BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF DELAWARE

IN THE MATTER OF THE APPLICATION OF DELMARVA POWER & LIGHT COMPANY, INC. EXELON CORPORATION, PEPCO HOLDINGS, INC., PURPLE ACQUISITION CORPORATION, EXELON ENERGY DELIVERY COMPANY, LLC 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)	))))))))))	PSC DOCKET NO. 14-193

ORDER NO. 8658

AND NOW, this 14th day of October, 2014, the Delaware Public Service Commission ("Commission") determines and orders the following:

1. On June 18, 2014, Delmarva Power & Light Company ("Delmarva"), Exelon Corporation ("Exelon"), Pepco Holdings Inc. ("PHI"), Purple Acquisition Company, Exelon Energy Delivery Company, LLC, and Special Purpose Entity, LLC ("Merger-Sub") (collectively the "Joint Applicants") filed an application seeking approvals under 26 *Del. C.* §§215 and 1016 for a change of control of Delmarva to be effected by a merger of PHI with Merger-Sub, a wholly owned subsidiary of Exelon; and

2. On July 8, 2014, the Commission approved Order No. 8581 which designated Senior Hearing Examiner Mark Lawrence as the Hearing Examiner for this docket with the authority to monitor and resolve any discovery disputes among the parties.

3. On July 31, 2014, Intervenor Jeremy Firestone ("Firestone") timely served discovery requests on the Joint Applicants. The Joint Applicants timely served responses to many

of the discovery requests, objected to some of the discovery requests with limited responses, and objected entirely to other discovery requests with no responses.

4. Firestone timely filed a motion to compel discovery on August 21, 2014 (the "First Motion to Compel"). Thereafter, the Joint Applicants filed a response to the First Motion to Compel, and Firestone filed a reply to the Joint Applicants' response.

5. In Order No. 8624 (August 27, 2014), the Hearing Examiner sustained all of the Joint Applicants' objections except one—Interrogatory No. 16. He then ordered that the Joint Applicants provide a better response to Firestone for Interrogatory No. 16 on or before October 3, 2014.

6. On September 5, 2014, Firestone filed a second motion to compel (the "Second Motion to Compel"), and on September 8, 2014, he filed a Motion for Reconsideration of his First Motion to Compel. The Joint Applicants filed responses to each of these filings on September 11, 2014, and September 15, 2014, respectively.

7. In Order No. 8637 (September 17, 2014), the Hearing Examiner ruled against Firestone on both of his motions to compel. In addition, he amended one of his previous orders (i.e., Order No. 8603) by imposing which he called "reasonable terms and conditions" upon Firestone's continued intervention status.

8. Thereafter, Firestone timely filed a petition for an interlocutory appeal (the "Interlocutory Petition"). The Joint Applicants responded by timely filing a reply.[1]

9. Having reviewed the record in this case, including the Interlocutory Petition and attached exhibits, the Joint Applicants' reply to the Interlocutory Petition including exhibits, and having heard oral argument from the participants and deliberated in public at our regularly-scheduled September 30, 2014;

NOW, THEREFORE, IT IS HEREBY ORDERED BY THE AFFIRMATIVE VOTE OF NOT FEWER THAN THREE COMMISSIONERS:

10. We have jurisdiction over this matter pursuant to 26 *Del. C.* §201 and 29 *Del. C.* §10128.

11. An interlocutory appeal from a ruling of a Hearing Examiner may be taken to the full Commission "where extraordinary circumstances necessitate a prompt decision by the Commission to prevent substantial injustice or detriment to the public interest." 26 *Del. Admin. C.* §1001-2.16.1. Based on the evidence presented to us, we find that the requirements of Section 1001-2.16.1 have not been met here.

12. Firestone argues the Hearing Examiner's orders are erroneous and the Hearing Examiner's threats to expel Firestone from the proceeding and to sanction him violate his due process rights. Although Firestone notes that removing the Hearing Examiner would be an extraordinary remedy, he nevertheless argues

[1] The reply was entitled "Joint Applicants' Answer to Intervenor Jeremy Firestone's Interlocutory Appeal."

the Hearing Examiner must be removed from this case because the Hearing Examiner continues to engage in conduct that will result in "extraordinarily bad" results.

13. In response, the Joint Applicants argue the Hearing Examiner correctly ruled that Firestone's discovery requests were overly burdensome and vexatious. In addition, the Joint Applicants point out that the Hearing Examiner has been "on top of" this case by working weekends and holidays and by being both responsive and accommodating. The Joint Applicants further argue there is no need to remove the Hearing Examiner, Firestone's tactics have been overly litigious, and Firestone is merely unhappy with the Hearing Examiner's rulings.

14. The evidence presented to this Commission demonstrates that Firestone merely has an on-going discovery dispute with the Joint Applicants. Although Firestone calls this a "substantial dispute" based on an allegedly breached agreement between him and the Joint Applicants, such dispute does not equate with a need to prevent substantial injustice.

15. The Commission's Rules of Practice and Procedure give the Hearing Examiner discretion when handling the day-to-day overview and process of this case, which is an important reason to uphold his prior orders on the First Motion to Compel and the Second Motion to Compel.

16. Moreover, the Commission does not find that the standard for an Interlocutory Petition as set forth in 26 *Del. Admin. C.* §1001-2.16.1 has been met here. Firestone has failed

to produce evidence that "extraordinary circumstances" exist which "necessitate a prompt decision by the Commission to prevent substantial injustice." In addition, we find no evidence has been presented to show that any "detriment to the public interest" will result if we do not grant the Interlocutory Appeal. Therefore, we conclude that the Interlocutory Petition should be denied. (Unanimous).

17. The Commission reserves the jurisdiction and authority to enter such further Orders in this matter as may be deemed necessary or proper.

BY ORDER OF THE COMMISSION:

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Chair

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Commissioner

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Commissioner

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Commissioner

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Commissioner

ATTEST:

_____
Secretary