

EXELON CORP
Form 8-K
July 21, 2014

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, DC 20549

FORM 8-K

CURRENT REPORT

Pursuant to Section 13 or 15(d)
of the Securities Exchange Act of 1934

Date of Report (Date of earliest event reported) July 18, 2014

Exact Name of Registrant as Specified in Its Charter; State of

Commission

Incorporation; Address of Principal Executive Offices;

File Number

and Telephone Number

**IRS Employer
Identification Number**

1-16169

EXELON CORPORATION

23-2990190

(a Pennsylvania corporation)

10 South Dearborn Street

P.O. Box 805379

Chicago, Illinois 60680-5379

(312) 394-7398

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- .. Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- .. Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- .. Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- .. Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Section 1 Registrant's Business and Operations

Item 1.01 Entry into a Material Definitive Agreement

The Amended and Restated Merger Agreement

On July 18, 2014, Exelon Corporation, a Pennsylvania corporation (Exelon), entered into an Amended and Restated Agreement and Plan of Merger (the Amended and Restated Merger Agreement) by and among Exelon, Purple Acquisition Corp., a Delaware corporation and a wholly owned subsidiary of Exelon (Merger Sub) and Pepco Holdings, Inc., a Delaware corporation (PHI). The Amended and Restated Merger Agreement amends and restates the Agreement and Plan of Merger, dated as of April 29, 2014, among Exelon, Merger Sub and PHI (the Original Merger Agreement).

The Amended and Restated Merger Agreement includes a revised form of certificate of incorporation of the surviving corporation in the merger. In addition, the Amended and Restated Merger Agreement extends the date by which PHI must file its preliminary proxy statement from June 11, 2014 to July 24, 2014 and the date by which PHI and Exelon must make all filings related to the Hart-Scott-Rodino Antitrust Improvements Act of 1976 and with the Federal Communication Commission and the Maryland Public Service Commission from June 28, 2014 to September 3, 2014. The Amended and Restated Merger Agreement also clarifies that Company PSUs (as that term is defined in the Amended and Restated Merger Agreement) that are required to be granted by the terms of an agreement in place as of the date of the Original Merger Agreement are treated as pre-signing date grants, not subject to the prorated payout applicable to equity awards granted after the date of the Original Merger Agreement. The terms and conditions of the Amended and Restated Merger Agreement otherwise are substantially the same as the terms of the Original Merger Agreement, including the merger consideration to be paid to PHI stockholders.

The foregoing summary of the Amended and Restated Merger Agreement does not purport to be complete and is subject to, and is qualified in its entirety by, the full text of the Amended and Restated Merger Agreement, attached as Exhibit 2.1 and incorporated herein by reference.

The Amended and Restated Merger Agreement has been included as an exhibit to this Current Report on Form 8-K to provide you with information regarding its terms. It is not intended to provide any other factual information about Exelon. The Amended and Restated Merger Agreement contains representations and warranties that the parties thereto made to each other as of a specific date. The assertions embodied in the representations and warranties in the Amended and Restated Merger Agreement were made solely for purposes of the Amended and Restated Merger Agreement and the transactions and agreements contemplated thereby among the parties thereto and may be subject to important qualifications and limitations agreed to by the parties in connection with negotiating the terms thereof. Moreover, some of those representations and warranties may not be accurate or complete as of any specified date, may be subject to a contractual standard of materiality different from those generally applicable to stockholders or may have been used for the purpose of allocating risk among the parties to the Amended and Restated Merger Agreement rather than establishing matters as facts.

Section 9 Financial Statements and Exhibits

Item 9.01. Financial Statements and Exhibits.

(d) *Exhibits.*

Exhibit No.	Description
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2.1 Amended and Restated Agreement and Plan of Merger, dated as of July 18, 2014, among Pepco Holdings, Inc., Exelon Corporation and Purple Acquisition Corp.

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Cautionary Statements Regarding Forward-Looking Information

Except for the historical information contained herein, certain of the matters discussed in this communication constitute forward-looking statements within the meaning of the Securities Act of 1933 and the Securities Exchange Act of 1934, both as amended by the Private Securities Litigation Reform Act of 1995. Words such as may, might, will, should, could, anticipate, estimate, expect, predict, project, future, potential, intend, see, believe, target, forecast, goal, objective, continue or the negative of such terms or other variations thereof and terms of similar substance used in connection with any discussion of future plans, actions, or events identify forward-looking statements. These forward-looking

statements include, but are not limited to, statements regarding benefits of the proposed merger, integration plans and expected synergies, the expected timing of completion of the transaction and anticipated future financial and operating performance and results, including estimates for growth. These statements are based on the current expectations of management of Exelon Corporation (Exelon) and Pepco Holdings, Inc. (PHI), as applicable. There are a number of risks and uncertainties that could cause actual results to differ materially from the forward-looking statements included in this communication. For example, (1) PHI may be unable to obtain shareholder approval required for the merger; (2) the companies may be unable to obtain regulatory approvals required for the merger, or required regulatory approvals may delay the merger or cause the companies to abandon the merger; (3) conditions to the closing of the merger may not be satisfied; (4) an unsolicited offer of another company to acquire assets or capital stock of Exelon or PHI could interfere with the merger; (5) problems may arise in successfully integrating the businesses of the companies, which may result in the combined company not operating as effectively and efficiently as expected; (6) the combined company may be unable to achieve cost-cutting synergies or it may take longer than expected to achieve those synergies; (7) the merger may involve unexpected costs, unexpected liabilities or unexpected delays, or the effects of purchase accounting may be different from the companies' expectations; (8) the credit ratings of the combined company or its subsidiaries may be different from what the companies expect; (9) the businesses of the companies may suffer as a result of uncertainty surrounding the merger; (10) the companies may not realize the values expected to be obtained for properties expected or required to be sold; (11) the industry may be subject to future regulatory or legislative actions that could adversely affect the companies; and (12) the companies may be adversely affected by other economic, business, and/or competitive factors. Other unknown or unpredictable factors could also have material adverse effects on future results, performance or achievements of the combined company. Therefore, forward-looking statements are not guarantees or assurances of future performance, and actual results could differ materially from those indicated by the forward-looking statements. Discussions of some of these other important factors and assumptions are contained in Exelon's and PHI's respective filings with the Securities and Exchange Commission (SEC), and available at the SEC's website at www.sec.gov, including: (1) Exelon's 2013 Annual Report on Form 10-K in (a) ITEM 1A. Risk Factors, (b) ITEM 7. Management's Discussion and Analysis of Financial Condition and Results of Operations and (c) ITEM 8. Financial Statements and Supplementary Data: Note 22; (2) Exelon's Quarterly Report on Form 10-Q for the quarter ended March 31, 2014 in (a) Part I, Item 1. Financial Statements, (b) Part I, Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations, and (c) Part II, Item 1A. Risk Factors, (3) PHI's 2013 Annual Report on Form 10-K in (a) ITEM 1A. Risk Factors, (b) ITEM 7. Management's Discussion and Analysis of Financial Condition and Results of Operations and (c) ITEM 8. Financial Statements and Supplementary Data: Note 15 and (4) PHI's Quarterly Report on Form 10-Q for the quarter ended March 31, 2014 in (a) Part I, Item 1. Financial Statements, (b) Part I, Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations and (c) Part II, Item 1A. Risk Factors. In light of these risks, uncertainties, assumptions and factors, the forward-looking events discussed in this communication may not occur. Readers are cautioned not to place undue reliance on these forward-looking statements, which speak only as of the date of this communication. Neither Exelon nor PHI undertakes any obligation to publicly release any revision to its forward-looking statements to reflect events or circumstances after the date of this communication. New factors emerge from time to time, and it is not possible for Exelon or PHI to predict all such factors. Furthermore, it may not be possible to assess the impact of any such factor on Exelon's or PHI's respective businesses or the extent to which any factor, or combination of factors, may cause results to differ materially from those contained in any forward-looking statement. Any specific factors that may be provided should not be construed as exhaustive.

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SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, each Registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

EXELON CORPORATION

/s/ Jonathan W. Thayer
Jonathan W. Thayer
Senior Executive Vice President and Chief
Financial Officer
Exelon Corporation

July 21, 2014

EXHIBIT INDEX

Exhibit No.	Description
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