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 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. 8844

Stay of Intervenor Jeremy Firestone's Motion For Cease And Desist Order Restraining the Delaware Division of the Public Advocate From Taking Actions Antagonistic To The Amended Settlement Agreement

AND NOW, this 7th day of January, 2016, the duly-appointed Hearing Examiner for this Docket determines and orders the following:

1. Pursuant to ¶2 of Order No. 8581 (July 8, 2014), the Commission designated me as the Hearing Examiner for this Docket and delegated the authority to me to resolve disputes among the parties such as this dispute. This Motion is within my authority pursuant to 26 Del. C. §502. Also, Commission Rule 2.10.3 permits the Hearing Examiner to manage the Procedural aspects of a Docket. Finally, Commission Rule 2.16.4 permits the Hearing Examiner to stay all or a portion of this proceeding if an interlocutory appeal is filed.

2. Due to the Public Advocate's Appeal to the Delaware Superior Court of PSC Order No. 8807 (Dec. 3, 2015) in PSC Docket No. 15-1462,[1] the Joint Applicants' pending Merger Application in the District of Columbia, and the fact that the Commission is not

[1] Civil Action N15A-12-002 FSS, New Castle County, DE Superior Court.

authorized to issue the remedy of a Restraining Order sought in the Motion, Jeremy Firestone's Motion in this Docket is hereby STAYED.

3. This Stay Order is first required because the Public Advocate's Appeal and Jeremy Firestone's Motion essentially involve the same threshold issue: the correct interpretation of 26 Del. C. §354(i) & (j) and §362 regarding the procedures for developing and/or the requirements of, freezing the minimum cumulative solar photovoltaic and eligible energy resource amounts.

4. Second, this Stay Order is required because the Joint Applicants' Merger Application in the District of Columbia is pending. If approved in the District of Columbia, the merger would be approved in all required jurisdictions. Paragraphs 103 through 105 of the Amended Settlement Agreement ("ASA"), the "Most Favored Nation Provision," specify a procedure for the parties and then the Commission to compare the customer fund and customer benefits settled or ordered in the District of Columbia with those afforded to Delaware ratepayers in the ASA. These customer benefits include renewable energy, the subject of Mr. Firestone's Motion. This analysis may render the Motion moot. On the other hand, if the merger is not approved in the District of Columbia, the Joint Applicants are entitled to withdraw their Merger Application in Delaware, rendering the Motion moot. The evidentiary record is not closed in this Docket.

5. Third, the Motion's Relief Clause seeks that the Commission issue "a Restraining Order which requires the Public Advocate to cease and desist from taking actions contrary to the Amended Settlement Agreement." The Commission does not have the legal authority to issue

a Restraining Order under these circumstances. *E.g.*, Del. Constitution Art. 4, §14 (Power of Courts to issue Preliminary Injunctions); Title 26 Del. Code §218 (Granting the Commission the power to levy fines payable to the General Fund.)

6. Finally, regarding the Regulations promulgated and published by DNREC, as a matter of public policy and for comity purposes, the Commission would not want to formally "restrain" the actions of the Public Advocate in dealing with DNREC, another state agency, particularly here where the statutes arguably have the Commission and DNREC working together regarding the minimum cumulative solar photovoltaic and eligible energy resource amounts. The Public Advocate is statutorily required to protect ratepayers' interests and address Commission matters. *See* 29 Del. Code §8716.

7. Although Mr. Firestone's Motion alleges that the Public Advocate's actions are adversely affecting the ASA which Mr. Firestone is not a party to, for the reasons described above, this issue cannot be fully resolved at this time and thus it is premature for the Commission to consider Mr. Firestone's Motion.

8. Due to potential estoppel issues regarding the Appeal and responding to the Motion, no party is currently required to file a Response to the Motion.

9. I will evaluate lifting this Stay Order in the future upon Motion filed by any party.

Done and Ordered this 7th day of January, 2016.

Mark Lawrence
Senior Hearing Examiner