



Public Service Commission of the District of Columbia
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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

SUMMARY OF COMMISSION DECISION
August 25, 2015

1. On April 30, 2014, Exelon Corporation announced Exelon's purchase of Pepco Holdings, Inc. ("PHI"). On June 18, 2014 Exelon, PHI, Potomac Electric Power Company ("Pepco"), Exelon Energy Delivery Company, LLC ("EEDC"), and New Special Purpose Entity, LLC ("SPE") (collectively, the "Joint Applicants") filed a Joint Application for approval by the Commission, pursuant to D.C. Code §§ 34-504 and 34-1001, for a change of control of Pepco (the "Proposed Merger"). Upon completion of the Proposed Merger, Exelon would become the sole owner of PHI and PHI's subsidiaries, including Pepco, and Pepco would be controlled in the future by Exelon under a management structure that is described in detail in this Order.

2. In this proceeding, the Commission must decide who will control the District's only local electric distribution company at a time when our city's leadership, at the urging of many residents, has mandated that the District must pursue a cleaner and greener future that includes more renewable energy resources and more distributed generation and at a time when the electric industry is undergoing significant transformation. The proposed change in ownership and control of Pepco must also be decided in the context of the public policy contained in District law that requires the electric company to be focused on distribution only, and to operate in a safe and reliable manner on a nondiscriminatory basis for all customers and suppliers.

3. This proceeding has generated more interest and more active participation by parties and interested persons than any other proceeding in the Commission's more than a century of operations. We fully respect, and have carefully considered, the submissions of the many parties and commenters, including the Government of the District of Columbia, the Office of the People's Counsel, the General Services Administration, D.C. Water, the solar and wind advocates, the consumer advocates, the Advisory Neighborhood Commissions and the interested parties who participated in our community hearings. Most of these parties opposed the transaction and asked the Commission to deny the application. Failing that, the parties asked the Commission to impose conditions that would mitigate their concerns.

4. As we have been reminded throughout this process, this decision is one of the most significant decisions that the Commission will ever make. Unlike a rate case, this decision will effect a permanent change in the ownership and control of the District's local electric distribution company. A rate case decision lasts only until the next rate case. This decision is forever.

5. It is a decision that the Commission must make based on the record before it, not based on aspirational goals that cannot be demonstrated. The Joint Applicants had full knowledge of the concerns and proposed solutions of the parties, as well as the questions raised by the Commission at the evidentiary hearings, in bench requests for further information and in data requests. The Joint Applicants were free to meet together with the parties to see if their objections could be resolved and a settlement could be reached. By law, the Commission staff is not a party to the case, only advisory to the Commission, and could not participate in such settlement discussions. Nevertheless, there was no settlement brought to the Commission that would have evidenced general agreement on those mitigating factors which would have satisfied the concerns of the parties. At the close of the record, in positions taken in the final briefs, their opposition to the Proposed Merger did not change, even as the Joint Applicants added additional commitments as a result of settlements reached in other jurisdictions to address concerns that were raised. Therefore, we consider the application as it stands on this record, not as it might have been proposed.

6. Cognizant of the statutory obligations placed on the Commission, we considered the effect of the Proposed Merger on the following seven factors to determine if the Proposed Merger is in the public interest:

(1) ratepayers, shareholders, the financial health of the utilities standing alone and as merged, and the economy of the District; (2) utility management and administrative operations; (3) public safety and the safety and reliability of services; (4) risks associated with all of the Joint Applicants' affiliated non-jurisdictional business operations, including nuclear operations; (5) the Commission's ability to regulate the new utility effectively; (6) competition in the local retail, and wholesale markets that impacts the District and District ratepayers; and (7) conservation of natural resources and preservation of environmental quality.¹

We also informed parties that because the circumstances of each merger are unique, not every public interest factor may be relevant or weighed equally from one merger to another.

7. In the Standard of Review Section of this Order, we explain how we will use the findings from our review of the effects of the Proposed Merger on the seven public interest factors to assess the transaction as a whole and make the public interest determination that is required by D.C. Code §§ 34-504 and 34-1001. We must find that the Proposed Merger benefits the public rather than merely leaves it unharmed, balancing the interests of shareholders and investors with the interests of ratepayers and the District community at large.

8. Throughout the proceeding, the Joint Applicants have argued that they have clearly shown that the Proposed Merger is in the public interest under the various public interest factors and the precedents set by this Commission. They have put forth arguments to counter each of the criticisms and concerns raised by the parties as well as by the thousands of interested persons who

¹ *Formal Case No. 1119*, Order No. 17597, ¶ 124, rel. August 22, 2014.

have voiced their opposition to placing the control of Pepco into the hands of the management of a diversified utility holding company that receives 63% of its revenues from generation assets. As the proponent of the proposed transaction and the approval order that is being sought, the Joint Applicants bear the burden of persuasion.²

9. The bulk of this order contains our review, analysis, and findings with respect to the effect of the Proposed Merger on each of the seven public interest factors. For the reasons that we set out in this order, we find that the impact of the Proposed Merger is a mixed one. There are a few elements of the Proposed Merger that produce a clear direct and tangible benefit --most notably the \$1.6 billion premium that would be paid to current PHI shareholders to buy out the interest of the current PHI shareholders at no cost to District ratepayers and the offer of a \$33.75 million Customer Investment Fund (CIF) (i.e., the equivalent of \$128 per ratepayer according to the Joint Applicants' customer meter count for the District -- a count that we call into question in this Order) which could be used by the Commission to fund a beneficial purpose of the Commission's choosing.³

10. While the Joint Applicants have persuaded the Commission that not everything that has been argued by the opponents of the Proposed Merger is true, the record in this proceeding persuades us that there are a number of effects of the Proposed Merger that are neither beneficial nor harmful, that is, they are neutral. There are also some effects of the Proposed Merger that are harmful or that have a reasonable potential for harm. For example, we found no benefit in the offer of increased reliability at a capped cost because it offers no increased reliability under our Electric Quality of Service Standards; rather, it relies on the increased reliability of the DC PLUG initiative that began before the Merger Application was submitted and it has terms and conditions that have already voided the cap that was offered.

11. Similarly, we found no benefit to District ratepayers in a new management structure that did not include the Pepco Region President in the Executive Committee for Exelon Utilities, thereby diminishing the influence of Pepco within the new structure and that would result in a more complex regulatory structure that would negatively impact the Commission's ability to regulate Pepco. Pepco will become a second tier company in a much larger corporation whose primary interest is not in distribution, but in generation. At a time of change in the energy field, Pepco's ability to adapt will be constrained by an increased management bureaucracy. We are also concerned about the inherent conflict of interest that might inhibit our local distribution company from moving forward to embrace a cleaner and greener environment.

12. Consequently, when this Proposed Merger is considered as a whole, for all of the reasons set forth in our Order, we conclude that the Joint Applicants have not met their burden of persuading this Commission that the Proposed Merger is in the public interest under D.C. Code §§ 34-504 and 34-1001. Therefore, the application is denied.

² See *People's Counsel of the District of Columbia v. Public Service Commission of the District of Columbia*, 474 A.2d 835, 837 (D.C. 1984) (the proponent of an order bears the burden of persuasion); *Washington Public Interest Organization v. Public Service Commission of the District of Columbia*, 393 A.2d 71, 77 (D.C. 1978) (the D.C. Court of Appeals has interpreted the phrase "burden of proof" to mean burden of persuasion); D.C. Code § 2-509 (b) (2001) ("In contested cases, except as may otherwise be provided by law, other than this subchapter, the proponent of a rule or order shall have the burden of proof.").

³ See *Formal Case No. 1119*, Order No. 17530, ¶ 26, rel. June 27, 2014, citing *Formal Case No. 1002*, Order No. 12395, ¶ 17, rel. May 1, 2002; and *Formal Case No. 951*, Order No. 11075, pp. 17-18, rel. October 20, 1997; *Formal Case No. 1119*, Order No. 17597, ¶ 88, rel. August 22, 2014.

