

**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, PEPSCO 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. 18000

I. INTRODUCTION

1. By this Order, the Public Service Commission of the District of Columbia (“Commission”) determines the Joint Motion of the District of Columbia Government (“District Government”) and Exelon Corporation, Pepco Holdings, Inc., Potomac Electric Power Company, Exelon Energy Delivery Company, LLC and New Special Purpose Entity, LLC (“Joint Applicants”) for a Stay or, in the Alternative, for an Extension of Time to Respond to the Application for Reconsideration of Order No. 17947 (“Joint Motion”) filed on September 30, 2015 and all responses filed to that Joint Motion are now moot.¹

2. Additionally, the Commission advised parties that responses to the Motion of the Joint Applicants to Reopen the Record in Formal Case No. 1119 to Allow for Consideration of Nonunanimous Full Settlement Agreement and Stipulation, or for Other Alternative Relief (“Motion to Reopen”), shall be due on or before October 16, 2015. The Order further directs the parties to specifically address the matters referenced in Paragraph 13 of this Order.

3. Finally the Commission clarifies that the stay of the filing of responses to the Joint Applicants’ Application for Reconsideration imposed in Order No. 17993 shall remain in effect until the Commission renders a decision on the Motion to Reopen.

II. BACKGROUND

4. On April 30, 2014, Exelon Corporation (“Exelon”) announced Exelon’s purchase of Pepco Holdings, Inc. (“PHI”). On June 18, 2014, the Joint Applicants filed the Joint

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”), Joint Motion of the District of Columbia Government and Joint Applicants for a Stay or, in the Alternative, for an Extension of Time to Respond to the Application for Reconsideration of Order No. 17947, filed September 30, 2015 (“Joint Motion”).*

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 Proposed Merger of PHI with Purple Acquisition Corp. (“Merger Sub”), a wholly owned subsidiary of Exelon.²

5. 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. Eleven days of evidentiary hearings were held on March 30–April 8, 2015 and April 20–22, 2015. On May 27, 2015, the record closed.

6. 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.³ On September 28, 2015, the Joint Applicants filed an Application for Reconsideration of Order No. 17947.⁴ Commission Rule 140.3 prescribes that responses to applications for reconsideration shall be filed within five (5) business days after receipt of the application.⁵

7. On September 30, 2015, the District Government and Joint Applicants filed their Joint Motion.⁶ In the Joint Motion, the District Government and Joint Applicants request, as alternatives to the Commission granting a stay in the proceeding: “(i) grant the District a 30-day extension of time to respond to the Reconsideration Application, and (ii) issue an order tolling the 30-day period for Commission reconsideration set forth in 34 D.C. Code Section 604(b)[,]” or “provide the parties with three additional business days from the date of that Order to respond to the Application for Reconsideration.”⁷ The Joint Motion indicates that DC Water and MDV-SEIA “do not object to the relief requested” while OPC “takes no position.”⁸

8. On October 1, 2015, the Apartment and Office Building Association of Metropolitan Washington and DC Solar United Neighborhoods (“DC SUN”) filed a Joint Reply

² See *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, p. 1, filed June 18, 2014 (“Joint Application”).

³ *Formal Case No. 1119*, Order No. 17947, rel. August 27, 2015.

⁴ *Formal Case No. 1119*, Application of the Joint Applicants for Reconsideration of Order No. 17947, filed September 28, 2015.

⁵ See 15 DCMR § 140.3 (1981). “Responses to applications for reconsideration or modification shall be considered by the Commission only if filed with the Commission within five (5) business days after receipt of the application.”

⁶ *Formal Case No. 1119*, Joint Motion of the District of Columbia Government and Joint Applicants for a Stay or, in the Alternative, for an Extension of Time to Respond to the Application for Reconsideration of Order No. 17947, filed September 30, 2015 (“Joint Motion”).

⁷ *Formal Case No. 1119*, Joint Motion at 1-2.

⁸ *Formal Case No. 1119*, Joint Motion at 2.

in Opposition to the Joint Motion (“Joint Opposition”).⁹ On October 2, 2015, GRID2.0 Working Group filed a reply in opposition to the Joint Motion.¹⁰ Both filings generally opposed the Joint Motion, except for the granting of the limited three day extension. No other parties filed responses. On October 1, 2015, a non-party, District of Columbia Public Power, also filed an Opposition to the Joint Motion.¹¹

9. On October 2, 2015, the Commission issued Order No. 17993, which pursuant to Commission Rule 146.1, waived the ten (10) day period for filing responses to the Joint Motion and directs parties to file their responses to the Joint Motion by close of business on October 6, 2015.¹² Additionally, the Commission stated “in no event will the responses [to the Application for Reconsideration] be due earlier than October 9, 2015.”¹³

10. On October 6, 2015, the Joint Applicants filed their Motion to Reopen.¹⁴ In their Motion to Reopen, the Joint Applicants state, the purpose of this motion is to “obtain the Commission’s guidance on the proper procedures” for allowing the Commission to rule on the Settlement Agreement.¹⁵ The Joint Applicants “request that the Commission reopen the record in this proceeding to allow for consideration of the Settlement Agreement, supporting testimony and exhibits, and other evidence developed at the evidentiary hearing on the Settlement Agreement.”¹⁶ The Joint Applicants “request that the Commission toll consideration of the Application for Reconsideration . . . for such period of time as the Commission requires to fully consider the merits of the Settlement Agreement” and “toll the time for responses to the Application for Reconsideration.”¹⁷ The Joint Applicants state that “this request supersedes the Joint Motion of [the District Government] and Joint Applicants . . .”¹⁸ The Joint Applicants then

⁹ *Formal Case No. 1119*, Joint Response of the Apartment and Office Building Association of Metropolitan Washington and DC SUN to the Joint Motion of the District of Columbia Government and Joint Applicants for a Stay or, in the Alternative, for an Extension of Time to Respond to the Application of Reconsideration of Order No. 17947, filed October 1, 2015 (“Joint Opposition”).

¹⁰ *Formal Case No. 1119*, Response of the GRID2.0 Working Group to the Joint Motion of the District of Columbia Government and Joint Applicants for a Stay or, in the Alternative, for an Extension of Time to Respond to the Application of Reconsideration of Order No. 17947, filed October 2, 2015 (“GRID2.0 Opposition”).

¹¹ *Formal Case No. 1119*, Opposition of D.C. Public Power to the Application of D.C. Government for a Stay of the Pending Reconsideration Proceeding and Tolling of the Time Periods Concerning Reconsideration of Order No. 17947, filed October 1, 2015.

¹² *Formal Case No. 1119*, Order No. 17993, ¶ 11, rel. October 2, 2015. (Citations Omitted).

¹³ *Formal Case No. 1119*, Order No. 17993, ¶¶ 1, 12, rel. October 2, 2015.

¹⁴ *Formal Case No. 1119*, Motion of the Joint Applicants to Reopen the Record in Formal Case No. 1119 to Allow for Consideration of Nonunanimous Full Settlement Agreement and Stipulation, or for Other Alternative Relief, filed October 6, 2015 (“Joint Applicants’ Motion to Reopen”).

¹⁵ *Formal Case No. 1119*, Joint Applicants’ Motion to Reopen at 4.

¹⁶ *Formal Case No. 1119*, Joint Applicants’ Motion to Reopen at 8.

¹⁷ *Formal Case No. 1119*, Joint Applicants’ Motion to Reopen at 11-12.

proceed to outline a schedule and process by which the Commission might consider the Settlement Agreement.¹⁹

III. DISCUSSION

11. The Joint Applicants assert that their Joint Motion to Reopen supersedes the Joint Motion filed on September 30, 2015. Accordingly, since the Joint Applicants and the District Government are proponents of both the Joint Motion and the Joint Applicants' Motion to Reopen, the Commission accepts the Joint Applicants' assertion and will treat the Joint Motion to Reopen as having superseded the Joint Motion thus now making the Joint Motion and responses filed thereto moot.

12. Additionally, the Commission notes that Order No. 17993 stayed the filing of responses to the Application of the Joint Applicants for Reconsideration of Order No. 17947 filed on September 29, 2015, while the Commission considered the September 30th Joint Motion. That stay will remain in effect until the Commission renders a decision on the Motion to Reopen.

13. Under Commission Rule 105.8, responses to the Motion to Reopen are due no later than ten (10) calendar days after the motion is served or by October 16, 2015. In their responses, parties are directed to comment on the proposed procedural schedule, which includes a recommended hearing date and discovery including the submission of data requests with responses to the data requests due in five (5) business days. The Settling Parties, and all other parties are directed to specifically address the scope of any discovery that would be included in the procedures and whether any discovery would be limited by Commission Rule 130.6 and other rules pertaining to settlements (15 DCMR §130).

THEREFORE IT IS ORDERED THAT:

14. The Joint Motion filed on September 30, 2015, and all responses filed to that Joint Motion are now moot;

15. The stay of the filing of responses to the Application for Reconsideration of Order No. 17947 set forth in Order No. 17993 shall remain in effect until the Commission renders a decision on the Motion to Reopen; and

¹⁸ *Formal Case No. 1119, Joint Applicants' Motion to Reopen at 13.*

¹⁹ *Formal Case No. 1119, Joint Applicants' Motion to Reopen at 13-17.*

16. Responses to the Motion to Reopen, which shall specifically address the matters referenced in Paragraph 13 of this Order, shall be due on or before October 16, 2015.

A TRUE COPY:

BY DIRECTION OF THE COMMISSION:

A handwritten signature in black ink, reading "Brinda Westbrook-Sedgwick". The signature is written in a cursive, flowing style.

CHIEF CLERK:

**BRINDA WESTBROOK-SEDGWICK
COMMISSION SECRETARY**