
DC Regulators Veto $6.8B Exelon-Pepco Deal

By **Chelsea Naso**

Law360, New York (August 25, 2015, 4:52 PM ET) -- The D.C. Public Service Commission on Tuesday rejected the $6.8 billion merger between Exelon Corp. and Pepco Holdings Inc., with the three-member commission ultimately concluding that the proposed tie-up between the utility companies is "not in the public interest."
Chairman Betty Ann Kane contended that the resulting company, a mid-Atlantic electric and gas utility giant with about 10 million customers and a rate base of approximately $26 billion, would not be able to properly focus on providing safe and affordable service to local residents.

"The public policy of the district is that the local electric company should focus solely on providing safe, reliable and affordable distribution service to district residences, businesses and institutions. The evidence in the record is that sale and change in control proposed in the merger would move us in the opposite direction," she said in a statement.

Exelon and Pepco have 30 days to ask the commission to reconsider.

In a joint statement, Exelon and Pepco said they were disappointed with the outcome, noting that they planned to review their next possible steps before deciding how to proceed.

"We are disappointed with the commission's decision and believe it fails to recognize the benefits of the merger to the District of Columbia and its residents and businesses. We continue to believe our proposal is in the public interest and provides direct immediate and long-term benefits to customers, enhances reliability and preserves our role as a community partner," the statement said.

The deal, which was announced in April 2014, was set to bring together Exelon utilities Baltimore Gas and Electric Co., Commonwealth Edison Co. and Peco Energy Co. with Pepco Holdings utilities Atlantic City Electric, Delmarva Power and Control Inc. and The Potomac Electric Power Co. The six utilities provide power for customers in five mid-Atlantic states stretching from New Jersey to Virginia, as well as in Chicago and most of northern Illinois and Washington, D.C.

The proposed merger drew scrutiny from several community organizations, including D.C. Sun, a group of local residents that joined together prior to the deal to promote the use of renewable energy.

The group was worried that because Exelon has energy generation assets, the company could have a conflict of interest, according to Randy Speck, a Kaye Scholer LLP special counsel who represented D.C. Sun pro bono.

"Our concern was that rather than having a utility that was focused on and supportive of the expansion of renewable generation, we would have, under their proposed merger, a utility that has at least divided loyalties," he said.

The D.C. Public Service Commission is also the only utility that weighs environmental factors in its decision, making concerns about the potential to suppress the proliferation of renewable energy sources particularly pertinent, Speck explained.

Exelon and Pepco had clinched approval from several state and federal regulatory boards before the D.C. Public Service Commission rejected the merger.

In May, the Maryland Public Service Commission **narrowly approved** the merger by a 3-2 vote. Under the terms of the approval, Exelon was told it must pony up nearly $110 million in residential customer credits and energy efficiency and build 20 megawatts of renewable generation in the service areas of Pepco Holding's utilities.

The deal received approval in February from the New Jersey Board of Public Utilities after the companies agreed to a settlement that included a $62 million fund for ratepayers of Pepco's Atlantic City Electric utility, $15 million in energy-efficiency savings for ACE customers as part of a five-year program, the hiring of 60 union employees and the protection of current workers' compensation and benefits.

The merger also has received approval from the Federal Energy Regulatory Commission, the Virginia State Corporation Commission and Pepco stockholders. Delaware commission staff and stakeholders reached a settlement agreement with Exelon on Feb. 13, but the agreement is pending commission approval, the company said.

--Additional reporting by Keith Goldberg. Editing by Katherine Rautenberg.

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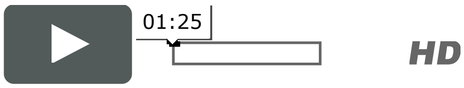

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