



Agenda Date: 10/15/15

Agenda Item: 2B

STATE OF NEW JERSEY
Board of Public Utilities
44 South Clinton Avenue, 9th Floor
Post Office Box 350
Trenton, New Jersey 08625-0350
www.nj.gov/bpu/

ENERGY

IN THE MATTER OF THE MERGER OF EXELON CORPORATION AND PEPCO HOLDINGS, INC.)	ORDER APPROVING
)	EXTENSION OF TIME
)	TO CONSUMMATE
)	MERGER
)	
)	DOCKET NO. EM14060581

Parties of Record:

Colleen A. Foley, Esq., Saul Ewing LLP, on behalf of the Joint Petitioners
Stefanie A. Brand, Esq., Director, New Jersey Division of Rate Counsel
James H. Laskey, Esq., Norris McLaughlin & Marcus, P.A., on behalf of the Independent Energy Producers of New Jersey
Joseph F. Accardo, Jr., Esq., on behalf of Public Service Electric and Gas Company, PSEG Power LLC, and PSEG Energy Resources & Trade LLC
Bradford M. Stern, Esq., Law Offices of Bradford M. Stern, LLC, on behalf of the Mid-Atlantic Renewable Energy Coalition
Jeffrey W. Mayes, Esq., on behalf of Monitoring Analytics, LLC
Abraham Silverman, Esq., on behalf of NRG Energy, Inc.
James C. Meyer, Esq., Riker, Danzig, Schere Hyland & Perretti, LLP, on behalf of Rockland Electric Company
Ernest Logan Welde, Esq., on behalf of the Clean Air Council

BY THE BOARD:

This Order addresses a request for an extension of time filed by Pepco Holdings, Inc. ("PHI"), Atlantic City Electric Company ("ACE"), Exelon Corporation ("Exelon"), Purple Acquisition Corp. ("Merger Sub"), Exelon Energy Delivery Company, LLC ("EEDC"), and New Special Purpose Entity, LLC ("New SPE") (collectively, the "Joint Petitioners"), to consummate the merger of Exelon and PHI.

By Order dated March 6, 2015, the New Jersey Board of Public Utilities ("Board") approved a Stipulation of Settlement setting the terms and conditions for the merger of Exelon and PHI.¹

¹ See In re the Merger of Exelon Corporation and Pepco Holdings, Inc., BPU Docket No. EM14060581, Order Approving Stipulation of Settlement, (March 6, 2015) ("Merger Order").

The Merger Order contained a sunset provision ordering the consummation of the merger of Exelon and PHI occur no later than November 1, 2015, unless otherwise extended by the Board.²

On September 16, 2015, the Joint Petitioners filed a motion seeking an extension of time, until June 30, 2015, to consummate the merger (“Extension Motion”).

According to the Extension Motion, the Joint Petitioners have received the required approvals of the merger from the Board, Delaware Public Service Commission (“Delaware”), the Maryland Public Service Commission (“Maryland”) and the Virginia State Corporation Commission (“Virginia”). On August 27, 2015 the District of Columbia Public Service Commission (“DC PSC”) denied the Joint Petitioners’ application “as filed.”³

The Joint Petitioners state they remain convinced that the merger provides significant benefits and is in the public interest, and plan on continuing to work to complete the merger⁴ and are seeking time to enable them to continue to work to complete the merger. On September 28, 2015, the Joint Petitioners filed an application for reconsideration with the DC PSC.

On September 17, 2015, New Jersey Division of Rate Counsel (“Rate Counsel”) filed a reply to the Extension Motion stating that it does not object to the granting of the extension of time to June 30, 2016. However, Rate Counsel requests that, if granted, ‘the extension be contingent upon the parties’ right to review the final form of the merger in order to insure that New Jersey ratepayers’ interests continue to be protected.”⁵

Joint Petitioners filed a response to Rate Counsel’s letter on September 22, 2015 asking that the Board grant the request for extension with no other modifications to the Merger Order. Joint Petitioners believe any further modification of the Merger Order is unnecessary and confusing, and argue that the detailed Most Favored Nation (“MFN”) provision included in the settlement and adopted in the Merger Order, addresses Rate Counsel’s concerns and protects the interests of New Jersey and its customers.⁶ The Joint Petitioners argue that the MFN provision was inserted to insure “in the aggregate, that New Jersey will be treated as favorably as Maryland, Delaware and the District of Columbia,” and the Joint Petitioners cite the Board’s language of the Merger Order that the MFN “provision provides additional assurance that the positive benefits of the Merger to the ratepayers and State of New Jersey are not ‘illusory.’”⁷

The Joint Petitioners also argue that Rate Counsel’s request to review the final form of the merger is confusing and vague. According to the Joint Petitioners, they are already required to provide Rate Counsel and Board Staff with copies of the final Orders and Settlements from the other jurisdictions, along with an analysis and explanation of the benefits awarded in each jurisdiction. No additional review process beyond that provided by the Merger Order is required, and Joint Petitioners submit that any such request be rejected.

² Id. at 44.

³ See 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, Orders No. 17947 (dated August 27, 2015), at paragraph 359.

⁴ Extension Motion at p. 2.

⁵ Rate Counsel Letter at p. 2.

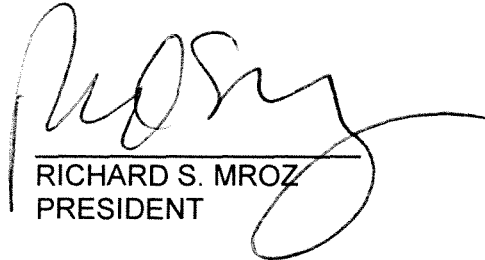
⁶ Response Letter at p. 2.

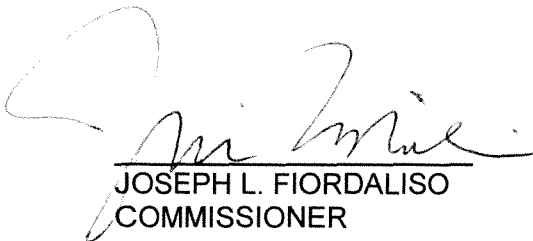
⁷ Ibid. citing Merger Order at p. 39.

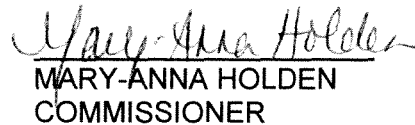
After reviewing the submissions of the Joint Petitioners and Rate Counsel and after due consideration of the arguments and of the provisions of the Merger Order, the Board **HEREBY FINDS** the extension request to be reasonable, and **HEREBY GRANTS** an extension of time for the Joint Petitioners to consummate the merger of Exelon and PHI to June 30, 2016. Given the Joint Petitioners' affirmation of their obligation to provide the Board and Rate Counsel with copies of the final orders and settlements from each of the jurisdictions, including the DC PSC, along with an analysis and explanation of the benefits awarded in each jurisdiction, the Board **HEREBY DECLINES** to order any additional review process at this time.

DATED: *October 15, 2015*

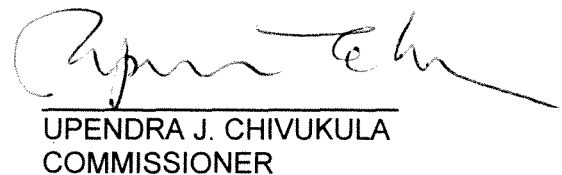
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BY:

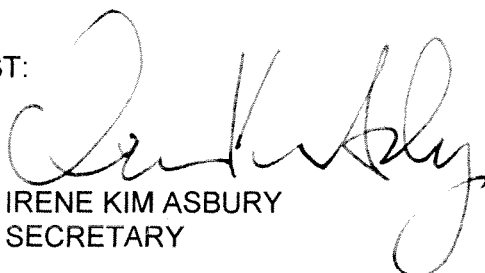

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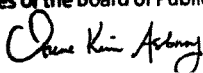

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ATTEST:

IRENE KIM ASBURY
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I HEREBY CERTIFY that the within document is a true copy of the original in the files of the Board of Public Utilities



IN THE MATTER OF THE MERGER OF EXELON CORPORATION
AND PEPSCO HOLDINGS, INC.
DOCKET NO. EM14060581

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