

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

ORDER

November 13, 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. 18028

I. INTRODUCTION

1. By this Order, the Public Service Commission of the District of Columbia (“Commission”) clarifies its November 5, 2015, Notice of Public Interest Hearing and Community Hearing in response to DC Solar United Neighborhoods’ (“DC SUN”) Letter Request to clarify the Notice.¹

II. BACKGROUND

2. 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 Application for approval by the Commission, pursuant to D.C. Code §§ 34-504 and 34-1001, for a change of control of the Potomac Electric Power Company (“Pepco”) to be effected by the Proposed Merger of PHI with Purple Acquisition Corp. (“Merger Sub”), a wholly owned subsidiary of Exelon (“Joint Application”).²

3. Following evidentiary and community hearings, on August 27, 2015, the Commission issued Order No. 17947, which denied the Joint Application and found that 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”), Letter Request of DC Solar United Neighborhoods’ (“DC SUN”) for Clarification of the Commission’s November 5, 2015 Notice of Public Interest Hearing and Community Hearing, filed November 5, 2015 (“Letter Request”).*

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”).*

proposed merger as filed was not in the public interest.³ On September 28, 2015, the Joint Applicants filed an Application for Reconsideration of Order No. 17947.⁴

4. On October 6, 2015, the Joint Applicants filed a Motion to Reopen the Record in *Formal Case No. 1119* to Allow for Consideration of a Nonunanimous Full Settlement Agreement and Stipulation.⁵ The Joint Applicants reported:

that extraordinary efforts have now yielded a Nonunanimous Full Settlement Agreement and Stipulation (“Settlement Agreement”) joined by a broad cross-section of the parties to this case – specifically, the Joint Applicants, Office of People’s Counsel (“OPC”), the District of Columbia Government (“DCG”), the District of Columbia Water and Sewer Authority (“DC Water”); the National Consumer Law Center (“NCLC”); National Housing Trust (“NHT”); the National Housing Trust-Enterprise Preservation Corporation (“NHT-E”); and the Apartment and Office Building Association of Metropolitan Washington (“AOBA”) (collectively, the “Settling Parties”).⁶

Among other things, the Joint Applicants requested “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.”⁷

5. In an Order issued October 28, 2015, the Commission granted the Motion to Reopen the Record in *Formal Case No. 1119* to Allow for Consideration of the Non-Unanimous Settlement Agreement and set forth in that Order the procedural schedule for doing so.⁸ On

³ *Formal Case No. 1119*, Order No. 17947, rel. August 27, 2015 (“Order No. 17947”).

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

⁵ *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 (“Motion to Reopen”).

⁶ *Formal Case No. 1119*, Motion to Reopen at 1-2.

⁷ *Formal Case No. 1119*, Motion to Reopen at 11, 13.

⁸ *Formal Case No. 1119*, Order No. 18011, rel. October 28, 2015. Prior to that Order, in the event the Commission determined to grant the Joint Applicants’ Motion to Reopen, the Commission, on October 26, 2015, issued an Order tolling the deadline for action on the merits of the Application for Reconsideration and the filing of responses to the Joint Applicants’ Application for Reconsideration until the Commission renders a decision on the Non-Unanimous Settlement Agreement, or until the Commission determines otherwise. See *Formal Case No. 1119*, Order No. 18009, rel. October 26, 2015.

November 5, 2015, the Commission posted a Notice of Public Interest Hearing and Community Hearing on its website.⁹

III. DC SUN'S LETTER REQUEST FOR CLARIFICATION

6. DC SUN states in its Letter Request that, “[w]ith respect to the Public Interest Hearing to be held December 2-4, 2015, the notice states, ‘[t]he Commission also notifies the Nonsettling Parties that they may be subject to cross-examination by the Settling Parties and may be questioned by the Commission.’”¹⁰ DC SUN further states that it “notified the Commission and the parties on November 4, 2015, that, because of the accelerated schedule and its limited resources, it does not intend to present testimony or to participate in the Public Interest Hearing.”¹¹ DC SUN asserts that:

[A]lthough the notice is not clear, DC SUN presumes that no witness from DC SUN will be required to submit to any cross-examination. It would be fundamentally unfair to require DC SUN to present a witness involuntarily and to subject that witness to open-ended cross-examination not limited by the scope of any direct testimony. We request that the Commission clarify that only Nonsettling Party witnesses who submit testimony about the proposed Settlement Agreement may be subject to cross-examination by the Settling Parties and questions from the Commission.¹²

7. DC SUN also seeks clarification concerning the registration procedures for the Community Hearing. It maintains that the November 5 Notice indicates that interested persons wishing to participate in the Community Hearing may notify the Commission’s Secretary in writing “prior to the date of the hearing.”¹³ DC SUN requests that the Commission clarify whether registration for the Community Hearings will be permitted on the day of the hearings, as has been the practice in the past. DC SUN adds that, “[b]y holding the Community Hearing during work hours instead of in the evenings -- as was the case in the past -- the Commission will limit opportunities to appear before them, and a requirement for pre- registration will further limit community participation.”¹⁴

⁹ *Formal Case No. 1119*, Notice of Public Interest Hearing and Community Hearing issued November 5, 2015 (“Notice”). The Commission sent the same Notice to the Office of Documents and Administrative Issuances for publication in the District of Columbia Register on Friday, November 13, 2015.

¹⁰ *Formal Case No. 1119*, Letter Request at 1.

¹¹ *Formal Case No. 1119*, Letter Request at 1.

¹² *Formal Case No. 1119*, Letter Request at 2.

¹³ *Formal Case No. 1119*, Letter Request at 2.

¹⁴ *Formal Case No. 1119*, Letter Request at 2.

IV. DISCUSSION

8. With regard to DC SUN's first request for clarification with respect to the cross-examination of Nonsettling Parties, a party that has not presented a witness with testimony, either oral or written, addressing the subject matter of the Settlement Agreement at the public interest hearing will not be subject to cross-examination. Thus, DC SUN is correct that only Nonsettling Party witnesses who submit testimony about the proposed Settlement Agreement may be subject to cross-examination by the Settling Parties and questions from the Commission.

9. Concerning DC SUN's request to clarify the Notice concerning the registration procedures for the Community Hearing, we note that the Commission has historically used a pre-registration requirement to ensure that the proceeding go forward in an orderly fashion and to ensure that the Commission has put in place a process that will accommodate the anticipated participants, including making arrangements that accommodate the schedule of the court reporter/stenographer. In our experience in holding Community Hearings, there are always persons requesting to speak on the day of the hearing. The Commission makes an effort to accommodate those persons requesting to speak after the registration period has closed at the end of the hearing, if time and circumstances allow. In almost all instances, the Commission is able to accommodate everyone who wants to be heard within the timeframe set out for the hearing.

10. The magnitude and importance of this proceeding has led a voluminous number of persons to request to speak at the Community Hearing in this case. The Commission has already received pre-registration from more than 200 interested persons. Given the three (3) minute time limit for individuals and the five (5) minute time limit for organizations, the pre-registrations to date could result in more than 12 hours of remarks if all of the speakers who have signed up appear. To accommodate the large number of speakers, the Commission will commence the Community Hearing on November 17, 2015 at 10:00 a.m. and hear speakers until 7:00 p.m. with a one-hour break for lunch. To allow for additional time to accommodate the pre-registrants, we have also decided to add an additional hearing day on the next day (*i.e.*, November 18, 2015) commencing at 10:00 a.m. and proceeding until 7:00 p.m. with a one hour lunch break, (*i.e.*, adding an additional 8 hours of hearing time). During these 16 hours, the Commission will try to accommodate as many speakers as possible. It is clear, however, that even with this extended schedule, the Commission may not be able to accommodate all persons who pre-register and all walk-in speakers. The Commission is posting this Order on its website with a list of the pre-registered speakers and will call speakers in the order that they have registered. The list is subject to change. An updated list will be posted after the close of business on November 13, 2015, and on November 16, 2015. If the pre-registered speakers have completed their statements before 7:00 p.m., walk-in speakers who register on the day of the hearing may be invited to speak in the order that they have signed in. The Community Hearing will end promptly at 7:00 p.m. on each of the two days. Given the large number of pre-registered speakers, the Commission highly encourages the public to consider the submission of written statements to the Commission's Secretary's Office in lieu of an oral statement at the Community Hearing. Written comments or statements can be filed until the close of the record, December 18, 2015, by sending them to Brinda Westbrook-Sedgwick, Commission Secretary, Public Service Commission of the District of Columbia, 1325 G Street, N.W., Suite 800, Washington D.C. 20005, or by email at Psc-commissionsecretary@dc.gov.

THEREFORE IT IS ORDERED THAT:

11. The Commission's November 5, 2015, Notice of Public Interest Hearing and Community Hearing is clarified in accordance with the Commission's discussion in this Order with respect to the issues raised by DC SUN;

12. The Community Hearing on November 17, 2015 will be held from 10:00 a.m. to 7:00 p.m. with a one-hour break for lunch; and

13. A second day, November 18, 2015, has been set for the Community Hearing beginning at 10:00 a.m. and ending at 7:00 p.m. with a one-hour break for lunch.

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 style with a large initial 'B'.

CHIEF CLERK:

**BRINDA WESTBROOK-SEDGWICK
COMMISSION SECRETARY**