



STATE OF NEW JERSEY
Board of Public Utilities
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IN THE MATTER OF THE MERGER OF EXELON)
CORPORATION AND PEPSCO HOLDINGS, INC.)
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)
)

ORDER REGARDING
MOTIONS TO INTERVENE
OR PARTICIPATE AND
AMENDING PRE-HEARING
ORDER

DOCKET NO. EM14060581

Parties of Record:

Stefanie A. Brand, Esq., Director, New Jersey Division of Rate Counsel
Colleen Foley, Esq., for Exelon Corporation, Pepco Holdings, Inc., Purple Acquisition Corporation, Exelon Energy Delivery Company, LLC, New Special Purpose Entity, LLC, and Atlantic City Electric Company
Joseph F. Accardo, Jr., Esq., for PSEG Services Corporation
Jeffrey W. Mayes, Esq., for Monitoring Analytics acting as PJM Independent Monitor
Bradford M. Stern, Esq., for Mid-Atlantic Renewable Energy Coalition
James H. Laskey, Esq., for Independent Energy Producers of New Jersey
Abraham Silverman, Esq., for NRG Energy, Inc.
James C. Meyer, Esq., for Rockland Electric Company

BY COMMISSIONER JOSEPH L. FIORDALISO:

On June 18, 2014, Exelon Corporation ("Exelon"), Pepco Holdings, Inc. ("PHI"), Purple Acquisition Corp. ("Merger Sub"), Exelon Energy Delivery Company, New Special Purpose Entity, LLC, and Atlantic City Electric Company ("ACE" or "Company") (collectively, the "Joint Petitioners") filed a petition with the Board of Public Utilities ("the Board") for approval pursuant to N.J.S.A. 48:3-10 and N.J.S.A. 48:2-51.1 of a change in control of ACE to be effected by the merger of PHI with Merger Sub, a wholly-owned subsidiary of Exelon, along with approvals for ACE's participation in Exelon's General Services Agreement, relief for ACE from certain restrictions previously imposed on its participation in PHI's money pool, and approval of the relocation of ACE's books and records from Wilmington, Delaware to PHI's headquarters in Washington, D.C. ("Exelon-Pepco merger").

By Order dated July 23, 2014, the Board retained this matter for hearing, and designated me as the presiding officer with authority to establish and modify schedules, decide all motions and

otherwise control the conduct of this case, subject to Board ratification. Additionally, the Order set August 15, 2014, as the last day for motions to intervene or participate in this matter. On August 14, 2014, I issued a Pre-Hearing Order setting the procedural schedule for this matter.

I have received requests to modify the procedural schedule as it was determined that the dates preliminarily scheduled conflict with religious and/or State holidays. On consent of all of the current parties, I am amending my previous order to move the September 24 and 25, 2014 discovery/settlement conference dates to the week of October 2, 2014, and the November 4, 2014 conference date to the week of November 3, 2014, with the exact date for each conference to be decided by the parties. In addition, one additional evidentiary hearing date will be scheduled during the week of December 15, 2014, to accommodate one Rate Counsel witness, and the time and date for the public hearings has been set as October 15, 2014 at 3:30 p.m. and 5:30 p.m., at a location in the ACE service territory to be determined. An Amended Procedural schedule is attached. No other provisions of the Prehearing Order are affected by this Order.

Five motions to intervene and one motion to participate were filed on or before the August 15, 2014 filing deadline. Public Service Electric and Gas Company ("PSE&G") and its affiliates, Monitoring Analytics, LLC acting as the Independent Market Manager for PJM, the Independent Energy Producers of New Jersey ("IEPNJ"), Mid-Atlantic Renewable Energy Coalition ("MAREC") and NRG Energy, Inc. ("NRG") filed motions to intervene. Rockland Electric Company ("RECO") filed a motion to participate. Each motion will be discussed below.

PSE&G and Affiliates

PSE&G, PSEG Power LLC and PSEG Energy Resources & Trade LLC ("the PSEG Companies") filed a motion to intervene on July 11, 2014. The PSEG Companies are subsidiaries of Public Service Enterprise Group Incorporated ("PSEG") with principal offices in Newark, NJ. PSE&G, a New Jersey electric and gas public utility, is the owner of distribution and transmission assets in New Jersey and is physically interconnected with ACE facilities through the distribution system in the State. PSEG Power, is a wholesale energy supply company with generation asset operations in New Jersey and within ACE territory, and PSEG Energy Resources & Trade ("PSEG ER&T") is a subsidiary of PSEG Power which sells power and other ancillary services at market-based rates. PSEG and Affiliates Motion at 1-2.

The PSEG Companies argue that whatever is decided in this proceeding could potentially impact New Jersey's basic generation service ("BGS") auction which establishes how PSE&G, ACE and the other New Jersey electric distribution companies ("EDCs") procure electric supply for default service customers. Additionally they maintain that how the Board decides several major issues raised by the merger petition such as EDC participation in public holding company money pools, consolidated income tax adjustments, reliability targets, ring-fencing as well as other policy matters may directly affect the PSEG Companies. PSEG and Affiliates Motion at 4-5.

Monitoring Analytics, LLC

Monitoring Analytics, LLC, acting in its capacity as the Independent Market Monitor for PJM Interconnection, LLC¹ ("Market Monitor"), filed a motion to intervene on August 13, 2014.

¹ PJM Interconnection, L.L.C. ("PJM") is a FERC-approved Regional Transmission Organization that

According to the motion, the Market Monitor is an organization created to objectively monitor competitiveness of the PJM Market and is funded by the members of PJM. As stated in the motion, the Market Manager is charged with monitoring compliance with PJM market rules, actual or potential design flaws in the PJM market rules, structural problems in the PJM Market that may inhibit a robust and competitive market, and the potential for a market participant to exercise market power or violate any of the PJM rules. Monitoring Analytics, LLC Motion at 1, 2.

The Market Manager argues that as this filing involves review of the impact on markets of the Joint Petitioners and if approved, the proposal could have a substantial impact on competition and rates in the retail markets subject to the jurisdiction for the Board; it implicates the Market Manager's purview. Ibid. at 3. Therefore the Market Manager requests leave to intervene in the proceeding.

As part of its motion to intervene, Elisabeth Leavy, Esq., a member of the bar of this State, has moved for the admission pro hac vice of counsel for the Market Manager, Jeffrey W. Mayes, Esq.. In support of the motion, Mr. Mayes represents that he has special expertise on issues related to the Market Manager's obligations as independent monitor for PJM. He states he is a member of good standing admitted to practice law in Pennsylvania, Virginia and the District of Columbia and is associated with New Jersey counsel of record for this proceeding. He has provided proof that he has paid the fees to the New Jersey Lawyer's Fund for Client Protection as required by R. 1:20-1 (b), R. 1:28-2 and R. 1:28B-1 e.

IEPNJ

According to its motion for intervention filed on August 14, 2014, IEPNJ is a trade association created to advance common interests of the New Jersey's generators of electric power. IEPNJ asserts that its members will be directly affected by the outcome of the proceeding, and no other party represents the interests of generators of electric energy. IEPNJ argues that its central purposes are the advancement of policies promoting fair competition in the generation and sale of electricity, implementation of responsible energy policies and the promotion of environmentally responsible practices in the electric supply marketplace. IEPNJ expresses its concern that the merger, if approved, does not detrimentally impact power generation competition in New Jersey. It argues that post-merger, Exelon would control the transmission and distribution systems in ACE's territory and would also control about 26,000 megawatts of generation, demand response and energy efficiency within the PJM footprint. IEPNJ Motion at 1- 2. IEPNJ argues that the proposed merger could have significant impact on New Jersey's competitive energy market and detrimental effects if the merged entity assists its power development group in identifying and developing generation projects through preferential services or the provision of proprietary information. Additionally, IEPNJ asserts that the merger could affect standby and maintenance service rates charged to its members and that no other party represents this interest. Ibid.

manages the regional, high –voltage electricity grid serving all or parts of 13 states including New Jersey, operates the regional competitive wholesale electric market, manages the regional transmission planning process, and establishes systems and rules to ensure that the energy markets operate fairly and efficiently. N.J.S.A. 48:3-51.

MAREC

MAREC in its motion to intervene filed on August 15, 2014, states that it is a nonprofit corporation formed to help enhance the opportunities for renewable energy development primarily in the region where the PJM operates, including New Jersey, Delaware, Maryland, Pennsylvania, Virginia, Ohio, West Virginia, North Carolina and the District of Columbia. According to its motion, MAREC has a substantial interest in the proceeding that is not represented by other parties because the outcome may impact renewable growth within the region and future opportunities for MAREC members. MAREC has serious concerns over the merger in relation to New Jersey's support of affordable renewable energy and Exelon's strong opposition to the federal production tax credit for wind. In addition, it has concerns over what impact the merger, if approved, would have on the structure within PJM with ramifications for MAREC members in PJM. MAREC Motion at 1, 2.

NRG

According to its motion to intervene, filed on August 15, 2014, NRG conducts retail operations in New Jersey through its wholly-owned subsidiaries Energy Plus Holdings LLC, Green Mountain Energy Company, Reliant Northeast LLC and Independence Energy Group LLC. Through these subsidiaries, NRG owns a number of generation assets in the northeast including in New Jersey. NRG Motion at 1, 2.

NRG represents that it is a wholesale and retail energy company that owns and operates a large and diverse non-utility owned generation portfolios and therefore has an interest in efficient competitive wholesale and retail electricity rates, which may be affected by the outcome of this proceeding. Ibid.

RECO

According to its motion to participate, filed August 12, 2014, RECO is a New Jersey public utility corporation engaged in the sale and distribution of electric energy for residential, commercial and industrial users within Northern New Jersey with approximately 72,000 customers. RECO argues that it has a right to participate as it is only one of four investor-owned electric utilities in New Jersey and sensitive policy and or procedural requirements established in this proceeding, such as the Consolidated Tax Adjustment ("CTA"), can significantly influence, if not have precedential effect over the outcome of proceedings involving RECO's own filings. RECO Motion at 1-3. Similarly RECO asserts that the merger petition outlines proposals for affiliate interest issues as they relate to the BGS auction and Exelon's continued participation in those proceedings. RECO maintains that it has an interest in assuring that its BGS electric supply is procured in a competitive process. RECO Motion at 3.

RECO states that it is only seeking participant status at this time with the rights to argue orally, file briefs or statements but "reserves its right to seek full party intervener status if the relevant circumstances underlying this proceeding change and it can establish that it satisfies regulatory requirements for such a change." RECO Motion at 4-5.

Joint Petitioners' Response

By letter dated August 19, 2014, the Joint Petitioners stated that they did not object to any of these motions to intervene but requested that two movants, IEPNJ and MAREC identify their members and indicate which members have agreed to be represented by each organization.

MAREC Response

On August 26, 2014 MAREC responded to the Joint Petitioners that the request that MAREC identify its members and indicate which members agreed to be represented by MAREC in this proceeding is not warranted and not consistent with prior Board orders. MAREC cited to an order where the Board granted intervention to multiple movants including the Solar Alliance, the New Jersey Solar Manufacturers Association and the Mid-Atlantic Solar Energy Industries Association, trade associations similar to MAREC, but conditioned the grant of intervention solely on the timely submittal of updated membership lists. The organizations were not required to indicate which of their members agreed to be represented.² MAREC Response Letter at 1-2.

MAREC attached its membership list to the response letter and represented that the organization's Board of Directors voted unanimously to file the motion to intervene. MAREC reiterates that it has met the standards for intervention and requests it be granted intervention. Id. at 2.

IEPNJ Response

On August 29, 2014, IEPNJ responded to the Joint Petitioners' request that IEPNJ identify its members and indicate which members agreed to be represented by IEPNJ. IEPNJ identified six members of its Executive Committee which are providing primary financial support for the intervention and objects to identifying the remainder of its members who IEPNJ maintains have no relevance to this proceeding. IEPNJ Response Letter at 1-2.

DISCUSSION AND FINDINGS:

In ruling on a motion to intervene, N.J.A.C. 1: 1-16.3(a) requires that the decision-maker consider the following factors:

- (1) the nature and extent of the moving party's interest in the outcome of the case;
- (2) whether that interest is sufficiently different from that of any other party so as to add measurably and constructively to the scope of the case;
- (3) the prospect for confusion and delay arising from inclusion of the party; and
- (4) other appropriate matters.

If the standard for intervention is not met, N.J.A.C. 1: 1-16.5 provides for a more limited form of involvement in the proceeding as a "participant," if, in the discretion of the trier of fact, the addition of the moving party is likely to add constructively to the case without causing undue delay or confusion. Under N.J.A.C. 1:1-16.6(c), such participation is limited to the right to argue orally, or file a statement or brief, or file exceptions, or all of these as determined by the trier of fact.

As the Board has stated in previous proceedings, application of these standards involves an implicit balancing test. The need and desire for development of a full and complete record,

² In re Petition of Public Service Electric and Gas Company for approval of a Solar Generation Investment Program and an Associated Cost Recovery Mechanism, Order on Motions for Participation and Pro Hac Vice Admission, Docket No. EO09020125, May 15, 2009.

which involves consideration of a diversity of interests, must be weighed against the requirements of the New Jersey Administrative Code, which recognizes the need for prompt and expeditious administrative proceedings by requiring that an intervenor's interest be specific, direct and different from that of the other parties so as to add measurably and constructively to the scope of the case. See, Order, In re the Joint Petition of Public Service Electric and Gas Company and Exelon Corporation for Approval of a Change in Control, Docket No. EM05020106 (June 8, 2005).

PSE&G and RECO convincingly argue that multiple issues that will be addressed in this proceeding, including but not limited to matters related to the BGS auction which establishes how PSE&G, ACE and the other EDCs procure electric supply for default service customers, EDC participation in public utility holding company money pools, consolidated income tax adjustments, reliability targets, ring-fencing, may affect them if not directly then indirectly through policy decisions. The other PSEG Companies operate in the PJM market and have a clear interest in maintaining the competitiveness of that market.

Accordingly, after consideration of the papers and lack of any objections, I **HEREBY FIND** pursuant to N.J.A.C. 1:1-16.6(b), that the PSEG Companies will be directly affected by the outcome of the Exelon-Pepco merger. Therefore, I **HEREBY FIND** that the PSEG Companies have met the standards for intervention in this proceeding. Accordingly, I **HEREBY GRANT** the motion to intervene of the PSEG Companies.

Accordingly, after consideration of the papers and lack of any objections, I **HEREBY FIND** the participation of RECO is likely to add constructively to the case without causing undue delay or confusion. Accordingly, I **HEREBY GRANT** the motion to participate submitted on behalf of RECO, limited to the right to argue orally and file a statement or brief as set out in N.J.A.C. 1:1-16(c)(1) and (2)³.

Monitoring Analytics, LLC as the Market Monitor has argued that various issues that may be addressed in this proceeding directly affect the various issues with which it is required to oversee including competition and rates in the wholesale market that affect the retail markets subject to the jurisdiction for the Board. Accordingly, after consideration of the papers and based on the lack of any objections, I **HEREBY FIND** pursuant to N.J.A.C. 1:1-16.6(b), that Monitoring Analytics, LLC has met the standards for intervention. Accordingly, I **HEREBY GRANT** the motion to intervene of Monitoring Analytics, LLC.

In light of this grant of intervention to Monitoring Analytics, LLC, I have reviewed the motion for admission pro hac vice of Jeffrey Mayes, Esq. and the supporting affidavit of Elizabeth Leavy, Esq., and no objections to it having been received after due notice to the parties, I **FIND** that Mr. Mayes has satisfied the conditions for admission, has submitted to the Board proof of payment to the New Jersey Lawyers' Fund for Client Protection of the fees required by R. 1:20-1(b) and 1:28-2, and therefore, **IS HEREBY** admitted to practice before the Board in this matter provided that he shall:

- (1) abide by the Board's rules and all applicable New Jersey court rules, including all disciplinary rules;

³ Because this matter has been retained by the Board, no initial decision will be issued and therefore, no exceptions can be filed.

- (2) consent to the appointment of the Clerk of the Supreme Court as agent upon whom service of process may be made for all actions against each of them that may arise out of his participation in this matter;
- (3) notify the Board immediately of any matter affecting his standing at the bar of any other jurisdiction; and
- (4) have all pleadings, briefs and other papers filed with the Board signed by an attorney of record authorized to practice in this State, who shall be held responsible for them and for the conduct of this cause and the admitted attorney therein.

IEPNJ has argued that its interest is unique in that the proposed merger could have significant impact on New Jersey's competitive energy market and detrimental effects if the merged entity assists its power development group in identifying and developing generation projects through preferential services or the provision of proprietary information. Additionally, IEPNJ asserts that the merger could affect standby and maintenance service rates charged to its members and that no other party represents this interest. IEPNJ has identified those members who have chosen to have IEPNJ represent them in this proceeding.

Accordingly, after consideration of the papers and lack of any objections, I **HEREBY FIND** that IEPNJ has met the standards for intervention in this proceeding. Accordingly, I **HEREBY GRANT** the motion to intervene of IEPNJ.

MAREC has asserted that it has serious concerns over the merger in relation to New Jersey's support of affordable renewable energy and Exelon's strong opposition to the federal production tax credit for wind show a unique interest in the proceeding and has persuasively argued that this interest is sufficiently different from the other parties moving to intervene.

Accordingly, after consideration of the papers and lack of any objections, I **HEREBY FIND** that MAREC has met the standards for intervention in the Exelon-Pepco Merger Proceeding. Accordingly, I **HEREBY GRANT** the motion to intervene of MAREC in the Exelon-Pepco Merger Proceeding pursuant to the authority granted to me by the Board under the June 23, 2014 Order.

NRG is a wholesale and retail energy company that owns and operates a large and diverse non-utility owned generation portfolio. NRG has argued that its interest in an efficient competitive wholesale and retail electricity rates is not represented by another party.


After consideration of the papers and lack of any objections, I **HEREBY FIND** that NRG has met the standards for intervention in this proceeding. Accordingly, I **HEREBY GRANT** the motion to intervene of NRG.

The parties added to the proceeding by this Order are directed to work cooperatively with the other parties to the fullest extent possible in the interest of reaching a just determination in this proceeding.

This ruling is provisional and subject to ratification or other alteration by the Board as it deems appropriate during the proceeding in this matter.

DATED: September 5, 2014

BY:



JOSEPH L. FIORDALISO
COMMISSIONER

EXHIBIT A

**IN THE MATTER OF THE MERGER OF EXELON CORPORATION AND
PEPCO HOLDINGS, INC.**

DOCKET NO. EM14060581

Amended Procedural Schedule

Last date to file Motions to Intervene	August 15, 2014
Initial Discovery Requests Served	August 22, 2014
Responses to Initial Discovery Requests	September 5, 2014
Second Round Discovery Requests Served	September 19, 2014
Discovery/Settlement Conference	October 2, 2014
Responses to Second Round Discovery Requests	October 2, 2014
Public hearings - Location TBD	October 15, 2014
Rate Counsel/Intervenor Testimony	October 17, 2014
Discovery on Rate Counsel/Intervenor Testimony	October 24, 2014
Rate Counsel/Intervenor Responses	October 31, 2014
Discovery/Settlement Conferences	November 3 & 5, 2014
Rebuttal Testimony	November 7, 2014
Discovery on Rebuttal Testimony	November 14, 2014
Responses to Discovery	November 21, 2014
Evidentiary Hearings before Commissioner Fiordaliso in Newark, NJ	December 8-12, 2014
Settlement Conference	December 16 & 18, 2014
Post-hearing Briefs or Comments	January 7, 2015
Reply Briefs	January 23, 2015

**IN THE MATTER OF THE MERGER OF EXELON CORPORATION AND
PEPCO HOLDINGS, INC.**

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