



Agenda Date: 07/23/14
 Agenda Item: 2H

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 DESIGNATING COMMISSIONER, SETTING A BAR DATE AND MANNER OF SERVICE DOCKET NO. EM14060581
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Parties of Record:

Colleen A. Foley, Esq., Saul Ewing LLC, for Exelon Corporation, Pepco Holdings, Inc., Atlantic City Electric Company, Purple Acquisition Corp., Exelon Energy Delivery Company, LLC and New Special Purpose Entity, LLC
Stefanie A. Brand, Esq., Director, New Jersey Division of Rate Counsel

BY THE BOARD¹:

The New Jersey Board of Public Utilities (“Board”) is empowered to ensure that regulated public utilities provide safe, adequate and proper service to the citizens of New Jersey. N.J.S.A. 48:2-23. Pursuant to N.J.S.A. 48:2-13, the Board has been vested by the Legislature with the general supervision and regulation of and jurisdiction and control over all public utilities, “so far as may be necessary for the purpose of carrying out the provisions of [Title 48].” The courts of this State have held that the grant of power by the Legislature to the Board is to be read broadly, and that the provisions of the statute governing public utilities are to be construed liberally. See, e.g. In re Public Service Electric and Gas Company, 35 N.J. 358, 371 (1961); Township of Deptford v. Woodbury Terrace Sewerage Corp., 54 N.J. 418, 424 (1969); Bergen County v. Dep’t of Public Utilities, 117 N.J. Super. 304 (App. Div. 1971). The Board is also vested with the authority, pursuant to N.J.S.A. 48:2-19, to investigate any public utility, and, pursuant to N.J.S.A. 48:2-16 and 48:2-40, to issue orders to public utilities.

On June 18, 2014, Exelon Corporation (“Exelon”), Pepco Holdings, Inc. (“PHI”), Atlantic City Electric Company (“ACE”), Purple Acquisition Corp. (“Merger Sub”), Exelon Energy Delivery Company, LLC (“EEDC”) and New Special Purpose Entity, LLC (“new SPE”) (the “Joint

¹ Commissioner Jeanne M. Fox abstained from voting on this matter.

Petitioners”) filed a petition with the Board seeking approval of the Board pursuant to N.J.S.A. 48:3-10 and N.J.S.A. 48:2-51.1, and related regulations, for a change of control of ACE to be effected by the merger of PHI with Merger Sub, a wholly owned subsidiary of Exelon (“the Merger”).

According to the Petition, additional approvals being sought by the Joint Petitioners include, pursuant to N.J.S.A. 48:3-7.1: 1) approval of ACE’s participation in Exelon’s General Services Agreement, which is designed to facilitate the provision of shared services across Exelon and PHI systems; 2) relief for ACE of certain restrictions previously imposed on its participation in PHI’s money pool which will no longer be necessary if the Joint Petitioner’s proposal to ring-fence PHI with its subsidiaries is adopted; and 3) approval of the relocation of ACE’s books and records from Wilmington, DE to PHI’s headquarters in Washington, DC.²

N.J.S.A. 48:2-51.1, states the Board “shall evaluate the impact of the acquisition on competition, on the rates of ratepayers affected by the acquisition of control, on the employees of the affected public utility or utilities, and on the provision of safe and adequate utility service at just and reasonable rates.” Thus, in evaluating this petition, the Board must be satisfied that positive benefits will flow to customers and the State of New Jersey and, at a minimum, that there are no adverse impacts on any of the criteria delineated in N.J.S.A. 48:2-51.1. See N.J.A.C. 14:1-5.14(c). Also, under N.J.S.A. 48:3-7 and N.J.S.A. 48:3-10, the Board is required to determine whether the public utility or a wholly owned subsidiary thereof may be unable to fulfill its pension obligations to any of its employees.

Accordingly, the Board has determined that the petition should be retained by the Board for hearing to decide whether the impact of the acquisition on competition, on the rates of ratepayers affected by the acquisition of control, on the employees of the affected public utility or utilities, and on the provision of safe and adequate utility service at just and reasonable rates has been proven and whether the public utility or a wholly owned subsidiary thereof is able to fulfill its pension obligations to any of its employees.

Pursuant to N.J.S.A. 48:2-32, the Board **HEREBY DESIGNATES** Commissioner Joseph L. Fiordaliso as the presiding officer. The Board **FURTHER ORDERS** that Commissioner Fiordaliso, as the presiding Commissioner, is **HEREBY AUTHORIZED** to establish and modify schedules, decide all motions, and otherwise control the conduct of this case, without the need for full Board approval, subject to subsequent Board ratification.

The Board **HEREBY DIRECTS** that all entities seeking to intervene in this matter file the appropriate application with the Board by August 15, 2014.

The Board **HEREBY DIRECTS** staff to post this Order on the Board’s website and serve a copy of the Order to the service list electronically.


² Petition, page 1.

In addition, in the interests of economy, all parties are **HEREBY DIRECTED** to serve all documents electronically, while still providing hard copies to the Board for those documents which must be filed with the Board, with hard copies to each party upon request.

DATED: 7/23/14


BOARD OF PUBLIC UTILITIES
BY:


DIANNE SOLOMON
PRESIDENT


MARY-ANNA HOLDEN
COMMISSIONER


JOSEPH L. FIORDALISO
COMMISSIONER

ATTEST:


KRISTI IZZO
SECRETARY

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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