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## **Press Release**

**For Immediate Release: February 26, 2016**

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### **Commission Votes 2-1 to Reject Pepco/Exelon Nonunanimous Settlement Agreement *Regulators Vote to Allow Consideration of Alternative Terms for Immediate Merger Approval***

(WASHINGTON, D.C.) – Today, the Public Service Commission of the District of Columbia (Commission) voted in a 2 to 1 decision to reject, as filed, the Nonunanimous Full Settlement Agreement and Stipulation (NSA) concerning the proposed merger between Pepco and Exelon Corporation as not being in the public interest (Order No. 18109). Chairman Betty Ann Kane and Commissioner Joanne Doddy Fort comprised the majority vote rejecting the NSA with Commissioner Willie L. Phillips dissenting. However, Commissioner Fort proposed alternative terms for a Revised NSA that would, if accepted by the settling parties, result in the approval of the Revised NSA and the Merger Application without additional action by the Commission, and asked for approval to send the alternative terms to the settling parties. Commissioner Phillips agreed to allow the alternative terms to be sent to the settling parties. If all the settling parties accept the Revised NSA with the alternative terms, the revised settlement as amended is approved with no further action required by the Commission. Chairman Kane dissented concluding that a Revised NSA with the alternative terms would still not be in the public interest.

Thus the Commission ruled by a vote of 2 to 1 that if all settling parties accept the proposed conditions within 14 days from the date of the Order, the Revised NSA and the Exelon/Pepco Merger will be approved as in the public interest without further Commission action.

In initially determining whether the NSA is in the public interest pursuant to D.C. Code §§ 34-504 and 34-1001, Chairman Kane and Commissioner Fort agreed that there are four (4) areas that warrant rejecting the NSA as filed:

- (1) the evidentiary record failed to provide a persuasive rationale for excluding non-residential ratepayers from sharing in the proposed \$25.6 million allocation of the Customer Investment Fund (CIF) for base rate credit relief and failed to persuade the Commission that the proposed allocation would not undermine the Commission's ability to address the negative rate of return that currently exists for residential ratepayers and the resulting subsidies that are placed on non-residential customers;
- (2) the NSA assigns roles to Exelon, as a developer of a solar generation facility at Blue Plains, and to Pepco, as a developer of four public purpose microgrids, that undermine competition and grid neutrality and are inconsistent with the District's restructured market;
- (3) the proposed uses of the CIF for sustainability projects and Low Income Home Energy Assistance Program (LIHEAP) payments do not improve Pepco's distribution system nor advance the Commission's objective to modernize the District's energy systems and distribution grid; and

(4) the proposed method of allocating the CIF funds to District Government agencies and designated funds deprives the Commission of the ability to ensure that all of the funds are being used to enhance the distribution system and benefit District ratepayers, and to enforce the terms of the NSA.

Commissioner Fort's alternative terms resolve the four (4) areas of concern by: (1) deferring a decision on the allocation of the \$25.6 million Customer Base Rate Credit until the next Pepco rate case; (2) removing the provision that designates Exelon as the developer of a 5 MW solar generation facility at DC Water Blue Plains Treatment Plant and requiring Pepco's commitment to facilitate the interconnection of a 5 MW solar project for any vendor selected by DC Water through its procurement process; (3) creating an escrow fund with two subaccounts at Pepco to hold \$32.80 million of the \$72.8 million Customer Investment Fund funded by Exelon under the NSA, \$21.55 million of which is to be used for pilot projects emerging from Formal Case No. 1130 (a case to modernize the District's energy system) and \$11.25 million of which would be used for energy efficiency and energy conservation initiatives with a primary focus on housing, including multifamily buildings, for low and limited income District residents; and (4) striking as premature the provisions regarding Pepco's role with the District to develop public purpose microgrids and requiring Pepco to facilitate and support the pilot projects under Formal Case No. 1130.

In separate opinions, Chairman Kane and Commissioner Fort explained their respective views on the NSA, including grounds for rejection as well as the revised NSA conditions.

Chairman Kane explained in her concurring and dissenting opinion that "while I agree that the four reasons cited in the Majority Opinion are a sufficient basis to conclude that the NSA, as filed, is not in the public interest, there are additional significant flaws in the NSA which are not addressed by the proposed alternative terms. In particular, the return of Pepco to an ownership structure that includes energy generation, supply, marketing and sales will result in an entanglement of management, financial health, and decision-making. This is a fatal flaw which will adversely affect Pepco and create a diversion of focus that carries it in the opposite direction from DC law and policy."

Commissioner Fort stated in her opinion "I agree with the NSA's supporters that the changes made by the NSA to the Merger Application, other than those [four concerns] that I have identified in this concurrence, have removed the reservations that I had with the original Merger Application. Moreover, I do not believe that the NSA is fatally flawed because each of the four concerns that the Majority Opinion has noted can be corrected by revising the NSA with alternative terms. For that reason and as explained in more detail in Order No. 18109, I have crafted alternative terms for the NSA and asked my fellow Commissioners to approve sharing them with the Settling Parties for their consideration under Commission Rule 130.17(b)."

In his separate opinion, Commissioner Phillips explained why he believes the NSA should be approved as filed. "I applaud the parties for negotiating a settlement that I believe is in the public interest. The Joint Applicants worked to address deficiencies outlined by the Majority's initial order on the merger, and got most of the parties to agree to a settlement. However, today's decision has effectively moved the goal post in order to reject the settlement. So, I cast my vote today to allow my colleague to circulate proposed terms, for the sole purpose of giving the Settling Parties an avenue to consummate their agreement, instead of resulting in an outright denial."

A copy of the Opinion and Order No. 18109 is posted on the Commission website, [www.dcpssc.org](http://www.dcpssc.org).

*The Public Service Commission of the District of Columbia is an independent agency established by Congress in 1913 to regulate electric, natural gas, and telecommunications companies in the District of Columbia.*

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