

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. 8637

**Order on Firestone's Motions to Compel**

AND NOW, this 17<sup>th</sup> day of September, 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. On July 30, 2014, I orally permitted Mr. Firestone's intervention at the Scheduling Conference, and on August 5, 2014, I entered Order No. 8603 formally allowing Mr. Firestone to intervene in this docket, without limitation.

3. For the reasons described herein, I am amending Order No. 8603 as it relates to Mr. Firestone's intervention, but not as to any of the other eight (8) interveners which have all complied with the discovery process. Mr. Firestone has a law degree and practiced as a

natural resources and environmental lawyer for ten (10) years.

(Firestone, Petition for Intervention, ¶¶19,20)

4. Regarding his First Motion to Compel, Intervener Jeremy Firestone's Motion for Reconsideration of Order No. 8624 (August 27, 2014) is denied. The reasons for my denial are contained in the Joint Applicants' well-reasoned Response in Opposition to the Motion for Reconsideration dated September 11, 2014. It is unnecessary to repeat these reasons herein.

5. Including sub-parts, Mr. Firestone's first round of discovery to the Joint Applicants was 106 discovery requests, consisting of 69 Interrogatories and 37 Requests for Production of Documents. Mr. Firestone's follow-up discovery was 118 discovery requests, consisting of 41 Interrogatories and 77 Requests for Admissions. Thus, since being admitted as an intervener less than 6 weeks ago, Mr. Firestone has lodged a total of 224 discovery requests to the Joint Applicants.

6. Before addressing Mr. Firestone's Second Motion to Compel, I want to begin by illustrating some of the vexatious and burdensome discovery, which is not reasonably calculated to lead to admissible evidence, which was filed by Mr. Firestone therein. The following are 24 examples; many more exist. I have included below Mr. Firestone's discovery requests followed by the Joint Applicant's objection and/or response.

**REQUESTS FOR PRODUCTION**

1. Produce all documents related to a response to the interrogatory requests.

Objection: Overly broad, unduly burdensome, seeks information that is irrelevant, vague and ambiguous and fails to identify with reasonable particularity the category of information requested.

7. This Request was contained in Mr. Firestone's First Request for Production, objected to by the Joint Applicants, whose objection was sustained by me by Order No. 8624 on Aug. 27, 2014. The reason that this request is improper is because "[t]his Request asks for everything Delmarva Power, PHI and Exelon have that is related to every question Mr. Firestone asks." (JA's Response, 8/26/14, p.9.) Mr. Firestone's response: on Aug. 29, 2014, he filed this request a send time, despite my prior Order.
8. As to the following Requests for Admissions, review each and you will see how each is vexatious and burdensome and not reasonably calculated to lead to admissible evidence, culminating in the following Request for Admission which appears last herein: "Nuclear power has social costs."
9. The purpose of Requests for Admissions is to attempt to establish disputable facts, not setting forth Mr. Firestone's "opinions, conjecture and speculation." These Requests clearly violate Delaware law, are objectionable, and need not be answered at all, although the Joint Applicants have attempted to accommodate Mr. Firestone with responses and documents where possible. In many cases, responses are not even possible. (JA's Response, 9/15/14, p.5, citing Bryant v. Bayhealth Medical Center, Inc., 937 A.2d 118, 126 (Del. 2007); Fedena v. August, 2014 Del. Super. LEXIS 74 at \*8-9 (Del. Super. Feb. 10, 2014; Papen v. Suburban Propane Gas Corp., 229 A.2d 567,570 Del. Super. 1967.)

**REQUESTS FOR ADMISSION**

1. There has been an over-build of wind power capacity.

Answer: The joint Applicants object to this request on grounds that it is vague and ambiguous in the use of the phrase "overbuild" because that phrase is not defined.

2. Exelon advocates for market-based approaches to electricity generation.

Answer: The Joint Applicants object to this request on grounds that it is vague and ambiguous in the use of the phrase "market based" because that phrase is not defined. Without waiving any objection, the Joint Applicants will provide a further response when due.

3. Exelon opposes subsidies for land-based wind power.

Answer: The Joint Applicants object to this request on grounds that it is vague and ambiguous in the use of the term "subsidies" because that term is not defined. Without waiving any objection, the Joint Applicants will provide a further response when due.

5. State RPS laws are subsidies.

Answer: See response to 3 above.

6. State RPS laws are non-market based approaches.

Answer: See response 2 above.

7. RPS laws are a down payment toward a sound climate policy.

Answer: The Joint Applicants object to this request on grounds that it is vague and ambiguous in the use of the phrases: "down payment" and "sound climate policy," as neither are defined. As such the Joint Applicants can either admit or deny.

8. Delaware's RPS is within the State of Delaware's right.

Answer: The Joint Applicants object to this request on grounds that is vague and ambiguous in the use of the phrase: "within the State of Delaware's right" and, to the extent the Joint Applicants understand this request, calls for a legal conclusion. As such the Joint Applicants can neither admit nor deny.

9. Exelon's purpose is to run a business and provide a return to shareholders while providing a product that consumers can use.

Answer: The Joint Applicants object to this request on grounds that it is vague and ambiguous in the use of the phrases "purpose is to run a business" and "product that consumers can use" and, to the extent the Joint Applicants understand this request, it appears to call for a legal conclusion as to whether transmission, delivery, energy and the other services that Exelon utilities provide are "products" within the meaning of the law. As such, the Joint Applicants can neither admit nor deny.

10. Exelon makes decisions to support or oppose modifications to RPS laws based on its private, commercial interests.

Answer: The Joint Applicants object to this request on grounds that it is vague and ambiguous in the use of the

phrase "private commercial interests" as that phrase and terms therein are not defined. Without wavering any objections, the Joint applicants will provide a further response when due.

11. RPS laws present a market and financial risk to Exelon.

Answer: The Joint Applicants object to this request on grounds that it is vague and ambiguous in the use of the phrase "present a market and financial risk..." Without waving any objection, the Joint Applicants will provide a further response when due.

15. Delaware RPS plays favorites.

Answer: Joint Applicants object to this request on grounds that it calls for speculation. Without waiving any objections, the Joint Applicants will provide a further response when due.

40. Energy efficiency is not in the best interest of Exelon's shareholders.

Answer: Joint Applicants object to this request on grounds that it is vague and ambiguous in the use of the phrase "in the best interest of Exelon's shareholders" and in that it calls for speculation.

42. When new wind power capacity is constructed in western PJM and wind power is subsequently generated, some of the fossil fuel generation displaced is upwind of Delaware.

Answer: Joint Applicants object to this request on grounds that it is vague and ambiguous in the use of the phrase "upwind of Delaware" and in that it calls for speculation. As such the Joint Applicants can neither admit nor deny.

43. When new wind power capacity is constructed in western PJM and wind power is subsequently generated, there are air quality benefits for Delaware.

Answer: Joint Applicants object to this request on grounds that it is vague and ambiguous in that it does not identify: (a) the amount of "wind power capacity," (b) the amount of wind generation or the length of time that the generation occurs, (c) whether any other resource is displaced as a result of the wind generation and if so, (d) where that resource is, (e) what the displaced resource is and (f) for how long it is displaced. As such the Joint Applicants can neither admit nor deny.

44. The PTC has benefited states beyond those that have mandatory RPS.

Answer: Joint Applicants object to this request on grounds that it is vague and ambiguous in the use of the phrase "has benefited states" in that it does not identify what the "benefits" are and in that it calls for speculation. As such the Joint Applicants can neither admit nor deny.

45. More than 10,000MW of installed capacity of wind power are in the eight states and two territories that have a voluntary RPS.

Answer: The Joint Applicants object to this request on grounds of relevance and to the extent the Joint Applicants are without information and knowledge necessary to admit or deny.

46. More than 3000MW of installed capacity of wind power in the states without voluntary or mandatory RPS.

Answer: See response to 45 above.

47. Siemens Wind Power is headquartered in Florida.

Answer: The Joint Applicants object to this request of grounds of relevance and to the extent the Joint Applicants are without sufficient knowledge or information necessary to admit or deny this request.

48. Next Era Energy Resources is headquartered in Florida.

Answer: The Joint Applicants object to this request of grounds of relevance.

49. General Electric has a wind turbine manufacturing facility in South Carolina.

Answer: The Joint Applicants object to this request of grounds of relevance.

50. The large wind turbine drivetrain testing facility is in South Carolina.

Answer: The Joint Applicants object to this request of grounds of relevance and on grounds that it is vague and ambiguous in that it does not identify who owns or operates "the large wind turbine drive train testing facility in South Carolina." As such the Joint Applicants can neither submit nor deny.

51. Neither Florida nor South Carolina has an RPS law.

Answer: The Joint Applicants object to this request and that it would require the Joint Applicants to engage in legal research on behalf of this intervener and to make a legal conclusion concerning the laws of other states.



52. Many nuclear plants in France are load-following.

Answer: The Joint Applicants object to this request on grounds of relevance.

66. Nuclear power has social costs.

Answer: Joint Applicants object to this request on grounds that it is vague and ambiguous in the use of the phrase: "social costs" as that phrase is not defined. Without waiving any objection, the Joint Applicants will provide a further response when due.

10. MR. FIRESTONE'S SECOND MOTION TO COMPEL. I hereby rule as follows as to Mr. Firestone's Second Motion to Compel, upholding every one of the Joint Applicants' Objections.

#### REQUESTS FOR ADMISSIONS<sup>1</sup>

1. Objections Sustained.
2. Objections Sustained.
3. Objections Sustained
4. N/A
5. Objections Sustained
6. Objections Sustained
7. Objections Sustained
8. Objections Sustained
9. Objections Sustained
10. Objections Sustained
11. Objections Sustained
12. Objections Sustained
13. N/A
14. Objections Sustained
15. Objections Sustained
16. N/A
17. N/A

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<sup>1</sup> I do not agree with the Joint Applicants' position that power generation is not a relevant issue in this docket. I do agree with this position to the extent it relates to the Joint Applicants' objections to Mr. Firestone's discovery requests which involve power generation all over the U.S. and the world. Moreover, I do not agree with the Joint Applicants' narrow definition of follow-up discovery as described in the Procedural Schedule due to the fact that the parties are in the process of amending the Procedural Schedule.

18. N/A
19. N/A
20. Objections Sustained
21. Objections Sustained
22. N/A
23. Objections Sustained
24. Objections Sustained
25. Objections Sustained
26. Objections Sustained
27. Objections Sustained
28. Objections Sustained
29. Objections Sustained
30. Objections Sustained
31. Objections Sustained
32. Objections Sustained
33. Objections Sustained
34. Objections Sustained
35. Objections Sustained
36. Objections Sustained
37. Objections Sustained
38. N/A
39. Objections Sustained
40. Objections Sustained
41. N/A
42. Objections Sustained
43. Objections Sustained
44. Objections Sustained
45. Objections Sustained
46. Objections Sustained
47. Objections Sustained
48. Objections Sustained
49. Objections Sustained
50. Objections Sustained
51. Objections Sustained
52. Objections Sustained
53. Through 65 N/A
66. Objections Sustained
67. Objections Sustained
68. Objections Sustained
69. Objections Sustained
70. N/A
71. Objections Sustained

- 72. N/A
- 73. Objections Sustained
- 74. Objections Sustained
- 75. N/A
- 76. Objections Sustained
- 77. Objections Sustained

INTERROGATORIES-Set 2

- 1. Objections Sustained
- 2. Objections Sustained
- 5. Objections Sustained
- 7. Objections Sustained
- 12. Objections Sustained
- 13. Objections Sustained
- 14. Objections Sustained
- 30. Objections Sustained
- 32. Objections Sustained
- 35. Objections Sustained
- 41. Objections Sustained

REQUEST FOR PRODUCTION-Set 2

DR1. Objections Sustained

11. Due to Mr. Firestone's abuse of the discovery process, which has been very expensive and burdensome for the Joint Applicants and the Commission, pursuant to Commission Rule 21(d), I impose the following "reasonable terms and conditions" upon Mr. Firestone's continued intervention, which is unprecedented for me as I have never before limited an intervener's discovery rights:

- a) Mr. Firestone is hereinafter prohibited from sending any additional Data Requests, Interrogatories and Requests for Production of Documents to the Joint Applicants.
- b) In compliance with the Procedural Schedule,<sup>2</sup> Mr. Firestone may continue to send Requests for Admission to the Joint Applicants, provided these requests are directed at "disputable facts" and are reasonable in number. If used properly, Requests for Admissions are the most cost effective discovery device.

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<sup>2</sup> The parties are in the process of amending the Procedural Schedule.

- c) The Joint Applicants are not required to prepare a Privilege Log for any of the documents regarding any of Mr. Firestone's discovery to date.
- d) Mr. Firestone may attend any depositions held in this docket.
- e) Mr. Firestone may continue to conduct complete discovery with the other parties in this docket; however, his discovery with the Joint Applicants shall proceed as described herein.
- f) Mr. Firestone may attend the evidentiary hearings, and participate to the extent other interveners are permitted to do so.
- g) If Mr. Firestone's discovery abuse continues, upon Motion from the Joint Applicants, I will consider revoking all of Mr. Firestone's discovery rights in this docket and/or revoking his intervener status.

**Done and ordered** this 17<sup>th</sup> day of September, 2014.

/s/ Mark Lawrence

Mark Lawrence

Senior Hearing Examiner