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 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

Clean Air Council's Pre-Hearing Submission in Opposition to Staff's Proposed Allocation of MFN Benefits

1. Clean Air Council ("Council") has two main concerns with the Delaware Public Commission's Staff's ("Staff") "Proposed Public Interest Project MFN Allocation" as outlined in its September 29, 2016 Proposal ("Proposal"). First, the Council does not believe that any, and all "public interest" organizations should be eligible to apply for funds received through the Exelon settlement, and second, Delmarva should not have the unilateral authority to award the funds allocated through the settlement.

2. The Council intervened in this matter because of two major concerns: 1. The merger's negative effect on Delmarva's continuation of energy efficiency programs, and 2. the merger's negative effect Delmarva's commitment to increasing renewable energy in Delaware. In fact, all parties (including intervenors) focused exclusively on energy-related issues that would be potentially affected by this merger.

3. A significant fear of the Council's, and other parties, was that post-merger there would be less incentive for Delmarva to partake in energy efficiency or renewable energy projects as the new parent, Exelon, owns and controls a tremendous amount of power generation–there is an

obvious conflict of interest. Due to these concerns, the public interest that needed to be protected in this case was the need for an increased vigilance over energy efficiency and renewable energy programs, thus the intervention of energy-focused groups and energy-focused testimony by all parties.

4. It is the Council's belief that a tremendous opportunity was missed by returning the original settlement amount to ratepayers in the form of a rebate. The Council, and other parties argued that the money should have been allocated to energy efficiency and renewable energy which would have returned a much higher economic benefit to the state, and a greater health impact to Delawareans. That ship has sailed.

5. At issue now is how to allocate the additional funds from the Most Favored Nation ("MFN") provision. Staff has proposed that $4 million of the MFN should be allocated and "broadly dispersed" by Delmarva to public interest groups throughout Delaware.

6. The Council believes that Staff (and DNREC) is incorrect in its assertion that the test of what qualifies as "public interest" is met by any social welfare organization. The activity of concern in this case is exclusively about energy–the ability of Delmarva to deliver electricity and gas to its customers, and other energy-related issues–not providing broader social benefits, no matter how worthy.

7. While all of the examples of qualifying organizations listed by Staff in its Proposal are extremely worthwhile organizations, those organizations were not parties to this merger, and their primary focus is not related to the distribution or use of energy. The public benefits from a utility merger should be directed through interested parties, from organizations that focus primarily on energy-related issues.

8. Intervenors such as Clean Air Council, Dr. Jeremy Firestone, and MAREC have, over the years of litigating this matter, outlined projects that, they believe, would benefit the public and

counteract the potential deleterious health and environmental effects from the merger between two energy companies. The Council believes that the true test for allocation of funds from the MFN should be: if the organization requesting any funds from the merger would have been directly impacted by the deleterious effects of that same merger–if a group will suffer to the downside, they should be allowed to benefit to the upside.

9. The Delaware Supreme Court spoke to this specific question, and in *Public Water Supply Co. v. DiPasquale*, 735 A.2d 378 (Del. Supreme Court 1999) confirmed that "the Commission was designed to protect, preserving and promoting indispensable services while preventing inferior service . . . .". *DiPasquale* 735 A.2 at 384. Applying that to this case, it goes without saying that the Commission's role here is to ensure that energy distribution is protected, and that all aspects related to that are considered. To that end, the merger has the potential to disincentivize the newly formed company in its pursuit of protecting its customers' interests in reducing the amount of energy used (through energy efficiency), and in delivering the most cost-effective energy type (through development of renewable energy).

10. Consequently, the only concern of the Commission in allocating the limited benefits from this merger should be to protect customers' interests vis-à-vis energy-related issues, not unrelated societal concerns.

11. It is worth noting that Exelon has committed to maintaining the level of funding that Delmarva has allocated to charitable giving in past years. That funding stream could be used to address the broader societal issues that Staff has mentioned.

12. The Council's second concern is that Staff outlines, in its Proposal, a mechanism for the newly-formed company (Exelon and Delmarva) to distribute the funds to worthwhile organizations as it sees fit.

13. There is an obvious and unsurmountable conflict here: Exelon and Delmarva sell energy,

and now, energy produced internally from fossil fuels and nuclear power. Although the Council has the upmost respect for Exelon and Delmarva, the appearance of a conflict of interest is too much for comfort.

14. If the merged company is the sole decision-maker for allocation of funds from the MFN, and it has a fiduciary responsibility (it is a publicly held corporation) to increase (or at a minimum maintain) sales of its energy assets, then there would be a temptation to not allocate funds to competing organizations–both energy efficiency and renewable energy could be seen by a reasonable person as antithetical to the normal and ongoing operations of the combined entity.

WHEREFORE, CLEAN AIR COUNCIL, INTERVENOR, RESPECTFULLY REQUESTS THAT THIS HONORABLE COMMISSION:

1. Reject Staff's Proposal allocation as it is not within the public interest the Commission was designed to protect. Only public interest groups that promote energy efficiency and/or renewable energy should be eligible to receive funding under the MFN. and;
2. Reject Staff's Proposal to allow the newly formed company, Exelon and Delmarva, to be the unilateral decision maker in allocating the funds available from the.

Respectfully submitted,

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October 10, 2016

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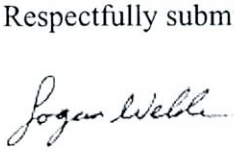
CERTIFICATE OF SERVICE

I, Logan Welde, hereby certify that on October 10, 2016, I caused a true and correct copy of the *Clean Air Council's Pre-Hearing Submission in Opposition to Staff's Proposed Allocation of MFN Benefits* to be served via e-mail as per the email service list and via Delafile.

Respectfully submitted,



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