

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

IN THE MATTER OF THE APPLICATION OF)
DELMARVA POWER & LIGHT COMPANY, INC.)
EXELON CORORPATION, PEPCO HOLDINGS, INC.)
PURPLE ACQUISITION CORPORATION, EXELON) PSC DOCKET NO. 14-193
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))

ORDER NO. 8643

AND NOW, this 30th day of September, 2014, the Delaware Public Service Commission ("Commission") determines and orders the following:

1. On June 18, 2014, Delmarva Power & Light Company ("Delmarva"), Exelon Corporation ("Exelon"), Pepco Holdings Inc. ("PHI"), Purple Acquisition Company, Exelon Energy Delivery Company, LLC, and Special Purpose Entity, LLC ("Merger-Sub") (collectively the "Applicants") filed an application (the "Application") seeking approvals under 26 *Del. C.* §§215 and 1016 for a change of control of Delmarva to be effected by a merger of PHI with Merger-Sub, a wholly owned subsidiary of Exelon; and

2. On July 8, 2014, the Commission approved Order No. 8581 which designated Senior Hearing Examiner Mark Lawrence as the Hearing Examiner for this docket with the authority to grant or deny petitions to intervene. This Order also established an intervention deadline of July 28, 2014.

3. On August 7, 2014, Local Union 614 of the International Brotherhood of Electrical Workers, AFL-CIO ("Local 614") filed with the Commission a petition to intervene (the "Intervention Petition")

in this docket.¹ In this filing, Local 614 alleged that its principal owner attempted to seek timely intervention in this docket by serving the Joint Applicants and the Public Advocate (the "DPA") with a copy of a petition or petition notice; however, no copy of the Intervention Petition was actually timely filed with this Commission or timely served on the parties as required by the Commission's rules. See 26 *Del. Admin. C.* §§ 1001-1.6.4, 1.6.6, and 1.6.7.

4. On August 11, 2014, in Order No. 8613, the Hearing Examiner first determined that although the Intervention Petition was untimely because it was filed ten days after the Commission's deadline, nevertheless, "good cause" existed to treat the Intervention Petition as timely. The Hearing Examiner reasoned that "good cause" existed because Local 614's business manager mistakenly believed that hand-delivering a copy of the substantive aspects of the petition to the office of counsel to the Joint Applicants on the last day of the intervention period would be deemed as filed with the Commission. See Order No. 8613, ¶9.

5. The Hearing Examiner next determined that granting Local 614's Intervention Petition would not be in the public interest for two reasons. First, he found that Local 614 failed to adequately allege why its participation in this docket would be in the public interest as required by Commission Rule 21(a) (iii).² Second, he found

¹ The Hearing Examiner noted in Order No. 8613 that Local Union 614 e-filed the Intervention Petition via the Delafile system on this date, but also emailed it to the parties on August 5 and 6, 2014.

² The Commission notes that its Rules have been adopted and approved as set forth in the existing regulations at 26 *Del. Admin. C.* §1001. Hence, this citation no longer exists. The proper citation is 26 *Del. Admin. C.* §1001-2.9.1.3 which requires that a petition to intervene set forth a concise statement of why the petitioner's interest will not be adequately represented by the parties to the proceeding or why participation in the proceeding would be in the public interest.

that Local 614's claims fell outside the Commission's duty of analyzing whether the proposed merger is consistent with the public interest as required by 26 *Del. C.* §215(d). See Order No. 8613, ¶¶12, 13 and ordering paragraphs 2 and 3.

6. On August 14, 2014, Local 614 timely filed a petition for an interlocutory appeal (the "Interlocutory Petition"). The Joint Applicants responded by filing an opposition on August 18, 2014.

7. Having reviewed the record in this case; and having also received and reviewed in particular the Interlocutory Petition and the Joint Applicants' Response in Opposition to IBEW Local 614's Interlocutory Appeal; and having heard oral argument from the participants at our regularly-scheduled August 19, 2014 meeting; and having deliberated in public at that August 19, 2014 meeting;

**NOW, THEREFORE, IT IS HEREBY ORDERED BY THE AFFIRMATIVE
VOTE OF NOT FEWER THAN THREE COMMISSIONERS:**

8. We have jurisdiction over this matter pursuant to 26 *Del. C.* §201 and 29 *Del. C.* §10128.

9. An interlocutory appeal from a ruling of a Hearing Examiner may be taken to the full Commission "where extraordinary circumstances necessitate a prompt decision by the Commission to prevent substantial injustice or detriment to the public interest." 26 *Del. Admin. C.* §1001-2.16.1. Because of the strict deadlines set forth for this proceeding and the scheduled evidentiary hearings to be held in December 2014, we find that a decision on the Interlocutory Petition is required at this time.

10. Local 614 filed its Intervention Petition on August 14, 2014. A petition to intervene must be filed with the Commission no

later than the date specified for the filing of such petitions in the public notice. 26 *Del. Admin. C.* §1001-2.16.1. In this case, the deadline for filing an intervention petition was July 28, 2014. Our rules allow late interventions to be sought and granted for "good cause shown." *Id.* We find that the Intervention Petition here was not timely filed in fact and that no good cause exists to allow for its untimely filing. A mistaken belief that service of papers to one of the parties—with no filing made with the Commission until ten days after the intervention deadline—is not good cause to excuse an untimely filing.

11. Finally, we find that it would not be in the public interest to allow Local 614 to intervene in this case. A petition to intervene requires a concise statement of why the petitioner's interest will not be adequately represented by the parties to the proceeding or why participation in the proceeding would be in the public interest. 26 *Del. Admin. C.* §1001-2.9.1.

Although in the past we have been liberal in construing what qualifies as "in the public interest" as it relates to petitions to intervene, our prior decisions have been based on whether a party has a concrete interest in the particular case. Here, the union is interested in working and employment conditions as they relate to PECO Energy Company ("PECO"), which is not a party in this docket. We believe that Local 614's interest in this matter is too tenuous to overrule the Hearing Examiner's decision. Hence, we approve the Hearing Examiner's decision to deny the Intervention Petition and uphold his findings except to the extent he found "good cause" to allow the

untimely filing of the Intervention Petition. We find that "good cause" does not exist here to allow the untimely filing of the Intervention Petition. (3-2, Commissioners Winslow and Lester voting no).

12. The Commission reserves the jurisdiction and authority to enter such further Orders in this matter as may be deemed necessary or proper.

BY ORDER OF THE COMMISSION:

/s/ Dallas Winslow
Chair

/s/ Joann T. Conaway
Commissioner

/s/ Harold B. Gray
Commissioner

/s/ Jeffrey J. Clark
Commissioner

/s/ Jaymes B. Lester
Commissioner

ATTEST:

/s/ Alisa Carrow Bentley
Secretary