March 16, 2016

Ms. Brinda Westbrook-Sedgwick  
Commission Secretary  
Public Service Commission  
of the District of Columbia  
1325 G Street NW Suite 800  
Washington DC 20005

Re: Response to Joint Applicants’ Request for Other Relief in Formal Case 1119  
Joint Application of Exelon Corp., Pepco Holdings et. al.  
for Authorization and Approval of Merger; and  
Order No. 18109 Alternative Settlement Terms

Dear Ms. Westbrook-Sedgwick:

ANC3B has previously submitted a resolution and two letters to the PSC expressing our recommendation that the PSC reject the application in FC1119, including the original application of June 2014, the modified application in February 2015, and the Non-Unanimous Settlement Agreement (NSA) of October 6, 2015. After reviewing Order No. 18109 and the Joint Applicants’ Request for Other Relief of March 7, 2016, we are reaffirming our conclusion that the application is not in the public interest with any of the proposed modifications the Joint Applicants have offered in its Request for Other Relief, and the request as well as the transaction should be rejected.

Order No. 18109 directed the Joint Applicants to come back to the PSC with agreement of all Settling Parties to accept the PSC’s modified provisions or to present an alternative settlement adopted by the Settling Parties, by March 11, 2016. The Joint Applicants have not succeeded at either of those measures. The PSC has already voted to reject the Joint Applicants’ first proposed option, the NSA. The Joint Applicants’ second option to accept the PSC’s proposed modifications to the settlement agreement has been strongly opposed by numerous parties to the proceeding, including the Office of People’s Counsel, the DC Attorney General, DC Water, MAREC, and NCLC. The Joint Applicants’ third option goes against the PSC’s modified provisions to create long-term benefits, has been rejected by all the above parties plus AOBA, and has never been subject to full and open public review or evidence, and would turn the responsibility for allocating the Customer Investment Fund back to the PSC, an approach that was so widely criticized in the initial briefs of OPC and others that the Joint Applicants abandoned it before the PSC’s evidentiary hearings began. As the PSC stated in Order No. 17947, rejecting the transaction in August, and cited in Order No. 18109, it is not the responsibility of the PSC to tell the applicants how to structure their proposal to meet the public interest standards for Commission approval.
We note that the Joint Applicants are also not offering any assurances that they would support or assist the District to meet its sustainability and renewable energy goals; preserve local control of Pepco; provide safeguards against their dominance in the regional electric markets and electric grid; or resolve the inherent conflict between Exelon’s business imperatives as an unregulated energy company focused on generating and selling electricity for maximum profit and Pepco’s obligations as the local distribution company to provide reliable electric service at the most economical prices for District ratepayers.

ANC3B continues to strenuously oppose the merger and recommends that the PSC vote to reject the Joint Applicants’ latest request and allow the entire application to fail. After four tries, the Joint Applicants have not met their burden of proof to show that their proposed transaction would meet the public interest by providing sufficient benefits to the ratepayers and the city to offset the substantial risks and harms presented by Exelon’s proposed acquisition of Pepco.

The Joint Applicants’ request for consideration of yet another round of options is beyond the scope of the process set out by the PSC in Order No. 18109, and takes the proceeding into a new realm. Any further review should require an open and transparent process to explore what other options the Joint Applicants and the PSC are considering, with comments and evidence. The PSC is not authorized to participate in negotiations to settle a case of this nature, and should not allow negotiations to occur either between the lines of formal filings or by serial rounds of orders and requests.

Thank you for your consideration of these additional comments.

Sincerely,

Jackie Blumenthal
Chairman and Commissioner, ANC3B02

Ann Mladinov
ANC3B01

Mary C. Young
ANC3B04

Brian Turmail
ANC3B05

Approved by a vote of 4-0 at a duly noticed public meeting of ANC3B on March 16, 2016, at which a quorum was present. (A quorum is three of the four sitting members.)