



**Office of the People's Counsel
District of Columbia**

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People's Counsel

July 18, 2014

VIA ELECTRONIC FILING

Brinda Westbrook-Sedgwick
Commission Secretary
Public Service Commission
of the District of Columbia
1333 H Street, N.W.
Second Floor, West Tower
Washington, D.C. 20005

Re: Formal Case No. 1119, In the Matter of the Joint Application of Exelon Corporation, Pepco Holdings, Inc., Potomac Electric Power Company, Exelon Energy Delivery Company, LLC and New Special Purpose Entity, LLC for Authorization and Approval of Proposed Merger Transaction

Dear Mrs. Westbrook-Sedgwick:

Enclosed for filing in the above-referenced proceeding is an original and twenty-five (25) copies of the Office of the People's Counsel's Comments Regarding the Proposed Public Interest Factors to be Considered by the Commission and Procedural Schedule.

If there are any questions regarding this matter, please contact me at (202) 727-3071.

Sincerely,

Laurence C. Daniels
Director of Litigation

Enclosure

cc: Parties of record

**BEFORE THE
PUBLIC SERVICE COMMISSION
OF THE DISTRICT OF COLUMBIA**

In the Matter of)	
The Joint Application of Exelon)	
Corporation, Pepco Holdings, Inc.,)	
Potomac Electric Power Company,)	Formal Case No. 1119
Exelon Energy Delivery Company, LLC)	
And New Special Purpose Entity, LLC)	
For Authorization and Approval of)	
Proposed Merger Transaction)	

**COMMENTS OF THE OFFICE OF PEOPLE’S COUNSEL
ON THE PROCEDURAL SCHEDULE AND FACTORS FOR DETERMINING
WHETHER THE PROPOSED MERGER IS IN THE PUBLIC INTEREST**

I. INTRODUCTION

Pursuant to the District of Columbia Public Service Commission’s (“Commission” or “PSC”) Order No. 17530,¹ the Office of the People’s Counsel for the District of Columbia (“Office” or “OPC”), the statutory representative of utility customers and ratepayers in the District of Columbia (“District”),² submits the following Comments addressing: (1) the procedural schedule in Formal Case No. 1119; and (2) the factors the Commission should consider in evaluating whether the proposed merger is in the public interest and provides direct, tangible and verifiable benefits to consumers.

¹ Formal Case No. 1119, *In the Matter of the Joint Application of Exelon Corporation, Pepco Holdings, Inc., Potomac Electric Power Company, Exelon Energy Delivery Company, LLC, and New Special Purpose Entity, LLC for Authorization and Approval of Proposed Merger Transaction*, Order No. 17530, rel. June 27, 2014.

² D.C. Code § 34-804 (2010).

For the reasons described herein, OPC respectfully requests that the Commission adopt the Office's proposed procedural schedule. OPC further requests that the Commission adopt the six factors identified in Order No. 17530 for determining whether the proposed merger is in the public interest, and either adopt each of OPC's proposed additional factors or affirmatively state that any of OPC's proposed additional factors that are not adopted fall within the scope of the Commission's original six factors.

II. PERSPECTIVE OF THE CASE

From several perspectives, this is the most important case this Commission will decide in the imminent future. Its implications will resonate for decades to come. Indeed, no case of this magnitude has been decided by the Commission since divestiture nearly 15 years ago. An affirming decision, much like the divestiture decision, will irrevocably change the regulatory landscape in the District of Columbia. The decision in this case has the potential to replace a company that has been the exclusive provider of electric service to District of Columbia consumers and ratepayers for nearly one hundred twenty years. If approved, Pepco will be replaced by a company with headquarters located over seven hundred miles away from the District of Columbia and with a customer base of approximately 10 million.

Markedly, it comes at a time when there are major changes occurring to the city's electric infrastructure. First, the city just recently enacted legislation granting authority to the Commission to oversee Pepco's process of placing a significant portion of its overhead powerlines underground in order to prevent outages due to severe storms. Second, Pepco is in the latter stages of installing an advanced metering infrastructure that will alter the relationship between Pepco and its consumers. Against this backdrop, over the past few years the city has enacted laws that support the integration of renewables into the electric distribution network.

Concomitant with the changes occurring at the local level, there are major industry wide changes occurring that will impact the operations of all electric companies. Electric companies, across the nation are developing new business models and business strategies and are grappling with the impact of these changes on their operations.

In no uncertain terms, this is a watershed case. What lies in the balance is whether the public interest will be served. While a number of entities have encouraged the Commission to approve this merger, the sole determinant that should guide the Commission's decision in this case is whether the merger is in the public interest. OPC submits, ultimately, the true measure of whether the public interest is served by this merger is whether consumers receive tangible and verifiable benefits commensurate with and equal to the benefits the applicants and their shareholders will receive from the transaction.

III. PROCEDURAL BACKGROUND

On June 18, 2014, Exelon Corporation ("Exelon"), Pepco Holdings, Inc. ("PHI"), Potomac Electric Power Company ("Pepco"), Exelon Energy Delivery Company, LLC, and New Special Purpose Entity, LLC (collectively, the "Joint Applicants") filed a Joint Application, pursuant to D.C. Code §§ 34-504 and 34-1001, for a change of control of Pepco to be effected by the merger of PHI with Purple Acquisition Corp., a wholly-owned subsidiary of Exelon.³ The Joint Application included a proposed procedural schedule and a list of sixteen proposed issues for the Commission's consideration.⁴

³ Formal Case No. 1119, *In the Matter of the Joint Application of Exelon Corporation, Pepco Holdings, Inc., Potomac Electric Power Company, Exelon Energy Delivery Company, LLC, and New Special Purpose Entity, LLC for Authorization and Approval of Proposed Merger Transaction* ("Formal Case No. 1119"), Joint Application of Exelon Corporation, Pepco Holdings, Inc., Potomac Electric Power Company, Exelon Energy Delivery Company, LLC, and New Special Purpose Entity, LLC ("Joint Application"), p. 1, filed June 18, 2014.

⁴ *Id.* at 10-11, 27; Exhibit Nos. 6 and 8.

On June 27, 2014, the Commission issued Order No. 17530, which, in part, directed parties to comment on the Joint Applicants' proposed procedural schedule and/or submit their own proposed procedural schedules.⁵ The Commission also stated that the only issue in this proceeding is whether the proposed merger is in the public interest.⁶ The Commission then set forth six factors it will consider in evaluating whether the proposed merger is in the public interest.⁷ The Commission invited parties to file comments, by July 18, 2014, addressing these six factors and/or proposing additional factors that the Commission should consider in determining whether the proposed merger is in the public interest.⁸

IV. COMMENTS

Regardless of the outcome, this proceeding will significantly influence the future of utility operations in the District. OPC looks forward to the opportunity to review the merits of Joint Applicants' proposal and meaningfully contribute to this proceeding to ensure that the public interest, which necessarily includes the interests of the District's residential ratepayers, is best served. Commission adoption of the procedural schedule and public interest factors presented herein are important initial steps in determining whether the proposed merger is in the public interest.

⁵ Formal Case No. 1119, Order No. 17530 at ¶ 28.

⁶ *Id.* at ¶ 27. The Commission further explained that, "for the proposed merger to be in the public interest, the proposed merger must benefit the public rather than merely leave it unharmed." *Id.* at ¶ 24 (internal quotation marks omitted).

⁷ *Id.* at ¶¶ 25-26. The six factors the Commission identified are the effect of the transaction on: (1) ratepayers, shareholders, the financial health of the utilities standing alone and as merged, and the local economy; (2) utility management and administrative operations; (3) the safety and reliability of services; (4) risks associated with nuclear operations; (5) the Commission's ability to regulate the new utility effectively; and (6) competition in the local utility market.

⁸ *Id.* at ¶ 35.

A. The Commission should adopt OPC's proposed procedural schedule to afford parties the process necessary to facilitate meaningful consideration of the proposed merger.

Having sufficient process to determine whether the proposed merger is in the public interest is, in and of itself, in the public interest. An important part of this process includes a Pre-Hearing Conference. OPC submits a Pre-Hearing Conference is necessary because this case will include a number of parties who will likely propose a number of new factors to be considered. Given the magnitude of the decision to be made, the Commission should afford those parties the opportunity to vet those issues. A Pre-Hearing Conference allows for such a process to occur. Therefore, the Commission should adopt OPC's proposed procedural schedule⁹ because it allows all parties the requisite time to conduct discovery, develop evidentiary presentations, and test the merits of each party's position. OPC's proposed procedural schedule also provides the Commission time to thoroughly evaluate the record evidence and determine whether the proposed merger is in the public interest. Significantly, OPC's proposed procedural schedule also recognizes Joint Applicants' desire to consummate the transaction (should the Commission approve the proposed merger) by the third quarter of 2015. The District of Columbia Government, DC Water, the General Services Administration and AOBA have adopted OPC's proposed procedural schedule included in this pleading.

OPC highlights the following differences between its proposal and Joint Applicants' proposed procedural schedule. First, OPC's proposal provides additional time for discovery, which is necessary to ensure a thorough understanding of the proposed merger. In the short term, OPC's proposed time line for discovery is appropriate because the volume and content of the Joint Applicants' supplemental testimony is currently unknown. In the longer term,

⁹ See Attachment 1, *infra*, which provides a side-by-side comparison of the Joint Applicants' and OPC's proposed procedural schedules.

additional time for discovery should permit parties to better understand respective positions, thereby streamlining responsive testimony and any evidentiary hearing. Second, OPC proposes additional settlement conferences to ensure the parties have sufficient opportunities to discuss the potential settlement of this case. To the extent the parties are able to reach settlement, valuable Commission and party resources would be conserved. Third, OPC's proposed procedural schedule would provide additional time to develop testimony, which results in higher quality evidentiary presentations for the Commission to consider. Finally, as noted above, while OPC proposes to extend this proceeding beyond the time period contemplated by Joint Applicants' proposed procedural schedule, OPC's proposal is consistent with Joint Applicants' stated goal of closing on the transaction by the third quarter of 2015 transaction, assuming the Commission approves the proposed merger.

For these reasons, OPC respectfully requests that the Commission adopt OPC's proposed procedural schedule.

B. The Commission should adopt the six factors identified in Order No. 17530 and either adopt OPC's additional factors or affirmatively state that any of OPC's additional factors that are not adopted fall within the scope of the Commission's six factors.

OPC agrees that each of the six factors set forth in Order No. 17530 is appropriate and should be adopted. However, given the significance of the proposed merger, the current statutory and regulatory landscape, and the unique challenges and opportunities facing the utility industry today, OPC believes consideration of additional factors is necessary.¹⁰ Consequently, OPC appreciates the Commission's invitation to propose additional factors, and respectfully asks

¹⁰ The Commission recently noted that "the distribution system in the District, like the distribution systems in many places across the country, is undergoing a period of change and growth." Formal Case No. 1103, Order No. 17424 at ¶ 120.

the Commission to expand the list of factors it will consider to also include the proposed merger's effect on:

1. The affordability of services;
2. Distribution grid reliability and modernization;
3. Consistency with statutory renewable energy generation requirements; and
4. Conservation of natural resources and preservation of environmental quality.

Inclusion of these four additional factors is necessary for the following reasons. First, Exelon's acquisition of PHI should do no harm to consumers through increased rates. Electric rates that increase on a near yearly basis as a result of back-to-back rate case filings directly impact affordability. Therefore, if the merger is approved, retail rates in the District of Columbia should, at a minimum, remain at their current, pre-merger levels for an appreciable time period. It may be appropriate for the merger to result rates that are lower pre-merger levels, consistent with Commission precedent that "the proposed merger must benefit the public rather than merely leave it unharmed."¹¹ In any event, reasonably priced electric service is essential to the health and welfare of District ratepayers. Therefore, it is in the public interest to ensure that affordable electricity is available to all consumers, regardless of income levels. Consequently, affordability of electric service is an appropriate factor to consider.

Second, the proposed merger should promote modernization of the District's distribution system, which serves the public interest by promoting reliability and preventing adverse impacts to District ratepayers. The District suffers from an aging electricity distribution network. Combined with recent severe weather events, this aging distribution grid has led to extended power outages that, in recent years, caused significant harm and inconvenience to

¹¹ Formal Case No. 1119, Order No. 17530 at ¶ 24.

numerous consumers in the District. Modernizing the distribution system is in the public interest because of the critical importance of maintaining the reliability of the District's emergency response services, such as public safety, healthcare, food supply and other essential needs and services. Further, the District's statutory commitment of encouraging and increasing the use of locally-generated renewable energy over the past several years places it at the forefront in terms of energy efficiency and sustainability. Progress in these areas and grid modernization are necessary to accommodate the growth of two-way electricity at the distribution level. Accordingly, the Commission should consider the effect of the proposed merger on promoting the modernization of the District's distribution system.

Third, the proposed merger should not impede, but rather should improve, the Joint Applicants' ability to meet the District's statutory renewable energy generation requirements. Studies from various academic and research institutions have established that greenhouse gas pollution from fossil fuels such as coal and oil poses a serious threat to public health and has been the principal contributor to global warming and climate change. In future years, the District is projected to experience more severe winter weather, significant flooding as a result of heavier precipitation and storms, and urban heat island effects. In 2005, the Council of the District of Columbia passed its Renewable Energy Portfolio Standard which, after subsequent amendments, requires that 20% of the District's energy be generated from renewable energy sources and that 2.5% of that energy be from solar resources by 2023. Given the negative impacts of fossil fuel combustion on the climate and public health in the District, ensuring consistency with these statutory obligations and supporting a transition to an electric system fueled by renewable sources is soundly in the public interest. Therefore, the Commission should consider the effect of the proposed merger on the Joint Applicants' ability to meet these statutory obligations.

Fourth, District residents have an interest in preserving and protecting the environmental health and air quality in their communities. The District is committed to fulfilling its obligation to reduce the concentration of air pollutants in accordance with local regulations and federal laws such as the Clean Air Act. Exelon's acquisition of PHI should neither result in the degradation of the region's natural environment nor compromise the quality of life and health of District consumers. The Commission should consider the effect of the proposed merger on the conservation of natural resources and preservation of environmental quality.

Each of OPC's four additional factors is distinct from those the Commission identified. These distinctions would become more pronounced, and more important, if the Commission's six factors were interpreted narrowly. Namely, failure to expand the list of factors to include OPC's proposals, coupled with narrow interpretation of the Commission's six factors, could result in improper limits on discovery, thereby impeding parties' abilities to elicit critical evidence. To avoid these possible adverse results, the Commission should adopt each of OPC's proposed additional factors. To the extent the Commission finds that any or all of OPC's proposed additional factors fall within the scope of the Commission's original six factors, OPC respectfully requests that the Commission state so affirmatively to ensure that a decision not to accept any OPC-proposed factor is not viewed as a finding that the "rejected" factor is beyond the scope of this proceeding.

V. **CONCLUSION**

WHEREFORE, for the foregoing reasons, the Office requests that the Commission adopt OPC's proposed procedural schedule, adopt the six factors identified in Order No. 17530 for evaluating whether the proposed merger is in the public interest, and either adopt each of OPC's proposed additional factors or affirmatively state that any of OPC's proposed additional factors that are not adopted fall within the scope of the Commission's original six factors.


Sandra Mattavous-Frye
People's Counsel

Dated: July 18, 2014

ATTACHMENT 1

**OPC's Proposed Procedural Schedule
in Formal Case No. 1119**

	Joint Applicants	OPC
Pre-Hearing Conference	July 17, 2014	September 11, 2014
Supplemental Direct Testimony and supporting workpapers of Jt. Applicants	August 22, 2014	October 9, 2014
All Information Requests to Jt. Applicants regarding Application, Direct Testimony and Supplemental Direct Testimony	September 3, 2014	October 30, 2014
Responses to Information Requests to Jt. Applicants regarding Application, Direct Testimony and Supplemental Direct Testimony	September 13, 2014	November 20, 2014
Settlement Conference		October 23, 2014
Settlement Conference		December 10, 2014
Direct Testimony and supporting workpapers of OPC and Intervenors	October 10, 2014	December 19, 2014
All Information Requests to OPC and Intervenor Direct Testimony	October 17, 2014	January 14, 2015
Responses to Information Requests to OPC and Intervenors Direct Testimony	October 24, 2014	February 4, 2015
Settlement Conference	November 3, 2014	
Filing of Rebuttal Testimony and supporting workpapers by Jt. Applicants	November 7, 2014	February 25, 2015
All Information Requests to Jt. Applicants re: Rebuttal Testimony	November 14, 2014	March 19, 2015
Responses to Information Requests to Jt. Applicants re: Rebuttal Testimony	November 21, 2014	April 9, 2015
Evidentiary Hearings Commence	December 8, 2014	April 28 – May 1, 2015
Filing of Initial Briefs	January 8, 2015	May 29, 2015
Filing Reply Briefs	January 22, 2015	June 12, 2015
Decision	April 22, 2015	September 12, 2015

CERTIFICATE OF SERVICE

Formal Case No. 1119, In the Matter of the Joint Application of Exelon Corporation, Pepco Holdings, Inc., Potomac Electric Power Company, Exelon Energy Delivery Company, LLC and New Special Purpose Entity, LLC for Authorization and Approval of Proposed Merger Transaction

I hereby certify that on this 18th day of July, 2014 a copy of the Office of the People's Counsel's Comments were served on the following parties of record by hand delivery, first class mail, postage prepaid, or electronic mail:

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A handwritten signature in black ink, appearing to read "Laurence C. Daniels". The signature is fluid and cursive, with a large, sweeping arch over the first few letters.

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Director of Litigation