

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

IN THE MATTER OF THE APPLICATION)
OF DELMARVA POWER & LIGHT COMPANY,)
EXELON CORORPATION, PEPSCO 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))

JEREMY FIRESTONE'S

PETITION FOR INTERLOCUTORY REVIEW OF ORDER 8638 ON DEPOSITIONS

Jeremy Firestone, *Pro Se*
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Intervenor Jeremy Firestone hereby Petitions the Commission for Interlocutory Review of Order 8638 regarding “Agreed Order Regarding Depositions.”

Statement of Case

1. On October 2, 2014, Senior Hearing Examiner Mark Lawrence issued Order 8638, which he captioned “Agreed Order Regarding Depositions.” Ex. 1. The caption creates the impression that it was agreed to by the parties to this docket, but it was not. There was no negotiation between the parties regarding the depositions and no submittal of an agreement resulting therefrom to the Hearing Examiner for his review and approval. While it appears there was some agreement among Staff, the Public Advocate and the Joint Applicants regarding the length of a few depositions and how time would be allocated among those three parties, the Order was issued without consultation of myself (and I believe any of the other Intervenors). The Order unreasonably limits questioning of the Joint Applicants’ witnesses to a mere fifteen (15) minutes per Intervenor for those Intervenors that are represented by a member of the Delaware Bar, relegating parties like myself who are *Pro Se* to mere observers in violation of 26 *Del. C.* § 508 and 26 *Del. Admin. C.* §1001-2.6.1.¹ While I appreciate the

¹ Indeed, such restricted attendance so limits us that it may be a better use of time to read the transcripts.

Commission's strong institutional preference for according the Hearing Examiner to whom it has designated authority wide latitude, and while I would prefer not to have to bring this Interlocutory Petition, fundamental notions of due process, interests of justice, and the integrity of this docket are at stake. These considerations would be of grave concern in any docket; they are heightened here given the docket's importance. If Order 8638 is left to stand, it may inalterably undermine the integrity of any final ruling by this Commission. Not intervening at this juncture would render any final decision in this docket arbitrary and capricious and not free from error within the meaning of 26 *Del. C.* § 510. As set forth in more detail below, extraordinary circumstances thus necessitate a prompt decision by the Commission to prevent substantial injustice and detriment to the public interest.

Summary of Jeremy Firestone's Position

2. The Commission should vacate Order 8638 and the Hearing Examiner should be directed to have the parties promptly negotiate a discovery schedule amongst themselves for submittal to and consideration by the Hearing Examiner. All parties consistent with 26 *Del. C.* § 508 should be permitted to question all witnesses and do so in the interests of justice without regard to arbitrary, constrained and unreasonable time limits.

Grounds Supporting Interlocutory Petition

3. In Order 8603 I was granted intervention without limitation. Ex. 2.
4. On October 2, 2014, Senior Hearing Examiner Lawrence issued Order 8638 (Ex. 1), entitled "Agreed Order Regarding Depositions." Not only did I not agree to Order 8638, I was never consulted on the same. While certain provisions in the Order appear to be based in part on an agreement among Staff, the Public Advocate and the Joint Applicants, it appears that other provisions and portions of the Order were included *Sua Sponte*.
5. Paragraph 8 of the Deposition Order provides that "Each intervener which is represented by an attorney who is a member of the Delaware Bar shall be allotted fifteen (15) minutes to question each witness in a deposition."
6. Paragraph 10 of the Deposition Order provides that "Interveners not represented by an

attorney who is a member of the Delaware Bar may attend the depositions, but are not permitted to ask the witnesses any questions.” It is not clear whether or not the intent is to exclude attorneys admitted *Pro Hac Vice*. In any event, such restricted *Pro Se* attendance with an outright prohibition on asking questions, unreasonably relegates *Pro Se* parties to mere observers, and violates rights of due process and equal protection and Delaware law, 26 Del. C. § 508 and 26 Del. Admin. C. §1001-2.6.1.

7. Although Order 8638 does not address depositions of Staff, Public Advocate or Intervenor witnesses, such depositions are permitted under the most recent Scheduling Order, Ex. 3, ¶6. If a similar process is followed for those deposition, the Joint Applicants would be permitted to question any such witnesses that I designate, but as noted, under Order 8638 I am not permitted to question their witnesses. This is fundamentally unbalanced, unfair and unjust.
8. As well, at the depositions of any such witnesses that I designate, under a similar process I would not be able to ask my witnesses any questions should I so choose, while Order 8638, ¶¶ 3-4, allows the Joint Applicants to ask questions of their own witnesses.
9. Further, the Scheduling Order (Ex. 3) provides that direct testimony of my witnesses must be filed by December 12, 2014. Not having the ability to question the Joint Applicants’ witnesses will severely handicap my ability to determine whether, and if so, who to designate as a witness(es), and what their direct testimony should cover; again, violating due process and running counter to the interests of justice.
10. In Delaware, *Durham v. Grapetree*, 2014 Del. Ch. Lexis 79 (May 16, 2014); *Sloan v. Segal*, 2008 Del. Ch. Lexis 3 (Jan. 3, 2008), as in other jurisdictions, it is appropriate for courts and tribunals to act with leniency toward *Pro Se* parties to ensure the case is fully and fairly heard; here, the Hearing Examiner, takes the opposite approach, relegating *Pro Se* parties to “passive participation,” with the effect that additional roadblocks are placed on us. This is exactly counter to the interests of justice.
11. The time limitations imposed on the Intervenors to take deposition testimony is arbitrary, unduly constrained and counter to the interests of justice as well. Indeed, much of the time

could be consumed by the Joint Applicants counsels' monologues and objections. Although some witnesses may require no questions and others a limited few, some witnesses will likely require more than 15 minutes (e.g., the Joint Applicants' expert witness, Dr. Susan Tierney).

12. In Order 8638, the Hearing Examiner states that the depositions of Christopher Crane, Joseph Rigby and Denis O'Brien should be limited in duration (generally to four hours among Staff, the Public Advocate and the Joint Applicants). Although those depositions will likely be circumscribed and may well be shorter than four hours, no one knows how long they will take until the depositions actually occur. It worth noting that these are not individuals who Staff, the Public Advocate or Intervenors subpoenaed or even sought out. Rather, they are three of the Joint Applicants' voluntarily selected witnesses who filed direct testimony. One may question how valuable the testimony of high corporate officials will be to the issue of whether or not the merger is for a proper purpose and consistent with the public interest. One also may question more generally whether those witnesses will bring forward relevant information of value and question the Joint Applicants' and their lawyers' decision to use them as witnesses. But once that decision was made, the other parties have a right to take the depositions of those witnesses and to do so without regard to arbitrary time deadlines. Pursuant to the Scheduling Order of September 29, 2014, Ex. 3., the evidentiary hearings in this matter are now scheduled for February 18-20, providing ample time for depositions. As such, the limitation on length runs counter to the interests of justice.
13. Although I am not a member of the Delaware Bar, I have been a member in good standing of the Michigan Bar since 1987, and actively practiced for the federal government and the State of Michigan for a total of ten years. That practice included scores of depositions, motion practice, bench trials in federal and state court and in front of an administrative law judge, and appellate brief and argument before the D.C. Circuit Court of Appeals, the Sixth Circuit Court of Appeals and the Michigan Court of Appeals. I am thus versed in the deposition process and how to comport myself, but even if were not, it would not be grounds to bar me from questioning witnesses for the reasons noted above.

14. In its decision on the Interlocutory Petition filed by IBEW Local 614, the Commission concluded (Order 8643) that a decision on the merits of the Petition was required at that time “because of the strict deadlines set forth for this proceeding and the scheduled evidentiary hearings to be held in December 2014” (as noted above, now scheduled for February 2015). In other words, “extraordinary circumstances necessitate[d] a prompt decision by the Commission to prevent substantial injustice or detriment to the public interest,” 26 *Del. Admin. C.* §1001-2.16.1. Had the Commission decided otherwise, a decision on whether or not Local 614 would be able to participate in the discovery process would not have been rendered until after discovery was complete.
15. Likewise, if my Interlocutory Petition is not granted, a decision on whether or not I am able to participate in a vital portion of the discovery process (questioning of deponents) will not be rendered until after discovery is complete.
16. In sum, given the considerations that are implicated by Order 8638, and that delay would result in substantial injustice and in detriment to the public interest, extraordinary circumstances necessitate a prompt decision by this august body.

WHEREFORE, for the reasons set forth above, Jeremy Firestone requests this Commission to:

1. Grant this Interlocutory Petition and hear it on its merits;
2. Vacate Order 8638;
3. Allow all parties to take and defend depositions;
4. Direct the parties to negotiate a deposition schedule and submit the same to the Senior Hearing Examiner for his approval; and
5. Grant such other relief as is appropriate and just.

Respectfully submitted,



Jeremy Firestone
October 6, 2014

Exhibit 1

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF DELAWARE

IN THE MATTER OF THE APPLICATION)
OF DELMARVA POWER & LIGHT COMPANY,)
EXELON CORPORATION,) PSC Docket No. 14-193
PEPCO HOLDINGS, INC., PURPLE)
ACQUISITION CORPORATION, EXELON)
ENERGY DELIVERY COMPANY, LLC AND)
NEW SPECIAL PURPOSE ENTITY FOR)
APPROVALS UNDER THE PROVISIONS OF)
26 DEL. C. §§ 215 and 1016 (Filed)
June 18, 2014))

ORDER NO. 8638
AGREED ORDER REGARDING DEPOSITIONS

This 2nd day of October, 2014, the Delaware Public Service Commission (the "Commission"), through its designated Hearing Examiner, adopts the following Order regarding depositions in this docket:

1. Counsel for Staff and the Public Advocate have each indicated that depositions upon oral examination need to be taken in this docket.
2. These parties have agreed that the depositions Christopher Crane, Exelon's President and Chief Executive Officer, Joseph M. Rigby, PHI's Chairman, President and Chief Executive Officer, and Denis P. O'Brien, Exelon's Chief Executive Officer, will be limited in duration. The parties should attempt to complete these depositions within four (4) hours, approximately. Additionally, due to the number of and complexity of the issues in this docket, the parties agree that there is a limited amount of time to take the depositions of other witnesses affiliated with the Joint Applicants, even if those

depositions are not specifically limited in duration.

In order for this docket to proceed in an orderly manner, I find as follows:

3. Pursuant to the statutory authority for their respective agencies, Counsel for Staff and Counsel for the Public Advocate shall take all depositions in this docket, and in the case of those limited in duration, Counsel for Staff and Counsel for the Public Advocate shall share time with the Joint Applicants if requested by the Joint Applicants, which may extend the length of any time limited deposition.

4. Regarding depositions limited in duration which the Joint Applicants do not seek equal time, the Joint Applicants' remaining time shall be equally allocated between or agreed upon by Staff's Counsel and the Public Advocate's Counsel.

5. If Staff's Counsel and the Public Advocate's Counsel agree that one is "the lead" on any deposition of limited duration, they may agree on a different allocation of time between themselves.

6. Staff's Counsel and the Public Advocate's Counsel shall file Notices of Depositions at least ten (10) days prior to the depositions. One (1) Notice may include all depositions.

7. The Notice of Deposition shall include the deponent, the location of the deposition, its date and time, and if applicable, its duration.

8. Each intervener which is represented by an attorney who is a member of the Delaware Bar shall be allotted fifteen (15) minutes to question each witness in a deposition, whether of limited duration or

not. The Intervener's Counsel's questioning shall occur after Staff's Counsel and the Public Advocate's Counsel have completed their direct examinations.

9. Intervener's Counsel shall file a Notice of Deposition(s) to participate in the depositions as noticed by Staff's Counsel and Counsel for the Public advocate at least seven (7) days prior to the depositions. One (1) Notice may include all depositions. If not timely filed, Intervener's Counsel will not be permitted to ask questions at the deposition, although they may attend the deposition.

10. Interveners not represented by an attorney who is a member of the Delaware Bar may attend the depositions, but are not permitted to ask the witnesses any questions.

11. As the Hearing Examiner for this matter, I will strive to make myself available via telephone while such depositions are pending, should disputes arise and there is a need for my intervention.

/s/ Mark Lawrence
Mark Lawrence
Senior Hearing Examiner

Exhibit 2

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF DELAWARE

IN THE MATTER OF THE APPLICATION OF)
DELMARVA POWER & LIGHT COMPANY, EXELON)
CORPORATION, PEPCO HOLDINGS, INC., PURPLE)
ACQUISITION CORPORATION, EXELON ENERGY) PSC Docket No. 14-193
DELIVERY COMPANY, LLC AND NEW SPECIAL)
PURPOSE ENTITY FOR APPROVALS UNDER THE)
PROVISIONS OF DEL. C. §§ 215 AND 1016)
(Filed June 18, 2014))

Order No. 8603

Omnibus Order Regarding Petitions to Intervene Filed to Date

AND NOW, this 5th day of August, 2014

WHEREAS, pursuant to PSC Order No. 8581 dated July 8, 2014, the deadline for filing Petitions to Intervene in this docket pursuant to Rule 1001-2.9 of the Commission's *Rules of Practice and Procedure* was Monday, July 28, 2014;

WHEREAS, in PSC Order No. 8581, the Commission ordered that, as the Hearing Examiner, I may grant a Petition to Intervene filed after the July 28, 2014 intervention deadline "only for good cause."

WHEREAS, excluding the Public Advocate which intervened on July 8, 2014 pursuant to its statutory right of intervention, on or before the July 28, 2014 intervention deadline, eight (8) entities or persons timely filed to intervene in this Docket, to wit: 1) Monitoring Analytics, LLC, acting in its capacity as the Independent Market Monitor for PJM; 2) The Mid-Atlantic Renewable Energy Coalition; 3) The Sustainable Energy Utility, Inc.; 4) Jeremy Firestone; 5) NRG Energy, Inc.; 6) The State of Delaware Department of Natural Resources

and Environmental Control ("DNREC"); 7) Chesapeake Utilities Corporation; and 8) James Black, Executive Director, Partnership for Sustainability in Delaware.

WHEREAS, at the Scheduling Conference on July 30, 2014, all participating entities or persons, Commission Staff, the Public Advocate and I agreed on the record that, based upon the petitions, oral argument, and the reasonably expedited nature of this docket, I would grant all timely filed petitions to intervene in this Docket;¹

WHEREAS, Clean Air Council ("CAC") filed a Petition to Intervene Out-of-Time on July 31, 2014, along with the *Pro Hac Vice* Motion of Matthew P. Ward, Esq., a member in good standing with the Delaware Bar;

WHEREAS, CAC's Petition to Intervene alleges that "[t]he Council and its members are actively involved in the protection of air quality and recognize that energy generation and fossil fuel transportation are major contributors to air pollution in Delaware and states throughout the region, including Pennsylvania and New Jersey. The Council has members in Delaware";

WHEREAS, CAC's Petition to Intervene CAC further alleges that "[t]he Council and its members are interested and concerned about the proposed merger's effect on Delaware's commitment to clean and renewable energy and the option for Delaware residents to purchase clean and renewable energy";

WHEREAS, on July 31, 2014, the Public Advocate's office objected to the untimely Motion to Intervene filed by CAC, arguing that: 1) CAC

¹ Most of these participants have pending *Pro Hac Vice* Motions which are scheduled to be heard by the Commission on August 5 or 19, 2014, depending on the Motion.

did not proffer any reason why current parties DNREC, the Mid-Atlantic Renewable Energy Coalition and Jeremy Firestone, would not adequately address the issues of renewable energy and clean air which CAC was seeking to address; and 2) without being excused, CAC failed to attend the Commission-ordered Scheduling Conference;

WHEREAS, DNREC, the Mid-Atlantic Renewable Energy Coalition, Chesapeake Utilities Corporation, and The Sustainable Energy Utility, Inc. did not object to CAC's participation, some stating CAC's participation would substantially benefit this docket, provided that CAC's late intervention did not interfere with the Scheduling Order established at the July 30, 2014 Scheduling Conference; the Applicants in this Docket stated that they did not take a position as to whether CAC should be permitted to intervene; and no other participating entity or person responded to my email asking whether they objected to my permitting CAC to intervene.

NOW, THEREFORE,

1. All nine (9) Petitions to Intervene filed to date in this Docket, including Clean Air Council's (CAC's) Petition to Intervene Filed Out-of-Time, are granted.

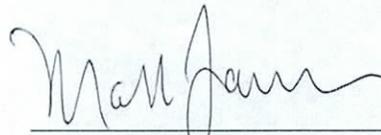
2. I find that "good cause" exists to permit CAC's late intervention. This is based upon: a) the content of CAC's Petition as described earlier herein; and b) all parties save one either seek that CAC be permitted to intervene, do not object to CAC's intervention, or in the case of the Applicants, do not take a position as to whether CAC should be permitted to intervene.

3. All intervening parties are entered this day as parties of record in this Docket. The Commission intends to enter Orders regarding *Pro Hac Vice* Motions filed in this Docket at its August 5 and 19, 2014 meetings, depending on the Motion.

4. All interventions are based upon the posture of this Docket as it currently stands with regard to any prior Commission orders and the "Revised Merger Schedule" dated July 31, 2014.

5. The parties are cautioned that each must hereinafter strictly comply with the Commission's *Rules of Practice and Procedure*, as well as Commission Orders, the Revised Merger Schedule, and regulations and statutes of the State of Delaware applicable to these proceedings. This includes E-filing with the Commission.

Respectfully Submitted,

A handwritten signature in cursive script, appearing to read "Mark Lawrence", written over a horizontal line.

Mark Lawrence
Senior Hearing Examiner

cc: Service List for PSC Docket No. 14-193

Exhibit 3

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF DELAWARE

IN THE MATTER OF THE APPLICATION)
OF DELMARVA POWER & LIGHT)
COMPANY, EXELON CORPORATION,)
PEPCO HOLDINGS, INC., PURPLE)
ACQUISITION CORPORATION, EXELON) PSC Docket No. 14-193
ENERGY DELIVERY COMPANY, LLC AND)
NEW SPECIAL PURPOSE ENTITY FOR)
APPROVALS UNDER THE PROVISIONS OF)
26 DEL. C. §§ 215 and 1016 (Filed June 18,)
2014))

SCHEDULING ORDER DATED SEPTEMBER 29, 2014

Pursuant to the agreement of the parties, the Delaware Public Service Commission (the “Commission”), through its designated Hearing Examiner, adopts the following Amended Scheduling Order in this case as submitted by the Applicants, the Commission Staff, the Division of the Public Advocate, and the approved Interveners:

1. Intervention. Petitions to intervene must be filed on or before July 28, 2014.
2. Scheduling Conference. A Scheduling Conference will be held on July 30, 2014 at 10:00 a.m. in the Commission’s Dover Office. All parties and those who have sought intervention should attend.
3. Discovery. Discovery issued to the Applicants will consist of two phases, the Initial Phase and the Follow-Up Phase, as follows:
 - (a). Initial Phase. Initial discovery requests to the Applicants must be served by July 31, 2014 and Staff responses must be served by September 10, 2014. If the Applicants have an Objection to any initial discovery request, it must be served on or before September 10, 2014, with the objected to documents being provided to the Hearing Examiner that day. Any Motion to Compel pertaining to the initial Staff discovery requests must be served by

September 15, 2014. The Hearing Examiner will issue his decision on any Motion to Compel on or before September 19, 2014. Any documents ordered to be produced as a result of the Hearing Examiner's decision will be served by 12:00 p.m. September 23, 2014.

(b). Follow-Up. Follow-up discovery must be served upon the Applicants by August 29, 2014 and responses must be served by September 12, 2014. If Applicants have an objection to any discovery request, it must be served by within (7) calendar days of receipt of the initial request. Any Motions to Compel must be served by September 3, 2014. Any documents ordered to be produced as a result of the Hearing Examiner's decision will be served by 12 p.m. September 10, 2014.

(c). Staff Follow-Up. Staff follow-up discovery requests must be served upon the Applicants by September 26, 2014 and responses must be served by October 8, 2014. If Applicants have an Objection to any follow-up discovery request, it must be served by October 3, 2014, with the objected to documents being provided to the Hearing Examiner the day any Objection is filed. Any Motions to Compel must be served no later than October 8, 2014. The Hearing Examiner will issue his decision on any Motion to Compel on or before 5:00 p.m. on October 15, 2014. Any documents ordered to be produced as a result of the Hearing Examiner's decision will be served by hand at the offices of Ashby & Geddes by 10:00 a.m. on October 20, 2014 and delivered to the e-room for access by a designated Staff consultant by 10:00 a.m. on October 20, 2014.

(d). Depositions. Depositions, to the extent requested by any party, will be taken during the week of November 10-14, 2014. The parties will develop, informally, the time and place of such depositions, including but not limited to any video depositions. However, with regard to Mr. Crane and Mr. Rigby, the parties agree their respective depositions will be

taken at a time and place to be worked out by the parties. Further, the parties will seek to have the transcripts of any deposition completed within seven days or by November 26, 2014, whichever is earlier in time.

(e). Additional Discovery. To the extent necessary, additional follow-up discovery including, but not limited to, written interrogatories, request for admissions and, if necessary, additional depositions may be conducted at any time prior to December 3, 2014.

4. Public Comment. Public Comment Sessions will be held on the following dates and times: September 3, 2014, beginning at 7:00 p.m., Carvel State Office Building, 820 N. French Street, Second Floor Auditorium, Wilmington, DE 19801; September 9, 2014, beginning at 6:00 p.m., Commission Hearing Room, 861 Silver Lake Boulevard, Dover, DE 19904; September 11, 2014, beginning at 7:00 p.m., Cape Henlopen High School, 1250 Kings Hwy., Lewes, DE 19958.

5. Direct Testimony. Staff, DPA and Intervenors must serve any direct testimony on or before December 12, 2014.

6. Discovery. Any discovery on Staff, DPA, or Intervenors must be served by December 19, 2014, including any request for depositions. Responses must be served no later than December 30, 2014, and the scheduling of any deposition request will be worked out by the parties.

7. Settlement Discussion. Settlement discussions may take place in person any business day prior to the day of the evidentiary hearings. The Commission will reserve time for consideration and possible decision on any proposed settlement agreement on December 16-18, 2014.

8. Rebuttal Testimony. Applicants must serve any rebuttal testimony on or before

January 12, 2015. Any party may request discovery from the Applicants on its Rebuttal Testimony on or before January 19, 2015, which discovery must be answered on or before January 28, 2015.

9. Pre-Hearing Briefs. Pre-hearing briefs shall be filed on or before February 11, 2015.

10. Evidentiary Hearing. The Commission will hold evidentiary hearings on February 18-20, 2015. The parties should be prepared to present oral argument to the Commission at the conclusion of the evidentiary hearing.

11. Minute Order. A Minute Order regarding a Decision by the Commission will be entered on or before February 20, 2015.

12. Final Order. The Final Order of the Commission will be issued on or before March 10, 2015.

/s/ Mark Lawrence
Mark Lawrence
Senior Hearing Officer
Public Service Commission

**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))

CERTIFICATE OF SERVICE

I hereby certify that on October 6, 2014, that I caused **PETITION FOR INTERLOUCTARY REVIEW OF ORDER 8638 ON DEPOSITIONS** to be filed in Delafile and additionally served on all parties on the email service list by email attachment.

Respectfully submitted,



Jeremy Firestone
6 October 2014