

NCLC Intervenes in Exelon, Southern Co. Mergers

Utility mergers are on the rise. In the third quarter of 2015, there were 42 “deals”, with 18 of those greater than \$50 million, more big “deals” than in the prior two quarters combined. Twenty years ago, there were 100 publicly-traded, investor owned utilities. As of mid-2014, that number had shrunk to 48, and has no doubt declined since.

CEOs enter into these mergers to increase shareholder value and corporate profits. There is no guarantee that the oft-asserted merger-related “synergy savings” are realized, or that consumers (especially low-income consumers) derive significant benefit, unless consumer advocates intervene in those proceedings. Most mergers are approved by state utility commissions, but often with conditions attached. By intervening, advocates for low-income consumers can insist that, if the merger is to be approved, conditions be added that ensure their clients will benefit.

Over the past 18 months, the National Consumer Law Center (NCLC) has been involved in two of the largest recent mergers, the \$12 billion merger of Exelon and Pepco Holdings, Inc, and the more recent \$12 billion merger of Southern Company and AGL Resources.

The Exelon merger needed approval from state regulators in Virginia, New Jersey, Maryland, Delaware, and D.C. All but D.C. have already approved the merger. Along with our partner, the National Housing Trust (NHT), we intervened in the Maryland and D.C. proceedings asserting that the merger could only be approved if it included substantial benefits for low-income households, including energy efficiency investments in affordable housing paid for by stockholders, not ratepayers.

In Maryland, NCLC/NHT were parties to a settlement, since approved by the Commission, that includes a one-time, \$50 per customer rate credit as well as a total of \$57 million for energy efficiency related investments, all at shareholder (not ratepayer) expense. A floor of approximately \$10 million will be spent specifically on EE investments in affordable multifamily housing. The counties which distribute the funds are free to spend more on the affordable housing sector. In addition, Exelon agreed to enter good-faith discussions with NCLC and any other interested party towards developing an Arrearage Management Program proposal that would then be submitted to the Commission for its review.

Moreover, under a “most favored nations” clause in the Maryland settlement – which requires the amounts previously noted to increase if any other state obtains larger, per-customer benefits – those amounts will more than double, if and when the D.C. Commission approves a pending settlement there.

Initially, the Exelon-Pepco merger was opposed by virtually every intervenor in the D.C. proceeding, and the Commission denied approval. That brought Exelon to the negotiating table, resulting in a settlement with overall, per-customer benefits more than double the amounts obtained in Maryland. For low-income households in particular, the settlement includes \$7 million for energy efficiency investments in affordable multifamily housing – with those programs to be designed in consultation with NCLC, NHT, and other interested parties – and \$9 million for a supplement to the federal fuel assistance funds the District receives. As in Maryland, all of these funds come at shareholder, not ratepayer, expense. This settlement is still pending before the District’s Public Service Commission. If the Commission approves, the merger will go forward. There will still be challenging work to

design and implement the energy efficiency and Arrearage Management Programs, but it will be well worth the effort, given the millions that will be made available for low-income households.

In Georgia, the proceedings in the Southern-AGL merger have only just begun. NCLC and its partner National Housing Trust (NHT) will seek similar energy efficiency investments in affordable housing, as we did in the Exelon cases.

Intervening in merger proceedings is not without costs and risks. Cases can be time-consuming: NCLC attorneys put in hundreds of hours of time, and NHT staff also logged significant time providing expert witnesses and other key support to the case. Moreover, there were parties representing consumer and environmental interests who vigorously opposed the merger being approved, regardless of any conditions. This was particularly true in D.C., where local environmental groups not only actively intervened in opposition before the Commission, but also engaged in extensive community organizing and public relations work to mobilize the merger's opponents.

It can be difficult to decide when a proposed merger is so inherently bad for consumers that it should be opposed, and when to advocate for conditions to be added to ensure that low-income customers benefit.

If you are interested in discussing any pending mergers in your area, feel free to contact NCLC attorney Charlie Harak at charak@nclc.org.