

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 SPECIAL PURPOSE)
ENTITY, LLC, FOR APPROVALS UNDER THE)
PROVISIONS OF 26 DEL. C. §§ 215 AND 1016)
(Filed JUNE 18, 2014))

ORDER NO. 8624
(Regarding Firestone's Motion to Compel)

AND NOW, this 27th day of August, 2014, 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 any discovery disputes among the parties.

2. At the July 30, 2014 Scheduling Conference in this docket, I orally granted Mr. Jeremy Firestone's ("Mr. Firestone") Petition to Intervene. On August 5, 2014, I entered Order No. 8603 formally permitting Mr. Firestone to intervene.

3. According to his Petition for Intervention, Mr. Firestone intervened "as an individual" "with specialized expertise in energy and climate issues." (¶¶2, 18.) According to his Petition, Mr. Firestone has spent his adult life studying, working with, and teaching these issues. (¶¶19-31.)

4. On July 31, 2014, as an Intervener, Mr. Firestone timely served discovery requests on Delmarva Power & Light Company ("Delmarva"), Pepco Holdings, Inc. ("PHI"), Exelon Corporation ("Exelon"), Exelon Energy Delivery Company, LLC ("Exelon"), Purple Acquisition Corporation ("Merger Sub"), and Special Purpose Entity, LLC ("SPE") (collectively, the "Joint Applicants").

5. In a subsequent filing, Mr. Firestone described his discovery as "relating to renewable energy, climate change, environmental externalities, efficiency, etc. This includes questions that relate to the fairness and size of the set aside for Delmarva customers as the size of the pie will determine what if any monies are dedicated to the topics referenced above." (Firestone's Reply dated Aug. 27, 2014, ¶11.)

6. Including sub-parts, Mr. Firestone's discovery consists of sixty nine (69) Interrogatories, thirty seven (37) Requests for Production of Documents, and in excess of five (5) pages of instructions. I calculated the number of Interrogatories after Mr. Firestone and the Joint Applicants' Counsel met in person on August 6, 2014 and Mr. Firestone agreed to withdraw sixteen (16) additional Interrogatories, some containing sub-parts.

7. On August 20, 2014, the Joint Applicants responded to many of Mr. Firestone's Interrogatories and Requests for Production of Documents, objected to some discovery requests while limiting their responses, and entirely objected to other discovery requests.

8. As to the discovery requests which were either objected to their entirety or objected to with some response-either limited

documents or a limited answer were provided - the Joint Applicants' initially objected to all requests as follows: "The Joint Applicants object to this request on grounds that it is overly broad, burdensome, and outside the scope of this intervenor's limited intervention."

9. On August 21, 2014, Mr. Firestone timely served a Motion to Compel Discovery. Mr. Firestone essentially argues that the Joint Applicants refused to answer or did not sufficiently answer his Interrogatories, or did not or did not sufficiently provide Mr. Firestone with the documents he requested usually because the Joint Applicants provided him with email links to documents previously filed in the public record in a number of proceedings.

10. On August 26, 2014, the Joint Applicants timely filed a Response to Mr. Firestone's Motion to Compel Discovery. On August 27, 2014, Mr. Firestone filed a Reply to the Joint Applicants' Response.

11. Before addressing the merits of Mr. Firestone's Motion to Compel, however, I want to first briefly address Mr. Firestone's claim that the Joint Applicants' failed to timely file their objections to his discovery requests. Pursuant to PSC Order No. 8616 (August 19, 2014), I have the authority to resolve disagreements between the parties regarding the Procedural Schedule in this docket. (See §2.)

12. Mr. Firestone's discovery requests were served on July 31, 2014. According to the revised Procedural Schedule in PSC Order No. 8616, the Applicants were required to file their responses, including objections, on or before August 20. Since the Joint Applicants timely filed their responses to discovery, including objections, on August 20, this is a non-issue.

13. **Mr. Firestone's Status as an Individual Intervenor.** The Joint Applicants argue that Mr. Firestone's discovery rights as an individual intervenor are not without limits. (Joint Applicants' Response; pp. 2-3.) The Joint Applicants essentially argue that there are four (4) limits upon Mr. Firestone's initial discovery imposed by Delaware law and the Commission: a) he may not engage in a "fishing expedition" for information or documents; b) his discovery must not be unduly burdensome for the Joint Applicants to respond to; c) the Commission may limit an individual intervenor's discovery to the scope of the intervenor's claimed interest in the proceeding; and d) the Joint Applicants may provide confidential discovery to Staff and the Public Advocate, but withheld same from other intervenors. (*Id.* & authorities cited therein.) Since I agree with the legal authorities discussed by the Joint Applicants in its Response, I will not discuss this issue any further.

14. **The Disputed Discovery Requests.** Since the parties have explained their respective positions in exhaustive detail in their filings, I will address each disputed discovery request and find whether the Joint Applicants' Objections are sustained or their Responses are sufficient. I note that, at this early stage of this docket, future reasonable discovery from the Joint Applicants is available to Mr. Firestone. Also, Staff's and the Public Advocate's Counsel have currently set aside the week of September 22-26 for depositions of the Joint Applicants' representatives, if necessary.

15. **Interrogatory No. 8.** I find that the Joint Applicants' Response is sufficient.

16. **Interrogatory No. 9.** I find that the Joint Applicants' Response is sufficient.

17. **Interrogatory No. 14.** I sustain the Joint Applicants' objections and find that the Joint Applicants' Response is sufficient.

18. **Interrogatory No. 15.** I find that the Joint Applicants' Response is sufficient.

19. **Interrogatory No. 16.** I overrule the Joint Applicants' objections and find that their Response is not sufficient. I order that the Joint Applicants provide a better response to Mr. Firestone on or before 5 p.m. on Friday October 3, or one (1) week after the deposition period expires, whichever is later. If any portion of the Interrogatory has been or is subsequently sufficiently answered in the Joint Applicants' responses to discovery from Staff, the Public Advocate or any other party, or is answered by any representative in a deposition, the Joint Applicants may refer to same in answering that portion of the Interrogatory.

20. **Interrogatory No. 17.** I sustain the Joint Applicants' objections and find that the Joint Applicants' Response is sufficient.

21. **Interrogatory No. 28.** I sustain the Joint Applicants' objections and find that the Joint Applicants' Response is sufficient. In November, I will require the parties to develop a Witness List regarding who will testify at the final hearings beginning on December 16, 2014.

22. **Document Request No. 1.** I sustain the Joint Applicants' objections and find that the Joint Applicants' Response is sufficient.

23. **Document Request No. 2.** I sustain the Joint Applicants' objections and find that the Joint Applicants' Response is sufficient.

24. **Document Request No. 4.** I sustain the Joint Applicants' objections and find that the Joint Applicants' Response is sufficient.

NOW, THEREFORE, it is ordered that Jeremy Firestone's Motion to Compel is granted in part and denied in part as described above, this 27th day of August, 2014.

Respectfully Submitted,

/s/ Mark Lawrence
Mark Lawrence
Senior Hearing Examiner