to appeal his conviction and the sentence imposed. Acknowledging this, if the

government makes a motion at sentencing for a downward departure pursuant to Guideline § 5K1.1, defendant knowingly waives the right to appeal his conviction, any pre-trial rulings by the Court, and any part of the sentence (or the manner in which that sentence was determined), including any term of imprisonment and fine within the maximums provided by law, in exchange for the concessions made by the United States in this Agreement. In addition, if the government makes a motion at sentencing for a downward departure pursuant to Guideline § 5K1.1, defendant also waives his right to challenge his conviction and sentence, and the manner in which the sentence was determined, in any collateral attack or future challenge, including but not limited to a motion brought under Title 28, United States Code, Section 2255. The waiver in this paragraph does not apply to a claim of involuntariness or ineffective assistance of counsel, nor does it prohibit defendant from seeking a reduction of sentence based directly on a change in the law that is applicable to defendant and that, prior to the filing of defendant's request for relief, has been expressly made retroactive by an Act of Congress, the Supreme Court, or the United States Sentencing Commission.

22. Defendant understands that by pleading guilty he is waiving all the rights set forth in the prior paragraphs. Defendant's attorney has explained those rights to him, and the consequences of his waiver of those rights.

Presentence Investigation Report/Post-Sentence Supervision

23. Defendant understands that the United States Attorney's Office in its submission to the Probation Office as part of the Pre-Sentence Report and at sentencing shall fully apprise the District Court and the Probation Office of the nature, scope, and extent of defendant's conduct regarding the charge against him, and related matters. The government will make known all matters in aggravation and mitigation relevant to sentencing, including the nature and extent of defendant's cooperation.

24. Defendant agrees to truthfully and completely execute a Financial Statement (with supporting documentation) prior to sentencing, to be provided to and shared among the Court, the Probation Office, and the United States Attorney's Office regarding all details of his financial circumstances, including his recent income tax returns as specified by the probation officer. Defendant understands that providing false or incomplete information, or refusing to provide this information, may be used as a basis for denial of a reduction for acceptance of responsibility pursuant to Guideline § 3E1.1 and enhancement of his sentence for obstruction of justice under Guideline § 3C1.1, and may be prosecuted as a violation of Title 18, United States Code, Section 1001, or as a contempt of the Court.

25. For the purpose of monitoring defendant's compliance with his obligations to pay a fine during any term of supervised release or probation to which defendant is sentenced, defendant further consents to the disclosure by the IRS to

the Probation Office and the United States Attorney's Office of defendant's individual income tax returns (together with extensions, correspondence, and other tax information) filed subsequent to defendant's sentencing, to and including the final year of any period of supervised release or probation to which defendant is sentenced. Defendant also agrees that a certified copy of this Agreement shall be sufficient evidence of defendant's request to the IRS to disclose the returns and return information, as provided for in Title 26, United States Code, Section 6103(b).

Other Terms

26. Defendant agrees to cooperate with the United States Attorney's Office in collecting any unpaid fine for which defendant is liable, including providing financial statements and supporting records as requested by the United States Attorney's Office.

27. Defendant will not object to a motion brought by the United States Attorney's Office for the entry of an order authorizing disclosure of documents, testimony and related investigative materials which may constitute grand jury material, preliminary to or in connection with any judicial proceeding, pursuant to Fed. R. Crim. P. 6(e)(3)(E)(i). In addition, defendant will not object to the government's solicitation of consent from third parties who provided records or other materials to the grand jury pursuant to grand jury subpoenas, to turn those materials over to the Civil Division of the United States Attorney's Office, or an appropriate federal or state agency (including but not limited to the Internal Revenue Service),

for use in civil or administrative proceedings or investigations, rather than returning them to the third parties for later summons or subpoena in connection with a civil or administrative proceeding involving, or investigation of, defendant. Nothing in this paragraph or the preceding paragraph precludes defendant from asserting any legal or factual defense to taxes, interest, and penalties that may be assessed by the IRS.

28. Defendant understands that, if convicted, a defendant who is not a United States citizen may be removed from the United States, denied citizenship, and denied admission to the United States in the future.

Conclusion

29. Defendant understands that this Agreement will be filed with the Court, will become a matter of public record, and may be disclosed to any person.

30. Defendant understands that his compliance with each part of this Agreement extends throughout the period of his sentence, and failure to abide by any term of the Agreement is a violation of the Agreement. Defendant further understands that in the event he violates this Agreement, the government, at its option, may move to vacate the Agreement, rendering it null and void, and thereafter prosecute defendant not subject to any of the limits set forth in this Agreement, or may move to resentence defendant or require defendant's specific performance of this Agreement. Defendant understands and agrees that in the event that the Court permits defendant to withdraw from this Agreement, or defendant breaches any of its terms and the government elects to void the Agreement and prosecute defendant,

any prosecutions that are not time-barred by the applicable statute of limitations on the date of the signing of this Agreement may be commenced against defendant in accordance with this paragraph, notwithstanding the expiration of the statute of limitations between the signing of this Agreement and the commencement of such prosecutions.

31. Should the judge refuse to accept defendant's plea of guilty, this Agreement shall become null and void and neither party will be bound to it.

32. Defendant and his attorney acknowledge that no threats, promises, or representations have been made, nor agreements reached, other than those set forth in this Agreement, to cause defendant to plead guilty.

33. Defendant acknowledges that he has read this Agreement and carefully reviewed each provision with his attorney. Defendant further acknowledges that he understands and voluntarily accepts each and every term and condition of this Agreement.

AGREED THIS DATE: September 28, 2020

AMARJEET BHACHU Digitally signed by AMARJEET BHACHU Date: 2020.09.27 16:28:50 -05'00'

Signed by Amarjeet S. Bhachu
on behalf of
JOHN R. LAUSCH, JR.
United States Attorney

FIDEL MARQUEZ
Defendant

TIMOTHY CHAPMAN Digitally signed by TIMOTHY CHAPMAN Date: 2020.09.27 16:40:13 -05'00'

TIMOTHY J. CHAPMAN
MICHELLE KRAMER
Assistant United States Attorneys

CHRISTOPHER NIEWOEHNER
WILLIAM R. ANDRICHIK
Attorneys for Defendant

ILND 450 (Rev. 04/29/2016) Judgment in a Civil Action

IN THE UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF ILLINOIS

Lawrence H Gress,

Plaintiff(s),

v.

Commonwealth Edison Co,

Defendant(s).

Case No. 20 C 4405
Judge Jorge L. Alonso

JUDGMENT IN A CIVIL CASE

Judgment is hereby entered (check appropriate box):

☐ in favor of plaintiff(s)
and against defendant(s)
in the amount of $

which ☐ includes pre–judgment interest.
☐ does not include pre–judgment interest.

Post-judgment interest accrues on that amount at the rate provided by law from the date of this judgment.

Plaintiff(s) shall recover costs from defendant(s).

☐ in favor of defendant(s)
and against plaintiff(s)

Defendant(s) shall recover costs from plaintiff(s).

☑ other: The Court grants defendants' motion [84] to dismiss. Plaintiffs' Count I is dismissed with prejudice. The Court relinquishes jurisdiction over plaintiffs' Counts II, III and IV, which are dismissed without prejudice. Intervenor Citizens Utility Board's Counts I and II are dismissed with prejudice. The Court relinquishes jurisdiction over intervenor Citizens Utility Board's Counts III and IV, which are dismissed without prejudice.

This action was *(check one)*:

☐ tried by a jury with Judge presiding, and the jury has rendered a verdict.
☐ tried by Judge without a jury and the above decision was reached.
☑ decided by Judge Jorge L. Alonso.

Date: 9/13/2021

Thomas G. Bruton, Clerk of Court

Lesley Fairley , Deputy Clerk

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

LAWRENCE H. GRESS, et al.,	)	
	)	
Plaintiffs,	)	Nos. 20 C 4405, 20 C 4555, 20 C 4980
	)	
v.	)	
	)	Judge Jorge L. Alonso
COMMONWEALTH EDISON COMPANY, and EXELON CORPORATION,	)	
	)	
Defendants.	)	

CITIZENS UTILITY BOARD,	)	
	)	
Plaintiff,	)	
	)	No. 20 C 4405
v.	)	
	)	Judge Jorge L. Alonso
COMMONWEALTH EDISON COMPANY,	)	
	)	
Defendant.	)	

MEMORANDUM OPINION AND ORDER

From Greylord to guilty governors, the citizens of Illinois have suffered their share of corrupt behavior by elected government officials. This case involves more appalling behavior by an elected official; but, here, the defendant is not the government official who allegedly took the bribes but instead the two deep-pocketed corporations, Commonwealth Edison Company ("ComEd") and Exelon Corporation ("Exelon"), whose employees allegedly agreed to pay the bribes.

Plaintiffs Lawrence H. Gress ("Gress"), Steven Brooks, David Chavez, 1540 Milwaukee LLC, South Branch LLC, TFO Golub Burnham LLC, TFO Golub IT 2.0 LLC, Rockwell on the River LLC and Carmichael Leasing Co., Inc., believing that bribery led to the passage of several laws that resulted in increased rates for the electricity they purchased, filed a consolidated complaint [Docket 75], seeking relief from defendants under the Racketeer Influenced and Corrupt Organizations Act ("RICO"), the Illinois Consumer Fraud and Deceptive Trade Practices Act ("ICFA"), as well as for conspiracy and unjust enrichment under Illinois law. Intervenor Citizens Utility Board ("CUB") filed a complaint in intervention with similar claims.[1] Defendants have filed a motion to dismiss. For the reasons set forth below, the Court grants the motion to dismiss.

I. BACKGROUND

The following facts are from plaintiffs' complaint, and the Court takes them as true.

Defendant ComEd is a public utility regulated by the Illinois Commerce Commission ("ICC"). ComEd provides electricity-delivery services to about 3,800,000 customers. Defendant Exelon owns 99.985% of ComEd.

Plaintiffs allege that Michael Madigan ("Madigan") is the Speaker[2] of the Illinois House of Representatives, a position he has held since 1997 and also held from 1983 to 1995. He is also the Chairman of the Illinois Democratic Party, a position that: (a) he has held since 1998; and (b) allows him to "largely control" fundraising and endorsements of candidates. (Complt. ¶ 32/Docket 75 ¶ 32). He has been the Democratic committeeman for the 13th Ward since 1969.

[1] As CUB states in its brief, its claims are essentially the same as plaintiffs' claims, and it has adopted all of plaintiffs' arguments.
[2] The Court takes the alleged facts as true, without vouching for their veracity.

Plaintiffs allege Madigan led an old-school "patronage system," (Complt. ¶ 37), doling out favors and jobs.

Plaintiffs allege that Madigan has a long history of taking favors from ComEd. Plaintiffs allege that "for decades, Madigan had named individuals to be ComEd employees, in such positions as meter readers, as part of an 'old-fashioned patronage system." (Complt. ¶ 124(e)). Nonetheless, plaintiffs allege that defendants, for many years, "counted Madigan among their greatest foes." (Complt. ¶ 147). For example, plaintiffs allege that, in 2003, Madigan "torpedoed" a rate hike that ComEd wanted. (Complt. ¶ 147).

Defendants changed their luck with Madigan, beginning in 2011. Specifically, plaintiffs allege that, between 2011 and 2019, defendants bribed Madigan by providing three favors: 1) ComEd made payments of more than $1,000,000.00 to Madigan cronies; 2) ComEd gave legal work to a law firm that was run by a Madigan crony and that donated more than $100,000.00 to funds controlled by Madigan; and 3) ComEd gave a seat on its Board of Directors to a Madigan crony.

Payments to Madigan cronies

According to plaintiffs, Madigan was assisted in his efforts to obtain bribes from ComEd by Michael McClain ("McClain"), Madigan's long-time friend. Plaintiffs describe McClain as one of Madigan's "clos[est]" and "most loyal" associates. (Complt. ¶ 45). McClain, like Madigan, served in the Illinois House of Representatives from 1972 to 1982. Plaintiffs allege that McClain has performed consulting and lobbying work for ComEd for many years and that he acts as a "trusted line of communication" between ComEd and Madigan. (Complt. ¶ 51).

Plaintiffs allege that in or about 2011, Madigan and McClain sought ComEd jobs, vendor subcontracts and payments. At about the same time, McClain and John Hooker ("Hooker"), who

was, at the time, ComEd's Executive Vice President of Legislative and External Affairs, "developed a plan" to direct money to three Madigan cronies through a consulting firm. (Complt. ¶ 116). That consulting firm was Jay D. Doherty & Associates, which is owned by Jay Doherty ("Doherty"). The three cronies were: Edward Moody ("Moody"), Frank Olivo, Jr. ("Olivo") and Ray Nice ("Nice"). Between 2011 and 2018, ComEd paid Jay D. Doherty & Associates $3,100,000.00.

The three cronies were long-time associates of Madigan. Moody has been associated with Madigan since he knocked on doors for Madigan as a teenager. He later became a precinct captain and worked as a Cook County Commissioner. Moody has been the Cook County Recorder of Deeds since December 2018. Olivo, too, has long been associated with Madigan. In the late 1960's, when Olivo was 18, he became a precinct captain. At some point, Madigan arranged for Olivo to be appointed Streets and Sanitation Superintendent for the 13th Ward. In 1994, at Madigan's request, then-Mayor Daley appointed Olivo to be 13th Ward Alderman, a position Olivo held until he retired in 2011. After his retirement until sometime in 2019, Olivo received payments as a lobbyist for ComEd. Similarly, Nice had a long relationship with Madigan. Nice was (or had been) a precinct captain in the 13th Ward. He was, at some point, a Deputy Recorder of Deeds for Cook County and, from 2013 to 2017, had a seat on the Employment Security Board of Review.

Plaintiffs allege that, from about 2011 until about 2019, ComEd gave money—indirectly through Jay Doherty & Associates—to Moody, Ovilo and Nice. Plaintiffs allege these three did "little or no work" in exchange for the money. (Complt. ¶ 120).

Those payments to Madigan's cronies via the consulting firm were not the only such payments alleged in the complaint. Plaintiffs allege that in May 2018, Madigan, via McClain,

asked Anne Pramaggiore ("Pramaggiore")—who was, at the time, the Senior Executive Vice President and CEO of Exelon Utilities—to hire Michael Zalewski ("Zalewski"). Zalewski had been Alderman of the 23rd Ward from May 1995 until he retired in May 2018. (At some point, Madigan helped Zalewski's daughter become Chair of the ICC, which regulates ComEd.) Pramaggiore, together with Doherty and another ComEd employee (Fidel Marquez), agreed that ComEd would pay Zalewski $5,000 per month via Jay Doherty & Associates. ComEd's contract with Jay Doherty & Associates was changed in June 2018 to increase the monthly payments to the consulting firm by $5,000.00.

Legal work

Plaintiffs allege that ComEd also agreed to give legal work to a Madigan crony. Specifically, in or around 2011, ComEd agreed to retain the law firm of Reyes Kurson to perform a minimum of 850 hours of work per year for ComEd. ComEd agreed to this in order "to influence and reward" Madigan. (Complt. ¶¶ 117-118). A partner in the Reyes Kurson firm was Victor Reyes ("Reyes"), who has donated more than $100,000 to "funds controlled by Madigan" and about $883,633.92 to the Democratic Party since 2005. (Complt. ¶ 80).

In or about 2016, some ComEd employees tried to give less work to Reyes Kurson, because the firm provided "little or no legal work of value." (Complt. ¶ 135(c)). Reyes complained to McClain, who wrote to Pramaggiore. McClain wrote, "If you do not get involve[d] and resolve this issue of 850 hours for his law firm per year then he will go to our Friend [Madigan]. Our Friend [Madigan] will call me and then I will call you." (Complt. ¶ 135(c)). Pramaggiore responded that she was "on this." (Complt. ¶ 135(c)).

Board seat

In or about 2017, Madigan sought to have Juan Ochoa ("Ochoa") appointed to the ComEd Board of Directors. Plaintiffs allege that Ochoa has "served Madigan for many years," but the complaint contains few details. Plaintiffs allege Ochoa was the head of the Metropolitan Pier and Exposition Authority from 2007 to 2010. Since 2010, he has been the CEO of a facilities management company. At some point, Ochoa granted a raise to the daughter of a former state senator as a favor to Madigan.

Madigan had McClain ask Pramaggiore to place Ochoa in a seat on ComEd's Board of Directors, a position that paid $78,000.00 per year. In May 2018, facing internal opposition to such an appointment, Pramaggiore asked McClain if Madigan would be satisfied by ComEd's giving Ochoa a part-time position that paid an equivalent amount. Plaintiffs allege "McClain told [her] that Madigan would appreciate if she would 'keep pressing' for the appointment of Ochoa as a Board Member." (Complt. ¶ 127). Pramaggiore agreed to do so, and, by April 2019, Ochoa was on the Board of Directors of ComEd. He resigned in April 2020.

Passage of laws

Plaintiffs allege that in exchange for ComEd's favors to his cronies, Madigan stewarded through the Illinois legislature three bills that were favorable to ComEd: the Energy Infrastructure and Modernization Act ("EIMA"), the 2013 EIMA Amendments and the Future Energy Jobs Act ("FEJA"). Specifically, plaintiffs allege:

> As a quid pro quo for these bribes, Madigan used his power as Speaker to permit EIMA to be voted on by the Illinois House of Representatives in or around May 2011, and used his powers to ensure House members would vote in support.

(Complt. ¶ 119). Plaintiffs allege that Madigan's support for the bills was "crucial: no bills move in the Illinois House without Madigan's support." (Complt. ¶ 2). "Absent Madigan's

active support, which was the object and result of Defendants' corruption, EIMA would not have become law." (Complt. ¶ 119).

Plaintiffs allege that Madigan had "outsized influence" in the Illinois House of Representatives. (Complt ¶ 143). Madigan, as Speaker, had "*de facto* ability to control which bills get voted on and which ones do not." (Complt. ¶ 143). With respect to each of 49 legislative committees in the Illinois House, Madigan, alone, decided which legislator would both serve as chair and collect the $10,000.00 per year stipend given to each chair. Madigan used those positions to reward loyalty or punish disloyalty. Plaintiffs allege Madigan had the power "to control the outcome of virtually all major legislation in the Assembly as well as the Senate." (Complt. ¶ 146).

EIMA

According to plaintiffs' complaint, defendants wanted EIMA to pass, because ComEd was having trouble getting projects approved by the ICC. In 2007, ComEd had asked the ICC "to approve hundreds of millions of dollars in 'smart grid' spending." (Complt. ¶ 154). The ICC declined, approving only a small pilot project. Defendants wanted EIMA to pass in order to ensure they could implement the smart-grid project and then pass the cost on to ratepayers.

Plaintiffs allege that, in February 2011, EIMA was introduced in the Illinois Senate, which passed the bill. The bill then went to the Illinois House, which approved the bill with 67 votes, after making amendments. The Illinois Senate voted to approve the amendments, and EIMA went to the Governor's desk. Then-Governor Patrick Quinn ("Quinn") vetoed the bill. Plaintiffs allege that, in "order to override the veto, Speaker Madigan, ComEd, and Exelon successfully pressured ten members of the House Democratic caucus and four members of the

Senate Democratic caucus who had not originally supported the bill to vote to override the veto." (Complt. ¶ 162).

EIMA Amendments

According to plaintiffs, at some point, ComEd asked the ICC to approve a change in how its return on invested capital would be calculated. ComEd wanted to begin earning a return in January of the year in which the money was invested, but the ICC declined. ComEd sought amendments to EIMA. Madigan, once again, "provided the votes to override" then-Governor Quinn's veto of the EIMA amendments. (Complt. ¶ 167).

FEJA

The next bill Madigan helped to pass for defendants was FEJA. Plaintiffs allege this bill provided a $2,350,000,000.00 "earmarked subsidy" for two Exelon nuclear plants in Illinois. In addition, it required that Zero Emission Credits be purchased from Exelon.[3]

Plaintiffs allege that FEJA was "controversial" and "would not have passed without Madigan's involvement." (Complt. ¶ 181). In late 2016, the bill passed the Illinois House with 63 votes (Madigan did not vote) and the Illinois Senate with 32 votes. Unlike the other two bills plaintiffs mention in their complaint, plaintiffs do not allege that this one required an override of a Governor's veto.[4]

Deferred prosecution agreement

Plaintiffs allege that a former ComEd employee has admitted to the bribery scheme. Specifically, plaintiffs allege that Frank Marquez ("Marquez"), who is ComEd's former Senior Vice President for Legislative Affairs, has admitted that he agreed with Hooker and Pramaggiore

[3] Plaintiffs do not say by whom the Zero Emission Credits were required to be purchased.
[4] The bill was signed by then-Governor Bruce Rauner. *See Village of Old Mill Creek v. Star*, Case No. 17-cv-1163, 17-cv-1164, 2017 WL 3008289 at *3 n. 8 (N.D. Ill. July 14, 2017).

to "arrange for Madigan's associates to obtain jobs, vendor subcontracts, and monetary payments—even in instances where the associates performed little or no work that they were purportedly hired to perform for ComEd—for the purpose of influencing and rewarding Madigan and to assist ComEd with respect to legislation affecting ComEd and its business." (Complt. ¶¶ 89, 95). Hooker was a 44-year ComEd employee, who retired in 2012 from his position as ComEd's Executive Vice President of Legislative and External Affairs. Pramaggiore was CEO of ComEd from about March 2012 to about May 2018. From June 1, 2018 through October 15, 2019, she was Senior Executive Vice President and CEO of Exelon Utilities.

Plaintiffs allege that ComEd has entered a deferred prosecution agreement with the United States Attorney for the Northern District of Illinois. Plaintiffs allege that, in the agreement, defendants admitted that "the reasonably foreseeable anticipated benefits to ComEd" of the legislation was at least $150,000,000.00. (Complt. ¶ 183). Under the deferred prosecution agreement, according to plaintiffs' allegations, "[d]efendants . . . accept[ed] responsibility for bribery in violation of 18 U.S.C. § 666(a)(2) and agree[d] to pay $200 million in fines to the United States Treasury." (Complt. ¶ 29).

Plaintiffs allege that defendants have benefitted from the scheme in an amount greater than the amount they are paying the United States Treasury. Plaintiffs allege that the legislation Madigan helped pass allowed defendants "to collect unjust and illegal profits from Illinois electricity customers," i.e., plaintiffs. (Complt. ¶ 226). Plaintiffs allege that the legislation allowed ComEd to charge higher rates for electricity. Plaintiffs claim they "paid over $5 billion due to the legislation." (Complt. ¶ 5).

Based on defendants' alleged conduct, plaintiffs assert claims for violation of RICO (Count I), for conspiracy (Count II), for violation of the Illinois Consumer Fraud and Deceptive

Trade Practices Act (Count III) and for unjust enrichment (Count IV). The Citizens Utility Board ("CUB") filed a complaint in intervention that is quite similar to plaintiffs' complaint. CUB asserts claims for violation of RICO, 18 U.S.C. § 1962(c) (Count I); RICO conspiracy, 18 U.S.C. § 1962(d) (Count II); conspiracy (Count III); and unjust enrichment (Count IV).

II. STANDARD ON A MOTION TO DISMISS

The Court may dismiss a claim pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure if the plaintiff fails "to state a claim upon which relief can be granted." Fed.R.Civ.P. 12(b)(6). Under the notice-pleading requirements of the Federal Rules of Civil Procedure, a complaint must "give the defendant fair notice of what the . . . claim is and the grounds upon which it rests." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (quoting *Conley v. Gibson*, 355 U.S. 41, 47 (1957)). A complaint need not provide detailed factual allegations, but mere conclusions and a "formulaic recitation of the elements of a cause of action" will not suffice. *Twombly*, 550 U.S. at 555. To survive a motion to dismiss, a claim must be plausible. *Ashcroft v. Iqbal*, 556 U.S. 662 (2009). Allegations that are as consistent with lawful conduct as they are with unlawful conduct are not sufficient; rather, plaintiffs must include allegations that "nudg[e] their claims across the line from conceivable to plausible." *Twombly*, 550 U.S. at 570.

In considering a motion to dismiss, the Court accepts as true the factual allegations in the complaint and draws permissible inferences in favor of the plaintiffs. *Boucher v. Finance Syst. of Green Bay, Inc.*, 880 F.3d 362, 365 (7th Cir. 2018). Conclusory allegations "are not entitled to be assumed true," nor are legal conclusions. *Iqbal*, 556 U.S. at 680 & 681 (noting that a "legal conclusion" was "not entitled to the assumption of truth[;]" and rejecting, as conclusory, allegations that "'petitioners 'knew of, condoned, and willfully and maliciously agreed to subject [him]' to harsh conditions of confinement"). The notice-pleading rule "does not unlock the

doors of discovery for a plaintiff armed with nothing more than conclusions." *Iqbal*, 556 U.S. at 678-679.

Pursuant to Rule 9(b) of the Federal Rules of Civil Procedure, the "circumstances constituting fraud" must be alleged with particularity. Fed.R.Civ.P. 9(b).

III. DISCUSSION

A. Filed Rate Doctrine

Electricity delivery is generally considered to be a natural monopoly, which is why rates are regulated and utilities are allowed a reasonable rate of return on invested capital. In this case, plaintiffs argue they paid inflated electricity rates due to laws that passed on account of bribery.

Defendants argue that plaintiffs' claims should be dismissed as barred by the filed rate doctrine, which is the principle that the "rights as defined by the tariff cannot be varied or enlarged by either contract or tort of the carrier." *Keogh v. Chicago & N.W. Ry. Co.*, 260 U.S. 156, 163 (1922). The filed rate doctrine "which is based on historical antipathy to rate setting by courts . . . and on a policy forbidding price discrimination by public utilities and common carriers, forbids a court to revise a public utility's or . . . common carrier's filed tariff, which is to say the terms of sale that the carrier has filed with the agency that regulates the carrier's service." *Arsberry v. Illinois*, 244 F.3d 558, 562 (7th Cir. 2001). As the Third Circuit succinctly put it, "[o]nce [the] rate is filed with the appropriate regulatory body, we have no ability to effectively reduce it by awarding damages for an alleged overcharge[.]" *Leo v. Nationstar Mortgage LLC*, 964 F.3d 213, 218 (3d Cir. 2020). This defense would seem to be a slam dunk in a case in which plaintiffs seek money damages as reimbursement for the inflated rates they paid for the electricity they used when they chose to, say, turn on their lights, cook on their electric stoves or charge their cell phones.

The Court, however, will not consider this issue on a motion to dismiss under Rule 12(b)(6). As plaintiffs point out, the filed rate doctrine is an affirmative defense. *Gunn v. Continental Casualty Co.*, 968 F.3d 802, 806 (7th Cir. 2020). Plaintiffs need not plead around an affirmative defense, and the Court may not dismiss a claim on the basis of an affirmative defense unless plaintiffs allege, and thus admit, the elements of the affirmative defense. *Chicago Bldg. Design, P.C. v. Mongolian House, Inc.*, 770 F.3d 610, 613-14 (7th Cir. 2014); *United States Gypsum Co. v. Indiana Gas Co., Inc.*, 350 F.3d 623, 626 (7th Cir. 2003). Defendants argue that the rates plaintiffs paid for the electricity they used were filed, but they do not cite any portions of the complaint in which plaintiffs admit that. Instead, defendants cite ICC orders and argue plaintiffs cannot deny the fact that the rates were filed. It is not enough that plaintiffs did not *deny* the fact in their complaint. In order for defendants to obtain dismissal on the basis of an affirmative defense, defendants need to point to complaint allegations in which plaintiffs *admitted* the facts. They have not done so.

Plaintiffs have not alleged, and thus admitted, the ingredients of defendants' filed-rate-doctrine affirmative defense. The Court will not dismiss on the basis of that affirmative defense on a motion to dismiss under Rule 12(b)(6).

B. RICO

1. Failure to state a claim

In Count I, plaintiffs asserts that defendants violated the Racketeer Influenced and Corrupt Organizations (RICO) Act, 18 U.S.C. § 1962(c). Defendants moves to dismiss for failure to state a claim, among other reasons.

RICO provides a private right of action for violations of 18 U.S.C. § 1962. 18 U.S.C. § 1964(c). In passing the RICO statute, Congress sought "to eradicate organized, long-term

criminal activity." *Midwest Grinding Co., Inc. v. Spitz*, 976 F.2d 1016, 1019 (7th Cir. 1992). "RICO has not federalized every common-law state cause of action" despite "widespread abuse of civil RICO." *Midwest Grinding*, 976 F.2d at 1025. The Seventh Circuit has explained:

> The prototypical RICO case is one in which a person bent on criminal activity seizes control of a previously legitimate firm and uses the firm's resources, contacts, facilities, and appearance of legitimacy to perpetuate more, and less easily discovered, criminal acts than he could do in his own person, that is, without channeling his criminal activities through the enterprise that he has taken over.

Fitzgerald v. Chrysler Corp., 116 F.3d 225, 227 (7th Cir. 1997). RICO has particular pleading (and proof) requirements, because RICO is not meant to be "'a surrogate for garden-variety fraud actions properly brought under state law.'" *Menzies v. Seyfarth Shaw LLP*, 943 F.3d 328, 337 (7th Cir. 2019) (quoting *Midwest Grinding*, 976 F.2d at 1022).

Plaintiffs assert a violation of 18 U.S.C. § 1962(c), which makes it "unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate directly in the conduct of such enterprise's affairs through a pattern of racketeering activity or collection of unlawful debt." 18 U.S.C. § 1962(c). To state a claim, plaintiffs must plausibly allege "(1) conduct (2) of an enterprise (3) through a pattern (4) of racketeering activity." *Menzies*, 943 F.3d at 336.

A "pattern of racketeering activity" is defined in the statute as "at least two acts of racketeering activity [within a specified time period]." 18 U.S.C. § 1961(5). Racketeering activity includes many indictable offenses, including mail and wire fraud and laundering of monetary instruments. 18 U.S.C. § 1961(1). Wire (or mail) fraud requires allegations of a scheme to defraud, intent to defraud and use of wires (or mail) in furtherance of the scheme. *United States v. Weimert*, 819 F.3d 351, 355 (7th Cir. 2016).

As defendants point out, in order to state a claim under RICO, plaintiffs must plausibly allege that a RICO violation "not only was a 'but for' cause of his injury, but was the proximate cause as well." *Holmes v. Securities Investor Protection Corp.*, 503 U.S. 258, 268 (1992). The Supreme Court has explained:

> Proximate cause for RICO purposes, we [have] made clear, should be evaluated in light of its common-law foundations; proximate cause thus requires 'some direct relation between the injury asserted and the injurious conduct alleged.' A link that is 'too remote,' 'purely contingent,' or 'indirec[t]' is insufficient.

Hemi Group, LLC v. City of New York, NY, 559 U.S. 1, 9 (2010). Although the test for proximate cause under RICO has a foundation in the common law, the Supreme Court has explicitly rejected the idea that the proximate cause requirement should "turn on foreseeability, rather than on the existence of a sufficiently 'direct relationship' between the fraud and the harm." *Hemi*, 559 U.S. at 12. Instead, when "a court evaluates a RICO claim for proximate causation, the central question it must ask is whether the alleged violation led directly to the plaintiff's injuries." *Anza v. Ideal Steel Supply Corp.*, 547 U.S. 451, 461 (2006); *see also Hemi*, 559 U.S. at 12 ("the focus is on the directness of the relationship between the conduct and the harm.").

In *Hemi*, for example, the City of New York sued a mail-order cigarette seller under RICO on the theory that the seller's failure to report the names of its buyers to the state of New York made it impossible for the City of New York to collect use tax from its citizens who had purchased cigarettes from the seller. It claimed the lost tax revenue as its RICO injury. The Supreme Court concluded that the City had failed to state a claim under RICO. *Hemi*, 559 U.S. at 18. It explained:

> The City's causal theory is far more attenuated than the one we rejected in *Holmes*. According to the City, Hemi committed fraud by selling cigarettes to city residents and failed to submit the required customer information to the State.

> Without the reports from Hemi, the State could not pass on the information to the City, even if it had been so inclined. Some of the customers legally obligated to pay the cigarette tax to the City failed to do so. Because the City did not receive the customer information, the City could not determine which customers had failed to pay the tax. The City thereby was injured in the amount of the portion of back taxes that were never collected.

Hemi, 559 U.S. at 9. The Supreme Court said, "the conduct directly responsible for the City's harm was the customers' failure to pay their taxes." *Hemi*, 559 U.S. at 11. "Because the City's theory of causation requires us to move well beyond the first step [of causation], that theory cannot meet RICO's direct relationship requirement." *Hemi*, 559 U.S. at 10.

Similarly, in *Anza*, the Supreme Court concluded that a plaintiff had failed to state a RICO claim, because he failed to allege the RICO violation had proximately caused his injury. There, plaintiff's theory was that defendants "harmed [plaintiff] by defrauding the New York tax authority and using the proceeds from the fraud to offer lower prices designed to attract more customers." *Anza*, 547 U.S. at 457-58. The Supreme Court concluded that the "connection between [plaintiff's] injury and [defendants'] injurious conduct" was too "attenuated." *Anza*, 547 U.S. at 459. The Supreme Court noted that defendants "could have lowered its prices for any number of reasons" and that its "lowering of prices in no sense required it to defraud the state tax authority." *Anza*, 547 U.S. at 459. It also noted that plaintiff's "lost sales could have resulted from factors other than petitioners' alleged" fraud, because "[b]usinesses lose and gain customers for many reasons[.]" *Anza*, 547 U.S. at 459.

The Seventh Circuit, too, has considered what it takes to show proximate cause in a RICO case, and it has done so with respect to facts that are similar to the allegations in this case. In *Empress Casino Joliet Corp. v. Johnston*, 763 F.3d 723 (7th Cir. 2014), casino owners sued members of the horseracing industry, accusing them of having used bribery to pass two state statutes (a 2006 Act that sunset after two years and a follow-up 2008 Act) that taxed casino

revenue in order to subsidize the horseracing industry. On summary judgment, plaintiffs had put forth evidence that former-governor Rod Blagojevich had taken a campaign contribution as a *quid pro quo* for signing the '08 Act. That exchange was sufficient to show proximate causation because:

> the '08 Act became law as a direct result of the alleged agreement to trade money for one person's action—the governor's signature. A jury could find that the causal chain between the Racetrack's bribe and the governor's signing of the bill was not broken by any intervening acts of third parties.

Empress Casino, 763 F.3d at 732.

With respect to the '06 Act, however, the Seventh Circuit reached a different conclusion. It said:

> The Casinos have not pointed to any evidence that would allow a factfinder to conclude that the Racetracks' alleged bribery scheme *caused* the legislature to pass the '06 Act. To begin with, the Casinos make no allegation and have no evidence that the Racetracks ever bribed or attempted to bribe state legislators. Nor do the Casinos point to evidence that the governor agreed to exert *improper* influence over state legislators in order to win their support of the '06 Act in exchange for a bribe.

Empress Casino, 763 F.3d at 729 (emphasis added). The Seventh Circuit added that evidence of "simple logrolling" would not suffice to show improper influence. *Empress Casino*, 763 F.3d at 729.

In this case, defendants argue that plaintiffs have not stated a claim under RICO, because they have not alleged that their injury was proximately caused by ComEd's alleged bribe of Madigan. Defendants, rightly, concede that plaintiffs have alleged but-for causation. Plaintiffs have, for example, alleged that Madigan had the "*de facto* ability to control which bills get voted on and which ones do not." (Complt. ¶ 143). That is enough to allege the bills would not have passed but-for Madigan. It is not, however, enough to allege proximate causation, because it is not enough to show that the bribery of Madigan was the proximate cause of the bills' ultimate

passage. Plaintiffs' allegations are different as to each bill, so the Court considers each bill in turn.

With respect to FEJA, plaintiffs allege the bill was "controversial" and "would not have passed without Madigan's involvement." (Complt. ¶ 181). That is enough to allege but-for causation, but it is not enough to establish proximate causation. True, Madigan brought FEJA up for vote, but two more things had to happen before the bill became law, and plaintiffs do not allege the bribe of Madigan caused those other things to happen. First, plaintiffs allege that, in late 2016, the bill passed the Illinois House (of which Madigan constitutes a single member) with 63 votes (Madigan did not vote) and the Illinois Senate (of which Madigan is not a member) with 32 votes. Plaintiffs have not alleged that the bribe of Madigan caused the members to vote in favor, because, just as with the '06 Act in *Empress Casino*, plaintiffs have not plausibly alleged that Madigan *improperly* influenced the other legislators who voted to pass the bill. Although plaintiff has alleged that Madigan had power over committee assignments, endorsements and fundraising, these allegations are consistent with lawful conduct. *See Twombly*, 550 U.S. at 570 (plaintiffs must include allegations that "nudg[e] their claims across the line from conceivable to plausible."). As the Seventh Circuit explained in *Empress Casino*:

> T]he usual give-and-take of legislative lawmaking[] might explain the change in outcome. . . . If the promise referred to support for re-election, or a commitment to co-sponsor a bill, without any taint of bribery, nothing would be wrong.

Empress Casino, 763 F.3d at 730. "[S]imple logrolling . . . falls short of evidence that could support a RICO claim." *Empress Casino,* 763 F.3d at 729.

The second thing that happened before the bill became law is the governor's signature on the bill. Plaintiffs omit from their complaint any mention of whether anything else was involved in the process of passing FEJA, but the Court can take judicial notice of the fact that then-

Governor Bruce Rauner signed FEJA into law. Plaintiffs have not alleged that the bribery of Madigan caused Governor Rauner to sign FEJA into law.

Next, plaintiffs allege that Madigan was a but-for cause with respect to the passage of EIMA and the EIMA Amendments. Once again, though, plaintiffs' allegations fall short of proximate causation. Although plaintiffs allege Madigan brought the bill to the legislature, plaintiffs fail to allege that the bribe of Madigan caused the members of the Illinois House and Senate to vote in favor of EIMA. Plaintiffs also allege that the Illinois legislature had to override a veto by then-Governor Quinn. Plaintiffs allege that, in "order to override the veto, Speaker Madigan, ComEd, and Exelon successfully pressured ten members of the House Democratic caucus and four members of the Senate Democratic caucus who had not originally supported the bill to vote to override the veto." (Complt. ¶ 162). What plaintiffs fail to allege is what pressure was put on legislators. If, by pressure, plaintiffs mean logrolling, committee assignments or help with reelection, then that does not suffice. Plaintiffs fail to allege that Madigan put any *improper* pressure on those lawmakers.

The same is true of plaintiffs' allegations as to the EIMA Amendments. Plaintiffs allege only that Madigan "provided the votes to override" then-Governor Quinn's veto of the EIMA amendments. (Complt. ¶ 167). Plaintiffs do not, however, say how. Once again, if plaintiffs mean merely that Madigan logrolled or used the usual give-and-take of the legislative process, it is not sufficient. To state a claim, plaintiffs need to allege Madigan provided the votes by placing *improper* pressure on lawmakers.

In short, plaintiffs have not included in their complaint sufficient allegations to allege plausibly that the RICO violation was a proximate cause of their injuries. Conceivably, plaintiffs could amend to cure the defect (though whether they could do so within the bounds of Rule 11

is, of course, a different question). Whether they should be allowed to file such an amendment depends on whether a "cure" for the alleged bribery may "lie in civil litigation." The Court considers that issue next.

2. *Fletcher v. Peck*

Defendants, relying on *Fletcher v. Peck*, also argue that this issue should not be the subject of civil litigation. Plaintiffs counter that *Fletcher v. Peck* is "forgotten"[5] and that the facts are different. Plaintiffs are at least half right. *Fletcher* did not involve electricity rates. When Chief Justice John Marshall wrote *Fletcher v. Peck*, it was not by the light of an Edison bulb, which would not be invented for another seventy years. The question is not whether the facts are the same but whether the principle is, as defendants argue, applicable here.

Fletcher v. Peck, 10 U.S. 87 (1810) involved a contract for the sale of land between two private individuals. When Peck deeded land to Fletcher it was with a covenant that Peck had conveyed all the title that the State of Georgia had held in the land. Unfortunately, the law that had allowed Georgia to transfer the land to a prior owner had been procured by bribery, which led Fletcher to argue the convenant was breached. The Supreme Court said they would not consider the issue, explaining:

> That corruption should find its way into the governments of our infant republics, and contaminate the very source of legislation, or that impure motives should contribute to the passage of a law, or the formation of a legislative contract, are circumstances most deeply to be deplored. How far a court of justice would, in any case, be competent, on proceedings instituted by the state itself, to vacate a contract thus formed, and to annul the rights required, under that contract, by third persons having no notice of the improper means by which it was obtained, is a question which the court would approach with much circumspection. . . . If the principle be conceded, that an act of the supreme sovereign power might be declared null by a court, in consequence of the means which procured it, still would there be much difficulty in saying to what extent those means mu[st] be applied to produce this effect. . . . Must the vitiating cause

[5] Docket 98-1 at 6/Plfs. Surreply at 1.

> operate on the majority, or on what number of the members? Would the act be null, whatever might be the wish of the nation, or would its obligation or nullity depend upon the public sentiment?
>
> If the majority of the legislature be corrupted, it may well be doubted, whether it be within the province of the judiciary to control their conduct, and, if less than a majority act from impure motives, the principle by which judicial interference would be regulated, is not clearly discerned.

Fletcher, 10 U.S. at 130. It went on to say:

> This is not a bill brought by the state of Georgia, to annul the contract, nor does it appear to the court, by this count, that the state of Georgia is dissatisfied with the sale that has been made. The case . . . is simply this. One individual who holds lands in the state of Georgia, under a deed covenanting that the title of Georgia was in the grantor, brings an action of covenant upon this deed, and assigns, as a breach, that some of the members of the legislature were induced to vote in favour of the law, which constituted the contract, by being promised an interest in it, and that therefore the act is a mere nullity.
>
> This solemn question cannot be brought thus collaterally and incidentally before the court. It would be indecent, in the extreme, upon a private contract, between two individuals, to enter into inquiry respecting the corruption of the sovereign power of a state. If the title be plainly deduced from a legislative act, which the legislature might constitutionally pass, if the act be clothed with all the requisite forms of a law, *a court*, sitting as a court of law, *cannot sustain a suit brought by one individual against another founded on the allegation that the act is a nullity, in consequence of the impure motives which influenced certain members of the legislature which passed the law.*

Fletcher, 10 U.S. at 130-31 (emphasis added).

In the meantime, *Fletcher* has not been forgotten. The Seventh Circuit, within the last decade, has considered whether *Fletcher* applies to a strikingly-similar factual situation. In *Empress Casino*, the Seventh Circuit thought *Fletcher* an important enough issue to mention. There, the Seventh Circuit described as a "questionable proposition" whether a RICO claim could be based on allegations that a governor used bribery to get a bill through a legislature. *Empress Casino*, 763 F.3d at 728. There, the Seventh Circuit explained both why that was questionable and why the court did not need to decide the issue, saying:

> The work of state legislatures lies at the heart of the 'Republican Form of Government' that the Constitution mandates. U.S. Const. Art. IV, § 4; *see also the Federalist No. 51* (James Madison) ("In the republican government, the legislative authority necessarily predominates."). The evidence would have to be extraordinary to conclude that one corrupt official, whether the governor or anyone else, had hijacked this foundational institution of state sovereignty. *And even if the evidence were strong, the cure may not lie in civil litigation in the courts.* [Citing and quoting *Fletcher v. Peck*.] We do not need to explore the outer boundaries of the *Fletcher* holding here, because this record is devoid of admissible evidence that the governor exerted undue influence on the legislators as they considered the '06 Act.

Empress Casino, 763 F.3d 730-31 (emphasis added).[6]

Here, as in *Fletcher*, it is not the State of Illinois that objects to how the law was passed. As in *Fletcher*, the Court has no reason to think the State of Illinois is unhappy with the law. Nor does the Court have any reason to think the constituents are unhappy with the law. In a state with an electorate that expresses concern about climate change, perhaps the constituents preferred to subsidize reliable, zero-emission nuclear power so that it could compete with federally-subsidized but intermittent wind or solar power. Perhaps the constituents wanted a modernized energy-delivery system. The legislature is the branch of government most responsive to the electorate. This Court shares *Fletcher's* concern about a court, in effect, overruling the decisions of a State legislature based on the alleged improper motives of the legislature.

Here, as in *Fletcher*, we have a dispute between private parties. In this case, plaintiffs allege they purchased electricity (and the delivery thereof) from their public utility (defendant ComEd) and its owner (Exelon) at rates that were inflated due to laws that were passed through a

[6] Plaintiffs discount the Seventh Circuit's concerns about *Fletcher*, arguing that, in *Empress Casino*, the Seventh Circuit allowed the claims about the '08 Act to proceed. The Court disagrees. The claims on the '08 Act proceeded, because they involved *executive* action (the governor was bribed to sign the '08 Act), not *legislative* action. *Fletcher* simply did not apply.

State legislature. Plaintiffs allege that the passage of those laws was tainted by the bribery of the Speaker of the House, and that, accordingly, plaintiffs should be reimbursed for the difference between the inflated rates they paid and the rates they would have paid had the laws not been passed. True, plaintiffs are not arguing that EIMA, the EIMA Amendments or FEJA are nullities. They are arguing they should be reimbursed for the effect those laws had on the rates they paid for electricity. Plaintiffs believe that any amounts defendants were able to collect from plaintiffs (in the form of higher rates for the electricity plaintiffs used) on account of the three laws should be given back to the plaintiffs in the form of damages on a RICO claim. How, though, is that different from nullifying those laws? Plaintiffs are certainly arguing that the rates—that are a product of those State laws—are nullities. The plaintiffs want this Court to order defendants to reimburse plaintiffs for those increased rates in the form of damages on a civil claim. The State legislature giveth, and the federal court taketh away. The effect to plaintiffs is essentially the same as nullifying the State law, all based on the motives of the legislators. In essence, plaintiffs' RICO claim is a collateral attack on three Illinois laws.

The problems with such a claim are those that the Supreme Court worried about in *Fletcher v. Peck*. It is not possible to determine the merits of the RICO proximate cause issue without considering the motives of the legislators who voted for the bill. By contemplating the motives of the legislators who voted for the bill, the Court would be violating *Fletcher v. Peck.*

The Court fails to see how it can "sustain" the RICO claim in light of *Fletcher v. Peck.* Accordingly, it would be futile to give plaintiffs leave to amend their RICO count. Count I is dismissed with prejudice.

Because the Court is dismissing the only claim over which it has original jurisdiction, it declines to exercise supplemental jurisdiction over plaintiffs' remaining state-law claims. *See*

Burritt v. Ditlefsen, 807 F.3d 239, 252 (7th Cir. 2015) ("The general rule, when the federal claims fall out before trial, is that the [district court] should relinquish jurisdiction over any supplemental . . . state law claims in order to minimize federal judicial intrusion into matters of purely state law.") (citation omitted) . Counts II, III and VI are dismissed without prejudice.

Citizens Utility Board's Count I is the same as plaintiffs' Count I. It is dismissed with prejudice for the same reasons. CUB's Count II is a RICO conspiracy claim under 18 U.S.C. § 1962(d). It is dismissed for the same reasons. *See United Food and Commercial Workers Unions and Employers Midwest Benefits Fund v. Walgreen Co.*, 719 F.3d 849, 856-57 (7th Cir. 2013) ("Having failed to plead facts that would establish a violation of Section 1962(c), the [plaintiff] cannot state a claim for conspiracy under Section 1962(d) based on those same facts."). The Court relinquishes jurisdiction over CUB's remaining state-law claims. Accordingly, Counts III and IV are dismissed without prejudice.

IV. CONCLUSION

For the reasons set forth above, the Court grants plaintiffs' motion [98] for leave to file surreply. The Court grants defendants' motion [84] to dismiss. Plaintiffs' Count I is dismissed with prejudice. The Court relinquishes jurisdiction over plaintiffs' Counts II, III and IV, which are dismissed without prejudice. Intervenor Citizens Utility Board's Counts I and II are dismissed with prejudice. The Court relinquishes jurisdiction over intervenor Citizens Utility Board's Counts III and IV, which are dismissed without prejudice. Civil case terminated.

SO ORDERED.

ENTERED: September 9, 2021

HON. JORGE ALONSO
United States District Judge

ILND 450 (Rev. 04/29/2016) Judgment in a Civil Action

IN THE UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF ILLINOIS

Steven Brooks,

Plaintiff(s),

v.

Commonwealth Edison Company et al,

Defendant(s).

Case No. 20 C 4555
Judge Jorge L. Alonso

JUDGMENT IN A CIVIL CASE

Judgment is hereby entered (check appropriate box):

☐ in favor of plaintiff(s)
and against defendant(s)
in the amount of $

which ☐ includes pre–judgment interest.
☐ does not include pre–judgment interest.

Post-judgment interest accrues on that amount at the rate provided by law from the date of this judgment.

Plaintiff(s) shall recover costs from defendant(s).

☐ in favor of defendant(s)
and against plaintiff(s)

Defendant(s) shall recover costs from plaintiff(s).

☑ other: The Court grants defendants' motion [84] to dismiss. Plaintiffs' Count I is dismissed with prejudice. The Court relinquishes jurisdiction over plaintiffs' Counts II, III and IV, which are dismissed without prejudice. Intervenor Citizens Utility Board's Counts I and II are dismissed with prejudice. The Court relinquishes jurisdiction over intervenor Citizens Utility Board's Counts III and IV, which are dismissed without prejudice.

This action was *(check one)*:

☐ tried by a jury with Judge presiding, and the jury has rendered a verdict.
☐ tried by Judge without a jury and the above decision was reached.
☑ decided by Judge Jorge L. Alonso.

Date: 9/15/2021

Thomas G. Bruton, Clerk of Court

Lesley Fairley , Deputy Clerk

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

LAWRENCE H. GRESS, et al.,	)	
	)	
Plaintiffs,	)	Nos. 20 C 4405, 20 C 4555, 20 C 4980
	)	
v.	)	
	)	Judge Jorge L. Alonso
COMMONWEALTH EDISON COMPANY, and EXELON CORPORATION,	)	
	)	
Defendants.	)	

CITIZENS UTILITY BOARD,	)	
	)	
Plaintiff,	)	
	)	No. 20 C 4405
v.	)	
	)	Judge Jorge L. Alonso
COMMONWEALTH EDISON COMPANY,	)	
	)	
Defendant.	)	

MEMORANDUM OPINION AND ORDER

From Greylord to guilty governors, the citizens of Illinois have suffered their share of corrupt behavior by elected government officials. This case involves more appalling behavior by an elected official; but, here, the defendant is not the government official who allegedly took the bribes but instead the two deep-pocketed corporations, Commonwealth Edison Company ("ComEd") and Exelon Corporation ("Exelon"), whose employees allegedly agreed to pay the bribes.

Plaintiffs Lawrence H. Gress ("Gress"), Steven Brooks, David Chavez, 1540 Milwaukee LLC, South Branch LLC, TFO Golub Burnham LLC, TFO Golub IT 2.0 LLC, Rockwell on the River LLC and Carmichael Leasing Co., Inc., believing that bribery led to the passage of several laws that resulted in increased rates for the electricity they purchased, filed a consolidated complaint [Docket 75], seeking relief from defendants under the Racketeer Influenced and Corrupt Organizations Act ("RICO"), the Illinois Consumer Fraud and Deceptive Trade Practices Act ("ICFA"), as well as for conspiracy and unjust enrichment under Illinois law. Intervenor Citizens Utility Board ("CUB") filed a complaint in intervention with similar claims.[1] Defendants have filed a motion to dismiss. For the reasons set forth below, the Court grants the motion to dismiss.

I. BACKGROUND

The following facts are from plaintiffs' complaint, and the Court takes them as true.

Defendant ComEd is a public utility regulated by the Illinois Commerce Commission ("ICC"). ComEd provides electricity-delivery services to about 3,800,000 customers. Defendant Exelon owns 99.985% of ComEd.

Plaintiffs allege that Michael Madigan ("Madigan") is the Speaker[2] of the Illinois House of Representatives, a position he has held since 1997 and also held from 1983 to 1995. He is also the Chairman of the Illinois Democratic Party, a position that: (a) he has held since 1998; and (b) allows him to "largely control" fundraising and endorsements of candidates. (Complt. ¶ 32/Docket 75 ¶ 32). He has been the Democratic committeeman for the 13th Ward since 1969.

[1] As CUB states in its brief, its claims are essentially the same as plaintiffs' claims, and it has adopted all of plaintiffs' arguments.
[2] The Court takes the alleged facts as true, without vouching for their veracity.

Plaintiffs allege Madigan led an old-school "patronage system," (Complt. ¶ 37), doling out favors and jobs.

Plaintiffs allege that Madigan has a long history of taking favors from ComEd. Plaintiffs allege that "for decades, Madigan had named individuals to be ComEd employees, in such positions as meter readers, as part of an 'old-fashioned patronage system." (Complt. ¶ 124(e)). Nonetheless, plaintiffs allege that defendants, for many years, "counted Madigan among their greatest foes." (Complt. ¶ 147). For example, plaintiffs allege that, in 2003, Madigan "torpedoed" a rate hike that ComEd wanted. (Complt. ¶ 147).

Defendants changed their luck with Madigan, beginning in 2011. Specifically, plaintiffs allege that, between 2011 and 2019, defendants bribed Madigan by providing three favors: 1) ComEd made payments of more than $1,000,000.00 to Madigan cronies; 2) ComEd gave legal work to a law firm that was run by a Madigan crony and that donated more than $100,000.00 to funds controlled by Madigan; and 3) ComEd gave a seat on its Board of Directors to a Madigan crony.

Payments to Madigan cronies

According to plaintiffs, Madigan was assisted in his efforts to obtain bribes from ComEd by Michael McClain ("McClain"), Madigan's long-time friend. Plaintiffs describe McClain as one of Madigan's "clos[est]" and "most loyal" associates. (Complt. ¶ 45). McClain, like Madigan, served in the Illinois House of Representatives from 1972 to 1982. Plaintiffs allege that McClain has performed consulting and lobbying work for ComEd for many years and that he acts as a "trusted line of communication" between ComEd and Madigan. (Complt. ¶ 51).

Plaintiffs allege that in or about 2011, Madigan and McClain sought ComEd jobs, vendor subcontracts and payments. At about the same time, McClain and John Hooker ("Hooker"), who

was, at the time, ComEd's Executive Vice President of Legislative and External Affairs, "developed a plan" to direct money to three Madigan cronies through a consulting firm. (Complt. ¶ 116). That consulting firm was Jay D. Doherty & Associates, which is owned by Jay Doherty ("Doherty"). The three cronies were: Edward Moody ("Moody"), Frank Olivo, Jr. ("Olivo") and Ray Nice ("Nice"). Between 2011 and 2018, ComEd paid Jay D. Doherty & Associates $3,100,000.00.

The three cronies were long-time associates of Madigan. Moody has been associated with Madigan since he knocked on doors for Madigan as a teenager. He later became a precinct captain and worked as a Cook County Commissioner. Moody has been the Cook County Recorder of Deeds since December 2018. Olivo, too, has long been associated with Madigan. In the late 1960's, when Olivo was 18, he became a precinct captain. At some point, Madigan arranged for Olivo to be appointed Streets and Sanitation Superintendent for the 13th Ward. In 1994, at Madigan's request, then-Mayor Daley appointed Olivo to be 13th Ward Alderman, a position Olivo held until he retired in 2011. After his retirement until sometime in 2019, Olivo received payments as a lobbyist for ComEd. Similarly, Nice had a long relationship with Madigan. Nice was (or had been) a precinct captain in the 13th Ward. He was, at some point, a Deputy Recorder of Deeds for Cook County and, from 2013 to 2017, had a seat on the Employment Security Board of Review.

Plaintiffs allege that, from about 2011 until about 2019, ComEd gave money—indirectly through Jay Doherty & Associates—to Moody, Ovilo and Nice. Plaintiffs allege these three did "little or no work" in exchange for the money. (Complt. ¶ 120).

Those payments to Madigan's cronies via the consulting firm were not the only such payments alleged in the complaint. Plaintiffs allege that in May 2018, Madigan, via McClain,

asked Anne Pramaggiore ("Pramaggiore")—who was, at the time, the Senior Executive Vice President and CEO of Exelon Utilities—to hire Michael Zalewski ("Zalewski"). Zalewski had been Alderman of the 23rd Ward from May 1995 until he retired in May 2018. (At some point, Madigan helped Zalewski's daughter become Chair of the ICC, which regulates ComEd.) Pramaggiore, together with Doherty and another ComEd employee (Fidel Marquez), agreed that ComEd would pay Zalewski $5,000 per month via Jay Doherty & Associates. ComEd's contract with Jay Doherty & Associates was changed in June 2018 to increase the monthly payments to the consulting firm by $5,000.00.

Legal work

Plaintiffs allege that ComEd also agreed to give legal work to a Madigan crony. Specifically, in or around 2011, ComEd agreed to retain the law firm of Reyes Kurson to perform a minimum of 850 hours of work per year for ComEd. ComEd agreed to this in order "to influence and reward" Madigan. (Complt. ¶¶ 117-118). A partner in the Reyes Kurson firm was Victor Reyes ("Reyes"), who has donated more than $100,000 to "funds controlled by Madigan" and about $883,633.92 to the Democratic Party since 2005. (Complt. ¶ 80).

In or about 2016, some ComEd employees tried to give less work to Reyes Kurson, because the firm provided "little or no legal work of value." (Complt. ¶ 135(c)). Reyes complained to McClain, who wrote to Pramaggiore. McClain wrote, "If you do not get involve[d] and resolve this issue of 850 hours for his law firm per year then he will go to our Friend [Madigan]. Our Friend [Madigan] will call me and then I will call you." (Complt. ¶ 135(c)). Pramaggiore responded that she was "on this." (Complt. ¶ 135(c)).

Board seat

In or about 2017, Madigan sought to have Juan Ochoa ("Ochoa") appointed to the ComEd Board of Directors. Plaintiffs allege that Ochoa has "served Madigan for many years," but the complaint contains few details. Plaintiffs allege Ochoa was the head of the Metropolitan Pier and Exposition Authority from 2007 to 2010. Since 2010, he has been the CEO of a facilities management company. At some point, Ochoa granted a raise to the daughter of a former state senator as a favor to Madigan.

Madigan had McClain ask Pramaggiore to place Ochoa in a seat on ComEd's Board of Directors, a position that paid $78,000.00 per year. In May 2018, facing internal opposition to such an appointment, Pramaggiore asked McClain if Madigan would be satisfied by ComEd's giving Ochoa a part-time position that paid an equivalent amount. Plaintiffs allege "McClain told [her] that Madigan would appreciate if she would 'keep pressing' for the appointment of Ochoa as a Board Member." (Complt. ¶ 127). Pramaggiore agreed to do so, and, by April 2019, Ochoa was on the Board of Directors of ComEd. He resigned in April 2020.

Passage of laws

Plaintiffs allege that in exchange for ComEd's favors to his cronies, Madigan stewarded through the Illinois legislature three bills that were favorable to ComEd: the Energy Infrastructure and Modernization Act ("EIMA"), the 2013 EIMA Amendments and the Future Energy Jobs Act ("FEJA"). Specifically, plaintiffs allege:

> As a quid pro quo for these bribes, Madigan used his power as Speaker to permit EIMA to be voted on by the Illinois House of Representatives in or around May 2011, and used his powers to ensure House members would vote in support.

(Complt. ¶ 119). Plaintiffs allege that Madigan's support for the bills was "crucial: no bills move in the Illinois House without Madigan's support." (Complt. ¶ 2). "Absent Madigan's

active support, which was the object and result of Defendants' corruption, EIMA would not have become law." (Complt. ¶ 119).

Plaintiffs allege that Madigan had "outsized influence" in the Illinois House of Representatives. (Complt ¶ 143). Madigan, as Speaker, had "*de facto* ability to control which bills get voted on and which ones do not." (Complt. ¶ 143). With respect to each of 49 legislative committees in the Illinois House, Madigan, alone, decided which legislator would both serve as chair and collect the $10,000.00 per year stipend given to each chair. Madigan used those positions to reward loyalty or punish disloyalty. Plaintiffs allege Madigan had the power "to control the outcome of virtually all major legislation in the Assembly as well as the Senate." (Complt. ¶ 146).

EIMA

According to plaintiffs' complaint, defendants wanted EIMA to pass, because ComEd was having trouble getting projects approved by the ICC. In 2007, ComEd had asked the ICC "to approve hundreds of millions of dollars in 'smart grid' spending." (Complt. ¶ 154). The ICC declined, approving only a small pilot project. Defendants wanted EIMA to pass in order to ensure they could implement the smart-grid project and then pass the cost on to ratepayers.

Plaintiffs allege that, in February 2011, EIMA was introduced in the Illinois Senate, which passed the bill. The bill then went to the Illinois House, which approved the bill with 67 votes, after making amendments. The Illinois Senate voted to approve the amendments, and EIMA went to the Governor's desk. Then-Governor Patrick Quinn ("Quinn") vetoed the bill. Plaintiffs allege that, in "order to override the veto, Speaker Madigan, ComEd, and Exelon successfully pressured ten members of the House Democratic caucus and four members of the

Senate Democratic caucus who had not originally supported the bill to vote to override the veto." (Complt. ¶ 162).

EIMA Amendments

According to plaintiffs, at some point, ComEd asked the ICC to approve a change in how its return on invested capital would be calculated. ComEd wanted to begin earning a return in January of the year in which the money was invested, but the ICC declined. ComEd sought amendments to EIMA. Madigan, once again, "provided the votes to override" then-Governor Quinn's veto of the EIMA amendments. (Complt. ¶ 167).

FEJA

The next bill Madigan helped to pass for defendants was FEJA. Plaintiffs allege this bill provided a $2,350,000,000.00 "earmarked subsidy" for two Exelon nuclear plants in Illinois. In addition, it required that Zero Emission Credits be purchased from Exelon.[3]

Plaintiffs allege that FEJA was "controversial" and "would not have passed without Madigan's involvement." (Complt. ¶ 181). In late 2016, the bill passed the Illinois House with 63 votes (Madigan did not vote) and the Illinois Senate with 32 votes. Unlike the other two bills plaintiffs mention in their complaint, plaintiffs do not allege that this one required an override of a Governor's veto.[4]

Deferred prosecution agreement

Plaintiffs allege that a former ComEd employee has admitted to the bribery scheme. Specifically, plaintiffs allege that Frank Marquez ("Marquez"), who is ComEd's former Senior Vice President for Legislative Affairs, has admitted that he agreed with Hooker and Pramaggiore

[3] Plaintiffs do not say by whom the Zero Emission Credits were required to be purchased.
[4] The bill was signed by then-Governor Bruce Rauner. *See Village of Old Mill Creek v. Star*, Case No. 17-cv-1163, 17-cv-1164, 2017 WL 3008289 at *3 n. 8 (N.D. Ill. July 14, 2017).

to "arrange for Madigan's associates to obtain jobs, vendor subcontracts, and monetary payments—even in instances where the associates performed little or no work that they were purportedly hired to perform for ComEd—for the purpose of influencing and rewarding Madigan and to assist ComEd with respect to legislation affecting ComEd and its business." (Complt. ¶¶ 89, 95). Hooker was a 44-year ComEd employee, who retired in 2012 from his position as ComEd's Executive Vice President of Legislative and External Affairs. Pramaggiore was CEO of ComEd from about March 2012 to about May 2018. From June 1, 2018 through October 15, 2019, she was Senior Executive Vice President and CEO of Exelon Utilities.

Plaintiffs allege that ComEd has entered a deferred prosecution agreement with the United States Attorney for the Northern District of Illinois. Plaintiffs allege that, in the agreement, defendants admitted that "the reasonably foreseeable anticipated benefits to ComEd" of the legislation was at least $150,000,000.00. (Complt. ¶ 183). Under the deferred prosecution agreement, according to plaintiffs' allegations, "[d]efendants . . . accept[ed] responsibility for bribery in violation of 18 U.S.C. § 666(a)(2) and agree[d] to pay $200 million in fines to the United States Treasury." (Complt. ¶ 29).

Plaintiffs allege that defendants have benefitted from the scheme in an amount greater than the amount they are paying the United States Treasury. Plaintiffs allege that the legislation Madigan helped pass allowed defendants "to collect unjust and illegal profits from Illinois electricity customers," i.e., plaintiffs. (Complt. ¶ 226). Plaintiffs allege that the legislation allowed ComEd to charge higher rates for electricity. Plaintiffs claim they "paid over $5 billion due to the legislation." (Complt. ¶ 5).

Based on defendants' alleged conduct, plaintiffs assert claims for violation of RICO (Count I), for conspiracy (Count II), for violation of the Illinois Consumer Fraud and Deceptive

Trade Practices Act (Count III) and for unjust enrichment (Count IV). The Citizens Utility Board ("CUB") filed a complaint in intervention that is quite similar to plaintiffs' complaint. CUB asserts claims for violation of RICO, 18 U.S.C. § 1962(c) (Count I); RICO conspiracy, 18 U.S.C. § 1962(d) (Count II); conspiracy (Count III); and unjust enrichment (Count IV).

II. STANDARD ON A MOTION TO DISMISS

The Court may dismiss a claim pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure if the plaintiff fails "to state a claim upon which relief can be granted." Fed.R.Civ.P. 12(b)(6). Under the notice-pleading requirements of the Federal Rules of Civil Procedure, a complaint must "give the defendant fair notice of what the . . . claim is and the grounds upon which it rests." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (quoting *Conley v. Gibson*, 355 U.S. 41, 47 (1957)). A complaint need not provide detailed factual allegations, but mere conclusions and a "formulaic recitation of the elements of a cause of action" will not suffice. *Twombly*, 550 U.S. at 555. To survive a motion to dismiss, a claim must be plausible. *Ashcroft v. Iqbal*, 556 U.S. 662 (2009). Allegations that are as consistent with lawful conduct as they are with unlawful conduct are not sufficient; rather, plaintiffs must include allegations that "nudg[e] their claims across the line from conceivable to plausible." *Twombly*, 550 U.S. at 570.

In considering a motion to dismiss, the Court accepts as true the factual allegations in the complaint and draws permissible inferences in favor of the plaintiffs. *Boucher v. Finance Syst. of Green Bay, Inc.*, 880 F.3d 362, 365 (7th Cir. 2018). Conclusory allegations "are not entitled to be assumed true," nor are legal conclusions. *Iqbal*, 556 U.S. at 680 & 681 (noting that a "legal conclusion" was "not entitled to the assumption of truth[;]" and rejecting, as conclusory, allegations that "'petitioners 'knew of, condoned, and willfully and maliciously agreed to subject [him]' to harsh conditions of confinement"). The notice-pleading rule "does not unlock the

doors of discovery for a plaintiff armed with nothing more than conclusions." *Iqbal*, 556 U.S. at 678-679.

Pursuant to Rule 9(b) of the Federal Rules of Civil Procedure, the "circumstances constituting fraud" must be alleged with particularity. Fed.R.Civ.P. 9(b).

III. DISCUSSION

A. Filed Rate Doctrine

Electricity delivery is generally considered to be a natural monopoly, which is why rates are regulated and utilities are allowed a reasonable rate of return on invested capital. In this case, plaintiffs argue they paid inflated electricity rates due to laws that passed on account of bribery.

Defendants argue that plaintiffs' claims should be dismissed as barred by the filed rate doctrine, which is the principle that the "rights as defined by the tariff cannot be varied or enlarged by either contract or tort of the carrier." *Keogh v. Chicago & N.W. Ry. Co.*, 260 U.S. 156, 163 (1922). The filed rate doctrine "which is based on historical antipathy to rate setting by courts . . . and on a policy forbidding price discrimination by public utilities and common carriers, forbids a court to revise a public utility's or . . . common carrier's filed tariff, which is to say the terms of sale that the carrier has filed with the agency that regulates the carrier's service." *Arsberry v. Illinois*, 244 F.3d 558, 562 (7th Cir. 2001). As the Third Circuit succinctly put it, "[o]nce [the] rate is filed with the appropriate regulatory body, we have no ability to effectively reduce it by awarding damages for an alleged overcharge[.]" *Leo v. Nationstar Mortgage LLC*, 964 F.3d 213, 218 (3d Cir. 2020). This defense would seem to be a slam dunk in a case in which plaintiffs seek money damages as reimbursement for the inflated rates they paid for the electricity they used when they chose to, say, turn on their lights, cook on their electric stoves or charge their cell phones.

The Court, however, will not consider this issue on a motion to dismiss under Rule 12(b)(6). As plaintiffs point out, the filed rate doctrine is an affirmative defense. *Gunn v. Continental Casualty Co.*, 968 F.3d 802, 806 (7th Cir. 2020). Plaintiffs need not plead around an affirmative defense, and the Court may not dismiss a claim on the basis of an affirmative defense unless plaintiffs allege, and thus admit, the elements of the affirmative defense. *Chicago Bldg. Design, P.C. v. Mongolian House, Inc.*, 770 F.3d 610, 613-14 (7th Cir. 2014); *United States Gypsum Co. v. Indiana Gas Co., Inc.*, 350 F.3d 623, 626 (7th Cir. 2003). Defendants argue that the rates plaintiffs paid for the electricity they used were filed, but they do not cite any portions of the complaint in which plaintiffs admit that. Instead, defendants cite ICC orders and argue plaintiffs cannot deny the fact that the rates were filed. It is not enough that plaintiffs did not *deny* the fact in their complaint. In order for defendants to obtain dismissal on the basis of an affirmative defense, defendants need to point to complaint allegations in which plaintiffs *admitted* the facts. They have not done so.

Plaintiffs have not alleged, and thus admitted, the ingredients of defendants' filed-rate-doctrine affirmative defense. The Court will not dismiss on the basis of that affirmative defense on a motion to dismiss under Rule 12(b)(6).

B. RICO

1. Failure to state a claim

In Count I, plaintiffs asserts that defendants violated the Racketeer Influenced and Corrupt Organizations (RICO) Act, 18 U.S.C. § 1962(c). Defendants moves to dismiss for failure to state a claim, among other reasons.

RICO provides a private right of action for violations of 18 U.S.C. § 1962. 18 U.S.C. § 1964(c). In passing the RICO statute, Congress sought "to eradicate organized, long-term

criminal activity." *Midwest Grinding Co., Inc. v. Spitz*, 976 F.2d 1016, 1019 (7th Cir. 1992). "RICO has not federalized every common-law state cause of action" despite "widespread abuse of civil RICO." *Midwest Grinding*, 976 F.2d at 1025. The Seventh Circuit has explained:

> The prototypical RICO case is one in which a person bent on criminal activity seizes control of a previously legitimate firm and uses the firm's resources, contacts, facilities, and appearance of legitimacy to perpetuate more, and less easily discovered, criminal acts than he could do in his own person, that is, without channeling his criminal activities through the enterprise that he has taken over.

Fitzgerald v. Chrysler Corp., 116 F.3d 225, 227 (7th Cir. 1997). RICO has particular pleading (and proof) requirements, because RICO is not meant to be "'a surrogate for garden-variety fraud actions properly brought under state law.'" *Menzies v. Seyfarth Shaw LLP*, 943 F.3d 328, 337 (7th Cir. 2019) (quoting *Midwest Grinding*, 976 F.2d at 1022).

Plaintiffs assert a violation of 18 U.S.C. § 1962(c), which makes it "unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate directly in the conduct of such enterprise's affairs through a pattern of racketeering activity or collection of unlawful debt." 18 U.S.C. § 1962(c). To state a claim, plaintiffs must plausibly allege "(1) conduct (2) of an enterprise (3) through a pattern (4) of racketeering activity." *Menzies*, 943 F.3d at 336.

A "pattern of racketeering activity" is defined in the statute as "at least two acts of racketeering activity [within a specified time period]." 18 U.S.C. § 1961(5). Racketeering activity includes many indictable offenses, including mail and wire fraud and laundering of monetary instruments. 18 U.S.C. § 1961(1). Wire (or mail) fraud requires allegations of a scheme to defraud, intent to defraud and use of wires (or mail) in furtherance of the scheme. *United States v. Weimert*, 819 F.3d 351, 355 (7th Cir. 2016).

As defendants point out, in order to state a claim under RICO, plaintiffs must plausibly allege that a RICO violation "not only was a 'but for' cause of his injury, but was the proximate cause as well." *Holmes v. Securities Investor Protection Corp.*, 503 U.S. 258, 268 (1992). The Supreme Court has explained:

> Proximate cause for RICO purposes, we [have] made clear, should be evaluated in light of its common-law foundations; proximate cause thus requires 'some direct relation between the injury asserted and the injurious conduct alleged.' A link that is 'too remote,' 'purely contingent,' or 'indirec[t]' is insufficient.

Hemi Group, LLC v. City of New York, NY, 559 U.S. 1, 9 (2010). Although the test for proximate cause under RICO has a foundation in the common law, the Supreme Court has explicitly rejected the idea that the proximate cause requirement should "turn on foreseeability, rather than on the existence of a sufficiently 'direct relationship' between the fraud and the harm." *Hemi*, 559 U.S. at 12. Instead, when "a court evaluates a RICO claim for proximate causation, the central question it must ask is whether the alleged violation led directly to the plaintiff's injuries." *Anza v. Ideal Steel Supply Corp.*, 547 U.S. 451, 461 (2006); *see also Hemi*, 559 U.S. at 12 ("the focus is on the directness of the relationship between the conduct and the harm.").

In *Hemi*, for example, the City of New York sued a mail-order cigarette seller under RICO on the theory that the seller's failure to report the names of its buyers to the state of New York made it impossible for the City of New York to collect use tax from its citizens who had purchased cigarettes from the seller. It claimed the lost tax revenue as its RICO injury. The Supreme Court concluded that the City had failed to state a claim under RICO. *Hemi*, 559 U.S. at 18. It explained:

> The City's causal theory is far more attenuated than the one we rejected in *Holmes*. According to the City, Hemi committed fraud by selling cigarettes to city residents and failed to submit the required customer information to the State.

> Without the reports from Hemi, the State could not pass on the information to the City, even if it had been so inclined. Some of the customers legally obligated to pay the cigarette tax to the City failed to do so. Because the City did not receive the customer information, the City could not determine which customers had failed to pay the tax. The City thereby was injured in the amount of the portion of back taxes that were never collected.

Hemi, 559 U.S. at 9. The Supreme Court said, "the conduct directly responsible for the City's harm was the customers' failure to pay their taxes." *Hemi*, 559 U.S. at 11. "Because the City's theory of causation requires us to move well beyond the first step [of causation], that theory cannot meet RICO's direct relationship requirement." *Hemi*, 559 U.S. at 10.

Similarly, in *Anza*, the Supreme Court concluded that a plaintiff had failed to state a RICO claim, because he failed to allege the RICO violation had proximately caused his injury. There, plaintiff's theory was that defendants "harmed [plaintiff] by defrauding the New York tax authority and using the proceeds from the fraud to offer lower prices designed to attract more customers." *Anza*, 547 U.S. at 457-58. The Supreme Court concluded that the "connection between [plaintiff's] injury and [defendants'] injurious conduct" was too "attenuated." *Anza*, 547 U.S. at 459. The Supreme Court noted that defendants "could have lowered its prices for any number of reasons" and that its "lowering of prices in no sense required it to defraud the state tax authority." *Anza*, 547 U.S. at 459. It also noted that plaintiff's "lost sales could have resulted from factors other than petitioners' alleged" fraud, because "[b]usinesses lose and gain customers for many reasons[.]" *Anza*, 547 U.S. at 459.

The Seventh Circuit, too, has considered what it takes to show proximate cause in a RICO case, and it has done so with respect to facts that are similar to the allegations in this case. In *Empress Casino Joliet Corp. v. Johnston*, 763 F.3d 723 (7th Cir. 2014), casino owners sued members of the horseracing industry, accusing them of having used bribery to pass two state statutes (a 2006 Act that sunset after two years and a follow-up 2008 Act) that taxed casino

revenue in order to subsidize the horseracing industry. On summary judgment, plaintiffs had put forth evidence that former-governor Rod Blagojevich had taken a campaign contribution as a *quid pro quo* for signing the '08 Act. That exchange was sufficient to show proximate causation because:

> the '08 Act became law as a direct result of the alleged agreement to trade money for one person's action—the governor's signature. A jury could find that the causal chain between the Racetrack's bribe and the governor's signing of the bill was not broken by any intervening acts of third parties.

Empress Casino, 763 F.3d at 732.

With respect to the '06 Act, however, the Seventh Circuit reached a different conclusion. It said:

> The Casinos have not pointed to any evidence that would allow a factfinder to conclude that the Racetracks' alleged bribery scheme *caused* the legislature to pass the '06 Act. To begin with, the Casinos make no allegation and have no evidence that the Racetracks ever bribed or attempted to bribe state legislators. Nor do the Casinos point to evidence that the governor agreed to exert *improper* influence over state legislators in order to win their support of the '06 Act in exchange for a bribe.

Empress Casino, 763 F.3d at 729 (emphasis added). The Seventh Circuit added that evidence of "simple logrolling" would not suffice to show improper influence. *Empress Casino*, 763 F.3d at 729.

In this case, defendants argue that plaintiffs have not stated a claim under RICO, because they have not alleged that their injury was proximately caused by ComEd's alleged bribe of Madigan. Defendants, rightly, concede that plaintiffs have alleged but-for causation. Plaintiffs have, for example, alleged that Madigan had the "*de facto* ability to control which bills get voted on and which ones do not." (Complt. ¶ 143). That is enough to allege the bills would not have passed but-for Madigan. It is not, however, enough to allege proximate causation, because it is not enough to show that the bribery of Madigan was the proximate cause of the bills' ultimate

passage. Plaintiffs' allegations are different as to each bill, so the Court considers each bill in turn.

With respect to FEJA, plaintiffs allege the bill was "controversial" and "would not have passed without Madigan's involvement." (Complt. ¶ 181). That is enough to allege but-for causation, but it is not enough to establish proximate causation. True, Madigan brought FEJA up for vote, but two more things had to happen before the bill became law, and plaintiffs do not allege the bribe of Madigan caused those other things to happen. First, plaintiffs allege that, in late 2016, the bill passed the Illinois House (of which Madigan constitutes a single member) with 63 votes (Madigan did not vote) and the Illinois Senate (of which Madigan is not a member) with 32 votes. Plaintiffs have not alleged that the bribe of Madigan caused the members to vote in favor, because, just as with the '06 Act in *Empress Casino*, plaintiffs have not plausibly alleged that Madigan *improperly* influenced the other legislators who voted to pass the bill. Although plaintiff has alleged that Madigan had power over committee assignments, endorsements and fundraising, these allegations are consistent with lawful conduct. *See Twombly*, 550 U.S. at 570 (plaintiffs must include allegations that "nudg[e] their claims across the line from conceivable to plausible."). As the Seventh Circuit explained in *Empress Casino*:

> T]he usual give-and-take of legislative lawmaking[] might explain the change in outcome. . . . If the promise referred to support for re-election, or a commitment to co-sponsor a bill, without any taint of bribery, nothing would be wrong.

Empress Casino, 763 F.3d at 730. "[S]imple logrolling . . . falls short of evidence that could support a RICO claim." *Empress Casino,* 763 F.3d at 729.

The second thing that happened before the bill became law is the governor's signature on the bill. Plaintiffs omit from their complaint any mention of whether anything else was involved in the process of passing FEJA, but the Court can take judicial notice of the fact that then-

Governor Bruce Rauner signed FEJA into law. Plaintiffs have not alleged that the bribery of Madigan caused Governor Rauner to sign FEJA into law.

Next, plaintiffs allege that Madigan was a but-for cause with respect to the passage of EIMA and the EIMA Amendments. Once again, though, plaintiffs' allegations fall short of proximate causation. Although plaintiffs allege Madigan brought the bill to the legislature, plaintiffs fail to allege that the bribe of Madigan caused the members of the Illinois House and Senate to vote in favor of EIMA. Plaintiffs also allege that the Illinois legislature had to override a veto by then-Governor Quinn. Plaintiffs allege that, in "order to override the veto, Speaker Madigan, ComEd, and Exelon successfully pressured ten members of the House Democratic caucus and four members of the Senate Democratic caucus who had not originally supported the bill to vote to override the veto." (Complt. ¶ 162). What plaintiffs fail to allege is what pressure was put on legislators. If, by pressure, plaintiffs mean logrolling, committee assignments or help with reelection, then that does not suffice. Plaintiffs fail to allege that Madigan put any *improper* pressure on those lawmakers.

The same is true of plaintiffs' allegations as to the EIMA Amendments. Plaintiffs allege only that Madigan "provided the votes to override" then-Governor Quinn's veto of the EIMA amendments. (Complt. ¶ 167). Plaintiffs do not, however, say how. Once again, if plaintiffs mean merely that Madigan logrolled or used the usual give-and-take of the legislative process, it is not sufficient. To state a claim, plaintiffs need to allege Madigan provided the votes by placing *improper* pressure on lawmakers.

In short, plaintiffs have not included in their complaint sufficient allegations to allege plausibly that the RICO violation was a proximate cause of their injuries. Conceivably, plaintiffs could amend to cure the defect (though whether they could do so within the bounds of Rule 11

is, of course, a different question). Whether they should be allowed to file such an amendment depends on whether a "cure" for the alleged bribery may "lie in civil litigation." The Court considers that issue next.

2. *Fletcher v. Peck*

Defendants, relying on *Fletcher v. Peck*, also argue that this issue should not be the subject of civil litigation. Plaintiffs counter that *Fletcher v. Peck* is "forgotten"[5] and that the facts are different. Plaintiffs are at least half right. *Fletcher* did not involve electricity rates. When Chief Justice John Marshall wrote *Fletcher v. Peck*, it was not by the light of an Edison bulb, which would not be invented for another seventy years. The question is not whether the facts are the same but whether the principle is, as defendants argue, applicable here.

Fletcher v. Peck, 10 U.S. 87 (1810) involved a contract for the sale of land between two private individuals. When Peck deeded land to Fletcher it was with a covenant that Peck had conveyed all the title that the State of Georgia had held in the land. Unfortunately, the law that had allowed Georgia to transfer the land to a prior owner had been procured by bribery, which led Fletcher to argue the convenant was breached. The Supreme Court said they would not consider the issue, explaining:

> That corruption should find its way into the governments of our infant republics, and contaminate the very source of legislation, or that impure motives should contribute to the passage of a law, or the formation of a legislative contract, are circumstances most deeply to be deplored. How far a court of justice would, in any case, be competent, on proceedings instituted by the state itself, to vacate a contract thus formed, and to annul the rights required, under that contract, by third persons having no notice of the improper means by which it was obtained, is a question which the court would approach with much circumspection. . . . If the principle be conceded, that an act of the supreme sovereign power might be declared null by a court, in consequence of the means which procured it, still would there be much difficulty in saying to what extent those means mu[st] be applied to produce this effect. . . . Must the vitiating cause

[5] Docket 98-1 at 6/Plfs. Surreply at 1.

> operate on the majority, or on what number of the members? Would the act be null, whatever might be the wish of the nation, or would its obligation or nullity depend upon the public sentiment?
>
> If the majority of the legislature be corrupted, it may well be doubted, whether it be within the province of the judiciary to control their conduct, and, if less than a majority act from impure motives, the principle by which judicial interference would be regulated, is not clearly discerned.

Fletcher, 10 U.S. at 130. It went on to say:

> This is not a bill brought by the state of Georgia, to annul the contract, nor does it appear to the court, by this count, that the state of Georgia is dissatisfied with the sale that has been made. The case . . . is simply this. One individual who holds lands in the state of Georgia, under a deed covenanting that the title of Georgia was in the grantor, brings an action of covenant upon this deed, and assigns, as a breach, that some of the members of the legislature were induced to vote in favour of the law, which constituted the contract, by being promised an interest in it, and that therefore the act is a mere nullity.
>
> This solemn question cannot be brought thus collaterally and incidentally before the court. It would be indecent, in the extreme, upon a private contract, between two individuals, to enter into inquiry respecting the corruption of the sovereign power of a state. If the title be plainly deduced from a legislative act, which the legislature might constitutionally pass, if the act be clothed with all the requisite forms of a law, *a court*, sitting as a court of law, *cannot sustain a suit brought by one individual against another founded on the allegation that the act is a nullity, in consequence of the impure motives which influenced certain members of the legislature which passed the law.*

Fletcher, 10 U.S. at 130-31 (emphasis added).

In the meantime, *Fletcher* has not been forgotten. The Seventh Circuit, within the last decade, has considered whether *Fletcher* applies to a strikingly-similar factual situation. In *Empress Casino*, the Seventh Circuit thought *Fletcher* an important enough issue to mention. There, the Seventh Circuit described as a "questionable proposition" whether a RICO claim could be based on allegations that a governor used bribery to get a bill through a legislature. *Empress Casino*, 763 F.3d at 728. There, the Seventh Circuit explained both why that was questionable and why the court did not need to decide the issue, saying:

> The work of state legislatures lies at the heart of the 'Republican Form of Government' that the Constitution mandates. U.S. Const. Art. IV, § 4; *see also the Federalist No. 51* (James Madison) ("In the republican government, the legislative authority necessarily predominates."). The evidence would have to be extraordinary to conclude that one corrupt official, whether the governor or anyone else, had hijacked this foundational institution of state sovereignty. *And even if the evidence were strong, the cure may not lie in civil litigation in the courts.* [Citing and quoting *Fletcher v. Peck*.] We do not need to explore the outer boundaries of the *Fletcher* holding here, because this record is devoid of admissible evidence that the governor exerted undue influence on the legislators as they considered the '06 Act.

Empress Casino, 763 F.3d 730-31 (emphasis added).[6]

Here, as in *Fletcher*, it is not the State of Illinois that objects to how the law was passed. As in *Fletcher*, the Court has no reason to think the State of Illinois is unhappy with the law. Nor does the Court have any reason to think the constituents are unhappy with the law. In a state with an electorate that expresses concern about climate change, perhaps the constituents preferred to subsidize reliable, zero-emission nuclear power so that it could compete with federally-subsidized but intermittent wind or solar power. Perhaps the constituents wanted a modernized energy-delivery system. The legislature is the branch of government most responsive to the electorate. This Court shares *Fletcher's* concern about a court, in effect, overruling the decisions of a State legislature based on the alleged improper motives of the legislature.

Here, as in *Fletcher*, we have a dispute between private parties. In this case, plaintiffs allege they purchased electricity (and the delivery thereof) from their public utility (defendant ComEd) and its owner (Exelon) at rates that were inflated due to laws that were passed through a

[6] Plaintiffs discount the Seventh Circuit's concerns about *Fletcher*, arguing that, in *Empress Casino*, the Seventh Circuit allowed the claims about the '08 Act to proceed. The Court disagrees. The claims on the '08 Act proceeded, because they involved *executive* action (the governor was bribed to sign the '08 Act), not *legislative* action. *Fletcher* simply did not apply.

State legislature. Plaintiffs allege that the passage of those laws was tainted by the bribery of the Speaker of the House, and that, accordingly, plaintiffs should be reimbursed for the difference between the inflated rates they paid and the rates they would have paid had the laws not been passed. True, plaintiffs are not arguing that EIMA, the EIMA Amendments or FEJA are nullities. They are arguing they should be reimbursed for the effect those laws had on the rates they paid for electricity. Plaintiffs believe that any amounts defendants were able to collect from plaintiffs (in the form of higher rates for the electricity plaintiffs used) on account of the three laws should be given back to the plaintiffs in the form of damages on a RICO claim. How, though, is that different from nullifying those laws? Plaintiffs are certainly arguing that the rates—that are a product of those State laws—are nullities. The plaintiffs want this Court to order defendants to reimburse plaintiffs for those increased rates in the form of damages on a civil claim. The State legislature giveth, and the federal court taketh away. The effect to plaintiffs is essentially the same as nullifying the State law, all based on the motives of the legislators. In essence, plaintiffs' RICO claim is a collateral attack on three Illinois laws.

The problems with such a claim are those that the Supreme Court worried about in *Fletcher v. Peck*. It is not possible to determine the merits of the RICO proximate cause issue without considering the motives of the legislators who voted for the bill. By contemplating the motives of the legislators who voted for the bill, the Court would be violating *Fletcher v. Peck.*

The Court fails to see how it can "sustain" the RICO claim in light of *Fletcher v. Peck.* Accordingly, it would be futile to give plaintiffs leave to amend their RICO count. Count I is dismissed with prejudice.

Because the Court is dismissing the only claim over which it has original jurisdiction, it declines to exercise supplemental jurisdiction over plaintiffs' remaining state-law claims. *See*

Burritt v. Ditlefsen, 807 F.3d 239, 252 (7th Cir. 2015) ("The general rule, when the federal claims fall out before trial, is that the [district court] should relinquish jurisdiction over any supplemental . . . state law claims in order to minimize federal judicial intrusion into matters of purely state law.") (citation omitted) . Counts II, III and VI are dismissed without prejudice.

Citizens Utility Board's Count I is the same as plaintiffs' Count I. It is dismissed with prejudice for the same reasons. CUB's Count II is a RICO conspiracy claim under 18 U.S.C. § 1962(d). It is dismissed for the same reasons. *See United Food and Commercial Workers Unions and Employers Midwest Benefits Fund v. Walgreen Co.*, 719 F.3d 849, 856-57 (7th Cir. 2013) ("Having failed to plead facts that would establish a violation of Section 1962(c), the [plaintiff] cannot state a claim for conspiracy under Section 1962(d) based on those same facts."). The Court relinquishes jurisdiction over CUB's remaining state-law claims. Accordingly, Counts III and IV are dismissed without prejudice.

IV. CONCLUSION

For the reasons set forth above, the Court grants plaintiffs' motion [98] for leave to file surreply. The Court grants defendants' motion [84] to dismiss. Plaintiffs' Count I is dismissed with prejudice. The Court relinquishes jurisdiction over plaintiffs' Counts II, III and IV, which are dismissed without prejudice. Intervenor Citizens Utility Board's Counts I and II are dismissed with prejudice. The Court relinquishes jurisdiction over intervenor Citizens Utility Board's Counts III and IV, which are dismissed without prejudice. Civil case terminated.

SO ORDERED.

ENTERED: September 9, 2021

HON. JORGE ALONSO
United States District Judge

ILND 450 (Rev. 04/29/2016) Judgment in a Civil Action

IN THE UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF ILLINOIS

South Branch LLC,

Plaintiff(s),

v.

Commonwealth Edison Company et al,

Defendant(s).

Case No. 20 C 4980
Judge Jorge L. Alonso

JUDGMENT IN A CIVIL CASE

Judgment is hereby entered (check appropriate box):

☐ in favor of plaintiff(s)
and against defendant(s)
in the amount of $

which ☐ includes pre–judgment interest.
☐ does not include pre–judgment interest.

Post-judgment interest accrues on that amount at the rate provided by law from the date of this judgment.

Plaintiff(s) shall recover costs from defendant(s).

☐ in favor of defendant(s)
and against plaintiff(s)

Defendant(s) shall recover costs from plaintiff(s).

☑ other: The Court grants defendants' motion [84] to dismiss. Plaintiffs' Count I is dismissed with prejudice. The Court relinquishes jurisdiction over plaintiffs' Counts II, III and IV, which are dismissed without prejudice. Intervenor Citizens Utility Board's Counts I and II are dismissed with prejudice. The Court relinquishes jurisdiction over intervenor Citizens Utility Board's Counts III and IV, which are dismissed without prejudice.

This action was *(check one)*:

☐ tried by a jury with Judge presiding, and the jury has rendered a verdict.
☐ tried by Judge without a jury and the above decision was reached.
☑ decided by Judge Jorge L. Alonso.

Date: 9/15/2021

Thomas G. Bruton, Clerk of Court

Lesley Fairley , Deputy Clerk

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

LAWRENCE H. GRESS, et al., Plaintiffs, v. COMMONWEALTH EDISON COMPANY, and EXELON CORPORATION, Defendants.	)	Nos. 20 C 4405, 20 C 4555, 20 C 4980 Judge Jorge L. Alonso

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CITIZENS UTILITY BOARD, Plaintiff, v. COMMONWEALTH EDISON COMPANY, Defendant.	)	No. 20 C 4405 Judge Jorge L. Alonso

MEMORANDUM OPINION AND ORDER

From Greylord to guilty governors, the citizens of Illinois have suffered their share of corrupt behavior by elected government officials. This case involves more appalling behavior by an elected official; but, here, the defendant is not the government official who allegedly took the bribes but instead the two deep-pocketed corporations, Commonwealth Edison Company ("ComEd") and Exelon Corporation ("Exelon"), whose employees allegedly agreed to pay the bribes.

Plaintiffs Lawrence H. Gress ("Gress"), Steven Brooks, David Chavez, 1540 Milwaukee LLC, South Branch LLC, TFO Golub Burnham LLC, TFO Golub IT 2.0 LLC, Rockwell on the River LLC and Carmichael Leasing Co., Inc., believing that bribery led to the passage of several laws that resulted in increased rates for the electricity they purchased, filed a consolidated complaint [Docket 75], seeking relief from defendants under the Racketeer Influenced and Corrupt Organizations Act ("RICO"), the Illinois Consumer Fraud and Deceptive Trade Practices Act ("ICFA"), as well as for conspiracy and unjust enrichment under Illinois law. Intervenor Citizens Utility Board ("CUB") filed a complaint in intervention with similar claims.[1] Defendants have filed a motion to dismiss. For the reasons set forth below, the Court grants the motion to dismiss.

I. BACKGROUND

The following facts are from plaintiffs' complaint, and the Court takes them as true.

Defendant ComEd is a public utility regulated by the Illinois Commerce Commission ("ICC"). ComEd provides electricity-delivery services to about 3,800,000 customers. Defendant Exelon owns 99.985% of ComEd.

Plaintiffs allege that Michael Madigan ("Madigan") is the Speaker[2] of the Illinois House of Representatives, a position he has held since 1997 and also held from 1983 to 1995. He is also the Chairman of the Illinois Democratic Party, a position that: (a) he has held since 1998; and (b) allows him to "largely control" fundraising and endorsements of candidates. (Complt. ¶ 32/Docket 75 ¶ 32). He has been the Democratic committeeman for the 13th Ward since 1969.

[1] As CUB states in its brief, its claims are essentially the same as plaintiffs' claims, and it has adopted all of plaintiffs' arguments.
[2] The Court takes the alleged facts as true, without vouching for their veracity.

Plaintiffs allege Madigan led an old-school "patronage system," (Complt. ¶ 37), doling out favors and jobs.

Plaintiffs allege that Madigan has a long history of taking favors from ComEd. Plaintiffs allege that "for decades, Madigan had named individuals to be ComEd employees, in such positions as meter readers, as part of an 'old-fashioned patronage system." (Complt. ¶ 124(e)). Nonetheless, plaintiffs allege that defendants, for many years, "counted Madigan among their greatest foes." (Complt. ¶ 147). For example, plaintiffs allege that, in 2003, Madigan "torpedoed" a rate hike that ComEd wanted. (Complt. ¶ 147).

Defendants changed their luck with Madigan, beginning in 2011. Specifically, plaintiffs allege that, between 2011 and 2019, defendants bribed Madigan by providing three favors: 1) ComEd made payments of more than $1,000,000.00 to Madigan cronies; 2) ComEd gave legal work to a law firm that was run by a Madigan crony and that donated more than $100,000.00 to funds controlled by Madigan; and 3) ComEd gave a seat on its Board of Directors to a Madigan crony.

Payments to Madigan cronies

According to plaintiffs, Madigan was assisted in his efforts to obtain bribes from ComEd by Michael McClain ("McClain"), Madigan's long-time friend. Plaintiffs describe McClain as one of Madigan's "clos[est]" and "most loyal" associates. (Complt. ¶ 45). McClain, like Madigan, served in the Illinois House of Representatives from 1972 to 1982. Plaintiffs allege that McClain has performed consulting and lobbying work for ComEd for many years and that he acts as a "trusted line of communication" between ComEd and Madigan. (Complt. ¶ 51).

Plaintiffs allege that in or about 2011, Madigan and McClain sought ComEd jobs, vendor subcontracts and payments. At about the same time, McClain and John Hooker ("Hooker"), who

was, at the time, ComEd's Executive Vice President of Legislative and External Affairs, "developed a plan" to direct money to three Madigan cronies through a consulting firm. (Complt. ¶ 116). That consulting firm was Jay D. Doherty & Associates, which is owned by Jay Doherty ("Doherty"). The three cronies were: Edward Moody ("Moody"), Frank Olivo, Jr. ("Olivo") and Ray Nice ("Nice"). Between 2011 and 2018, ComEd paid Jay D. Doherty & Associates $3,100,000.00.

The three cronies were long-time associates of Madigan. Moody has been associated with Madigan since he knocked on doors for Madigan as a teenager. He later became a precinct captain and worked as a Cook County Commissioner. Moody has been the Cook County Recorder of Deeds since December 2018. Olivo, too, has long been associated with Madigan. In the late 1960's, when Olivo was 18, he became a precinct captain. At some point, Madigan arranged for Olivo to be appointed Streets and Sanitation Superintendent for the 13th Ward. In 1994, at Madigan's request, then-Mayor Daley appointed Olivo to be 13th Ward Alderman, a position Olivo held until he retired in 2011. After his retirement until sometime in 2019, Olivo received payments as a lobbyist for ComEd. Similarly, Nice had a long relationship with Madigan. Nice was (or had been) a precinct captain in the 13th Ward. He was, at some point, a Deputy Recorder of Deeds for Cook County and, from 2013 to 2017, had a seat on the Employment Security Board of Review.

Plaintiffs allege that, from about 2011 until about 2019, ComEd gave money—indirectly through Jay Doherty & Associates—to Moody, Ovilo and Nice. Plaintiffs allege these three did "little or no work" in exchange for the money. (Complt. ¶ 120).

Those payments to Madigan's cronies via the consulting firm were not the only such payments alleged in the complaint. Plaintiffs allege that in May 2018, Madigan, via McClain,

asked Anne Pramaggiore ("Pramaggiore")—who was, at the time, the Senior Executive Vice President and CEO of Exelon Utilities—to hire Michael Zalewski ("Zalewski"). Zalewski had been Alderman of the 23rd Ward from May 1995 until he retired in May 2018. (At some point, Madigan helped Zalewski's daughter become Chair of the ICC, which regulates ComEd.) Pramaggiore, together with Doherty and another ComEd employee (Fidel Marquez), agreed that ComEd would pay Zalewski $5,000 per month via Jay Doherty & Associates. ComEd's contract with Jay Doherty & Associates was changed in June 2018 to increase the monthly payments to the consulting firm by $5,000.00.

Legal work

Plaintiffs allege that ComEd also agreed to give legal work to a Madigan crony. Specifically, in or around 2011, ComEd agreed to retain the law firm of Reyes Kurson to perform a minimum of 850 hours of work per year for ComEd. ComEd agreed to this in order "to influence and reward" Madigan. (Complt. ¶¶ 117-118). A partner in the Reyes Kurson firm was Victor Reyes ("Reyes"), who has donated more than $100,000 to "funds controlled by Madigan" and about $883,633.92 to the Democratic Party since 2005. (Complt. ¶ 80).

In or about 2016, some ComEd employees tried to give less work to Reyes Kurson, because the firm provided "little or no legal work of value." (Complt. ¶ 135(c)). Reyes complained to McClain, who wrote to Pramaggiore. McClain wrote, "If you do not get involve[d] and resolve this issue of 850 hours for his law firm per year then he will go to our Friend [Madigan]. Our Friend [Madigan] will call me and then I will call you." (Complt. ¶ 135(c)). Pramaggiore responded that she was "on this." (Complt. ¶ 135(c)).

Board seat

In or about 2017, Madigan sought to have Juan Ochoa ("Ochoa") appointed to the ComEd Board of Directors. Plaintiffs allege that Ochoa has "served Madigan for many years," but the complaint contains few details. Plaintiffs allege Ochoa was the head of the Metropolitan Pier and Exposition Authority from 2007 to 2010. Since 2010, he has been the CEO of a facilities management company. At some point, Ochoa granted a raise to the daughter of a former state senator as a favor to Madigan.

Madigan had McClain ask Pramaggiore to place Ochoa in a seat on ComEd's Board of Directors, a position that paid $78,000.00 per year. In May 2018, facing internal opposition to such an appointment, Pramaggiore asked McClain if Madigan would be satisfied by ComEd's giving Ochoa a part-time position that paid an equivalent amount. Plaintiffs allege "McClain told [her] that Madigan would appreciate if she would 'keep pressing' for the appointment of Ochoa as a Board Member." (Complt. ¶ 127). Pramaggiore agreed to do so, and, by April 2019, Ochoa was on the Board of Directors of ComEd. He resigned in April 2020.

Passage of laws

Plaintiffs allege that in exchange for ComEd's favors to his cronies, Madigan stewarded through the Illinois legislature three bills that were favorable to ComEd: the Energy Infrastructure and Modernization Act ("EIMA"), the 2013 EIMA Amendments and the Future Energy Jobs Act ("FEJA"). Specifically, plaintiffs allege:

> As a quid pro quo for these bribes, Madigan used his power as Speaker to permit EIMA to be voted on by the Illinois House of Representatives in or around May 2011, and used his powers to ensure House members would vote in support.

(Complt. ¶ 119). Plaintiffs allege that Madigan's support for the bills was "crucial: no bills move in the Illinois House without Madigan's support." (Complt. ¶ 2). "Absent Madigan's

active support, which was the object and result of Defendants' corruption, EIMA would not have become law." (Complt. ¶ 119).

Plaintiffs allege that Madigan had "outsized influence" in the Illinois House of Representatives. (Complt ¶ 143). Madigan, as Speaker, had "*de facto* ability to control which bills get voted on and which ones do not." (Complt. ¶ 143). With respect to each of 49 legislative committees in the Illinois House, Madigan, alone, decided which legislator would both serve as chair and collect the $10,000.00 per year stipend given to each chair. Madigan used those positions to reward loyalty or punish disloyalty. Plaintiffs allege Madigan had the power "to control the outcome of virtually all major legislation in the Assembly as well as the Senate." (Complt. ¶ 146).

EIMA

According to plaintiffs' complaint, defendants wanted EIMA to pass, because ComEd was having trouble getting projects approved by the ICC. In 2007, ComEd had asked the ICC "to approve hundreds of millions of dollars in 'smart grid' spending." (Complt. ¶ 154). The ICC declined, approving only a small pilot project. Defendants wanted EIMA to pass in order to ensure they could implement the smart-grid project and then pass the cost on to ratepayers.

Plaintiffs allege that, in February 2011, EIMA was introduced in the Illinois Senate, which passed the bill. The bill then went to the Illinois House, which approved the bill with 67 votes, after making amendments. The Illinois Senate voted to approve the amendments, and EIMA went to the Governor's desk. Then-Governor Patrick Quinn ("Quinn") vetoed the bill. Plaintiffs allege that, in "order to override the veto, Speaker Madigan, ComEd, and Exelon successfully pressured ten members of the House Democratic caucus and four members of the

Senate Democratic caucus who had not originally supported the bill to vote to override the veto." (Complt. ¶ 162).

EIMA Amendments

According to plaintiffs, at some point, ComEd asked the ICC to approve a change in how its return on invested capital would be calculated. ComEd wanted to begin earning a return in January of the year in which the money was invested, but the ICC declined. ComEd sought amendments to EIMA. Madigan, once again, "provided the votes to override" then-Governor Quinn's veto of the EIMA amendments. (Complt. ¶ 167).

FEJA

The next bill Madigan helped to pass for defendants was FEJA. Plaintiffs allege this bill provided a $2,350,000,000.00 "earmarked subsidy" for two Exelon nuclear plants in Illinois. In addition, it required that Zero Emission Credits be purchased from Exelon.[3]

Plaintiffs allege that FEJA was "controversial" and "would not have passed without Madigan's involvement." (Complt. ¶ 181). In late 2016, the bill passed the Illinois House with 63 votes (Madigan did not vote) and the Illinois Senate with 32 votes. Unlike the other two bills plaintiffs mention in their complaint, plaintiffs do not allege that this one required an override of a Governor's veto.[4]

Deferred prosecution agreement

Plaintiffs allege that a former ComEd employee has admitted to the bribery scheme. Specifically, plaintiffs allege that Frank Marquez ("Marquez"), who is ComEd's former Senior Vice President for Legislative Affairs, has admitted that he agreed with Hooker and Pramaggiore

[3] Plaintiffs do not say by whom the Zero Emission Credits were required to be purchased.
[4] The bill was signed by then-Governor Bruce Rauner. *See Village of Old Mill Creek v. Star*, Case No. 17-cv-1163, 17-cv-1164, 2017 WL 3008289 at *3 n. 8 (N.D. Ill. July 14, 2017).

to "arrange for Madigan's associates to obtain jobs, vendor subcontracts, and monetary payments—even in instances where the associates performed little or no work that they were purportedly hired to perform for ComEd—for the purpose of influencing and rewarding Madigan and to assist ComEd with respect to legislation affecting ComEd and its business." (Complt. ¶¶ 89, 95). Hooker was a 44-year ComEd employee, who retired in 2012 from his position as ComEd's Executive Vice President of Legislative and External Affairs. Pramaggiore was CEO of ComEd from about March 2012 to about May 2018. From June 1, 2018 through October 15, 2019, she was Senior Executive Vice President and CEO of Exelon Utilities.

Plaintiffs allege that ComEd has entered a deferred prosecution agreement with the United States Attorney for the Northern District of Illinois. Plaintiffs allege that, in the agreement, defendants admitted that "the reasonably foreseeable anticipated benefits to ComEd" of the legislation was at least $150,000,000.00. (Complt. ¶ 183). Under the deferred prosecution agreement, according to plaintiffs' allegations, "[d]efendants . . . accept[ed] responsibility for bribery in violation of 18 U.S.C. § 666(a)(2) and agree[d] to pay $200 million in fines to the United States Treasury." (Complt. ¶ 29).

Plaintiffs allege that defendants have benefitted from the scheme in an amount greater than the amount they are paying the United States Treasury. Plaintiffs allege that the legislation Madigan helped pass allowed defendants "to collect unjust and illegal profits from Illinois electricity customers," i.e., plaintiffs. (Complt. ¶ 226). Plaintiffs allege that the legislation allowed ComEd to charge higher rates for electricity. Plaintiffs claim they "paid over $5 billion due to the legislation." (Complt. ¶ 5).

Based on defendants' alleged conduct, plaintiffs assert claims for violation of RICO (Count I), for conspiracy (Count II), for violation of the Illinois Consumer Fraud and Deceptive

Trade Practices Act (Count III) and for unjust enrichment (Count IV). The Citizens Utility Board ("CUB") filed a complaint in intervention that is quite similar to plaintiffs' complaint. CUB asserts claims for violation of RICO, 18 U.S.C. § 1962(c) (Count I); RICO conspiracy, 18 U.S.C. § 1962(d) (Count II); conspiracy (Count III); and unjust enrichment (Count IV).

II. STANDARD ON A MOTION TO DISMISS

The Court may dismiss a claim pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure if the plaintiff fails "to state a claim upon which relief can be granted." Fed.R.Civ.P. 12(b)(6). Under the notice-pleading requirements of the Federal Rules of Civil Procedure, a complaint must "give the defendant fair notice of what the . . . claim is and the grounds upon which it rests." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (quoting *Conley v. Gibson*, 355 U.S. 41, 47 (1957)). A complaint need not provide detailed factual allegations, but mere conclusions and a "formulaic recitation of the elements of a cause of action" will not suffice. *Twombly*, 550 U.S. at 555. To survive a motion to dismiss, a claim must be plausible. *Ashcroft v. Iqbal*, 556 U.S. 662 (2009). Allegations that are as consistent with lawful conduct as they are with unlawful conduct are not sufficient; rather, plaintiffs must include allegations that "nudg[e] their claims across the line from conceivable to plausible." *Twombly*, 550 U.S. at 570.

In considering a motion to dismiss, the Court accepts as true the factual allegations in the complaint and draws permissible inferences in favor of the plaintiffs. *Boucher v. Finance Syst. of Green Bay, Inc.*, 880 F.3d 362, 365 (7th Cir. 2018). Conclusory allegations "are not entitled to be assumed true," nor are legal conclusions. *Iqbal*, 556 U.S. at 680 & 681 (noting that a "legal conclusion" was "not entitled to the assumption of truth[;]" and rejecting, as conclusory, allegations that "'petitioners 'knew of, condoned, and willfully and maliciously agreed to subject [him]' to harsh conditions of confinement"). The notice-pleading rule "does not unlock the

doors of discovery for a plaintiff armed with nothing more than conclusions." *Iqbal*, 556 U.S. at 678-679.

Pursuant to Rule 9(b) of the Federal Rules of Civil Procedure, the "circumstances constituting fraud" must be alleged with particularity. Fed.R.Civ.P. 9(b).

III. DISCUSSION

A. Filed Rate Doctrine

Electricity delivery is generally considered to be a natural monopoly, which is why rates are regulated and utilities are allowed a reasonable rate of return on invested capital. In this case, plaintiffs argue they paid inflated electricity rates due to laws that passed on account of bribery.

Defendants argue that plaintiffs' claims should be dismissed as barred by the filed rate doctrine, which is the principle that the "rights as defined by the tariff cannot be varied or enlarged by either contract or tort of the carrier." *Keogh v. Chicago & N.W. Ry. Co.*, 260 U.S. 156, 163 (1922). The filed rate doctrine "which is based on historical antipathy to rate setting by courts . . . and on a policy forbidding price discrimination by public utilities and common carriers, forbids a court to revise a public utility's or . . . common carrier's filed tariff, which is to say the terms of sale that the carrier has filed with the agency that regulates the carrier's service." *Arsberry v. Illinois*, 244 F.3d 558, 562 (7th Cir. 2001). As the Third Circuit succinctly put it, "[o]nce [the] rate is filed with the appropriate regulatory body, we have no ability to effectively reduce it by awarding damages for an alleged overcharge[.]" *Leo v. Nationstar Mortgage LLC*, 964 F.3d 213, 218 (3d Cir. 2020). This defense would seem to be a slam dunk in a case in which plaintiffs seek money damages as reimbursement for the inflated rates they paid for the electricity they used when they chose to, say, turn on their lights, cook on their electric stoves or charge their cell phones.

The Court, however, will not consider this issue on a motion to dismiss under Rule 12(b)(6). As plaintiffs point out, the filed rate doctrine is an affirmative defense. *Gunn v. Continental Casualty Co.*, 968 F.3d 802, 806 (7th Cir. 2020). Plaintiffs need not plead around an affirmative defense, and the Court may not dismiss a claim on the basis of an affirmative defense unless plaintiffs allege, and thus admit, the elements of the affirmative defense. *Chicago Bldg. Design, P.C. v. Mongolian House, Inc.*, 770 F.3d 610, 613-14 (7th Cir. 2014); *United States Gypsum Co. v. Indiana Gas Co., Inc.*, 350 F.3d 623, 626 (7th Cir. 2003). Defendants argue that the rates plaintiffs paid for the electricity they used were filed, but they do not cite any portions of the complaint in which plaintiffs admit that. Instead, defendants cite ICC orders and argue plaintiffs cannot deny the fact that the rates were filed. It is not enough that plaintiffs did not *deny* the fact in their complaint. In order for defendants to obtain dismissal on the basis of an affirmative defense, defendants need to point to complaint allegations in which plaintiffs *admitted* the facts. They have not done so.

Plaintiffs have not alleged, and thus admitted, the ingredients of defendants' filed-rate-doctrine affirmative defense. The Court will not dismiss on the basis of that affirmative defense on a motion to dismiss under Rule 12(b)(6).

B. RICO

1. Failure to state a claim

In Count I, plaintiffs asserts that defendants violated the Racketeer Influenced and Corrupt Organizations (RICO) Act, 18 U.S.C. § 1962(c). Defendants moves to dismiss for failure to state a claim, among other reasons.

RICO provides a private right of action for violations of 18 U.S.C. § 1962. 18 U.S.C. § 1964(c). In passing the RICO statute, Congress sought "to eradicate organized, long-term

criminal activity." *Midwest Grinding Co., Inc. v. Spitz*, 976 F.2d 1016, 1019 (7th Cir. 1992). "RICO has not federalized every common-law state cause of action" despite "widespread abuse of civil RICO." *Midwest Grinding*, 976 F.2d at 1025. The Seventh Circuit has explained:

> The prototypical RICO case is one in which a person bent on criminal activity seizes control of a previously legitimate firm and uses the firm's resources, contacts, facilities, and appearance of legitimacy to perpetuate more, and less easily discovered, criminal acts than he could do in his own person, that is, without channeling his criminal activities through the enterprise that he has taken over.

Fitzgerald v. Chrysler Corp., 116 F.3d 225, 227 (7th Cir. 1997). RICO has particular pleading (and proof) requirements, because RICO is not meant to be "'a surrogate for garden-variety fraud actions properly brought under state law.'" *Menzies v. Seyfarth Shaw LLP*, 943 F.3d 328, 337 (7th Cir. 2019) (quoting *Midwest Grinding*, 976 F.2d at 1022).

Plaintiffs assert a violation of 18 U.S.C. § 1962(c), which makes it "unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate directly in the conduct of such enterprise's affairs through a pattern of racketeering activity or collection of unlawful debt." 18 U.S.C. § 1962(c). To state a claim, plaintiffs must plausibly allege "(1) conduct (2) of an enterprise (3) through a pattern (4) of racketeering activity." *Menzies*, 943 F.3d at 336.

A "pattern of racketeering activity" is defined in the statute as "at least two acts of racketeering activity [within a specified time period]." 18 U.S.C. § 1961(5). Racketeering activity includes many indictable offenses, including mail and wire fraud and laundering of monetary instruments. 18 U.S.C. § 1961(1). Wire (or mail) fraud requires allegations of a scheme to defraud, intent to defraud and use of wires (or mail) in furtherance of the scheme. *United States v. Weimert*, 819 F.3d 351, 355 (7th Cir. 2016).

As defendants point out, in order to state a claim under RICO, plaintiffs must plausibly allege that a RICO violation "not only was a 'but for' cause of his injury, but was the proximate cause as well." *Holmes v. Securities Investor Protection Corp.*, 503 U.S. 258, 268 (1992). The Supreme Court has explained:

> Proximate cause for RICO purposes, we [have] made clear, should be evaluated in light of its common-law foundations; proximate cause thus requires 'some direct relation between the injury asserted and the injurious conduct alleged.' A link that is 'too remote,' 'purely contingent,' or 'indirec[t]' is insufficient.

Hemi Group, LLC v. City of New York, NY, 559 U.S. 1, 9 (2010). Although the test for proximate cause under RICO has a foundation in the common law, the Supreme Court has explicitly rejected the idea that the proximate cause requirement should "turn on foreseeability, rather than on the existence of a sufficiently 'direct relationship' between the fraud and the harm." *Hemi*, 559 U.S. at 12. Instead, when "a court evaluates a RICO claim for proximate causation, the central question it must ask is whether the alleged violation led directly to the plaintiff's injuries." *Anza v. Ideal Steel Supply Corp.*, 547 U.S. 451, 461 (2006); *see also Hemi*, 559 U.S. at 12 ("the focus is on the directness of the relationship between the conduct and the harm.").

In *Hemi*, for example, the City of New York sued a mail-order cigarette seller under RICO on the theory that the seller's failure to report the names of its buyers to the state of New York made it impossible for the City of New York to collect use tax from its citizens who had purchased cigarettes from the seller. It claimed the lost tax revenue as its RICO injury. The Supreme Court concluded that the City had failed to state a claim under RICO. *Hemi*, 559 U.S. at 18. It explained:

> The City's causal theory is far more attenuated than the one we rejected in *Holmes*. According to the City, Hemi committed fraud by selling cigarettes to city residents and failed to submit the required customer information to the State.

> Without the reports from Hemi, the State could not pass on the information to the City, even if it had been so inclined. Some of the customers legally obligated to pay the cigarette tax to the City failed to do so. Because the City did not receive the customer information, the City could not determine which customers had failed to pay the tax. The City thereby was injured in the amount of the portion of back taxes that were never collected.

Hemi, 559 U.S. at 9. The Supreme Court said, "the conduct directly responsible for the City's harm was the customers' failure to pay their taxes." *Hemi*, 559 U.S. at 11. "Because the City's theory of causation requires us to move well beyond the first step [of causation], that theory cannot meet RICO's direct relationship requirement." *Hemi*, 559 U.S. at 10.

Similarly, in *Anza*, the Supreme Court concluded that a plaintiff had failed to state a RICO claim, because he failed to allege the RICO violation had proximately caused his injury. There, plaintiff's theory was that defendants "harmed [plaintiff] by defrauding the New York tax authority and using the proceeds from the fraud to offer lower prices designed to attract more customers." *Anza*, 547 U.S. at 457-58. The Supreme Court concluded that the "connection between [plaintiff's] injury and [defendants'] injurious conduct" was too "attenuated." *Anza*, 547 U.S. at 459. The Supreme Court noted that defendants "could have lowered its prices for any number of reasons" and that its "lowering of prices in no sense required it to defraud the state tax authority." *Anza*, 547 U.S. at 459. It also noted that plaintiff's "lost sales could have resulted from factors other than petitioners' alleged" fraud, because "[b]usinesses lose and gain customers for many reasons[.]" *Anza*, 547 U.S. at 459.

The Seventh Circuit, too, has considered what it takes to show proximate cause in a RICO case, and it has done so with respect to facts that are similar to the allegations in this case. In *Empress Casino Joliet Corp. v. Johnston*, 763 F.3d 723 (7th Cir. 2014), casino owners sued members of the horseracing industry, accusing them of having used bribery to pass two state statutes (a 2006 Act that sunset after two years and a follow-up 2008 Act) that taxed casino

revenue in order to subsidize the horseracing industry. On summary judgment, plaintiffs had put forth evidence that former-governor Rod Blagojevich had taken a campaign contribution as a *quid pro quo* for signing the '08 Act. That exchange was sufficient to show proximate causation because:

> the '08 Act became law as a direct result of the alleged agreement to trade money for one person's action—the governor's signature. A jury could find that the causal chain between the Racetrack's bribe and the governor's signing of the bill was not broken by any intervening acts of third parties.

Empress Casino, 763 F.3d at 732.

With respect to the '06 Act, however, the Seventh Circuit reached a different conclusion. It said:

> The Casinos have not pointed to any evidence that would allow a factfinder to conclude that the Racetracks' alleged bribery scheme *caused* the legislature to pass the '06 Act. To begin with, the Casinos make no allegation and have no evidence that the Racetracks ever bribed or attempted to bribe state legislators. Nor do the Casinos point to evidence that the governor agreed to exert *improper* influence over state legislators in order to win their support of the '06 Act in exchange for a bribe.

Empress Casino, 763 F.3d at 729 (emphasis added). The Seventh Circuit added that evidence of "simple logrolling" would not suffice to show improper influence. *Empress Casino*, 763 F.3d at 729.

In this case, defendants argue that plaintiffs have not stated a claim under RICO, because they have not alleged that their injury was proximately caused by ComEd's alleged bribe of Madigan. Defendants, rightly, concede that plaintiffs have alleged but-for causation. Plaintiffs have, for example, alleged that Madigan had the "*de facto* ability to control which bills get voted on and which ones do not." (Complt. ¶ 143). That is enough to allege the bills would not have passed but-for Madigan. It is not, however, enough to allege proximate causation, because it is not enough to show that the bribery of Madigan was the proximate cause of the bills' ultimate

passage. Plaintiffs' allegations are different as to each bill, so the Court considers each bill in turn.

With respect to FEJA, plaintiffs allege the bill was "controversial" and "would not have passed without Madigan's involvement." (Complt. ¶ 181). That is enough to allege but-for causation, but it is not enough to establish proximate causation. True, Madigan brought FEJA up for vote, but two more things had to happen before the bill became law, and plaintiffs do not allege the bribe of Madigan caused those other things to happen. First, plaintiffs allege that, in late 2016, the bill passed the Illinois House (of which Madigan constitutes a single member) with 63 votes (Madigan did not vote) and the Illinois Senate (of which Madigan is not a member) with 32 votes. Plaintiffs have not alleged that the bribe of Madigan caused the members to vote in favor, because, just as with the '06 Act in *Empress Casino*, plaintiffs have not plausibly alleged that Madigan *improperly* influenced the other legislators who voted to pass the bill. Although plaintiff has alleged that Madigan had power over committee assignments, endorsements and fundraising, these allegations are consistent with lawful conduct. *See Twombly*, 550 U.S. at 570 (plaintiffs must include allegations that "nudg[e] their claims across the line from conceivable to plausible."). As the Seventh Circuit explained in *Empress Casino*:

> T]he usual give-and-take of legislative lawmaking[] might explain the change in outcome. . . . If the promise referred to support for re-election, or a commitment to co-sponsor a bill, without any taint of bribery, nothing would be wrong.

Empress Casino, 763 F.3d at 730. "[S]imple logrolling . . . falls short of evidence that could support a RICO claim." *Empress Casino,* 763 F.3d at 729.

The second thing that happened before the bill became law is the governor's signature on the bill. Plaintiffs omit from their complaint any mention of whether anything else was involved in the process of passing FEJA, but the Court can take judicial notice of the fact that then-

Governor Bruce Rauner signed FEJA into law. Plaintiffs have not alleged that the bribery of Madigan caused Governor Rauner to sign FEJA into law.

Next, plaintiffs allege that Madigan was a but-for cause with respect to the passage of EIMA and the EIMA Amendments. Once again, though, plaintiffs' allegations fall short of proximate causation. Although plaintiffs allege Madigan brought the bill to the legislature, plaintiffs fail to allege that the bribe of Madigan caused the members of the Illinois House and Senate to vote in favor of EIMA. Plaintiffs also allege that the Illinois legislature had to override a veto by then-Governor Quinn. Plaintiffs allege that, in "order to override the veto, Speaker Madigan, ComEd, and Exelon successfully pressured ten members of the House Democratic caucus and four members of the Senate Democratic caucus who had not originally supported the bill to vote to override the veto." (Complt. ¶ 162). What plaintiffs fail to allege is what pressure was put on legislators. If, by pressure, plaintiffs mean logrolling, committee assignments or help with reelection, then that does not suffice. Plaintiffs fail to allege that Madigan put any *improper* pressure on those lawmakers.

The same is true of plaintiffs' allegations as to the EIMA Amendments. Plaintiffs allege only that Madigan "provided the votes to override" then-Governor Quinn's veto of the EIMA amendments. (Complt. ¶ 167). Plaintiffs do not, however, say how. Once again, if plaintiffs mean merely that Madigan logrolled or used the usual give-and-take of the legislative process, it is not sufficient. To state a claim, plaintiffs need to allege Madigan provided the votes by placing *improper* pressure on lawmakers.

In short, plaintiffs have not included in their complaint sufficient allegations to allege plausibly that the RICO violation was a proximate cause of their injuries. Conceivably, plaintiffs could amend to cure the defect (though whether they could do so within the bounds of Rule 11

is, of course, a different question). Whether they should be allowed to file such an amendment depends on whether a "cure" for the alleged bribery may "lie in civil litigation." The Court considers that issue next.

2. *Fletcher v. Peck*

Defendants, relying on *Fletcher v. Peck*, also argue that this issue should not be the subject of civil litigation. Plaintiffs counter that *Fletcher v. Peck* is "forgotten"[5] and that the facts are different. Plaintiffs are at least half right. *Fletcher* did not involve electricity rates. When Chief Justice John Marshall wrote *Fletcher v. Peck*, it was not by the light of an Edison bulb, which would not be invented for another seventy years. The question is not whether the facts are the same but whether the principle is, as defendants argue, applicable here.

Fletcher v. Peck, 10 U.S. 87 (1810) involved a contract for the sale of land between two private individuals. When Peck deeded land to Fletcher it was with a covenant that Peck had conveyed all the title that the State of Georgia had held in the land. Unfortunately, the law that had allowed Georgia to transfer the land to a prior owner had been procured by bribery, which led Fletcher to argue the convenant was breached. The Supreme Court said they would not consider the issue, explaining:

> That corruption should find its way into the governments of our infant republics, and contaminate the very source of legislation, or that impure motives should contribute to the passage of a law, or the formation of a legislative contract, are circumstances most deeply to be deplored. How far a court of justice would, in any case, be competent, on proceedings instituted by the state itself, to vacate a contract thus formed, and to annul the rights required, under that contract, by third persons having no notice of the improper means by which it was obtained, is a question which the court would approach with much circumspection. . . . If the principle be conceded, that an act of the supreme sovereign power might be declared null by a court, in consequence of the means which procured it, still would there be much difficulty in saying to what extent those means mu[st] be applied to produce this effect. . . . Must the vitiating cause

[5] Docket 98-1 at 6/Plfs. Surreply at 1.

> operate on the majority, or on what number of the members? Would the act be null, whatever might be the wish of the nation, or would its obligation or nullity depend upon the public sentiment?
>
> If the majority of the legislature be corrupted, it may well be doubted, whether it be within the province of the judiciary to control their conduct, and, if less than a majority act from impure motives, the principle by which judicial interference would be regulated, is not clearly discerned.

Fletcher, 10 U.S. at 130. It went on to say:

> This is not a bill brought by the state of Georgia, to annul the contract, nor does it appear to the court, by this count, that the state of Georgia is dissatisfied with the sale that has been made. The case . . . is simply this. One individual who holds lands in the state of Georgia, under a deed covenanting that the title of Georgia was in the grantor, brings an action of covenant upon this deed, and assigns, as a breach, that some of the members of the legislature were induced to vote in favour of the law, which constituted the contract, by being promised an interest in it, and that therefore the act is a mere nullity.
>
> This solemn question cannot be brought thus collaterally and incidentally before the court. It would be indecent, in the extreme, upon a private contract, between two individuals, to enter into inquiry respecting the corruption of the sovereign power of a state. If the title be plainly deduced from a legislative act, which the legislature might constitutionally pass, if the act be clothed with all the requisite forms of a law, *a court*, sitting as a court of law, *cannot sustain a suit brought by one individual against another founded on the allegation that the act is a nullity, in consequence of the impure motives which influenced certain members of the legislature which passed the law.*

Fletcher, 10 U.S. at 130-31 (emphasis added).

In the meantime, *Fletcher* has not been forgotten. The Seventh Circuit, within the last decade, has considered whether *Fletcher* applies to a strikingly-similar factual situation. In *Empress Casino*, the Seventh Circuit thought *Fletcher* an important enough issue to mention. There, the Seventh Circuit described as a "questionable proposition" whether a RICO claim could be based on allegations that a governor used bribery to get a bill through a legislature. *Empress Casino*, 763 F.3d at 728. There, the Seventh Circuit explained both why that was questionable and why the court did not need to decide the issue, saying:

> The work of state legislatures lies at the heart of the 'Republican Form of Government' that the Constitution mandates. U.S. Const. Art. IV, § 4; *see also the Federalist No. 51* (James Madison) ("In the republican government, the legislative authority necessarily predominates."). The evidence would have to be extraordinary to conclude that one corrupt official, whether the governor or anyone else, had hijacked this foundational institution of state sovereignty. *And even if the evidence were strong, the cure may not lie in civil litigation in the courts.* [Citing and quoting *Fletcher v. Peck*.] We do not need to explore the outer boundaries of the *Fletcher* holding here, because this record is devoid of admissible evidence that the governor exerted undue influence on the legislators as they considered the '06 Act.

Empress Casino, 763 F.3d 730-31 (emphasis added).[6]

Here, as in *Fletcher*, it is not the State of Illinois that objects to how the law was passed. As in *Fletcher*, the Court has no reason to think the State of Illinois is unhappy with the law. Nor does the Court have any reason to think the constituents are unhappy with the law. In a state with an electorate that expresses concern about climate change, perhaps the constituents preferred to subsidize reliable, zero-emission nuclear power so that it could compete with federally-subsidized but intermittent wind or solar power. Perhaps the constituents wanted a modernized energy-delivery system. The legislature is the branch of government most responsive to the electorate. This Court shares *Fletcher's* concern about a court, in effect, overruling the decisions of a State legislature based on the alleged improper motives of the legislature.

Here, as in *Fletcher*, we have a dispute between private parties. In this case, plaintiffs allege they purchased electricity (and the delivery thereof) from their public utility (defendant ComEd) and its owner (Exelon) at rates that were inflated due to laws that were passed through a

[6] Plaintiffs discount the Seventh Circuit's concerns about *Fletcher*, arguing that, in *Empress Casino*, the Seventh Circuit allowed the claims about the '08 Act to proceed. The Court disagrees. The claims on the '08 Act proceeded, because they involved *executive* action (the governor was bribed to sign the '08 Act), not *legislative* action. *Fletcher* simply did not apply.

State legislature. Plaintiffs allege that the passage of those laws was tainted by the bribery of the Speaker of the House, and that, accordingly, plaintiffs should be reimbursed for the difference between the inflated rates they paid and the rates they would have paid had the laws not been passed. True, plaintiffs are not arguing that EIMA, the EIMA Amendments or FEJA are nullities. They are arguing they should be reimbursed for the effect those laws had on the rates they paid for electricity. Plaintiffs believe that any amounts defendants were able to collect from plaintiffs (in the form of higher rates for the electricity plaintiffs used) on account of the three laws should be given back to the plaintiffs in the form of damages on a RICO claim. How, though, is that different from nullifying those laws? Plaintiffs are certainly arguing that the rates—that are a product of those State laws—are nullities. The plaintiffs want this Court to order defendants to reimburse plaintiffs for those increased rates in the form of damages on a civil claim. The State legislature giveth, and the federal court taketh away. The effect to plaintiffs is essentially the same as nullifying the State law, all based on the motives of the legislators. In essence, plaintiffs' RICO claim is a collateral attack on three Illinois laws.

The problems with such a claim are those that the Supreme Court worried about in *Fletcher v. Peck*. It is not possible to determine the merits of the RICO proximate cause issue without considering the motives of the legislators who voted for the bill. By contemplating the motives of the legislators who voted for the bill, the Court would be violating *Fletcher v. Peck.*

The Court fails to see how it can "sustain" the RICO claim in light of *Fletcher v. Peck.* Accordingly, it would be futile to give plaintiffs leave to amend their RICO count. Count I is dismissed with prejudice.

Because the Court is dismissing the only claim over which it has original jurisdiction, it declines to exercise supplemental jurisdiction over plaintiffs' remaining state-law claims. *See*

Burritt v. Ditlefsen, 807 F.3d 239, 252 (7th Cir. 2015) ("The general rule, when the federal claims fall out before trial, is that the [district court] should relinquish jurisdiction over any supplemental . . . state law claims in order to minimize federal judicial intrusion into matters of purely state law.") (citation omitted) . Counts II, III and VI are dismissed without prejudice.

Citizens Utility Board's Count I is the same as plaintiffs' Count I. It is dismissed with prejudice for the same reasons. CUB's Count II is a RICO conspiracy claim under 18 U.S.C. § 1962(d). It is dismissed for the same reasons. *See United Food and Commercial Workers Unions and Employers Midwest Benefits Fund v. Walgreen Co.*, 719 F.3d 849, 856-57 (7th Cir. 2013) ("Having failed to plead facts that would establish a violation of Section 1962(c), the [plaintiff] cannot state a claim for conspiracy under Section 1962(d) based on those same facts."). The Court relinquishes jurisdiction over CUB's remaining state-law claims. Accordingly, Counts III and IV are dismissed without prejudice.

IV. CONCLUSION

For the reasons set forth above, the Court grants plaintiffs' motion [98] for leave to file surreply. The Court grants defendants' motion [84] to dismiss. Plaintiffs' Count I is dismissed with prejudice. The Court relinquishes jurisdiction over plaintiffs' Counts II, III and IV, which are dismissed without prejudice. Intervenor Citizens Utility Board's Counts I and II are dismissed with prejudice. The Court relinquishes jurisdiction over intervenor Citizens Utility Board's Counts III and IV, which are dismissed without prejudice. Civil case terminated.

SO ORDERED.

ENTERED: September 9, 2021

HON. JORGE ALONSO
United States District Judge

CIRCUIT RULE 30(d) STATEMENT

Pursuant to Circuit Rule 30(d), counsel certifies that all material required by Circuit Rule 30(a) and (b) are included in the appendix.

Dated: January 14, 2022

/s/ Jonathan D. Selbin

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