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June 7, 2021

VIA ELECTRONIC MAIL

aida.camacho@bpu.nj.gov

board.secretary@bpu.nj.gov

Aida Camacho-Welch
Secretary to the Board
Board of Public Utilities
44 South Clinton Avenue, 9th Floor
P.O. Box 350
Trenton, NJ 08625-0350

RE: In the Matter of the Petition of Atlantic City Electric Company for a Declaratory
Ruling
BPU Docket No. _____

Dear Secretary Camacho-Welch:

Enclosed herewith for filing is an electronic copy of a Petition and exhibit initiating the above-entitled matter for Atlantic City Electric Company (“ACE” or the “Company”).

Consistent with the Order issued by the Board in connection with *In the Matter of the New Jersey Board of Public Utilities’ Response to the COVID-19 Pandemic for a Temporary Waiver of Requirements for Certain Non-Essential Obligations*, BPU Docket No. EO20030254, Order dated March 19, 2020, this document is being electronically filed with the Secretary of the Board and the New Jersey Division of Rate Counsel. No paper copies will follow.

Aida Camacho-Welch

June 7, 2021

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Thank you for your cooperation and all courtesies extended. Please contact me with any questions or concerns with this filing. I am happy to provide any further assistance that I can.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Cynthia L.M. Holland". The signature is written in a cursive, flowing style.

Cynthia L.M. Holland
An Attorney at Law of the
State of New Jersey

Enclosure

cc: Service List

**IN THE MATTER OF THE PETITION
OF ATLANTIC CITY ELECTRIC
COMPANY FOR A DECLARATORY
RULING**

**STATE OF NEW JERSEY
BOARD OF PUBLIC UTILITIES
BPU DOCKET NO. _____**

PETITION

Consistent with its letter filing in Docket No. EM14060581 on March 30, 2021 (the “March 30, 2021 Letter”), Atlantic City Electric Company (“ACE” or “Petitioner”), a corporation organized and existing under the laws of the State of New Jersey, which is subject to the jurisdiction of the Board of Public Utilities (the “Board” or “BPU”) and which maintains a regional office at 5100 Harding Highway, Mays Landing, New Jersey 08330, respectfully states that the “Exelon Generation Spin Transaction” (as defined below) will not result in (i) the sale, lease, mortgage or other disposal of public utility property; (ii) the merger or consolidation of public utility property, privileges, or any other rights of a New Jersey public utility; (iii) the transfer of the capital stock of a New Jersey public utility; or (iv) a change of control of a New Jersey public utility, and therefore, approval is not required for consummation of the Exelon Generation Spin Transaction. Petitioner seeks a declaratory ruling confirming that such approval is not required, and in support thereof, Petitioner states as follows:

I. BACKGROUND

1. ACE serves approximately 560,000 electric customers in a 2,700 square-mile area of southern New Jersey and is a subsidiary of Pepco Holdings LLC (“PHI”). Exelon Corporation (“Exelon”) became the ultimate parent of ACE and PHI on March 23, 2016, in accordance with the prior approval of the Board. See Order Approving Stipulation of Settlement, *In the Matter of*

the Merger of Exelon Corporation and Pepco Holdings, Inc., Docket No. EM14060581 (Order effective March 19, 2015) (the “2016 Merger Approval Order”).

2. Exelon is also the parent company, through its subsidiary Exelon Energy Delivery Company, LLC (“EEDC”), of the following regulated public utility companies: Commonwealth Edison Company, PECO Energy Company, Baltimore Gas and Electric Company, Potomac Electric Power Company, and Delmarva Power & Light Company. Potomac Electric Power Company and Delmarva Power & Light Company are also PHI subsidiaries.

3. Another Exelon subsidiary, Exelon Generation Company, LLC (“Exelon Generation”), operates Exelon’s existing generation business, including its generation plants, wholesale energy marketing operations and a competitive retail sales business.

4. On February 24, 2021, Exelon announced that it intends to transfer 100% ownership of Exelon Generation to a newly created subsidiary that will then be “spun off,” becoming Exelon Generation’s new ultimate parent company. As a result of this transaction (the “Exelon Generation Spin Transaction”), Exelon Generation and its subsidiaries will no longer be owned by Exelon.

5. On March 30, 2021, ACE filed the March 30, 2021 Letter providing the Board with notice and information about the Exelon Generation Spin Transaction.

6. As ACE explained in the March 30, 2021 Letter, the Exelon Generation Spin Transaction will have no impact on the ownership or control of Exelon or the ownership or control of ACE. Exelon will continue to be the sole owner of EEDC and, through EEDC, indirectly the sole owner of ACE and all other existing Exelon transmission and distribution utilities.

7. Subsequent to the Exelon Generation Spin Transaction, Exelon will no longer own merchant generation businesses. Exelon will be the nation’s largest transmission and distribution

utility company, with more than 16,400 employees delivering electricity and natural gas to more than 10 million customers.

8. The Exelon Generation Spin Transaction will have no impact on ACE's service, rates, governance, employment levels, or day-to-day operations. There is no anticipated transfer of assets between Exelon Generation, PHI or ACE as a part of the Exelon Generation Spin Transaction.

9. In addition, all of the commitments undertaken in connection with the 2016 merger of Exelon and PHI and incorporated in the 2016 Merger Approval Order will remain unchanged. In accordance with these prior merger commitments, ACE and the other PHI utilities will remain "ring-fenced" and insulated from business risks associated with any utility or non-utility activities of Exelon outside of PHI after the Exelon Generation Spin Transaction.

10. A chart showing the current ownership of ACE and Exelon's other utilities, which will be unchanged as a result of the Exelon Generation Spin Transaction, is attached as Exhibit A. It reflects the special purpose entities that provide enhanced ring-fencing protections, but does not reflect other Exelon Corporation subsidiaries, such as Exelon Business Services Company, which will remain within Exelon Corporation post-transaction.

11. Exelon intends to complete the Exelon Generation Spin Transaction in the first calendar quarter of 2022 and seeks a ruling by the Board confirming that approval is not required by September 30, 2021, in order to facilitate the Exelon Generation Spin Transaction.

II. LEGAL AUTHORITY

12. The Board may, upon request of any interested person, "make a declaratory ruling with respect to the applicability to any person, property or state of facts of any statute or rule enforced or administered by that agency." N.J.S.A. 52:14B-8.

III. ARGUMENT

13. Approval is not necessary for consummation of the Exelon Generation Spin Transaction. The Exelon Generation Spin Transaction will not be implemented by, nor will it have any impact to or effect the performance of, any New Jersey public utility subject to the jurisdiction of the Board. Furthermore, the Exelon Generation Spin Transaction does not involve, nor will it result in, any of the specifically enumerated transactions that are subject to Board jurisdiction.

A. **The Exelon Generation Spin Transaction Does Not Involve a Public Utility**

14. The Board has general supervisory and regulatory jurisdiction over “public utilities.” N.J.S.A. 48:2-13(a). A “public utility” is defined as “every individual . . . corporation . . . that now or hereafter may own, operate, manage or control within this State any . . . electricity *distribution* . . . plant or equipment for public use, under privileges granted or hereafter to be granted by this State or by any political subdivision thereof.” Id. (emphasis added). A “public utility” does not include corporations that own, operate, manage or control only electric *generation* plant and equipment.¹

15. The Exelon Generation Spin Transaction is limited to transferring ownership of Exelon Generation from Exelon to a newly created subsidiary which will then be spun off from Exelon. Exelon Generation does not meet the definition of a “public utility” under New Jersey law and is not currently subject to Board jurisdiction. While ACE and its owners certainly are subject to Board jurisdiction, the Exelon Generation Spin Transaction does not involve ACE, PHI, EEDC or any of Exelon’s other regulated public utilities. Thus, the Exelon Generation Spin Transaction does not trigger general regulatory authority over public utilities.

¹ The Electric Discount and Energy Competition Act (“EDECA”) removed generation assets from the Board’s general regulatory jurisdiction. See N.J.S.A. 48:3-49 *et seq.*; see also L. 1999, c. 23 (removing companies engaged in “electric light, heat, power” from the enumerated entities that constitute a “public utility” subject to Board jurisdiction).

B. The Exelon Generation Spin Transaction Is Not of The Type of Enumerated Transactions That Are Subject to Board Jurisdiction

16. In addition, the Exelon Generation Spin Transaction is not of the type of enumerated public utility transactions that are subject to review and approval.

17. Board approval is necessary (i) to acquire or seek to acquire control of a public utility, see N.J.S.A. 48:2-51.1; (ii) for a public utility to sell, lease, mortgage, or otherwise dispose of or encumber its property, franchises, privileges, or rights, or any part thereof; or merge or consolidate its property, franchises, privileges, or rights, or any part thereof, with that of any other public utility, see N.J.S.A. 48:3-7; or (iii) to transfer any share or shares of its capital stock, to any other public utility, or to any corporation, domestic or foreign, or any person, the result of which sale or transfer in itself or in connection with other previous sales or transfers would be to vest in such corporation or person a majority in interest of the outstanding capital stock of such public utility, see N.J.S.A. 48:3-10.

18. The Exelon Generation Spin Transaction will not result in a change in control over ACE directly, or in any entity that directly or indirectly has any control over ACE. As stated above, the Exelon Generation Spin Transaction will result in a change in ownership only over Exelon Generation, which does not have ownership in, or control over, ACE. The Exelon Generation Spin Transaction also does not contemplate or involve a change in control that would subject the transaction to review pursuant to N.J.S.A. 48:2-51.1.

19. Moreover, the Exelon Generation Spin Transaction does not involve an acquisition or merger in, or by, any entity in the ownership chain above ACE. Rather, the Exelon Generation Spin Transaction is a disposition by Exelon of Exelon Generation, an Exelon subsidiary with no ownership in or control over ACE or any entity in the ownership chain above ACE. C.f., In the Matter of the Business Combination of FirstEnergy Corp., Docket No. EM11010012, 2011 WL

1211019 (Feb. 10, 2011) (approving the acquisition of Allegheny Energy, Inc. by FirstEnergy Corp., parent of Jersey Central Power & Light Company, pursuant to N.J.S.A. 48:3-51.1); In the Matter of Aqua America, Inc.’s Acquisition of LDC Funding, LLC, Docket No. WM19050565, 2019 WL 2656058 (June 21, 2019) (approving the acquisition of Peoples Gas by Aqua America, Inc., parent of Aqua New Jersey, Inc.).

20. The Exelon Generation Spin Transaction will not result in the sale or disposition of any property, franchises, privileges, rights, or capital stock that would in any way subject the Exelon Generation Spin Transaction to review under N.J.S.A. 48:3-7 or N.J.S.A. 48:3-10. The transaction involves the disposition of only Exelon Generation and its subsidiaries. Therefore, the Exelon Generation Spin Transaction is not subject to review or approval under N.J.S.A. 48:3-51.1, N.J.S.A. 48:3-7, or N.J.S.A. 48:3-10.

IV. REQUEST FOR EXPEDITED TREATMENT

21. Exelon intends to complete the Exelon Generation Spin Transaction in the first calendar quarter of 2022. Thus, Exelon respectfully requests that the Board take any action as may be necessary to complete its review of this Petition by September 30, 2021.

22. Communications and correspondence regarding this matter should be sent to Petitioner’s counsel at the following address:

Cynthia L. M. Holland, Esq.
Assistant General Counsel
Atlantic City Electric Company – 92DC42
500 North Wakefield Drive
P.O. Box 6066
Newark, DE 19714-6066
(267) 533-1671
cynthia.holland@exeloncorp.com

with a copy to the following representatives of the Company:

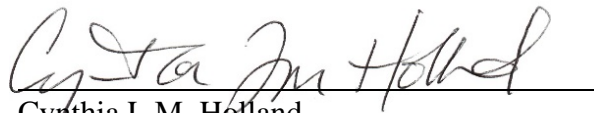
Marissa E. Humphrey
Vice President of Regulatory Policy and Strategy
Atlantic City Electric Company – 92DC56
500 North Wakefield Drive
P.O. Box 6066
Newark, DE 19714-6066
marissa.humphrey@exeloncorp.com

V. CONCLUSION

WHEREFORE, ACE respectfully requests a declaratory ruling confirming that approval is not required for consummation of the Exelon Generation Spin Transaction. In the alternative, if the Board determines approval is required, ACE respectfully requests that the Board render such approval as may be necessary for the Exelon Generation Spin Transaction to be completed as described herein.

Dated: June 7, 2021

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Cynthia L.M. Holland", is written over a horizontal line.

Cynthia L.M. Holland
Assistant General Counsel
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an Exelon Company
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Counsel for Atlantic City Electric Company

**IN THE MATTER OF THE PETITION
OF ATLANTIC CITY ELECTRIC
COMPANY FOR A DECLARATORY
RULING**

**STATE OF NEW JERSEY
BOARD OF PUBLIC UTILITIES**

CERTIFICATION IN SUPPORT OF PETITION

MARISSA E. HUMPHREY, of full age, certifies as follows:

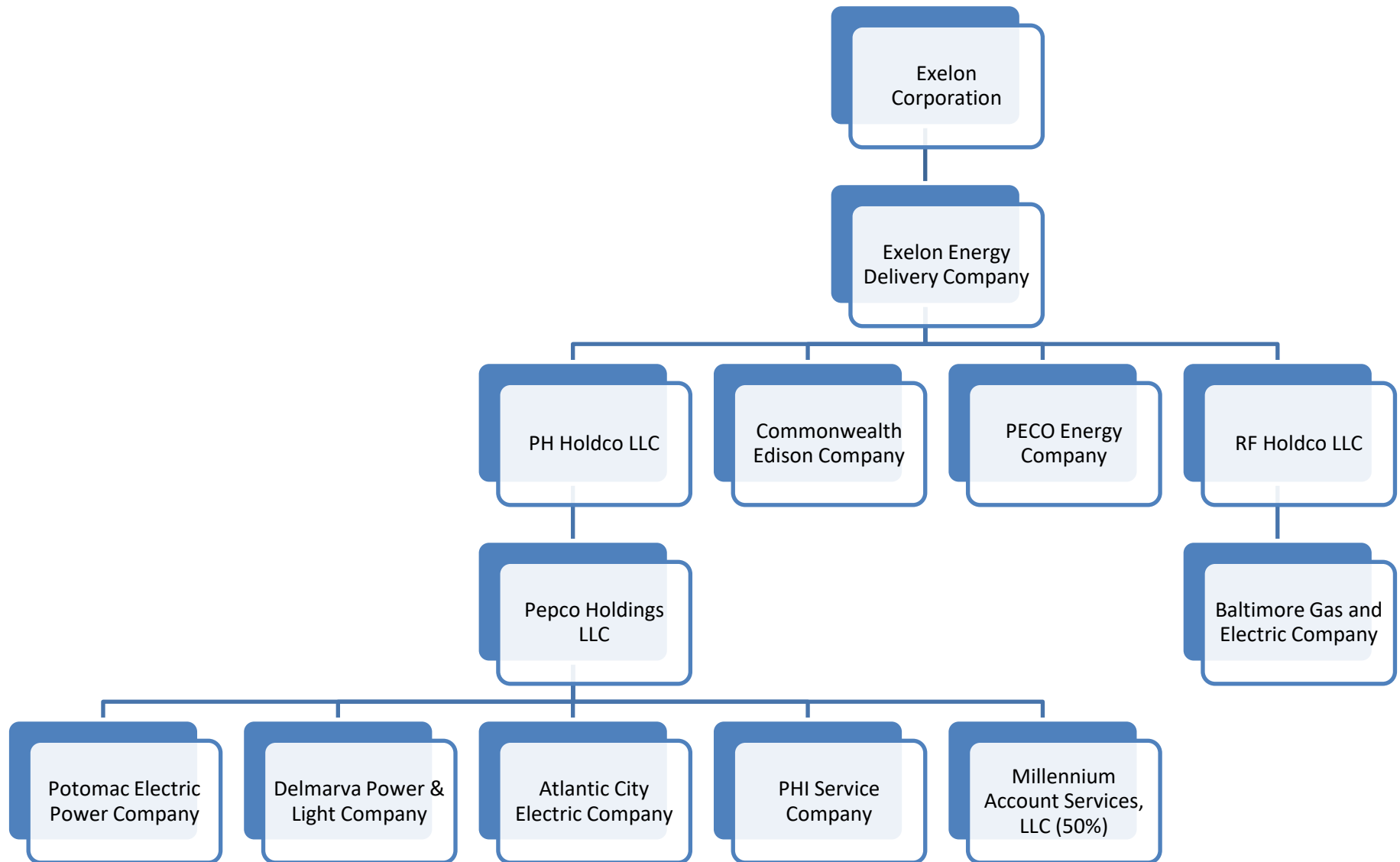
1. I am the Vice President of Regulatory Policy and Strategy of and for Atlantic City Electric Company ("ACE"), the Petitioner named in the foregoing Petition. I am duly authorized to make this Certification on ACE's behalf.
2. I hereby certify that I have read the contents of the foregoing Petition for Declaratory Ruling and supporting documents thereto.
3. I further and finally certify that the information contained therein is true and correct to the best of my knowledge, information, and belief. I am aware that, if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Dated: 6/3/2021


MARISSA E. HUMPHREY

Exhibit A

Attachment A
Exelon Organizational Chart – Utilities



**IN THE MATTER OF THE PETITION
OF ATLANTIC CITY ELECTRIC
COMPANY FOR A DECLARATORY
RULING**

**STATE OF NEW JERSEY
BOARD OF PUBLIC UTILITIES**

CERTIFICATION OF SERVICE

CYNTHIA L.M. HOLLAND, of full age, certifies as follows:

1. I am an attorney at law of the State of New Jersey and am Assistant General Counsel to Atlantic City Electric Company, the Petitioner in the within matter, with which I am familiar.
2. I hereby certify that, on June 7, 2021, I caused the within Petition and the supporting testimony, schedules, and exhibits thereto, to be filed with the New Jersey Board of Public Utilities (the “Board” or “BPU”) through its eFiling Portal. I also caused an electronic copy to be sent to the Board Secretary’s office at board.secretary@bpu.state.nj.us.
3. I further certify that, on June 7, 2021, I caused a complete copy of the Petition and the supporting testimony, schedules, and exhibits thereto, to be sent by electronic mail to each of the parties listed in the attached Service List.
4. Consistent with the Order issued by the Board in connection with *In the Matter of the New Jersey Board of Public Utilities’ Response to the COVID-19 Pandemic for a Temporary Waiver of Requirements for Certain Non-Essential Obligations*, BPU Docket No. EO20030254, Order dated March 19, 2020, only electronic copies of this Petition have been served on persons on the Service List.

In the Matter of the Petition of Atlantic City Electric Company for a Declaratory Ruling
BPU Docket No. _____

Service List

BPU

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Heather Hall
Manager, Regulatory Affairs –
New Jersey
heather.hall@pepcoholdings.com

5. I further and finally certify that the foregoing statements made by me are true. I am aware that, if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Dated: June 7, 2021

A handwritten signature in black ink, appearing to read "Cynthia L.M. Holland", written over a horizontal line.

CYNTHIA L.M. HOLLAND

An Attorney at Law of the
State of New Jersey

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