PALEY
ROTHMAN
GOLDSTEIN, ROSENBERG, EIG & COOPER
CHARTERED
ATTORNEYS AT LAW • 4800 HAMPDEN LANE, 7TH FLOOR • BETHESDA, MARYLAND 20814-2922 • PH 301-656-7603 • FX 301-654-7354

September 17, 2014

David J. Collins
Executive Secretary
Maryland Public Service Commission
William Donald Schaefer Tower
6 St. Paul Street, 16th Floor
Baltimore, MD 21202-6906

Re: Case No. 9361

Dear Executive Secretary Collins,

Enclosed for filing is the Petition to Intervene by the Coalition for Utility Reform in the above referenced proceeding (In the Matter of the Merger of Exelon Corporation and Pepco Holdings, Inc.). Pursuant to the submission filing guidelines and Order No. 86555, 17 copies of this filing are being sent via first class mail.

Please feel free to contact my office should you have any questions regarding this filing.

Sincerely,

Ryan S. Spiegel, Esq.
PALEY, ROTHMAN, GOLDSTEIN,
ROSENBERG, EIG, & COOPER, CHTD.
4800 Hampden Lane, 7th Floor
Bethesda, MD 20814
Telephone: (301) 968-3412
Facsimile: (301) 654-7354
E-mail: rspiegel@paleyrothman.com

BEFORE THE PUBLIC SERVICE COMMISSION OF MARYLAND

IN THE MATTER OF THE MERGER OF	*	
EXELON CORPORATION AND PEPCO	*	CASE NO. 9361
HOLDINGS, INC.	*	
	*	
______________________________	*	

PETITION TO INTERVENE

BY THE

COALITION FOR UTILITY REFORM

Pursuant to the Commission's Order 8655 issued on August 19, 2014, the Coalition for Utility Reform ("the Coalition"), a broad-based coalition consisting of local-elected government officials, municipal governments from both Montgomery County and Prince George's County, environmental organizations, national energy think tanks, and advanced energy economy companies, file this timely petition to intervene and become a full party in the above referenced proceeding.

As set forth more fully below in sections 13 and 14, the Coalition submits that in order for the Commission to find that the proposed merger is in the public interest, it must include among the conditions it imposes tying at least 50% of the merged entity's return on equity to meeting performance metrics that will produce a more cost-effective, reliable, cleaner, technologically advanced and consumer-directed distribution system.

In support of its petition, the Coalition states as follows:

(1) This proceeding will determine whether, and under what conditions, Exelon Corporation ("Exelon") will be permitted, in the words of the Commission in Order 8655, "to acquire the power to exercise substantial influence over the policies and actions of Pepco Holdings, Inc. ("PHI), Potomac Electric Power Company ("Pepco"), and Delmarva Power &

Light Company ("Delmarva Power")" pursuant to the application filed on August 19th, 2014. That application in turn reflects the terms set forth under an Amended and Restated Agreement and Plan of Merger dated July 18, 2014, wherein Exelon and PHI have agreed to combine through a proposed merger.

(2) The proposed merger has profound implications for the State of Maryland. If approved, it would result in a single energy player being responsible for providing electric distribution services to approximately 85% of the people of Maryland. For the residents who have suffered through unacceptably poor service by Pepco throughout the years, this proceeding will determine our fate going forward for decades to come.

(3) The Coalition for Utility Reform ("the Coalition") takes no position on whether the merger is in the public interest or on a wide variety of potential conditions that may be required in order to find it in the public interest.[1] However, the Coalition does submit that one set of conditions that is necessary in order to make a finding that the merger could be in the public interest are conditions, set forth more fully below, that would bring about fundamental utility reforms.

(4) The Coalition has a direct and substantial interest in this proceeding, interests that cannot be adequately represented by any other party given the Coalition's singular focus on obtaining fundamental utility reform in this proceeding. The Coalition's current members include communities in Montgomery County and Prince George's County that would be served by the merged entity;[2] elected officials representing these communities; Maryland environmental organizations, whose members live in the communities that will be served by the merged entity, if approved, and who seek to ensure that the merged entity, particularly in light of Exelon's heavy investment in nuclear power, is required to significantly contribute to bringing about a cleaner environment;[3] national energy think tanks, including the Energy Future Coalition who was directed by the Governor's Reliability Task Force to develop a pilot for Utility 2.0 for the

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1 While the Coalition itself takes no position on whether the merger is in the public interest, this is without prejudice to the right of individual members of the coalition to take a position on this fundamental question.

2 Montgomery County has separately intervened and therefore cannot join this coalition. The County has advised the Coalition of its support for the Coalition's objectives.

3 The Sierra Club has intervened in this proceeding in its own name and therefore is not an official member of the Coalition. However, the Sierra Club has advised the Coalition of its strong support for the Coalition's objectives.

state; and solar, energy efficiency, and smart grid companies that are poised to contribute to a more innovative, dynamic, and cleaner grid in Maryland.

(5) What binds the Coalition together is the conviction that the current regulatory and utility business model is inconsistent with the broader public interest. It has certainly not served the interests of the residents of Montgomery County and Prince George's County.

(6) The Coalition is hardly alone in this view. In August, 2012, the Energy Future Coalition ("EFC"), a nationally respected non-profit focused exclusively on issues of this nature, testified powerfully before Governor O'Malley's Electric Reliability Task Force that our current utility model is a "vestige" of "century old" thinking and needs fundamental reform. Importantly, the Governor's Task Force "concurred":

> During the course of the roundtable discussions, there was consensus that the utility industry was transforming at a pace unseen in its history. Between the breakthroughs in technology regarding the delivery of energy, the analytics involved in evaluating the usage of energy, and the numerous and varied ways to communicate with customers, utilities are constantly reacting and adapting to changing paradigms. ***Layered on top of these formidable challenges are significant policy goals, including the increase of renewable energy sources, the reduction of energy usage, and the decrease in greenhouse gas emissions, that require additional adaptation from the utilities*** (emphasis added).
>
> The new reality facing the utility industry is that they must perform in an environment rife with change, pressure, and demands that far exceed their traditional scope of expertise and past consumer expectations. ***The Task Force concurs with the analysis offered by the Energy Future Coalition, that this is a transformative time in Maryland's energy future, and that big, bold thinking is required*** (emphasis added).
>
> The Task Force is also cognizant of its recommendations regarding changes to the cost recovery model. Specifically, by modifying the incentives for utilities, i.e., offering benefits if they exceed reliability metrics and promising penalties if they fail to meet them, the group has already embraced a review of the traditional regulatory construct. ***Therefore, we are intrigued by the vision that the Energy Future Coalition has posited; that by rewarding performance, consumers will receive better performance.***[4]

[4] "Weathering the Storm." Report of the Grid Resiliency Task Force. September 24, 2012. Recommendation 11 at p. 89.

As a result of the EFC's testimony, and the recognition by the Task Force of the need for "big, bold thinking", the Task Force requested that EFC produce a pilot program for Utility 2.0. EFC did just that on March 15, 2013, which was filed with the Commission on May 14, 2013.[5]

As the Task Force recognized, the most important reform advocated by EFC in its report is to "*align utility actions with customer values*." EFC posits those values as "*cost [minimization], reliability, customer service, adoption of smart grid technologies and services, and support for alternate energy*."[6] To bring about this realignment, EFC maintains it is critical to focus the compensation a utility earns on the degree to which the utility meets these fundamental consumer objectives. Performance based ratemaking on what matters most.

(7) EFC's work is consistent with what is now an emerging national consensus among industry leaders. As the authors of America's Power Plan state in the very first sentence of their executive summary, *"[t]he electricity system in America, and in many other nations, is in the early days of a radical makeover that will drastically reduce greenhouse gas emissions, increase system flexibility, incorporate new technologies, and shake existing utility business models. This is already underway: it is not speculation."*[7]

(8) Similarly, the Rocky Mountain Institute, a nationally recognized leader in this field, maintains that:

> "[t]oday's electricity system faces a perfect storm of deferred major infrastructure investments, financial constraints, stagnating or falling demand, a fundamentally altered competitive landscape, and evolving environmental and health priorities. But there's also an astonishing menu of solutions. Rapid technological progress has overcome or bypassed many previous constraints on how electricity is made and delivered. Advances in renewable generation technologies, communications and controls, distributed

[5] *See* Councilmember Roger Berliner's "The Energy Future Coalition's Report and Recommendations in Response to the Request of the Governor's Grid Resiliency Task Force" before the Public Service Commission of Maryland. May 14, 2013. Addendum to Maillog 145759: Councilmember Berliner's "Petition to Open Investigation into Utility 2.0 - The Future of Maryland's Grid." March 5, 2013.

[6] *Utility 2.0: Piloting the Future for Maryland's Electric Utilities and their Customers.* Energy Future Coalition. March 15, 2013. Pgs. 24 and 2, respectively.

[7] Harvey, Hal and Sonia Aggarwal. *America's Power Plan.* Energy Innovation. 2013. Pg. 2.

generating technologies, and storage *have laid the foundation for a customer-centric electricity system that is renewable, distributed, and resilient.*"[8]

(9) Significantly, other state commissions, notably, the New York Public Service Commission, are moving aggressively to bring about this new and better future. In April of this year, the Commission announced that it would pursue fundamental change, change it called "Reforming the Energy Vision."

(10) According to the New York Commission:

> "[T] he basic cost-of-service paradigm for regulating distribution utilities ....provides few incentives for utilities to innovate or to support third-party innovation, to address the current challenges in ways that promote a more efficient system and benefit consumers... . Although the existing paradigm served adequately for many years, it now falls short of the pace of technology development that defines many parts of our economy.
>
> This report proposes a platform to transform New York's electric industry, for both regulated and non-regulated participants, with the objective of creating market based, sustainable products and services that drive an increasingly efficient, clean, reliable, and consumer-oriented industry. One key outcome of the transformation is to address the Commission's stated objective to make energy efficiency and other distributed resources a primary tool in the planning and operation of an interconnected modernized power grid. Under the customer-oriented regulatory reform envisioned here, utilities will actively manage and coordinate a wide range of distributed resources ... ."[9]

(11) The New York Commission maintains that such "sweeping reform[s]" will "*secure material economic and environmental benefits for our consumers and, at the same time, drive economic development by establishing the scale that supports private investment in the existing and new companies that will provide these benefits.*"[10]

(12) The Coalition for Utility Reform submits that this proceeding is the time and place to provide the "material economic and environmental benefits" New York is intent on securing for its citizens to the people of Maryland, and particularly to the residents of Montgomery and Prince George's County who have endured substandard utility service for many, many years. If

[8] From Executive Summary of: Lovins, Amory and Rocky Mountain Institute. *Reinventing Fire: Bold Business Solutions for the New Energy Era.* New York: Chelsea Green Publishing, 2011.

[9] See *Reforming the Energy Vision.* NYS Department of Public Service Staff Report and Proposal. Case 14-M-0101. April 24, 2014. Pg. 2.

[10] Ibid., Pg. 10.

the Commission does determine to grant a single energy player such a dominant role in our state, Maryland should insist in return that the merged entity assume a leadership role in meeting our state's most significant energy, environmental, and economic policy objectives. The current system does not do that.

(13) Accordingly, the Coalition recommends that in order for the Commission to conclude that the proposed merger is in the public interest, it must condition approval upon a requirement that 50% of the merged utility's return on equity be tied to meeting critical performance metrics. While for the most part the precise metrics themselves should be the subject of a future proceeding, this proceeding should clearly identify the policy objectives and consumer requirements suitable for the 21st Century.

(14) The Coalition recommends building upon the recommendations set forth by EFC in its report to the Governor's Task Force, which are also generally consistent with the direction of New York. Specifically, the Coalition for Utility Reform submits that the merged entity's financial return paid for by ratepayers should be tied to meeting the following ratepayer objectives:

- Cost Minimization – Under the current and traditional regulatory model, utilities earn their return on the basis of capital invested in the system. This produces the perverse incentive to over-invest and a disincentive to find least cost alternatives. Distributed energy resources, such as energy efficiency, renewables, and micro-grids, are often far more cost-effective than traditional utility investments.

- Reliability – This is one metric that does not require further elucidation or reflection. The communities served by the merged entity should receive nothing short of excellent reliability. It is fundamental to our quality of life; it is foundational for our economy. The merged entity should be required to provide "top quartile" reliability within the next three years, as measured by SAIDI, SAIFI and/or CAIDI metrics.

- Customer Satisfaction -- In an unregulated environment, when customers are unhappy with a product, they can take their business elsewhere. Not so with monopoly electric distribution companies. Were that possible, Pepco customers would have fled in droves. Indeed, in a recent JD Power customer satisfaction survey, Pepco ranked 15 out of 17 East Coast utility companies.[11] Metrics should be developed by which the merged entity is judged by how well it meets consumer needs.

- Carbon Reduction & Environmental Stewardship -- Carbon reduction must become a fundamental utility objective. The most recent scientific studies make it abundantly clear that climate change poses an unacceptable risk to the future of our planet. The merged entity's return should be linked to specific goals for renewable energy and energy efficiency. Setting ambitious targets for carbon reduction is particularly important in this proceeding given the concern of many that Exelon's substantial investment in nuclear power plants makes it hostile to roof top solar and other "disruptive" renewable and distributed technologies

- Distributed Energy Resources -- The centralized grid is energy inefficient and susceptible to extended outages from weather, cyber attacks, and physical attacks. Distributed resources, such as micro-grids and solar with back up batteries, are important for essential public facilities and communities alike. These technologies can also contribute to other goals, such as grid reliability and customer optionality.

- Customer Control – The current utility model is a top down, one direction, utility dominated system. It needs to give more power – not just electric power – to its customers. As EFC observed, "residential customers will, over time, seek to avail themselves of the latest "smart" equipment to optimize and minimize their use of electricity, and will make appropriate judgments on using those characteristics to achieve greater savings and convenience."[12] The merged entity should be judged on optimizing the smart grid technology to empower consumers to take control over their electricity consumption.

- Innovation – As EFC observed, "utilities are not good innovators, but are highly risk-averse and conservative entities that have the responsibility for reliability and consistency of the operation of critical infrastructure; the trends playing out in the transformation of the electricity industry absolutely call out for the high levels of innovation, risk-taking, and experimentation that a swarm of competing technology vendors and third-party intermediators will inevitably bring."[13] The merged entity should be rewarded on the basis of how much innovation it achieves through opening its system to the world of entrepreneurs.

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[11] Clabaugh, Jeff. "Pepco ranks near bottom in customer satisfaction survey." *Washington Business Journal.* July 16, 2014.

[12] *Utility 2.0: Piloting the Future for Maryland's Electric Utilities and their Customers.* Energy Future Coalition. March 15, 2013. Pg. 10.

[13] Ibid., Pg. 27.

(15) The current members of the Coalition in Support of Utility Reform are as follows:

Environment Maryland
c/o Joanna Diamond, Director
3121 St. Paul Street, Suite 26
Baltimore, MD 21218

Energy Future Coalition
c/o John Jimison, Managing Director
1750 Pennsylvania Avenue, Suite 300
Washington, DC 20006

Maryland Municipal League
Montgomery Chapter
c/o Bridget Donnell Newton, President
111 Maryland Avenue
Rockville, MD 20850

City of Rockville
c/o Bridget Donnell Newton, Mayor
111 Maryland Avenue
Rockville, MD 20850

City of Takoma Park
c/o Mayor Bruce R. Williams
7500 Maple Avenue
Takoma Park, MD 20912

Town of Garrett Park
c/o Peter Benjamin, Mayor
P.O. Box 84
4600 Waverly Avenue, Top Floor
Garrett Park, MD 20896

Town of Somerset
c/o Rich Charnovich, Town Manager
4510 Cumberland Avenue
Chevy Chase, MD 20815

City of Greenbelt
c/o Emmett Jordan, Mayor
25 Crescent Road
Greenbelt, MD 20770

City of College Park
c/o Andrew M. Fellows, Mayor
4500 Knox Road
College Park, MD 20740

NextGen LED, LLC
c/o Marnie Abramson, Partner
1101 Wootton Parkway, Suite 920
Rockville, MD 20852

Wattlots LLC
c/o Chris Connor, Director of Business Development
1932 Long Hill Rd
Millington, NJ 07946

Wired Group
c/o Paul Alvarez, President
P.O. Box 150963
Lakewood, CO 80215

Galvin Electricity Institute
c/o Kurt Yeager, Vice Chairman
P.O. Box 1336
Aptos, CA 95001

Mayor Bruce R. Williams
City of Takoma Park
7500 Maple Avenue
Takoma Park, MD 20912

Mayor Jeffrey Z. Slavin
Town of Somerset
4510 Cumberland Avenue
Chevy Chase, MD 20815

Councilmember Roger Berliner
Montgomery County Council
100 Maryland Avenue
Rockville, MD 20850

Councilmember Hans Riemer
Montgomery County Council
100 Maryland Avenue
Rockville, MD 20850

Councilmember Marc Elrich
Montgomery County Council
100 Maryland Avenue
Rockville, MD 20850

Councilmember Phil Andrews
Montgomery County Council
100 Maryland Avenue
Rockville, MD 20850

Councilmember George Leventhal
Montgomery County Council
100 Maryland Avenue
Rockville, MD 20850

Councilmember Cherri Branson
Montgomery County Council
100 Maryland Avenue
Rockville, MD 20850

Councilmember Seth Grimes
City of Takoma Park
7500 Maple Avenue
Takoma Park, MD 20912

Councilmember Kate Stewart
City of Takoma Park
7500 Maple Avenue
Takoma Park, MD 20912

Councilmember Terry Seamens
City of Takoma Park
7500 Maple Avenue
Takoma Park, MD 20912

Councilmember Jarrett Smith
City of Takoma Park
7500 Maple Avenue
Takoma Park, MD 20912

Councilmember Fred Schultz
City of Takoma Park
7500 Maple Avenue
Takoma Park, MD 20912

(16) The Coalition requests that copies of all pleadings, filings and official correspondence in this case be addressed to:

Ryan S. Spiegel, Esq.
PALEY, ROTHMAN, GOLDSTEIN
ROSENBERG, EIG & COOPER, CHTD.
4800 Hampden Lane, 7th Floor
Bethesda, Maryland 20814
Telephone: (301) 968-3412
Facsimile: (301) 654-7354
E-mail: rspiegel@paleyrothman.com

and

Roger A. Berliner, Esq., *pro hac vice* pending
6421 Rock Forest Dr, Apt 401
Bethesda, MD 20817
Telephone: (301) 706-0628
Facsimile: (240)-777-7989
roger@berlinerlawpllc.com

(17) Wherefore, for the reasons set forth herein, the Coalition for Utility Reform requests that the Commission grant this petition to intervene and allow the Coalition to become a full, active party in the proceeding that will determine whether, and if so, on what terms, the proposed merger of Exelon and Pepco will be permitted.

Respectfully submitted,

Roger A. Berliner, Esq.,
pro hac vice pending
6421 Rock Forest Dr, Apt 401
Bethesda, MD 20817
Telephone: (301)-706-0628
Facsimile: (240)-777-7989
roger@berlinerlawpllc.com

Ryan S. Spiegel, Esq.
PALEY, ROTHMAN, GOLDSTEIN
ROSENBERG, EIG & COOPER, CHTD.
4800 Hampden Lane, 7th Floor
Bethesda, Maryland 20814
Telephone: (301) 968-3412
Facsimile: (301) 654-7354
E-mail: rspiegel@paleyrothman.com

Notice of Appearance

The Coalition for Utility Reform requests that the Commission enter the appearance of Ryan S. Spiegel, Esq., who is admitted to practice law in the State of Maryland, as Counsel in the above-captioned proceeding. Mr. Spiegel is designated as the attorney to receive service on behalf of the above-named petitioners.

Ryan S. Spiegel, Esq.
PALEY, ROTHMAN, GOLDSTEIN
ROSENBERG, EIG & COOPER, CHTD.
4800 Hampden Lane, 7th Floor
Bethesda, Maryland 20814
Telephone: (301) 968-3412
Facsimile: (301) 654-7354
E-mail: rspiegel@paleyrothman.com

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Petition to Intervene of Montgomery County, Maryland have been served electronically and mailed first-class, postage prepaid on this 17th day of September, 2014 to the below-listed parties.

Paul R. Bonney
Counsel
Exelon Corporation
100 Constellation Way, Suite 500C
Baltimore, MD 21202

Darryl M. Bradford, Esq.
Senior Vice President, General Counsel
Regulatory
Exelon Corporation
10 South Dearborn, 54th Floor
Chicago, IL 60603

Thomas P. Gadsden
Counsel
Morgan, Lewis & Bockius LLP
1701 Market Street
Philadelphia, PA 19103-2921

Brooke E. McGlinn
Counsel
Morgan, Lewis & Bockius LLP
1701 Market Street
Philadelphia, PA 19103-2921

Paula M. Carmody
Office of People's Counsel
6 St. Paul Street, Suite 2102
Baltimore, MD 21202

Wendy E. Stark, Esq.
Deputy General Counsel
Pepco Holdings, Inc
701 S. 9th Street, NW
Washington, DC 20068

Peter Meier, Esq.
Vice President & General Counsel
Pepco Holdings, Inc.
701 S. 9th Street, NW
Washington, DC 20068

Kevin C. Fitzgerald
Counsel
Pepco Holdings, Inc.
701 S. 9th Street, NW
Washington, DC 20068

F. William DuBois, Esq.
Venable, LLP
750 East Pratt Street, 7th Floor
Baltimore, MD 21202-3133

Michael A. Dean
Assistant Staff Counsel
Staff Counsel
Public Service Commission
William Donald Schafer Tower
6 St. Paul Street, 16th Floor
Baltimore, MD 21202

Leslie Romine
Staff Counsel
Public Service Commission
William Donald Schafer Tower
6 St. Paul Street, 16th Floor

Jennifer J. Grace
Assistant Staff Counsel
Staff Counsel
Public Service Commission
William Donald Schafer Tower
6 St. Paul Street, 16th Floor
Baltimore, MD 21202

J. Joseph Curran, III, Esq.
Venable, LLP
750 East Pratt Street, 7th Floor
Baltimore, MD 21202

Frann G. Francis, Esq.
Senior Vice President and General Counsel
Apartment and Office Building
Association of Metropolitan Washington
1050 17th Street, NW, Suite 300
Washington, DC 20036

Bruce R. Oliver
Revilo Hill Associates, Inc.
7103 Laketree Drive
Fairfax Station, Virginia, 22039

Heather R. Cameron
Assistant General Counsel
General Services Administration
1800 F Street, NW
Room 2019A
Washington, D.C. 20405

Lisa Brennan
Associate County Attorney
Montgomery County, Maryland
101 Monroe Street, Third Floor
Rockville, MD 20850

Taggart Hutchinson
Assistant County Attorney
Montgomery County, Maryland
101 Monroe Street, Third Floor
Rockville, MD 20850

Susan Stevens Miller, Esq.
Earthjustice
1525 Massachusetts Avenue, NW
Suite 702
Washington, DC 20036

Paul Chernick
President, Resource Insight
5 Water Street
Arlington, Massachusetts 02476

David L. Scull, Esq.
7960 Old Georgetown Rd. #8C
Bethesda, MD 20814

Gary R. Alexander, Esq.
James K. McGee, Esq.
Alexander & Cleaver, P.A.
11414 Livingston Road
Fort Washington, Maryland 20744

M. Andree Green, Esq.
County Attorney
14741 Gov. Oden Bowie Drive, Room 5121
Upper Marlboro, Maryland 20772

Nicholas J. Enoch, Esq.
349 North Fourth Avenue
Phoenix, Arizona 85003

Charles J. Brown, III, Esq.
Emily K. Devan, Esq.
913 North Market Street, 10th Floor
Wilmington, Delaware 19801

Ryan S. Spiegel, Esq.
PALEY, ROTHMAN, GOLDSTEIN
ROSENBERG, EIG & COOPER, CHTD.
4800 Hampden Lane, 7th Floor
Bethesda, Maryland 20814
Telephone: (301) 968-3412
Facsimile: (301) 654-7354
E-mail: rspiegel@paleyrothman.com

Roger A. Berliner, Esq., *pro hac vice* pending
6421 Rock Forest Dr, Apt 401
Bethesda, MD 20817
Telephone: (301)-706-0628
Facsimile: (240)-777-7989
roger@berlinerlawpllc.com