

**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF DELAWARE**

IN THE MATTER OF THE APPLICATION )  
OF DELMARVA POWER & LIGHT COMPANY, )  
EXELON CORORPATION, PEPCO HOLDINGS ) PSC DOCKET NO. 14-193  
INC., PURPLE ACQUISITION CORPORATION, )  
EXELON ENERGY DELIVERY COMPANY, LLC )  
AND SPECIAL PURPOSE ENTITY, LLC )  
FOR APPROVALS UNDER THE PROVISIONS )  
OF 26 *Del. C.* §§ 215 AND 1016 )  
(FILED JUNE 18, 2014) )

**RESPONSE TO MOTION TO AMEND SCHEDULING ORDER**

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*Pro Se*

1. The Joint Applicants have moved this Honorable Commission to cancel the evidentiary hearings scheduled for February 18-20, 2015, and schedule a hearing on a proposed settlement for April 21, 2015, purportedly to “allow all parties and the Commission time to carefully consider the Settlement Agreement and to accommodate other scheduling matters facing the parties and the Commission.” Motion, paragraph 6 (emphasis added).

2. Of the parties that participated in this docket, I am the only party that I know of that has stated opposition to the proposed settlement.

3. The Joint Applicants filed their application on June 18, 2014.

4. Under 26 Del. C. §1016, the 120-day clock would have run by October 16, 2014.

5. The Joint Applicants, Staff and DPA first agreed to an 82 day extension, as the initial scheduling order that set the hearings for December 16-17, 2014, and a final order by January 6, 2015. See Commission Order 8581.

6. Second, the schedule was extended an additional 65 days until March 10, 2015 (and with the hearing scheduled for February 18-20) as a result of the failure of the Joint Applicants to properly respond to Staff discovery, and on information and belief to accommodate prior DPA commitments.

7. At a scheduling conference on February 11, 2015, I learned from the Hearing Examiner (who had apparently learned *ex parte*), of the intention to extend the schedule further with a hearing on the Settlement scheduled for April 7, 2015. By that time, however, the Joint Applicants were already considering extending the schedule even further.

8. The third request to extend the schedule is embodied in the motion in which the Joint Applicants ask that the schedule be extended by an additional 56 days, with a hearing on the settlement to be held April 21, 2015, and an Order by May 5, 2015.

9. I was not consulted on either the April 7 or April 21 date for hearing.

10. In total, with the latest extension request, the schedule will have been extended by 203 days. In no instance, did I request any such extension.

11. I am a Professor at the University of Delaware. Every seven years we may apply for sabbatical, with mine occurring this spring. Sabbatical is not vacation, but is only approved with a plan of study, research, teaching, etc. I planned the timing of my sabbatical travels around the existing schedule.

12. I am traveling from March 7 to March 22 to various locations in Europe to, among other things, attend a conference on wildlife impacts of wind energy, a workshop at DTU in Denmark, and to give talks at Exeter University and Cardiff University.

13. I am traveling to China (assuming my visa application is approved) to teach a course in Energy Law at the Ocean University of China in Qingdao. I previously arranged with

OUC to fly to China on March 30 and to return around the US on or about June 6, 2014. My normal teaching days are Tuesdays and Thursdays (time unknown at this time).

14. I have and am making other travel arrangements for academic purposes while in China, including to Xiamen University, where I have been invited to give a lecture on April 20 and visit with Xiamen colleagues. Xiamen is paying the costs of my visit and is expecting me to visit with them for a few days, which likely includes April 21.

15. In an attempt to obviate the need to oppose the Motion, I contacted Mr. Geddes the day before it was filed. I informed Mr. Geddes of the broad outlines of my schedule by telephone and follow-up email. As noted, I was not consulted prior to the Settling Parties apparently agreeing among themselves of the April 21, 2015 date.

16. Additionally, given changes to Chinese visa procedures for academic exchanges that took effect last month, my travel to China may be delayed by about one week or so with a similar period added to the end.

17. In sum, despite the Joint Applicants' representation to the Commission that the April 21, 2015 date "accommodates[s] other scheduling matters facing the parties"; it plainly does not.

18. It has been suggested that I could participate via Skype from China. That would be highly prejudicial given (a) the uncertainty of gaining access from China given China's control and ever-changing policies and practices regarding the Internet; (b) the unknown nature of the connection speeds I will be able to access; (c) the vagaries of the Internet in general; (d) the 11 hour time difference, which will require me to participate in the middle of the night; and (e) the prejudicial nature of not being in the same room as the witnesses I will be cross-examining and of not being live in front of the Commission, including the inability to submit live

testimony and make live argument.

19. The prejudicial nature of the April 21, 2015 date is exacerbated and would only serve to further compromise the legal integrity of any decision approving the proposed settlement in light of the earlier actions in this docket, including:

a. The Hearing Examiner misreading his own scheduling order and ignoring the Joint Applicant's patent breach of a discovery agreement in denying a motion to compel.

b. The Hearing Examiner unlawfully restricting my ability to undertake discovery in part as a response to my filing a motion to reconsider an earlier decision. This resulted in my having no ability to submit any interrogatories or document requests to the Joint Applicants after they submitted substantially revised rebuttal testimony, including setting aside prior testimony and substituting new theories and new witnesses.

c. The Hearing Examiner not compelling the Joint Applicants to file private documents that could have shed light on their renewable energy policies and on whether the merger was premised on a purpose other than that publically touted.

d. The Hearing Examiner issuing an unlawful and misleadingly titled "agreed" deposition order that sought to bar me from asking any questions. While this Commission rightly granted my Interlocutory Petition, the Joint Applicants maintained an aggressive posture regarding the extent of the ruling, asserting that I did not have the right to equal time to question witnesses, resulting in a compromised deposition order.

e. The Hearing Examiner denying a Motion in Limine that I filed on grounds that included that it was untimely even though I went out of my way to file it one day and four hours prior to the deadline that he established in his Scheduling Order. I filed early

to accommodate both the Joint Applicants and the Hearing Examiner given tight time deadlines in advance of the scheduled February 18-20 hearings, yet I was equitably barred because, according to the Hearing Examiner, I should have filed the Motion even earlier than I did. Order 8707, paragraph 15 (February 2, 2015). It is as if the Hearing Examiner applied the equitable doctrine of laches to negate a statutory regime that was governed by a statute of limitations; only it is worse, in that he applied an equitable bar to negate a deadline he himself had previously established in his own Order. How does one explain such a decision?

20. I oppose the proposed settlement because, if approved, it would among other things, backslide on the renewable energy practices of Delmarva Power, settling for renewable energy credit (REC) purchases rather than integrated energy, capacity and REC contracts; require the Commission to endorse the preferences of the settling parties on how to allocate the \$49M Customer Investment Fund (CIF) rather than allowing than simply providing the sum and leaving it to the wisdom and judgment of the Commission on how to do so; allocate the CIF such that the entire amount is dedicated to customer bill credits despite the much larger benefits that would accrue if the monies were allocated to efficiency; re-integrate generation into distribution; jeopardize future progress on renewables in the state by transferring control to a company that has opposed enhanced renewable portfolio standards in neighboring Maryland (as compared to PHI, which did not); result in Delawareans paying higher costs in the future for electricity generally, wind power specifically and RECs if Exelon prevails on its opposition to the wind production tax and proposed transmission projects that would bring wind power to PJM; and place ratepayers at risk in the event of nuclear power plant decommissioning cost over-runs and at the risk more generally of being asked to subsidize nuclear operations as Exelon is seeking to

have ratepayers do in other states. It is a proposed settlement that provides minimal benefits in the near term in exchange for very large long-term risks—risks that must be considered in light of 26 Del. C. §1013—and that falls far short of even Staff’s own minimum “requirements,” that it earlier filed in this docket.

21. Given the above, the importance of this docket, and necessity that the Commission have the benefit of as complete an airing of the pros and the cons of the proposed settlement as is possible at this stage of the proceedings, the hearing should be scheduled for June 16, 2015 (or later), which would only result in an additional 56 days to the suggested April 21, 2015 hearing date. Given the Joint Applicants suggest a 323 day docket, this is an addition of only 17%. Alternatively, although the Commission is not presently scheduled to meet the last week in March, and although not ideal from my perspective, the Commission could consider scheduling the hearing for Tuesday March 24, which would be 28 days earlier than proposed.

WHEREFORE, I RESPECTFULLY REQUEST THIS COMMISSION TO:

- a. Deny in part the Joint Applicants’ prejudicial motion.
- b. Set the hearing on the proposed settlement for June 16, 2015 or later.
- c. Ensure that the Hearing Examiner treats me fairly in any further scheduling orders in light of scheduling constraints and overseas presence.

Respectfully submitted,



Jeremy Firestone  
February 16, 2015

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CERTIFICATE OF SERVICE

I hereby certify that on February 16, 2015, that on behalf of Jeremy Firestone, Pro Se, I filed **RESPONSE TO MOTION TO AMEND SCHEDULING ORDER** with Delafile and provided a copy of the same on all persons on the email service list by email attachment.

Respectfully submitted,



Jeremy Firestone  
16 February 2015