



COUNCIL OF THE DISTRICT OF COLUMBIA
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Betty Ann Kane, Chairperson
Joanne Doddy Fort, Commissioner
Willie L. Phillips, Commissioner
Public Service Commission of the District of Columbia
1333 H St. N.W., Suite 200, West Tower
Washington, D.C. 20005

Re: Formal Case No. 1119

Dear Chairperson Kane and Commissioners Fort and Phillips:

We write on behalf of District residents and ratepayers concerned about potential adverse impacts from Formal Case No. 1119, the application for approval of Exelon Corporation's acquisition of Pepco Holdings, Inc. (PHI). As you know, the Committee on Transportation and the Environment held a public roundtable on the potential environmental effects of this proposed acquisition on January 23,¹ and the Committee on Business, Consumer, and Regulatory Affairs held a roundtable on January 29 that included, among other topics, the proposed acquisition. We have had a chance to review testimony submitted at these roundtables, and find the concerns raised by the public, the Office of the People's Counsel, the District government, and environmental groups to be deeply troubling. It is our belief that the acquisition as proposed is not in the public interest as required by D.C. Code § 34-504.

As members of the public, various experts, and intervenors in Formal Case 1119 have repeatedly noted, there is a basic conflict of interest between a company that is primarily a generator (a producer) of electricity and a company that is a primarily a distributor (or buyer) of electricity. A producer looks for the highest

¹ With this letter, we have included copies of the written testimony received by the Committee from the public roundtable.

prices for its product, but a buyer looks for the lowest prices. PHI owns almost no bulk generation, being primarily a distribution company, while Exelon owns approximately 33,137 MW of generation, 89% of which comes from nuclear and fossil fuel plants.

In 1999, when the Commission approved Pepco's proposed divestment of its generation assets, it found that the sale of that part of Pepco's business was in the public interest because, in addition to monetary benefits, it would result in "a host of other non-monetary, but no less important, benefits to District ratepayers."² These benefits included the fact that divestiture from generation assets "significantly reduces (and could possibly eliminate) the existence of stranded costs," and the fact that divestiture "eliminates market power concerns" because "[w]ith Pepco substantially out of the generation business, there will be less motivation for the Company to act as an inhibitor to the development of a competitive generation market in the District."³ These benefits that contributed to the Commission's approval of Pepco's divestiture from its generation assets in 1999 will be sacrificed if the Commission approves Pepco's acquisition by a company invested primarily and significantly in the business of generation, Exelon.

The Commission must take these lost non-monetary benefits that it identified in 1999 into account in making its determination of whether, as a whole, the acquisition is in the "public interest" as required by D.C. Code § 34-504. In addition to these benefits, which still exist today, the Commission should also consider the District's aggressive pursuit of policies supporting increased reliance on renewable, distributed energy sources over the last several years, as well as the growing national movement toward grid technology that can support increased distributed generation. These modern policies and technologies provide myriad benefits to District residents and ratepayers for reasons of both environmental and energy security—benefits that are significant, albeit difficult to quantify monetarily. Such policies also support competition with centralized generation plants like the ones Exelon is so heavily invested in, however, and it is reasonable to expect that Exelon will, as it has in other jurisdictions, oppose them in the District.

² PSC Order No. 11576, Formal Case No. 945, *In the Matter of the Investigation Into Electric Service Market Competition and Regulatory Policies* (Dec. 30, 1999), p. 16.

³ *Id.*

Given these considerations, which touch on aspects of all seven of the “public interest factors” identified in the Commission’s Order No. 17597,⁴ we have grave doubts that any deal approving this acquisition can be in the public interest. Exelon’s acquisition proposal offers little in the way of legally binding assurances of Pepco’s continued independence in decision-making when it comes to rates and policies regarding the District’s grid and power supply. PHI will become one of many subsidiaries subject to the objectives of Exelon executives in policy positions, and Pepco’s board will have little motivation or ability to oppose its parent company.

The benefit that Exelon proposes in its revised application for the acquisition consists primarily of a \$33.75 million one-time payment, about \$128 per ratepayer. Exelon commits itself to no enforceable increases in reliability that Pepco is not already obligated to meet, and its proposal presents significant risk of future rate increases due to the risk inherent in its ownership of large generation assets. Although Exelon proposes “ring-fencing” measures to protect PHI from its financial risk for 5 years, these measures are not a guarantee against risk, and further, are in place for only 5 years before Exelon may petition to remove them. This attempt at mitigating risk, therefore, still leaves risk exposure and does not result in any public benefit. Additionally, although Exelon claims that there will be savings resulting from “efficiencies” in company operations, nothing in its application holds them accountable for identifying these savings or requires them to be passed on to District ratepayers.

Based on all the information currently available, it appears that the only real beneficiaries of the takeover will be Pepco shareholders (Exelon is buying them out at a more than 24% premium over market value) and Exelon Corporation (which will capture a steady, reliable stream of revenue to offset its riskier generation assets). District ratepayers and the District as a whole will achieve no net benefit, and will be at substantial risk of higher prices, lost jobs, distant governance, and a marked reversal of progressive environmental initiatives. Not only has Exelon not carried its burden of showing that the takeover is in the public interest, the District could be worse off, far worse off, if the deal is approved.

⁴ PSC Order No. 17597, Formal Case No. 1119, *In the Matter of the Joint Application of Exelon Corp., Pepco Holdings, Inc., Potomac Electric Power Company, Exelon Energy Delivery Co., LLC and New Special Purposes Entity, LLC for Authorization and Approval of Proposed Merger Transaction* (Aug. 22, 2014), p. 60-61.

Thank you for your important work on this case. We urge you to thoroughly consider the risks and benefits from all angles, both monetary and non-monetary, of this acquisition in making your determination of whether to approve it. We also ask that, if it is approved, the approval includes conditions shielding District residents to the maximum extent possible not only from rate increases, but from the consequences and influence over Pepco's policy decisions that ownership by a major centralized power generation company can yield. We doubt that such conditions can be effectively guaranteed, especially over time. But if there are conditions, the Commission must insist that they be legally binding, permanent, and enforceable, not simply commitments or statements from Exelon executives.

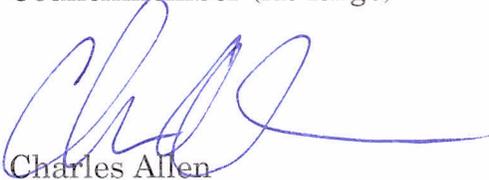
Sincerely,



Mary M. Cheh
Councilmember (Ward 3)



Elissa Silverman
Councilmember (At-large)



Charles Allen
Councilmember (Ward 6)