

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

Adelphia Gateway, LLC

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Docket No. CP18-46-000

COMMENTS OF EXELON CORPORATION

Pursuant to the “Notice of Application,” issued by the Federal Energy Regulatory Commission (“Commission”) in this proceeding on January 23, 2018, Exelon Corporation (“Exelon”)¹ hereby respectfully submits comments concerning the January 23, 2018 abbreviated application by Adelphia Gateway, LLC (“Adelphia”) for certificates of public convenience and necessity authorizing acquisition, construction, and operation of certain pipeline facilities and related authorizations.

BACKGROUND

By its application, Adelphia has proposed the “Adelphia Gateway Pipeline Project” (“Proposed Pipeline”) to be in Pennsylvania and Delaware. Adelphia, a wholly owned subsidiary of NJR Pipeline Company, would acquire non-jurisdictional oil-only or dual-phase oil and natural gas service facilities of Interstate Energy Company (“IEC”) for \$189,000,000 from IEC’s affiliate Talen Generation, and convert them to jurisdictional natural gas service.

As explained by Adelphia in its filing, its plans involve two Exelon companies, PECO Energy Company (“PECO”) and Delmarva Power and Light Company (“Delmarva”). Adelphia states that it intends for its Proposed Pipeline to extend approximately 84 miles through an 18-inch Mainline from Marcus Hook to Martins Creek, with laterals proposed to be constructed and

¹ Exelon filed a document-less intervention in this proceeding on January 23, 2018.

connected to PECO and Delmarva. The application does not contain executed precedent agreements and does not provide the identity of the shippers to be served.

Neither PECO nor Delmarva have executed binding requests to be served by Adelphia. Nor has PECO or Delmarva consented to have Adelphia acquire, construct, interconnect, or otherwise have access to any property or right of way belonging to PECO or Delmarva. Following the filing of the application, Adelphia, PECO, and Delmarva have had informal, preliminary contacts about the need to communicate with respect to this application in light of the references made therein to PECO and Delmarva.

SUMMARY

Adelphia's application appears to contemplate a sharing of PECO and Delmarva land or right-of-way ("ROW") to construct and operate its Proposed Pipeline facilities. PECO and Delmarva have procedures in place by which third parties (including affiliates) may request permission from PECO and Delmarva to occupy some of its ROW. The Commission should require Adelphia to follow PECO's and Delmarva's request procedures and to abide by the outcome of such procedures.

In addition, third parties must request permission from and negotiate appropriate terms with PECO and Delmarva prior to constructing or interconnecting pipeline laterals. Accordingly, PECO's and Delmarva's utility use of their land and ROW, including prior rights to use their land and ROW for any anticipated expanded use should be recognized in this proceeding to the extent that there is any conflict between Adelphia's proposal and PECO's and Delmarva's own future projects planning.

This is not to say that Exelon is in opposition to Adelphia's application or that accommodations cannot be satisfactorily arranged with Adelphia for its Proposed Pipeline to

involve PECO or Delmarva sites. It is unclear how near Adelphia intends to locate its Proposed Pipeline facilities to PECO or Delmarva properties and facilities. If Adelphia literally intends to co-habit identical space with PECO or Delmarva, this intent may be counter to PECO's or Delmarva's existing or future needs and plans for full utilization of lands and ROW. At this point, neither Adelphia nor the Commission would have any reason to be aware of PECO's or Delmarva's needs and future planning designs. Until there is a full dissemination of information, the Commission will lack an adequate record upon which to base any determination with respect to Adelphia's proposed laterals.

DISCUSSION

I. Exelon Is Committed to Safeguard Proper Usage of Its Land and ROW.

PECO and Delmarva have the responsibility to maintain and operate their gas and electric distribution and electric transmission lines in a safe and reliable manner. It is their duty to mitigate any foreseeable potential threats to the facilities. PECO and Delmarva are good corporate citizens of the southeastern Pennsylvania and Delaware communities that they serve that are named in Adelphia's application. They scrupulously adhere to outstanding licenses, leases, and usage agreements when considering the potential placement of facilities in their land and ROW.

At this stage, Exelon cannot determine whether Adelphia's proposed references to their properties would be acceptable. Adelphia must provide a clearer and more precise statement of intent, and assuming there is any feasibility to its intentions with respect to PECO and Delmarva land use, Adelphia must honor PECO's and Delmarva's prior rights to the use of their land and ROW. Adelphia must submit review requests to PECO and Delmarva real estate representatives. They, in turn, will distribute the requests to all PECO and Delmarva divisions that may be affected thereby. Each division will focus on how a request could impact assets under its responsibility.

These impacts include possible code violations, regulatory requirements, facility integrity, and accessibility to work areas.

The requirements and elements of these codes and regulations mitigate the danger to personnel and the public at large. Clearance is an important factor considered by these codes and regulations, including airspace. PECO and Delmarva review the requests to assure that their facilities and the proposed occupations will interact and conform in a manner that meets the codes and regulations, and thereby consider the human safety aspects of any such occupation. It is important to note that many of the codes require complex analysis of a multitude of factors, and should only be interpreted by trained, industry professionals.

A large part of the review process is to ensure the structural integrity of PECO's and Delmarva's facilities. The supporting structures of PECO's and Delmarva's lines are complicated systems that have more components involved than are readily apparent, and involve precautions concerning grading as well as excavation.

Horizontal clearances preserve the integrity of underground equipment, including Underground Residential Distribution type installations such as gas distribution lines. It should not be assumed that co-location with above-ground facilities is all that is required. It is important that any proposed co-location not interfere with existing underground facilities or new underground facilities planned by PECO and Delmarva.

If the proposed occupation poses no potential adverse impact, it will be allowed by a written agreement that is subject to a set of standard terms and conditions and any specific conditions named by the reviewing division. Depending upon the type of occupation, a deed, license, or letter of agreement will be created governing the terms of occupation.

If, on the other hand, the proposed occupation poses a potential adverse impact, or would interfere with utility structures or facilities, PECO and Delmarva will strive to reach a reasonable solution that will accommodate the occupation. There are instances when no such feasible solution can be found because of stringent code requirements or other overriding safety, operational, and maintenance considerations. In these cases, the occupation is denied with an explanation. The existing review process provides the best solution to assure the integrity of PECO's and Delmarva's assets while maximizing the opportunity for third parties to utilize PECO and Delmarva ROW for the public benefit.

Examples of the sensitivity and gravity of the standards that must be met before utility land or ROW, owned and maintained by PECO and Delmarva, can be shared by others are set forth in the attached Appendix. Even when these generally applicable standards are satisfied by a requestor, PECO and Delmarva reserve the right to impose case-specific conditions arising out of the division-level reviews described above.

II. PECO and Delmarva Stewardship Over Their Land and ROW is Preeminent.

Any granting of certificate authorization to Adelphia should be made conditional upon Adelphia's presenting a proper request to PECO and Delmarva for use or occupation of PECO and Delmarva land or ROW, and Adelphia's strict compliance with conditions imposed on any granting of such a request by PECO and Delmarva. Any determination by PECO and Delmarva that Adelphia's request cannot be accommodated due to safety and reliability considerations, or incompatibility with PECO and Delmarva utility use plans, should also be explicitly stated as a basis for withholding a grant of certificate authorization by the Commission to Adelphia.

No exercise of any alleged "condemnation" of property authority should be invoked against PECO and Delmarva by Adelphia in furtherance of any certificate authorization issued to it by the

Commission, and the Commission should expressly so caution Adelpia in any such conditional grant of authorization to it. A seizure of property usage within or along PECO and Delmarva land or ROW would defeat the public purpose for which the land or ROW was acquired by PECO and Delmarva. PECO and Delmarva have exclusive and overriding land and ROW ownership rights and a concomitant duty of stewardship over these rights; PECO and Delmarva should remain unimpaired in their ability to maintain those responsibilities by anything that transpires in these proceedings. Secondary use or occupation should only be allowed by express permission of PECO and Delmarva through exercise of their inherent right of refusal against any occupation of their public utility land and ROW.

In furtherance of these rights and responsibilities, PECO and Delmarva need the opportunity to review and approve any use or occupation within their land and ROW to continue effective operation of their facilities. Reviewing and approving proposed uses or occupations would not only allow PECO and Delmarva the chance to protect their dedicated utility assets; it would also prevent situations that may conflict with their standard usage policies, existing agreements, and the codes and regulations to which those procedures appertain.

Accordingly, PECO and Delmarva desire that any proposed uses or occupations of their land or ROW to be handled through their existing property use request process. PECO and Delmarva need to maintain the right of refusal to ensure safety and the integrity of the infrastructure and the viability of the corridor for the planned use. This right of refusal is an important principle that allows PECO and Delmarva the only practicable means to protect their assets from *de facto* degradation and confiscation, and thereby protect the public at large that depend on PECO and Delmarva either directly or indirectly to continue to provide service.

PECO and Delmarva will consider any proposed occupations presented, as with any other third-party requestors. However, it is imperative that PECO and Delmarva be the final arbiters over such usage upon completion of their review of these requests. Assuming the safety and public service needs are properly safeguarded, and adequate compensation is assured, but not until then, the application will be ripe for a decision.

CONCLUSION

WHEREFORE, Exelon requests that:

(1) The Commission assure itself of an adequate record upon which to base its determination with respect to Adelphia's application by including within its record the technical requirements hereby submitted by Exelon;

(2) The Commission require Adelphia to perform and produce studies of (a) construction easements; (b) placement of the Proposed Pipeline within PECO and Delmarva property or ROW; and (c) grounding and other protections; and

(3) Any authorization of Adelphia to locate its Proposed Pipeline within or adjacent to any land or ROW of PECO and Delmarva be conditioned upon the submission of requests by Adelphia to PECO and Delmarva under their standard request and review procedures described herein, with recognition that PECO and Delmarva are authorized to reject such a request if they determine that the proposed use or occupation fails to satisfy the standards applied by PECO and Delmarva, including PECO and Delmarva maintenance of an overriding reservation of exclusive use of their property and ROW to the extent required to accommodate their anticipated future use of their property or ROW.

Respectfully submitted,

/s/ Gary E. Guy

Gary E. Guy

Assistant General Counsel

Baltimore Gas and Electric Company, an

Exelon Company

710 Ninth Street, N.W., Suite 9426

Washington, D.C. 20068

Telephone: 202-872-2576

Email: gary.e.guy@bge.com

Dated: February 13, 2018

APPENDIX

CONDITIONS REQUIRED FOR PIPELINE USE OF UTILITY SPACE

- Access to and from PECO and Delmarva facilities must be maintained always. If existing access to and along the fee simple and/or easement property or access to the facilities is denied due to the PECO or Delmarva construction, Adelphia must provide temporary access during construction and permanent access thereafter or reimburse PECO and Delmarva for obtaining other access. Where any access road is relocated and/or disturbed, the road must be thoroughly compacted and restored to a condition equal to or better than its present condition.
- No blasting will be permitted within PECO or Delmarva property and/or within forty feet of their facilities without prior approval and under arrangements satisfactory to them. PECO and Delmarva must be fully reimbursed for any damages resulting from operations. They must be notified at least 5 working days in advance of any blasting near their property to arrange to have a representative on the job site.
- Adelphia, at its expense, must protect and support all PECO and Delmarva facilities, install sheathing, and air ram the back fill of excavations including the use of select back fill materials as directed by PECO and Delmarva representatives, to avoid settlement which may result from Adelphia's construction.
- Adelphia, at its expense, is solely responsible for any and all work site portable facilities as may be required for use by its work crews and contractors.
- Hand excavation is required when working within 3 feet of any PECO or Delmarva electric and gas underground facilities. If Adelphia is not digging prudently or inadvertently hits the supplier's incoming line due to a miscalculation, or if the Proposed Pipeline is derated, Adelphia must buy the replacement electric power or gas or reimburse the cost differential incurred by PECO and Delmarva of any replacement.
- Should any rearrangement, repairs, replacement, modification or protection of PECO's or Delmarva's existing or planned facilities be necessitated by the construction by Adelphia, as determined by PECO or Delmarva, Adelphia must reimburse them for such expense incurred. PECO and Delmarva must be given an adequate and reasonable amount of time within which to complete said work.
- Every precaution, including the grounding of Adelphia's equipment and materials, must be used while working near PECO and Delmarva facilities. Under no circumstances may Adelphia's equipment maintain less than 25 feet clearance from any overhead transmission wires or less than 10 feet clearance from any other overhead lines or wires. In addition to these clearances, Adelphia must comply with federal and state requirements, including the Occupational Safety and Health Act Standards contained in Title 29 C.F.R. Parts 1910 and 1926.
- Clearances must be maintained in conformity with accepted good engineering practice and PECO and Delmarva standards. No buildings, storage sheds, trailers, equipment, dirt, rock or materials of any type will be permitted to be stored on the land or ROW of PECO or Delmarva. Nor may Adelphia bring soils onto, or remove

soils from, the land or ROW of PECO or Delmarva without their prior written consent.

- Grade will be restored to the existing depth of cover unless a change in grade is approved by PECO and Delmarva. Any such advance approved change in grade may not reduce the cover over the underground facilities of PECO and Delmarva to less than 4 feet or increase it to more than 5 feet without requiring rearrangement of the said facilities, or as otherwise approved by PECO and Delmarva.
- Clearances between the PECO and Delmarva underground facilities must be maintained in conformity with accepted good engineering practice to avoid damage during construction and provide clearance for future maintenance. A minimum horizontal clearance of 5 feet and a vertical clearance of 12 inches must be maintained with underground facilities, unless greater clearances or special protective measures are stipulated.
- No grading will be permitted on PECO and Delmarva fee simple and/or easement property within 40 feet of any tower or steel pole foundations or within 10 feet of any wood pole existing as of the time of such grading. Extreme care must be used when grading in proximity to PECO and Delmarva towers.
- PECO and Delmarva fee simple and/or easement property, if disturbed by construction or future maintenance operations, must be restored to an acceptable condition including necessary screening and landscaping, if applicable, subject to PECO and Delmarva approval.
- Any undesirable sediment, erosion and/or drainage conditions or ponding of water on PECO and Delmarva fee simple and/or easement property caused by acts of Adelphia, its agents and employees, which will adversely affect PECO and Delmarva property or facilities, must be corrected by Adelphia.
- To the fullest extent permitted by law, Adelphia must agree to indemnify, defend, protect, and hold harmless PECO and Delmarva, and their successors and assigns, against and from any and all costs, liability, and expenses in respect of any and all loss of life or property, or injury or damage to persons or property of any person, firm or corporation (including the parties hereto, their respective officers, agents, and employees) and against and from any and all claims, demands, and actions in respect to such loss, injury, or damage, caused by or growing out of the existence or the installation, construction, reconstruction, maintenance, repair, operation and/or inspection of said installation, provided that such loss, injury, or damage is not caused by the vehicular traffic of the general public after completion of construction of PECO and Delmarva facilities.
- Five working days' notice must be given before the start of the work of construction and of any future maintenance which will affect PECO and Delmarva fee simple and/or easement property or PECO and Delmarva facilities by telephoning the real estate representative between the hours of 8:00 AM and 3:30 PM, so that arrangements can be made to send PECO and Delmarva representatives to the site of such work.
- In the event any rearrangement of PECO and Delmarva facilities is necessitated by the rights granted to Adelphia or by any future maintenance requirements and/or alterations of Adelphia, PECO and Delmarva must be given reasonable notice so

that adequate time may be had in which the arrangement of the PECO and Delmarva facilities may be accomplished.

- PECO and Delmarva reserve the right for themselves, their successors, licensees and assigns, to construct, reconstruct, operate, and maintain present and/or future gas, electric and/or communication facilities, cables, pipes, wires and mains, and appurtenant facilities including, but not limited to, steam, sewer, oil, water and communication lines under and over the herein described parcel(s) of land together with the right of PECO and Delmarva and their successors and assigns, to cut, trim, and top and keep cut, trimmed and topped any trees, which in their sole judgment might interfere with or fall upon PECO and Delmarva facilities.
- If Adelphia is permitted to construct through any easement conveyance, it will be bound by its terms and have no other rights or permission for any other use of property or ROW of PECO and Delmarva.
- If cathodic protection systems are to be installed, Adelphia must furnish engineering plans or drawings of cathodic protection systems for Adelphia's review and approval prior to installation. Cathodic protection tests must be performed on the completed Proposed Pipeline by and at Adelphia's expense, and Adelphia must provide PECO and Delmarva with written results of such tests within 30 days after installation of the cathodic protection system.
- If a leak or spill occurs from the Proposed Pipeline, Adelphia must notify PECO and Delmarva within 24 hours and provide PECO and Delmarva with a written report within 5 business days. Adelphia must immediately commence and complete cleanup operations and satisfy all requirements of PECO and Delmarva, the Environmental Protection Agency and any other governmental agency for the cleanup of the leak or spill and assume full responsibility for the costs of the cleanup.
- The Proposed Pipeline must have a minimum cover as approved or as specified by PECO and Delmarva. Adelphia must acknowledge that it understands that PECO and Delmarva intend to traverse over the Proposed Pipeline with vehicles generally weighing 38,000 pounds per axle and Adelphia must install the Proposed Pipeline accordingly. PECO and Delmarva will not warrant that any approved or specified cover will protect the Proposed Pipeline.
- Manholes must not extend above grade unless otherwise approved by PECO and Delmarva.
- Adelphia must install and maintain, at its expense, permanent markers for the Proposed Pipeline at strategic locations longitudinally and where the Proposed Pipeline enters and leaves the easement area and at all angles in the Proposed Pipeline. The markers must be approved by PECO and Delmarva prior to their installation and must be completed within 6 months after completion of the Proposed Pipeline in the easement area.
- Adelphia must assume all risk of loss, injury or damage to the Proposed Pipeline or personal property and all risk of injury or death to its employees, contractors, workmen, or any other person from any causes whatsoever.
- Any increase in property taxes on land owned by PECO and Delmarva caused by the improvements placed on PECO and Delmarva property by Adelphia will be

paid by Adelphia within 30 days after receiving notification from PECO and Delmarva, and such increased taxes owed will be paid by Adelphia for as long as such increased tax assessments are in effect.

- No heavy equipment, as determined by PECO and Delmarva, may be moved over PECO and Delmarva underground facilities without their prior approval.
- Adelphia must be responsible for obtaining all permits required by law before performing any work upon PECO and Delmarva premises, and comply with all laws relating to hazardous materials.
- Adelphia must abide by insurance requirements specified by PECO and Delmarva, and must discharge all liens that may interfere with property of PECO and Delmarva within 15 days of service or notice, whichever is sooner.
- Adelphia must not commence any alterations or construction or installation of improvements of PECO or Delmarva land or ROW without written approval of PECO and Delmarva of Adelphia's plans, and all such construction must be in accordance with such approved plans and construction standards of PECO and Delmarva. To allow sufficient time for review, plans must be submitted to PECO and Delmarva at least 90 days before the proposed commencement of the construction. Additional notice must be given by Adelphia to PECO and Delmarva at least 5 days before the construction begins.
- Adelphia must notify the Pennsylvania ONE CALL SYSTEM and its Delaware equivalent to determine the location of any underground facilities at least 5 working days prior to performing any work in the easement area.
- Adelphia must notify its agents, servants, employees, and/or contractors performing the installation and maintenance of Adelphia's facilities of these conditions and provisions.

Certificate of Service

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Washington, D.C. this 13th day of February 2018.

/s/ Jeffrey W. Garrison
Jeffrey W. Garrison