

**PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA
1325 G STREET N.W., SUITE 800
WASHINGTON, D.C. 20005**

ORDER

October 8, 2015

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. 17999

I. INTRODUCTION

1. By this Order, the Public Service Commission of the District of Columbia (“Commission”) denies the District of Columbia Public Power’s (“DCPP”) Request for Reconsideration.¹

II. BACKGROUND

2. On April 30, 2014, Pepco Holdings, Inc. (“PHI”) and Exelon Corporation (“Exelon”) announced Exelon’s purchase of PHI. PHI is the parent company of the Potomac Electric Power Company (“Pepco”), the electric distribution company that serves the District of Columbia (“District”). On June 18, 2014, Exelon, PHI, 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 to be effected by the merger of PHI with Purple Acquisition Corp. (“Merger Sub”), a wholly-owned subsidiary of Exelon (“Joint Application”).²

3. The Office of the People’s Counsel is the statutory party of right to any Commission investigation,³ and it participated as a party in this case. In addition, the

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 (“Formal Case No. 1119”), Notice of appearance pursuant to Rule 110.3; Request for Reconsideration in Formal Case No. 1119, filed September 28, 2015 (“Request for Reconsideration”).*

² *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 for Authorization and Approval of Proposed Merger Transaction, filed June 18, 2014 (“Joint Application”).*

³ D.C. Code § 34-804 (a) (2015).

Commission granted petitions to intervene of 11 other entities to participate as parties in this proceeding.⁴

4. The Commission convened four (4) community hearings seeking input from the public on the Joint Application. The hearings were held between December 17, 2014 and January 20, 2015, at various times and locations throughout the District of Columbia.⁵ The Commission also held 11 days of evidentiary hearings from March 30, 2015 through April 8, 2015, and April 20, 2015 through April 22, 2015. On May 27, 2015, the record closed.⁶

5. On August 27, 2015, the Commission issued Order No. 17947, which denied the Joint Application and found that the proposed merger was not in the public interest.⁷ On September 28, 2015, the Joint Applicants filed an Application for Reconsideration of Order No. 17947.⁸ Also, on September 28, 2015, DCPP filed its Request for Reconsideration.

III. DISCUSSION

6. DCPP is a Washington, D.C. not-for-profit entity which is a strong advocate of a D.C. based electric power utility.⁹ In its Request for Reconsideration, DCPP states that it has a strong interest in participating in a reconsideration hearing.¹⁰ According to DCPP, it has “developed a workable and feasible proposal related to that advocacy that would meet all of the DC PSC’s concerns with the proposed merger, and that would substantially increase public benefits.”¹¹ DCPP “proposes to enter into an agreement with Exelon to acquire between 51 to 100 percent of PHI’s DC-based assets at an agreed-upon price and terms.”¹² DCPP claims this transaction would occur as soon as feasible “with appropriate assurances sufficient to satisfy the

⁴ *Formal Case No. 1119*, Order No. 17597, rel. August 22, 2014 (“Order No. 17597”). The other parties are: Apartment and Office Building Association of Metropolitan Washington; the District of Columbia Government; D.C. Solar United Neighborhood; District of Columbia Water and Sewer Authority; General Services Administration; GRID2.0 Working Group, Maryland DC Virginia Solar Energy Industries Association, Mid-Atlantic Renewable Energy Coalition; Monitoring Analytics, LLC as the Market Monitor for PJM; National Consumer Law Center, National Housing Trust, National Housing Trust Enterprise Preservation Corporation; and NRG Energy, Inc.

⁵ *Formal Case No. 1119*, Notice of Community Hearings, issued November 21, 2014; see also Vol. 68 No. 48 *D.C. Reg.*

⁶ *Formal Case No. 1119*, Notice of Close of Record, issued May 27, 2015.

⁷ *Formal Case No. 1119*, Order No. 17947, rel. August 27, 2015 (“Order No. 17947”).

⁸ *Formal Case No. 1119*, Application of the Joint Applicants for Reconsideration of Order No. 17947, filed September 28, 2015.

⁹ *Formal Case No. 1119*, DCPP’s Request for Reconsideration at 1-2.

¹⁰ *Formal Case No. 1119*, DCPP’s Request for Reconsideration at 2.

¹¹ *Formal Case No. 1119*, DCPP’s Request for Reconsideration at 2.

¹² *Formal Case No. 1119*, DCPP’s Request for Reconsideration at 2.

DC PSC, interveners and elected officials that the acquisition is in the public interest.”¹³ DCPD has communicated its proposal to Exelon’s attorneys and to officials of the District of Columbia Government, but “have not yet engaged the cooperation of the merging parties.”¹⁴

7. DCPD states that it “understand[s] and appreciate[s] that pursuant to DC PSC rules a proceeding for reconsideration based on new information and proposed new terms and conditions from the parties will be a public and open proceeding, and consider comments from the public and address alternative operational and ownership models.”¹⁵ DCPD concludes its Request for Reconsideration by stating that it appreciates a fair opportunity to be heard with regard to reconsideration of the merger proposal and “to advance its concerns and ideas with regard to facilitating provision of electrical utility service in a manner that best serves the public interests of the citizens of the District of Columbia.”¹⁶

8. D.C. Code § 34-604(b) states in pertinent part:

Any public utility or any other person or corporation affected by any final order or decision of the Commission may, within 30 days after the publication thereof, file with the Commission an application in writing requesting a reconsideration of the matters involved, and stating specifically the errors claimed as grounds for such reconsideration.¹⁷

Case law construing D.C. Code § 34-604(b) provides that a petitioner or applicant for reconsideration need not be a party to the proceeding, but only needs to be affected by the order in question to apply for reconsideration.¹⁸ Thus, DCPD does not have to be a party to apply for reconsideration of Order No. 17947. However, the statements in DCPD’s Request for Reconsideration fall far short of the allegations that must be made in a proper application for reconsideration. In its construction of D.C. Code § 34-604(b), the Commission has held in various cases that (1) the purpose of an application for reconsideration is to identify errors of law or fact in the Commission’s order so that they can be corrected;¹⁹ and (2) an application for

¹³ *Formal Case No. 1119*, DCPD’s Request for Reconsideration at 2.

¹⁴ *Formal Case No. 1119*, DCPD’s Request for Reconsideration at 2.

¹⁵ *Formal Case No. 1119*, DCPD’s Request for Reconsideration at 2.

¹⁶ *Formal Case No. 1119*, DCPD’s Request for Reconsideration at 2.

¹⁷ D.C. Code § 34-604 (2015).

¹⁸ *Goodman v. Public Service Commission*, 309 A.2d 97, 99, n. 2 (D.C. 1973).

¹⁹ *See Formal Case No. 1103, In the Matter of the Application of the Potomac Electric Power Company for Authority to Increase Existing Retail Rates and Charges for Electric Distribution Service*, Order No. 17539 ¶ 4, rel. July 10, 2014, construing D.C. Code § 34-604(b) (2001).

reconsideration “shall set forth specifically the grounds on which the applicant considers the order or decision of the Commission to be unlawful or erroneous.”²⁰

9. DCPD’s reason for participating at this stage of the proceeding appears to be based on an erroneous understanding of the Commission’s reconsideration procedures. First, DCPD’s Request for Reconsideration does not allege the requisite grounds on which our Order to be reconsidered is unlawful or erroneous. In fact, it does not even allege that DCPD is affected by the Order or that the Order is unlawful or erroneous. Second, DCPD incorrectly describes our reconsideration proceeding as one “based on new information and proposed new terms and conditions from the parties,” and that it will be a public and open proceeding to “consider comments from the public and address alternative operational and ownership models.” As stated above, the purpose of a reconsideration request is to identify errors of law or fact in the Commission’s Order so that they can be corrected. Third, DCPD also misunderstands the reconsideration procedure. DCPD states that it “understand[s] that such a proceeding will occur before the DC PSC takes any further actions concerning the Exelon-PHI merger proposal.”²¹ However, there is no reconsideration hearing as DCPD erroneously assumes in its Request for Reconsideration. The Commission’s traditional procedure is to determine an application for reconsideration from the application and the responses thereto.²² For these reasons, DCPD’s Request for Reconsideration does not present any valid grounds for the Commission to consider for reconsideration, and, therefore, its Request must be denied.

THEREFORE, IT IS ORDERED THAT:

10. The District of Columbia Public Power’s Request for Reconsideration of Order No. 17947 is **DENIED**.

A TRUE COPY:

BY DIRECTION OF THE COMMISSION:



CHIEF CLERK:

**BRINDA WESTBROOK-SEDGWICK
COMMISSION SECRETARY**

²⁰ See 15 DCMR § 140.2 (June 25, 1982).

²¹ *Formal Case No. 1119*, DCPD’s Request for Reconsideration at 2.

²² See, e.g., *Formal Case No. 1115, Application of Washington Gas Light Company for Approval of a Revised Accelerated Pipe Replacement Program*, Order No. 17885, rel. May 19, 2015; and *Formal Case No. 1093, In the Matter of the Investigation Into the Reasonableness of Washington Gas Light Company’s Existing Rates and Charges for Gas Service*, Order No. 17204, rel. July 31, 2013.