



Member Update: March 23, 2016

DC PSC Approves Pepco/Exelon Merger with Conditions Supported by AOBA

After two prior rejections of the proposed Pepco Holdings/Exelon Merger, the DC PSC, in a 2 to 1 decision, approved the Merger on March 23, 2016 with the terms and conditions supported by AOBA, and rejected by all other parties. Given that Pepco Holdings, Inc. (“PHI”) had previously received regulatory approvals from the Federal Energy Regulatory Commission and from each of the other jurisdictions in which PHI maintained distribution utility operations (i.e., Maryland, Delaware, and New Jersey), the DC PSC decision represented the critical final approval required for the Merger. Within hours of the announcement of the DC PSC decision, Pepco and Exelon notified the Commission that they had closed their merger transaction.

Although multiple District of Columbia governmental bodies, including the Office of Peoples’ Counsel (“OPC”), the Mayor, and the Attorney General had previously supported a Settlement Agreement which would have allowed the Merger to move forward, each of those parties specifically rejected the terms and conditions the Commission has now approved. AOBA was the only party to the proceeding (which lasted nearly two years) that specifically [supported](#) the terms the Commission approved in its March 23, 2016 decision.

In October 2016 a Non-Unanimous Settlement Agreement (NSA) aimed at resolving issues associated with the Merger was entered into by a number of parties in the District. AOBA joined in that settlement, but only after

AOBA was able to secure benefits for members who operate multi-family apartment buildings and protections for commercial building owners and operators. On February 26, 2016, the DC PSC rejected the Non-Unanimous Settlement finding that certain provisions of the settlement were not in the public interest. However, through the concurring opinion of Commissioner Joanne Doddy Fort, a possible way forward for the Merger was set forth based on the adoption of amendments to specific elements within the settlement agreement that had been submitted to the Commission.

Since AOBA believed the Commissioner Fort's amendments to the previously submitted settlement agreement strengthened and enhanced the settlement, AOBA expressed its support for Commissioner Fort's revised version of the settlement agreement. Other than Pepco and Exelon, no other parties to the proceeding indicated support for Commission's revised settlement terms, and several parties specifically rejected those terms.

In comments filed with the PSC regarding the Commission's revisions to the terms of the settlement, AOBA stated:

"... the proposed revised NSA clarifies the responsibilities of Exelon and Pepco in a post-merger environment, permits all ratepayers to participate in the benefits of the merger, ensures that funds that are intended to benefit ratepayers and improve Pepco's electric system in the District of Columbia are not diverted to other purposes, and retains the Commission's statutory authority to enforce the terms and conditions of the revised NSA."

AOBA notes in particular that the Commission's revised terms for the NSA address the allocation of \$25.6 million of customer benefits by deferring a decision on how and when these credits should be distributed until Pepco's next base rate case in the District. Since the Commission's February 26, 2016 decision found that excluding the Commercial class from receiving a share of such benefits is *"unfair and unjustified on the*

evidentiary record in this proceeding,” AOBA believes that the Commission’s revised terms for the NSA open the door for commercial and multi-family customers to participate more directly in those benefits.

The revised terms for the NSA also reiterate the Commission’s support for AOBA’s long-standing position advocating for eliminating the “**negative rates of return**” for residential service that Pepco presently experiences. Those negative rates of return result in substantial subsidies between rate classes that are presently being borne primarily by Pepco’s commercial customers in the District.

Additionally, the revised terms of the Settlement ensure that monies earmarked for ratepayer benefits, such as grid modernization, would be safeguarded against reallocation to DC’s general fund, as has happened in the past. To further ensure the value of promised benefits to District ratepayers, the Commission’s revised NSA terms mandate that funds to be provided by Exelon as part of the Merger settlement be placed into interest-bearing escrow accounts.

For 40 years, AOBA has been the only party in rate case proceedings, as well as two previous merger cases, representing commercial (non-governmental) and multi-family customers. AOBA will continue to advocate for equitable distribution rates for commercial and multifamily customers who, along with GSA, currently pay the entire return for PEPCO’s operations in the District of Columbia.

AOBA believes the PSC’s decision is in the public interest because it ensures a financially healthy utility while providing safeguards to better protect the interests of ALL ratepayers, including multi-family apartment buildings and commercial office buildings.