

**ORDER NO. 90498**

In the Matter of the Merger of Exelon  
Corporation and Pepco Holdings, Inc.

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BEFORE THE  
PUBLIC SERVICE COMMISSION  
OF MARYLAND

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CASE NO. 9361  
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**Issue Date: February 3, 2023**

**ORDER ON COMPLIANCE WITH MERGER CONDITIONS**

**Background**

1. On October 5, 2022, the Commission issued a “Notice of Comment Period”, allowing parties and interested persons to respond to the sufficiency of the merger applicants’ (“Pepco”) March 26, 2021, response to the Commission’s request to demonstrate merger compliance.

**Gaithersburg’s Comments**

2. On November 3, 2022, the City of Gaithersburg submitted its comments. The City of Gaithersburg alleged violations of Merger Condition 4 (Energy Efficiency), Condition 5 (Enhanced Energy Efficiency Plans), and Condition 11 (Reliability – Customer Service and Satisfaction).

3. Regarding Conditions 4 and 5, Gaithersburg alleges that Pepco “has not worked to make their assets more efficient.”<sup>1</sup> Specifically, Pepco has not developed a street light

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<sup>1</sup> November 3, 2022, Letter at .1.

conversion plan from High Pressure Sodium lights to LEDs, which would result in much greater energy efficiency.

4. Regarding Condition 11, Gaithersburg alleges that it receives many complaints from residents, claiming that they are unable to obtain a response from Pepco regarding their service issues. Essentially, Gaithersburg alleges a failure of communication between Pepco and its ratepayers.

#### **Staff's Comments**

5. On November 4, 2022, Staff submitted its comments in which it primarily agreed that Pepco had complied with all conditions. However, Staff noted that Pepco's Corporate Governing Principles did not include the Commission as an entity from which Pepco Holdings Inc. required written approval to initiate or invest in new non-utility operations as required by Condition 50.

#### **Response by Pepco**

6. In response to Gaithersburg's comments, Pepco noted that Conditions 5 and 11 were not included in the initial Commission Order requiring the Company to demonstrate merger compliance.<sup>2</sup> Therefore, the Commission should not consider Gaithersburg's comments on these conditions.

7. Substantively, Pepco argues that it complies with Condition 4 annually, on February 15 and August 15, through the filing of its EmPOWER semi-annual reports, and triennially with the filing of its three-year program cycle plans.

8. Regarding Condition 5, the Commission has previously ruled that the Company had fully complied with Condition 5 and required no further filings. Similarly, Pepco

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<sup>2</sup> The Commission's Letter Order (Mail Log No. 233898) asks the Company to demonstrate compliance with Conditions 1, 4, 10, 12, 17, 18, 19, 21, 22, 23, 25, 26, 33, 34, 35, 40, 41, 43, 45 and 50.

argues that it fully complied with Condition 11 when it filed a root-cause analysis as well as an action plan to improve its customer-service metrics on September 22, 2016.<sup>3</sup>

9. In response to Staff's comments, Pepco acknowledged that the Corporate Governing Principles of Pepco Holdings, Inc. provided to Staff did not include the Commission as an entity from which written approval was required in certain cases, but Pepco stated that the amended Corporate Governing Principles do contain the required language. Pepco promised to submit this updated language separately.

**Commission Decision**

10. The Commission agrees with Pepco that Conditions 5 and 11 were not included within the list of conditions to be addressed in Pepco's compliance filing. Additionally, the Company has complied with Condition 4 through its EmPOWER semi-annual reports and three-year plans.

11. Therefore, the Commission cannot conclude that Pepco has violated any of the merger conditions raised by the City of Gaithersburg. However, the Commission expects that Pepco will promptly address the communication issues the City has raised.

12. Regarding Staff's Comments, the Commission agrees and finds that Pepco is in compliance with all merger conditions. If Pepco has not already done so, the Commission directs it to submit the updated Corporate Governing Principles that include the language required by Condition 50.

**IT IS THEREFORE**, this 3rd day of February, in the year of Two Thousand Twenty-Three, by the Public Service Commission of Maryland, **ORDERED**:

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<sup>3</sup> Maillog No. 199620.

(1) that Pepco Holdings, Inc. shall file with the Commission updated Corporate Governing Principles that include the Commission as an entity from which it must acquire written approval to initiate or invest in new non-utility operations as required by Condition 50; and

(2) that upon receipt of the updated Corporate Governing Principles, Exelon Corp. and Pepco Holdings Inc. are in compliance with the merger conditions attached to Order No. 88022.

*/s/ Jason M. Stanek* \_\_\_\_\_

*/s/ Michael T. Richard* \_\_\_\_\_

*/s/ Anthony J. O'Donnell* \_\_\_\_\_

*/s/ Odogwu Obi Linton* \_\_\_\_\_

*/s/ Patrice M. Bubar* \_\_\_\_\_

Commissioners