



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

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March 11, 2016

VIA ELECTRONIC FILING

Brinda Westbrook-Sedgwick
Commission Secretary
Public Service Commission
of the District of Columbia
1325 G Street, N.W. Suite 800
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 fifteen (15) copies of the Office of the People's Counsel's Response to Commission Order 18109.

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 Merger 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)	

**RESPONSE OF THE
OFFICE OF THE PEOPLE’S COUNSEL FOR THE DISTRICT OF COLUMBIA
TO THE JOINT APPLICANTS’ MARCH 7, 2016 SUBMISSION**

I. INTRODUCTION

The Office of the People’s Counsel for the District of Columbia (“OPC”), the statutory representative of District of Columbia ratepayers and consumers,¹ has consistently focused throughout this long and protracted proceeding on ensuring that any outcome—whether the District moves forward with an Exelon-owned or a PHI-owned Pepco—is in the best interest of the public, and that the merger’s claimed benefits will be meaningful, verifiable, and traceable to the proposed transaction. When the Joint Applicants’ initial proposals did not provide meaningful, direct, and traceable benefits that outweighed the risks of the merger, OPC vigorously opposed those proposals. However, when the Joint Applicants agreed to substantially revise their proposals through a settlement agreement that did provide such benefits (i.e., the original NSA), OPC supported that revision.

OPC respectfully submits this Response to the filing submitted on March 7, 2016 by the Joint Applicants (“March 7 Submission”).² In support of its Response, OPC states as follows:

¹ D.C. Code § 34-804 (2010).

² The March 7 Submission was entitled “Joint Applicants’ Request for Other Relief Pursuant to 15 DCMR § 130.17(B) and Order No. 18[109].” As explained in Section I below,

II. BACKGROUND

On February 26, 2016, the District of Columbia Public Service Commission (“Commission”) issued Order No. 18109,³ in which a majority of the Commission rejected a Nonunanimous Full Settlement Agreement and Stipulation (“Original NSA”) that was submitted by the “Settling Parties” on October 6, 2015.⁴ Following the majority’s decision to reject the Original NSA, a majority of the Commission exercised discretion under Rule 130.17(b) and “vote[d] to...approve a Revised NSA with alternative terms if accepted by all of the Settling Parties.”⁵ In Paragraph 206 of Order No. 18109, the Commission directed the Settling Parties “to review the alternative terms set forth in Paragraphs 140-161 of Commissioner Fort’s concurrence as captured in the Revised NSA at Attachment A and file a Notice with the Commission Secretary no later than fourteen (14) days from the date of this Order, either accepting the Revised NSA, or requesting other relief[.]”

OPC conducted a thorough review of the alternative terms set forth in the Revised NSA. For the reasons stated in its March 1, 2016 Press Release, OPC cannot and does not accept the

however, the March 7 Submission is not, in fact, a request for “other relief” pursuant to Order No. 18109. Rather, OPC understands the Commission intends to treat the March 7 Submission as a “motion” under Rule 105.8 for which responses are due no later than March 17, 2016.

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*, Order No. 18109, rel. February 26, 2016, at ¶206 (“Order No. 18109”).

⁴ The “Settling Parties” are: (1) the Joint Applicants; (2) the District of Columbia Government; (3) OPC; (4) the District of Columbia Water and Sewer Authority; (5) the Apartment and Office Building Association of Metropolitan Washington; and (6) the National Consumer Law Center, the National Housing Trust, and the National Housing Trust-Enterprise Preservation Corporation. Order No. 18109 at ¶ 9; *see also* March 7 Submission at 1, n.1.

⁵ Order No. 18109 at ¶ 17; *see also id.* at ¶ 207.

Revised NSA.⁶ Namely, the Revised NSA removed a principal benefit to residential electricity customers by eliminating the guarantee of no rate increases for residential ratepayers through March 2019. Other Settling Parties also indicated opposition to the Revised NSA.⁷

The process set forth in Paragraph 206 of Order No. 18109 for approving the Revised NSA cannot be pursued due to the lack of unanimity among the Settling Parties with respect to the alternative terms in the Revised NSA.

II. RESPONSE TO THE JOINT APPLICANTS' MARCH 7 SUBMISSION

The Joint Applicants' March 7 Submission purports to present the Commission with three options for moving forward: (1) adopt the Original NSA; (2) adopt the Revised NSA; or (3) adopt a further revision to the Revised NSA. OPC submits, as set forth below, these options suffer from fatal procedural or substantive defects and therefore are not viable.

The Joint Applicants' March 7 Submission raises issues from a procedural perspective. For example, OPC agrees with the Joint Applicants' assertion "that the Residential Customer Base Rate Credit, as structured in the [Original NSA], will not undermine the Commission's ability to achieve its stated policy of correcting the historical inequity of negative class rates of return."⁸ Nonetheless, a majority of the Commission did not agree. While OPC is disappointed in the majority's decision, it respects the regulatory process that authorizes the Commission to make that decision and the regulatory process that follows a Commission decision on the

⁶ OPC's March 1, 2016 Press Release is can be accessed at <http://opc-dc.gov/index.php/consumer-topics-a-z/press-release/1236-people-s-counsel-opposes-the-psc-s-revised-pepco-exelon-merger-settlement-agreement>.

⁷ See Statement from Mayor Bowser on Public Service Commission's Order (March 1, 2016), *available at* <http://mayor.dc.gov/release/statement-mayor-bowser-public-service-commission%E2%80%99s-order>; *see also* DC Water Statement on Revised Pepco-Exelon Merger Settlement Agreement (March 3, 2016), *available at* https://www.dewater.com/news/listings/press_release762.cfm.

⁸ March 6 Submission at 3.

merits—*i.e.*, articulating any challenges in an application for reconsideration filed pursuant to Rule 140. Therefore, even though OPC continues to believe the Original NSA is in the public interest, OPC cannot support the Joint Applicants’ proposal for the Commission to bypass Rule 140, “adopt the terms of the Settlement Agreement as a resolution on the merits[,] and approve the merger without any further steps.”⁹ Supporting this option would be inconsistent with OPC’s advocacy for an open and fair process.

The Joint Applicants’ second option—adopt the Revised NSA—should be rejected out of hand because it is not in the public interest. In particular, a principal benefit of the Original NSA was that it “insulate[d] residential ratepayers from any rate increase through March 2019.”¹⁰ The Revised NSA eliminated this essential benefit, stating:

Exelon will provide a Customer Base Rate Credit in the amount of \$25.6 million, which will be a credit to offset rate increases for Pepco customers approved by the Commission in any Pepco base rate case filed after the close of the Merger until the Customer Base Rate Credit is fully utilized. The parties in the next Pepco base rate case will be provided an opportunity to propose to the Commission how the Customer Base Rate Credit will be allocated among Pepco customers and over what period of time. No portion of the Customer Base Rate Credit shall be recovered in utility rates.¹¹

OPC (and other parties to the Original NSA) bargained for an assured period of repose for residential customers from base distribution rate increases until at least March 2019 (any amount of the credit not utilized by that time would continue to be applied against any future residential class rate increase – another benefit of the NSA taken away by Paragraph 4 of the Revised NSA). Paragraph 4 of the Revised NSA provides residential customers no assurance whatsoever of such rate relief. Therefore, under the Revised NSA, residential ratepayers will not know what, if any,

⁹ *Id.* at 4 (footnote omitted).

¹⁰ *Formal Case No. 1119*, “Initial Brief of the Office of the People’s Counsel,” December 16, 2015 (post-public interest hearing) at 7.

¹¹ Order No. 18109, Attachment A, ¶ 4.

amount of the credit will be provided to them until the end of the next rate case. Further, while Paragraph 4 of the Revised NSA gives residential customers the right to argue against an allocation of the credit to other classes, OPC already has the right to argue for and against a particular cost allocation in the next base rate case. Indeed, OPC has historically opposed cost allocation changes that have shifted excessive costs to the residential class.¹² OPC's support for the Original NSA was premised on the *assurance of* no rate increases for residential ratepayers through March 2019, not the opportunity to argue that residential customers should obtain some portion of the credit.

In short, Paragraph 4 of the Original NSA embodies what OPC believes to be an essential protection for the District's residential customers. Given that the Revised NSA eliminates that essential protection, OPC simply cannot accept the Joint Applicants' second option i.e., adoption of the Revised NSA.

The Joint Applicants' third option—adopt a modified version of the Revised NSA—is also unacceptable. Even if the Commission would consider the re-allocation of the Customer Investment Funds proposed by the Joint Applicants in their third option, other elements of that option ignore the Commission's specifically stated customer class cost allocation concerns that led to the Original NSA's rejection. Notably, the third option maintains the “Incremental Offset” that was part of Paragraph 4 of the Original NSA. OPC respectfully disagrees with the concerns raised in Order No. 18109 about the Incremental Offset, and continues to believe that the Incremental Offset was a major benefit of the Original NSA. Second, Option 3 introduces a level of uncertainty by vesting the Commission with the authority to exercise its discretion regarding how the transferred funds will be used. In effect once again calling upon the

¹² *Formal Case No. 1087*, Order No. 16930, ¶¶ 259-262, rel. (September 27, 2012).

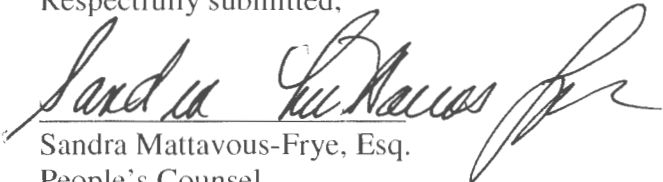
Commission to “split the baby.” OPC submits that any alternative proposal at this point must be mindful of those Commission concerns in order to be viable.

III. CONCLUSION

For its part, OPC is ready to move on and address other challenges and opportunities facing the District. As we approach the two-year anniversary of the announcement of the proposed merger, and in consideration of the extraordinary processes the Commission already established throughout the course of this proceeding to consider alternative proposals, OPC encourages the Commission to make an expeditious decision and bring closure to this matter.

WHEREFORE, the Office of the People’s Counsel for the District of Columbia respectfully submits the foregoing Response and asks the Commission to reject the relief requested in the Joint Applicants’ March 7 Submission.

Respectfully submitted,



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Dated: March 11, 2016

CERTIFICATE OF SERVICE

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I hereby certify that on March 11, 2016, a copy of the Office of People's Counsel's Response was served on the following parties of record by hand delivery, first class mail, postage prepaid, or electronic mail:

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