

Capital Reporting Company
Formal Case No. 1119 (Volume II) 12-03-2015

343

PUBLIC SERVICE COMMISSION
OF THE DISTRICT OF COLUMBIA

-----: :
IN THE MATTER OF THE JOINT : Formal Case
APPLICATION OF EXELON : No. 1119
CORPORATION, PEPCO HOLDINGS, :
INC., POTOMAC ELECTRIC POWER : Volume II
COMPANY, EXELON ENERGY :
DELIVERY COMPANY, LLC AND :
NEW SPECIAL PURPOSE ENTITY, LLC: :
FOR AUTHORIZATION AND APPROVAL :
OF PROPOSED MERGER TRANSACTION :
-----:

Washington, D.C.

Thursday, December 3, 2015

The Public Interest Hearing in the
above-captioned matter began at 10:31 a.m.,
pursuant to notice, at the Public Service
Commission of the District of Columbia, 1325 G
Street, N.W., Washington, D.C.

BEFORE: BETTY ANN KANE, CHAIRWOMAN
JOANNE DODDY FORT, Commissioner
WILLIE L. PHILLIPS, Commissioner

Reported by: Rose A. Tamburri

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1 Appearances, Continued:

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20 HEATHER CAMERON, ESQUIRE

21 On Behalf of Grid 2.0 Working Group:
22 (Grid)

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25 On Behalf of Maryland DC Virginia Solar Energy
26 Industries Association:

27 BRIAN R. GREEN, ESQUIRE

28 On Behalf of Monitoring Analytics, Inc.:
29 (Independent Market Monitor for PJM)

30 JEFFREY W. MAYES

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1 Appearances, Continued:

2 On Behalf of Mid-Atlantic Renewable Energy
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CAROLYN ELEFANT, ESQUIRE

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On Behalf of NRG Energy, Inc.: (NRG)

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CORTNEY MADEA, ESQUIRE

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1		I N D E X		
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3	DR. SUSAN TIERNEY			
4	By Mr. Meier	352		
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9	By Ms. Francis	459		495
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1	E X H I B I T S		
2	EXHIBIT NO.	MARKED	RECEIVED
3	JA5G, JA5G-1 - 6	353	388
4	OPC-3A	395	456
5	Commission 7	455	456
6	Commission 6	--	456
7	AOBA NSA-1	460	496
8	AOBA Exhibit B	461	496
9	DCG-2A and DCG-2A-1	497	529
10	NCLC/NHT Exhibit B	533	543
11	JA-8/JA-NSA-2	560	586
12	JA-NSA-3	559	586
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1 P R O C E E D I N G S

2 CHAIRWOMAN KANE: We are now back on the
3 record in the hearing in Formal Case 1119 to
4 consider whether the Non-Unanimous Settlement
5 Agreement is in the public interest. It is
6 Thursday, December 3rd, and it is 10:31 a.m.

7 Before we resume with our next witness,
8 may I ask the parties if there are any preliminary
9 matters? Mr. Meier?

10 MR. MEIER: Yes, ma'am. Good morning.
11 It's come to our attention that the numbering
12 convention we're using for our testimony is not in
13 conformance with the secretary's direction, and so
14 we can correct that now for the prior two
15 witnesses and proceed accordingly.

16 CHAIRWOMAN KANE: Yes, please. We do
17 need to follow directions of our secretary.

18 MR. MEIER: Yes, indeed. Carim
19 Khouzami's testimony is properly designated Joint
20 Applicants Exhibit 5F and his exhibits are 5F-1
21 through 5F-4. And we'll be filing conformed
22 testimony with the proper numbering on it.

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1 And Mr. Velazquez's testimony is
2 properly designated JA-M, letter M. That's all I
3 have as a preliminary matter, Your Honor.

4 CHAIRWOMAN KANE: Thank you. Any other
5 parties have anything preliminary?

6 (No response.)

7 CHAIRWOMAN KANE: Very good. You may
8 proceed with your next witness.

9 MR. MEIER: Thank you very much. The
10 Joint Applicants call Dr. Sue Tierney to the
11 stand, please.

12 WHEREUPON,

13 DR. SUE TIERNEY,
14 having first been duly sworn and/or affirmed, was
15 examined and testified as follows.

16 DIRECT EXAMINATION

17 BY MR. MEIER:

18 Q. Good morning, Dr. Tierney.

19 A. Good morning.

20 Q. Could you state your name and employment
21 for the record, please.

22 A. My name is Susan Tierney. I work at

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1 Analysis Group --

2 CHAIRWOMAN KANE: Speak up, please.

3 THE WITNESS: My name is Susan Tierney.

4 I work at Analysis Group in Boston.

5 BY MR. MEIER:

6 Q. Do you have before you your fully
7 conformed testimony?

8 A. I do.

9 MR. MEIER: In accordance with the
10 Commission's approval of stipulating testimony
11 into the record, I'd like to premark Dr. Tierney's
12 testimony as JA-5G and her exhibits as JA-5G-1
13 through 6.

14 CHAIRWOMAN KANE: So marked.

15 MR. MEIER: And I have just two
16 questions for the witness.

17 BY MR. MEIER:

18 Q. Dr. Tierney, Mr. Hempling states in his
19 testimony at page 10 that the District's desire to
20 diversify and democratize power supply will be at
21 risk because Exelon's 63 percent dependence on
22 conventional generation revenue gives it an

1 incentive in the District and elsewhere both to
2 discourage innovation and to deter competitive
3 entry.

4 According to Mr. Hempling, the reason is
5 simple; all such innovations and entry leads to
6 the same place: Reduced dependence on
7 conventional centralized generation, existing and
8 future.

9 Do you agree with Mr. Hempling?

10 A. No, I do not.

11 Q. Could you please explain.

12 A. Sure. There are several reasons why I
13 disagree with Mr. Hempling's point of view on
14 this. First is the fact that I -- I think his
15 presumed motives for Exelon in undertaking this
16 merger are incorrect, or they're not appropriate.

17 It seems to me that if Exelon is seeking
18 to acquire Pepco in a PHI, that it is doing so
19 because it wants to get into the utility business
20 in a much bigger way. Already, the 2014 10-K for
21 Exelon indicates that Exelon's business is quite
22 oriented toward electric utilities and wants to

1 become an even larger player in that sphere.

2 For example, in 2014, 64 percent of
3 Exelon's revenues -- excuse me, operating revenues
4 came from the utility business, 50 percent of its
5 net income -- over 50 percent of its net income
6 came from the utility business. So a post merger,
7 as Mr. Crane has said, the Exelon Corporation will
8 be even more oriented toward the electric utility
9 segment.

10 Secondly, I disagree with Mr. Hempling's
11 premise that the introduction of distributed
12 generation is likely to materially undermine the -
13 - the market for central generation, central
14 station generation. There are lots of
15 opportunities for investment in the central
16 station market, there are lots of opportunities
17 for investment in the behind the meter market.
18 Both of those things are likely to be healthy
19 going forward, and I just don't agree with him
20 that the orientation of a utility, vis-a-vis
21 distributed generation, has to see that in
22 conflict with a generation business.

1 Third, I believe that the utility
2 platform is likely to evolve. You are seeing that
3 here, it's happening around the country, and as it
4 evolves, we are likely to see Exelon be a partner
5 and a highly motivated player in wanting to
6 provide services that customers want. You're
7 seeing here in the District, as utilities are
8 seeing in many other parts of the country, that
9 customers are seeking to put generation on their
10 side of the meter. A company like Exelon that has
11 been so pro-competition for so many years is
12 likely to see that movement to be consistent with
13 a diversified portfolio.

14 And finally, my experience in
15 participating in countless discussions of "Utility
16 of the Future" topics around the country leads me
17 to believe that a diversified company like Exelon
18 is actually likely to be much less nervous about
19 the changes underway in the electric industry than
20 a stand-alone distribution utility is. The
21 diversification helps as the industry is changing,
22 and I hear many distribution utilities around the

1 country talking about their concerns about the
2 sustainability of the traditional regulatory
3 model. And I hear that actually more often than
4 I'm hearing it from companies that own a lot of
5 generation.

6 So again, I disagree fundamentally with
7 the point of view that Mr. Hempling shared about
8 the -- his view that there's an inconsistency with
9 Exelon's motivations and the interest of the
10 District's customers.

11 Q. Thank you, Dr. Tierney. One more
12 question.

13 In his testimony, Mr. Hempling asserts
14 that several of the benefits of the merger fall
15 into a forbidden category which he believes proper
16 merger analysis must ignore. Are you familiar with
17 this forbidden category Mr. Hempling describes,
18 and do you agree with him regarding proper merger
19 analysis?

20 A. No, I have never heard the phrase
21 "forbidden category" in my 30 years in the -- in
22 the business of either being a regulator of

1 utilities or being an observer in the industry.

2 Let me answer your second question,
3 which is my point of view about this, and the --
4 my view that that's an inappropriately narrow and
5 rigid standard for commissions to use. If
6 commissions were to have applied his standard of
7 review in mergers around the country, I just don't
8 think we would have seen the many mergers approved
9 that we have seen over the past few decades.

10 Let me give you some examples of why I
11 think it is inappropriately narrow and rigid, in
12 part, reflecting things that I see in the
13 Commission's discussion and in the Commission's
14 factors, as the Commission has been applying these
15 so far.

16 One example is with regard to Factor No.
17 7. Factor No. 7 seems to me to be all about
18 community impacts, impacts on natural resources,
19 the environment. It's not about red herring
20 impacts or customer impacts. As such, Mr. Hempling
21 would view the benefits of a merger package that
22 are going toward those benefits as things that the

1 Commission shouldn't count because they are not
2 things that arise from the consolidation of two
3 companies.

4 I fundamentally disagree with that, and
5 as I interpret the Commission's own merger
6 standards, I think that Mr. Hempling would --
7 would not be of inconsistency with where the
8 Commission has gone.

9 The second example is with regard to
10 jobs. It seems to me that every single commission
11 that I have observed in reviewing mergers is
12 concerned about the implications of a merger for
13 jobs in the locality. As a result of that, I
14 think Mr. Hempling would say that that's not fair
15 game, that would be forbidden, because again, that
16 is not an issue associated with the synergies or
17 economies of scale that he would say are going to
18 flow. If you didn't care about jobs, you would
19 not be looking for -- I mean, if one were not
20 caring about jobs, you wouldn't see the kind of
21 commitments that many companies, including the
22 Joint Applicants, have made here.

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1 And just a final one. Let's look at
2 reliability. If a company, through a merger, is
3 accomplishing reliability objectives either faster
4 or more efficiently or more cost effectively, but
5 those reliability benefits could happen if the
6 Commission made them so, or if the company could
7 be accomplishing those in the absence of the
8 merger, but at a much slower time frame, Mr.
9 Hempling would not count those as merger benefits.

10 So I think his merger standard, as he
11 proposed it, is inappropriately narrow, and it
12 just seems to me that it's unfortunate that he
13 would change what -- some of the things that many
14 people are looking for to accompanying mergers;
15 impacts on the environment, beneficial impacts on
16 the environment and natural resources, beneficial
17 impacts on jobs, beneficial impacts on our
18 liability, and I would encourage the Commission
19 not to adopt his standard.

20 MR. MEIER: Thank you. Dr. Tierney is
21 available for cross-examination.

22 CHAIRWOMAN KANE: Do the parties have

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1 any cross-examination of Dr. Tierney?

2 MS. ELEFANT: I do, unless some of the
3 other parties preceding me do.

4 CHAIRWOMAN KANE: You're next. Go
5 ahead.

6 Please, again, identify yourself for the
7 transcriber.

8 MS. ELEFANT: Carolyn Elefant, on behalf
9 of the Mid-Atlantic Renewable Energy Coalition.

10 CROSS-EXAMINATION

11 BY MS. ELEFANT:

12 Q. Good morning, Dr. Tierney.

13 A. Good morning.

14 Q. Again, we meet again.

15 A. Nice to see you again.

16 Q. Yes, you, too. Anyway, before I get
17 into the questions that I have, I just wanted to
18 follow up on some of this additional rebuttal-type
19 testimony that you gave.

20 Now, you acknowledge that the standard
21 for approval of a merger, both in DC and in many
22 other jurisdictions, is sort of a broad public

1 interest standard; isn't that right?

2 A. I do.

3 Q. And as part of the public interest
4 standard, an agency has to determine whether a
5 merger complies with applicable laws of the
6 jurisdiction; isn't that fair to say?

7 A. I would agree with that.

8 Q. Okay. So for Public Interest Factor 7,
9 isn't one of the -- isn't one of the Commission's
10 goals in adopting Public Interest 7, Public
11 Interest Factor 7, to determine whether the merger
12 is in compliance with several DC statutes relating
13 to the environment, such as Renewable Portfolio
14 Standard, the Clean Energy -- the Clean and
15 Affordable Energy Act?

16 A. I'm struggling with your phrasing of
17 whether the merger is in compliance with various
18 statutes. So what I'm -- what I interpret you to
19 be asking me is whether or not the Commission will
20 be looking at whether something is aligned with,
21 but not in compliance.

22 Q. Okay. And aligned with would be a

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1 factor. What I'm trying to get at is it seemed as
2 if you had suggested in your response that Public
3 Interest Factor 7 was potentially something that
4 was an inappropriate consideration because it
5 doesn't directly impact ratepayer -- ratepayer
6 concerns, and I was following up to ask you
7 whether there are other considerations that a
8 commission takes into account in determining
9 public interest besides ratepayer concerns?

10 A. Yes. In case there is any doubt in the
11 record about what I was trying to say when I
12 raised the example of factor -- Public Interest
13 Factor No. 7, I absolutely think it is appropriate
14 for the Commission to be looking at that. And
15 what I was saying is that application of Mr.
16 Hempling's point of view would have excluded that
17 from being part of an appropriate merger standard.
18 So I definitely agree that it is appropriate and
19 consistent with what the Commission is
20 articulating as its standards.

21 Q. Okay. Do you have a copy of the
22 Commission's Order up there? And have you

1 reviewed the Commission's Order rejecting the
2 merger prior to today?

3 A. Yes. Just -- yes.

4 Q. I will let you get ahold of it.

5 So I have a question about a statement
6 or concern that the Commission expressed in
7 paragraph 338 of its Order.

8 A. Yes. It's been a little while since
9 I've looked at it, so can I just review --

10 Q. Of course. Of course. Take your time.

11 A. Yes, I remember this one.

12 Q. And so paragraph 338 expresses the
13 Commission's concern that the applicants were not
14 duly familiar with various District policies,
15 particularly related to clean energy programs.

16 A. I read the words to be, "Important
17 District energy policies."

18 Q. Okay. So they're concerned about
19 familiarity with District energy policies.

20 Now, the Settlement Agreement doesn't
21 address that concern directly; does it?

22 A. I completely disagree with what you've

1 asked me.

2 Q. Okay. Can you cite to me specific
3 paragraphs in the Settlement Agreement that
4 address the Commission's concern about the
5 applicant's lack of familiarity with energy
6 policy?

7 A. Yes. First of all, the Customer
8 Investment Fund includes a number of provisions
9 that are identified in paragraphs 6, 7 and 8 of
10 the Settlement Agreement, and those identify
11 organizations or divisions of District Government
12 that have responsibility for clean energy
13 policies, whether it's renewables or energy
14 efficiency.

15 Q. And just --

16 A. I'm not done.

17 Q. Okay. Go ahead. I'll let you finish.

18 A. Thank you. Additionally, there are
19 specific provisions relating to energy efficiency
20 programs that are identified in paragraph 9(c)
21 that anticipate working with organizations to
22 address energy efficiency needs to provide

1 benefits for low income customers.

2 Additionally, there are provisions in
3 paragraph 115 that describe Exelon's support for
4 working on energy efficiency and demand response
5 as playing an important role in the energy mix.

6 And then paragraphs 118 through 130
7 delineate a long list of provisions that are
8 designed to support clean energy investment in the
9 District and in markets that serve the District,
10 and that those are consistent with the District's
11 clean energy policies.

12 Q. So those provisions, for example,
13 paragraphs 6 to 8, would provide funding for the
14 programs, but there's nothing in there that
15 specifically requires the applicants to be active
16 participants or to educate themselves to provide
17 procedures whereby people can, you know --
18 interactive procedures? I mean, the Commission's
19 concern, it seems to me, was not so much that
20 those issues hadn't been addressed, but that the
21 applicants lacked familiarity with how the
22 District's energy programs worked.

1 And so I guess what I'm asking is how
2 those provisions that you've just discussed
3 reflect an understanding and a commitment to
4 continue to understand and work with the District
5 on those energy programs?

6 A. I have a hard time understanding how one
7 could not read the provisions in the Settlement
8 Agreement as indicating very strong support of the
9 Joint Applicants for the District's clean energy
10 policies, energy efficiency, demand response,
11 behind the meter investment in distributed
12 generation. Specifically, paragraph 115 talks
13 about specifically supporting and continuing to
14 support energy efficiency and demand response as
15 playing a critical role in the energy mix.

16 So I just have a hard time understanding
17 if there is a particular word that you're looking
18 for that's missing, how one could miss the big
19 picture, which is that these are very strong
20 commitments for clean energy policies in the
21 District.

22 Q. Now, when Exelon prepared its

1 application, it's a joint application, so
2 presumably it was prepared with Pepco and -- Pepco
3 Holdings, Inc., and other companies that had been
4 involved in District energy policy as a result of
5 being utilities here; is that right?

6 A. That's -- that's my understanding, yes.

7 Q. And so -- and yet the Commission still
8 expressed concern in paragraph 338 that the
9 application and the witnesses that Exelon had
10 proffered during the hearing did not have a
11 sufficient understanding of energy policy,
12 notwithstanding that they were working with Pepco?

13 A. I read paragraph 338 as identifying a
14 single witness, Mr. Crane, and there's a reference
15 to two instances where members of the Commission
16 were educating Mr. Crane about a particular aspect
17 of the way energy efficiency programs are run in
18 the District.

19 I didn't see it as a -- those
20 illustrative examples were condemning forever the
21 Joint Applicants from understanding where the
22 District's strong positions are on clean energy.

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1 Q. Okay. Now I want to turn to your
2 testimony, and I'll let you get a copy of that.

3 A. I'm good to go.

4 Q. Okay. So I wanted to ask you first
5 about your testimony on page 8, paragraph 12,
6 where you are discussing the CIF.

7 A. Yes. Do you mean line 12?

8 Q. Yes, yeah, line 12 to 14 where you're
9 discussing some of the additional -- the funds in
10 the Consumer Investment Fund, and then you go on
11 to compare those later on on that page and the
12 next page to benefits that are offered in other
13 merger proceedings and other jurisdictions.

14 A. Yes, I see that.

15 Q. Okay. And so you had reviewed other
16 merger proceedings to find out what the consumer
17 benefits were there?

18 A. I was reviewing other mergers in the
19 following way: I read the Commission's Orders on
20 several mergers to identify what the Commission
21 took into consideration in terms of commitments,
22 firm commitments from the companies, and I was

1 interested in seeing what the packages of
2 commitments were and how firm they were and how
3 deep and large the benefits were.

4 Q. Okay. Did you look at factors such as
5 whether those cases involved acquisition of the
6 sole utility company serving a particular
7 jurisdiction when you were -- as is the case here,
8 when you were comparing the amount of customer
9 benefits?

10 A. Each one of these mergers involved the
11 acquisition of an electric utility that was the
12 sole electric distribution company in that
13 jurisdiction.

14 Q. Okay. And did you also look at whether
15 those mergers would involve the consolidation of
16 utilities in as large a region -- in -- within a
17 region as large as the consolidation of Exelon and
18 Pepco?

19 A. I'm sorry, I don't understand the
20 question.

21 Q. I'm just wondering if the -- as a result
22 of the merger between Exelon and Pepco, Exelon

1 will be the dominant provider in the District of
2 Columbia, and also in Maryland, and will also have
3 influence in two other jurisdictions; it's a four-
4 jurisdiction merger. And so I was wondering
5 whether these mergers where you compared the
6 customer benefits in those jurisdictions also
7 involved multiple jurisdiction mergers that would
8 give the combined company wide regional control?

9 A. I'm going to answer the question that
10 you asked about whether or not the mergers
11 resulted in a consolidated company that was a
12 large presence in terms of serving distribution
13 companies, and the answer is yes. There are
14 instances of mergers that I've looked at. I would
15 give the example of Eversource, which is the
16 current name of the merger between Northeast
17 Utilities and NStar. That is a company that has a
18 large presence in the New England states.

19 Q. Okay. And that's -- I don't see it
20 discussed here directly. I assume it's -- oh,
21 it's in the attachment, you had had a list of ones
22 in the attachment, so I assume it's presumably in

1 that attachment, unless I'm missing it here?

2 A. Correct. Correct. It's on -- I don't
3 remember the name -- the number of my exhibits,
4 but it's in the Exhibit 3.

5 Q. Yes.

6 A. So someone should give me the right --

7 Q. Yeah. I remember seeing the list of it,
8 so, okay. I just hadn't seen it.

9 A. And I just want to refresh my own -- I
10 want to add to the point that I made before, and
11 that is that First Energy, the mergers that were
12 also on my list, represents a very large, multi-
13 state company.

14 And finally, the Mid-American
15 acquisition of NV Energy led to the acquisition of
16 a company that basically serves all of Nevada and
17 many other -- and has affiliated companies in many
18 other parts of the west.

19 Q. Okay. And do you know whether in any of
20 those cases the benefits were offered as a result
21 of an initial rejection of the merger, as was the
22 case here?

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1 A. No.

2 Q. No, you don't know? It was my fault,
3 bad question.

4 Were the benefits offered in those cases
5 the result of a rejection of a merger?

6 A. There were no -- none of these companies
7 had a rejection from the local commission.

8 Q. Okay. Thanks.

9 I now wanted to move to page 17 of your
10 testimony. And you said something, it was on line
11 -- let's see where this is. Oh, line 13 and 14,
12 where you stated, "Within the District's market
13 for competitive generation service, although in
14 theory there could be a potential conflict between
15 the role as purchaser for SOS services on one hand
16 and Exelon's role as potential competitive
17 supplier of wholesale SOS services to Pepco on the
18 other," you then go on to say that there are
19 essentially rules and practices and policies in
20 place that would address or guard against any
21 potential undue influence or problematic complex.
22 Is that sort of the gist of your testimony on that

1 point?

2 A. Yes, but I was quite specific about the
3 competitive procurement roles that exist in the
4 District and exist in other jurisdictions where
5 there are local distribution companies that
6 provide default service or basic service as a
7 pass-through to customers, and that you don't hear
8 complaints these days about problems in those
9 competitive procurements.

10 Q. Right. I think you gave also another
11 example of how the District, at one time when
12 Pepco had a competitive supplier affiliate, the
13 District also either had or put into effect
14 regulations to prevent conflicts and undue
15 affiliate interests between Pepco's distribution
16 and its -- and the generation supply company; is
17 that right?

18 A. Yes.

19 Q. And, of course, once Pepco got rid of
20 its generation, those rules -- I assume presumably
21 they're still on the books, but they're no longer
22 necessary, at least insofar as Pepco is concerned,

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1 because it's just a distribution company?

2 A. At the moment right now, I think there's
3 only a -- actually, there has been a competitive
4 affiliate of Pepco, and I don't -- I'm not aware
5 that there's any problem.

6 Q. But is it fair to say that as a result
7 of this merger, the need for regulation and for
8 relying on those rules would be heightened as
9 compared to the situation now where Pepco does not
10 have a large competitive -- or does not have a
11 large generation affiliate as it would as part of
12 this transaction?

13 A. I would put it this way: I believe that
14 the Commission's policies with regard to
15 competitive procurements standard offer service
16 are strong, they are -- I would expect the
17 Commission always to be interested in ensuring
18 that the results are competitive, and I would
19 expect the Commission to continue to be interested
20 to know that the results are competitive.

21 Q. Yes, but is it still fair to say that as
22 a result of this merger, their obligation to

1 continue to be vigilant will be heightened because
2 Pepco will now have a large competitive generation
3 affiliate which has not been true for the past, I
4 don't know, seven years or since it got rid of its
5 generation?

6 A. As I say, I would expect the Commission
7 has always been interested in ensuring that the
8 SOS procurements are competitive. The procedures
9 that are in place that include monitors of such
10 procurements are tools that the Commission can and
11 I assume will rely upon.

12 So I believe that the Commission will be
13 interested for sure to make sure that there are
14 not unearned competitive advantages associated
15 with affiliate relations, but I think the
16 procedures are already set up to assure that.

17 Q. Okay. I wanted to go to page 22 and
18 just ask you one or two questions about the
19 development of -- let me see if it's on page 22.
20 I'm sorry, yeah, page 22 about the development of
21 the 10 megawatts of solar.

22 Now, were you here for any part of the

1 hearing yesterday, because this issue had come up
2 in questioning to a couple of the witnesses?

3 A. I was here yesterday and heard that
4 testimony.

5 Q. Okay. Well, I just wanted to ask you
6 then for your understanding.

7 You discussed this arrangement for the
8 10 megawatts of solar, and you refer to paragraph
9 118 of the Settlement Agreement, or you cited
10 paragraph 118 which, if you want to take a look at
11 that, too, at the same time, because --

12 A. Yes.

13 Q. Okay. And so it discusses how Exelon
14 will enter into good faith negotiations of a
15 commercially acceptable arrangement for five
16 megawatts of generation, and I just wanted to ask
17 you, do you have an understanding of what's meant
18 by "commercially reasonable" in that -- in that
19 paragraph of the agreement?

20 A. I don't have, because I can't have a
21 legal opinion about that.

22 Q. Sure.

1 A. But I would -- I interpret this to mean
2 that the two parties to a transaction, potential
3 transaction, each have to find that the deal is
4 good for them and consistent with normal
5 commercial transactions of the like.

6 Q. Okay.

7 A. And just to be clear, when I said "two
8 parties," I meant Exelon as a potential developer
9 of five megawatts of solar on the Blue Plains
10 Wastewater Treatment Plant, but also the DC
11 Water's side of that. DC Water is not compelled
12 to enter into a contract with Exelon.

13 Q. Okay. Now, given that the development
14 of the waste -- the solar wastewater treatment
15 plant was, at least to some degree, underway at
16 the time this Settlement Agreement was negotiated
17 --

18 MR. MEIER: Objection, Your Honor.
19 There's no foundation for that.

20 MS. ELEFANT: Okay. I can refer to --

21 BY MS. ELEFANT:

22 Q. Did you hear Director Wells' testimony

1 yesterday?

2 A. I did hear it, yes.

3 Q. Do you recall Director Wells talking
4 about how there had initially been some activity
5 underway in terms of development of the five
6 megawatts of solar at the wastewater treatment
7 facility?

8 A. I generally remember the testimony. I
9 don't remember the specifics about timing of
10 negotiations, vis-a-vis the agreement.

11 Q. And do you, just to ask you, for laying
12 a foundation, do you recall Director Wells
13 discussing that one of the obstacles to moving
14 forward with the plant had to do with
15 interconnection, and it was one of several, I
16 believe? Do you remember his testimony on that
17 point?

18 A. I do, but I don't understand what you
19 asked me when you just said "one of several." What
20 did you refer to?

21 Q. I was then referring to when the
22 Commissioners were questioning Director Wells, he

1 mentioned that the interconnection issue was not
2 the only obstacle, there were other reasons why
3 this project didn't proceed.

4 A. I remember listening to testimony. I
5 was -- I don't have any knowledge of the -- of
6 either the negotiations or prior developments at
7 the wastewater treatment project.

8 Q. Okay. Okay. So then just to -- I'm
9 sorry, just to clarify, so you don't have any
10 knowledge as to whether the negotiations or
11 development had started in -- had been underway
12 prior to this settlement provision being
13 negotiated?

14 A. I do not.

15 Q. Okay. So I'm going to skip this
16 question with you.

17 A. Thank you.

18 Q. Thank you. Okay.

19 Let's turn to page 24 of your testimony.

20 A. Yep.

21 Q. And this is where, starting at line 11,
22 you talk about Exelon's commitment to solicit

1 proposals for wind.

2 A. Yes.

3 Q. Okay. And in this provision, you did
4 some calculations. You took the average install
5 cost of wind projects from 2014; is that right?

6 A. Yes.

7 Q. Now, do you recall that under the -- and
8 if you want to actually turn your attention to the
9 settlement paragraph relating to the wind
10 development, I think that is in paragraph 128 of
11 the Settlement Agreement.

12 A. Do you mean 130?

13 Q. Yes, I think I -- yes, I do. I misread
14 your footnote. Sorry about that. Thank you.

15 A. I'm there.

16 Q. Okay. So just before I ask you the
17 questions, let's go back. So paragraph 130 talks
18 about how Exelon or non-affiliate -- non-utility
19 subsidiaries will, within five years, hold --
20 conduct an RFP or competitive process to solicit
21 proposals for wind purchases of a total of 100
22 megawatts; right?

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1 A. Yes.

2 Q. So in theory, that would mean that it's
3 possible that, you know, if these aren't conducted
4 for five years, you know, if Exelon doesn't
5 conduct them for five years, the projects won't
6 come online until at least 2020, five years from
7 now, and that's assuming that it doesn't take them
8 time to be constructed or anything; right?

9 A. If Exelon waited until the last day of
10 the five-year period and solicited from greenfield
11 projects, those projects would need a lead time of
12 a few years to come online. I actually interpret
13 this as saying there's flexibility with regard to
14 the timing.

15 Q. Sure. So I guess I'm wondering, can you
16 explain why you had used the average installed
17 costs for 2014 when there is potentially some lead
18 time as to when these projects will come online,
19 why you used 2014 for purposes of your
20 calculations?

21 A. It was the most recent information that
22 one has.

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1 Q. Okay.

2 A. I do know that prices have been going
3 down, and as I explained here, I explained why I
4 thought it was a reasonable number to use for this
5 purpose.

6 Q. Okay. Do you have any opinion on -- as
7 to how those benefit calculations might change if,
8 let's say, Exelon just waited three years and the
9 plants came on in 2018 or 2017, or they bought
10 power, they had started a power purchase agreement
11 in 2017 or 2018?

12 A. I'm going to answer the question whether
13 or not I think the cost of building wind projects
14 is likely to go down in the next few years, and I
15 do believe it will go down, and I don't know how
16 much, so I thought it was appropriate to use the
17 most recent information.

18 Q. Okay. So it's possible this number
19 might go down, but you don't know by -- it's
20 impossible to say by how much; would that be
21 accurate?

22 A. Yes.

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1 Q. Okay.

2 A. But it will still be very positive and
3 the fact of long-term contracting will be very
4 positive, something that won't happen in the
5 absence of the merger.

6 Q. Okay. And when you say that the long-
7 term contracts would be positive and not happen --
8 well, would be positive, you're talking about a
9 positive impact for the District; right?

10 A. I'm talking about a positive impact for
11 Factor No. 7 issues in the District because this
12 wind resource that will be contracted for with
13 long-term contracts will be delivered into the
14 region of PJM from which the District gets its
15 electricity supply at wholesale and also is the
16 place where renewable energy credits that can be
17 counted towards the District's renewable portfolio
18 standard can apply.

19 Q. Okay. All right. Let's see.

20 I have also a question for you, this is
21 -- I'm sorry. I'm jumping around.

22 Now, let's go to page 26 of your

1 testimony, and you say here at line 10, you know,
2 "Few parties that seek to merge but receive a
3 rejection by utility regulatory agency take the
4 next step of regrouping diligently trying to
5 fashion a response that addresses the concerns."
6 That was your testimony on page 26?

7 A. Yes.

8 Q. Now, how many -- did you look at other
9 cases of situations where mergers had been
10 rejected in arriving at that opinion?

11 A. Yes.

12 Q. And so how many other examples did you
13 find where a -- regulators had rejected a merger
14 and companies didn't go forward with, you know,
15 other proposals?

16 A. I think in recent years, I can think of
17 a handful of rejections. I know over the past
18 several decades, I am aware that there have been
19 rejections by state commissions and local
20 regulators. The same would be true with regard to
21 FERC, Federal Energy Regulatory rejections of --
22 Regulatory Commission rejections of mergers being

1 asked.

2 Q. So were you included FERC -- when you
3 were talking about few parties that seek to merge,
4 but receive a rejection by utility regulatory
5 agency, were you including FERC in that
6 description?

7 A. Yes. I wanted to include not only the
8 District as a utility regulatory agency, and I
9 didn't want to use the word "state" on purpose,
10 but I was also including federal regulators of
11 utilities.

12 Q. Okay. Do you recall how many or whether
13 you looked at cases that involved multi-
14 jurisdiction approvals where all of the other
15 jurisdictions except one had approved the merger?

16 A. I don't recall a fact pattern that's the
17 same in any of the other rejections.

18 Q. Okay.

19 A. But that doesn't mean it didn't happen;
20 I just don't remember it.

21 Q. Right, right.

22 MS. ELEFANT: Let me see if I have any

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1 other questions. I don't have any further
2 questions. Thank you.

3 THE WITNESS: Thank you.

4 MR. MEIER: Thank you.

5 CHAIRWOMAN KANE: Redirect?

6 Commissioners, any questions? Commissioner Fort?

7 COMMISSIONER DODDY FORT: I just have a
8 question based on one of the answers you gave in
9 your rejoinder. You told us that 64 percent of
10 Exelon's operating revenue comes from utility
11 business.

12 THE WITNESS: If I said that, I
13 misspoke. I meant to say operating income.

14 COMMISSIONER DODDY FORT: Operating
15 income comes. And within the context of that
16 statement, what is included in utility business?

17 THE WITNESS: ComEd, PECO, Baltimore Gas
18 & Electric.

19 COMMISSIONER DODDY FORT: Okay. I just
20 wanted it for the record. Thanks.

21 THE WITNESS: Right. Thank you.

22 MR. MEIER: No redirect, Your Honor.

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1 CHAIRWOMAN KANE: Thank you. The
2 witness is excused.

3 THE WITNESS: Thank you.

4 (Witness excused.)

5 MR. MEIER: I would move into evidence
6 Joint Applicants Exhibit 5G, including 5G-1
7 through 5G-6.

8 CHAIRWOMAN KANE: They are moved into
9 evidence.

10 OPC, you may proceed with your witness.

11 MR. EILBOTT: Thank you, Your Honor.

12 OPC calls Dr. David Dismukes, please.

13 WHEREUPON,

14 DR. DAVID DISMUKES,
15 having first been duly sworn and/or affirmed, was
16 examined and testified as follows...

17 DIRECT EXAMINATION

18 BY MR. EILBOTT:

19 Q. Dr. Dismukes, could you please state
20 your name and business address for the record,
21 please.

22 A. My name is David E. Dismukes, D-I-S-M-U-

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1 K-E-S. My business address is 5800 One Perkins
2 Place Drive, Baton Rouge, Louisiana, 70808.

3 Q. And you are the same Dr. Dismukes who
4 filed direct and supplemental direct testimony in
5 the initial phase of this proceeding; is that
6 right?

7 A. Yes, sir, I am.

8 MR. EILBOTT: Your Honor, yesterday I
9 provided the Commission Secretary with a list of
10 minor errata to Dr. Dismukes' testimony. I
11 distributed that list to parties' counsel this
12 morning.

13 BY MR. EILBOTT:

14 Q. And I just wanted to confirm with Dr.
15 Dismukes that none of those errata makes any
16 substantive or significant change to any portion
17 of your testimony; is that right?

18 A. Yes, sir, that's correct.

19 MR. EILBOTT: And, Your Honor, I did
20 have a couple of questions, rejoinder questions,
21 that I wanted to discuss with Dr. Dismukes at this
22 point.

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1 CHAIRWOMAN KANE: Yes. Proceed.

2 MR. EILBOTT: Thank you.

3 BY MR. EILBOTT:

4 Q. Dr. Dismukes, are you familiar with --
5 are you aware that Grid 2.0, Witness Hempling, in
6 his November 17th testimony opposing this
7 Settlement Agreement, asserts that Exelon's
8 dependence on generation sales conflicts with
9 Pepco's dependence on generation purchases?

10 A. Yes, sir, I am.

11 Q. Okay. And what is your understanding of
12 his position and concern on this issue?

13 A. I think generally that Exelon has a
14 built-in bias to preface generation over other
15 types of assets and that bias will continue in the
16 aftermath of this merger if it were approved by
17 the Commission and in the stipulation.

18 Q. And in his testimony, does he offer his
19 opinion that the Settlement Agreement does not
20 resolve those conflict of interest concerns?

21 A. Yes, sir.

22 Q. Do you agree with his opinion on that

1 issue?

2 A. No, I do not.

3 Q. Can you explain why you do not agree.

4 A. Well, I think there are a number of
5 provisions that run through the Settlement
6 Agreement that go a long way in either reducing
7 Exelon's ability to essentially act on that
8 incentive to preference its generation or makes it
9 very costly for them to try to do that. And I
10 think this is what differs significantly from the
11 testimony and the proposal that was before the
12 Commission and before the various stakeholders to
13 what we're looking at considering now.

14 You know, these provisions are not just
15 in one particular place, but I think are replete
16 through various different provisions within the
17 Settlement Agreement going -- to a certain extent
18 with some of the ringfencing measures,
19 particularly now with the agreement that we have
20 where we have a broader degree of independent
21 governance with regards to the SPE that's going to
22 be managing the PHI assets into the government's

1 provisions that are included in the agreement.
2 That will create some independence for the Pepco
3 affiliates, themselves, as well as the governing
4 board for Pepco.

5 There are also provisions that are
6 replete through the document that I think are
7 going to, again, dampen any incentive to act or
8 make it a pejorative for the company to act on
9 that generation incentive as it relates to some of
10 the provisions that are intended to address Item
11 No. 7, because there are -- the Public Interest
12 Factor No. 7, because there are a number of
13 provisions and commitments that the Joint
14 Applicants have to enter into now on a foregoing
15 basis, whether it goes from study requirements to
16 new investments in a distributed generation to
17 facilitating micro grids that would be in direct
18 conflict with that kind of incentive.

19 So I see many of those incentives, even
20 if they exist, dampening the company's ability to
21 act on those. And I think that is what was
22 important in the evaluation for OPC in examining

1 this agreement and coming to the table and
2 agreeing with the Joint Applicants on these
3 particular terms, because now we have a set of
4 very firm requirements where we had ambiguity
5 before, and we have actions that would prevent the
6 companies from acting on those incentives.

7 And I also think that those are all
8 provisions that will exist within the relatively
9 short run, within, say, the immediate years after
10 the merger, if it is approved.

11 I think over the long run, that kind of
12 incentive is going to likely get dampened, given
13 some of the commitments, again, that are in the
14 merger, particularly the ones that really, I
15 think, join Exelon's future to what goes on here
16 in the District. There will now be a corporate
17 headquarters here for the utility operations, you
18 will have offices for many of the executive
19 committee officers, you are going to have an
20 independent president for PHI and for Pepco,
21 themselves.

22 All of this independence is going to

1 make it very difficult, I think, for Exelon to try
2 to assert this, and it's going to probably create
3 a disincentive, because now, their future and the
4 future profitability of those operations is going
5 to be very, very tied to the District.

6 You're also going to have a president
7 for PHI, for Pepco, that's going to be meeting
8 monthly with the CEO for Exelon. You have a lot of
9 things now that didn't exist prior to -- a lot of
10 commitments that didn't exist prior to this
11 Settlement Agreement that I think now create
12 strong disincentives from acting on those kinds of
13 concerns.

14 Q. Thank you. And would you say that --
15 would it be fair to say that at least a few of
16 those commitments that you've alluded to were
17 specifically asked for by OPC in the initial phase
18 of this case?

19 A. Yes.

20 MR. EILBOTT: Your Honor, I have no
21 further questions, but a housekeeping matter.
22 Given -- my understanding of the Commission's

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1 Secretary's requirements, I think we had,
2 likewise, not correctly marked Dr. Dismukes'
3 testimony. We had premarked it as OPC-A. Given
4 this is his third round -- third piece of
5 testimony, I think we would correct this to be
6 OPC-3A and we will make that correction.

7 CHAIRWOMAN KANE: Thank you.

8 MR. EILBOTT: And with that, the witness
9 is available for cross-examination.

10 CHAIRWOMAN KANE: Do parties have cross-
11 examination of Mr. Dismukes? No, anybody? No?

12 (No response.)

13 CHAIRWOMAN KANE: Well, the Commission
14 does, and I'm going to start.

15 BY CHAIRWOMAN KANE:

16 Q. Dr. Dismukes, there were three areas I
17 want to get some further clarification on in terms
18 of the position of the Office of People's Counsel
19 --

20 A. Yes, ma'am.

21 Q. -- on this non-unanimous settlement. And
22 they go to, first of all, your concern in the

1 first go-round, as you cite on page 3 of your
2 testimony, that in the original application, and I
3 might quote, starting on line 4, "The Joint
4 Applicants promise much in their application" --
5 excuse me, "promise much in their original
6 application, base these promises upon a limited
7 amount of questionable information, and then place
8 the risk of all these verbal assurances and
9 promises really on the ratepayers." I want to
10 focus on the limited amount of questions on the
11 information aspect of that statement, and then I
12 want to ask you about rate increases and then
13 about competition.

14 A. Yes, ma'am.

15 Q. Okay? Let me start with your first
16 statement and -- which I just quoted, that in your
17 -- your concern about the original application and
18 your reason -- your clients' reason for opposition
19 to the original application.

20 Was it some of the promises were based
21 on a limited amount of questionable information,
22 and I think later in your testimony you talk about

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1 them being vague or not identifiable. And I want
2 to ask you about -- were you here during the
3 testimony of Mr. Wells and Mr. Velazquez?

4 A. Yes, ma'am, I was.

5 Q. You were. Okay. So do you recall the
6 question that was put to Mr. Velazquez first about
7 how the \$25.6 million in rate credits was going to
8 be handled?

9 A. Yes, ma'am.

10 Q. And do you recall his saying that it
11 hadn't yet been determined, a lot of the details
12 of that?

13 A. Yes, ma'am.

14 Q. Okay. Then do you recall my question to
15 Director Wells about the greenbank?

16 A. Yes, ma'am.

17 Q. And do you recall his answer that the
18 greenbank doesn't actually exist yet?

19 A. I believe so, yes, ma'am.

20 Q. And do you recall -- I don't know
21 whether it was in his written testimony or, excuse
22 me, his oral questioning about the job training

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1 and which organizations -- to which organizations
2 the \$5.2 million would be allocated?

3 A. Yes, ma'am.

4 Q. And his answer that it hasn't been
5 determined, that there were a number that might be
6 possible?

7 A. Yes, ma'am.

8 Q. Okay. And do you recall the questions
9 about the micro grids and to which organizations
10 might be the candidates for a pilot project to be
11 determined?

12 A. Yes, ma'am, I do recall that.

13 Q. And do you recall his answer, that it
14 hadn't been determined?

15 A. Yes, ma'am.

16 Q. And then do you recall the questions
17 about the 6.75 million for renovation of low
18 income housing for weatherization, et cetera?

19 A. Yes, ma'am, I do.

20 Q. And do you recall his answer, that it
21 hadn't been determined how that would be done,
22 which organizations would be getting it, how it

1 would be disbursed, et cetera?

2 A. Yes, ma'am, that's correct.

3 Q. And did you recall my questioning of
4 Director Wells about the history of diverting
5 Energy Assistance Trust Funds, Sustainable Energy
6 Trust Funds, Renewable Energy Development Trust
7 Funds' money into the general fund?

8 A. Yes, ma'am, I do recall.

9 Q. And my question to him as to whether
10 there was anything binding in the Settlement
11 Agreement that would prevent a future mayor or
12 council from continuing to do that?

13 A. I do recall.

14 Q. And his answer that no, really in his
15 word that he would not do it or support it?

16 A. Yes, ma'am.

17 Q. Okay. Thank you.

18 And then finally on the question that I
19 believe was directed to Mr. Velazquez about the
20 hundred megawatts of wind?

21 A. Yes, ma'am.

22 Q. As to whether that would be new or

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1 existing wind?

2 A. Yes, ma'am.

3 Q. And that it wasn't determined?

4 A. Yes, ma'am.

5 Q. And to who would buy the wind and who
6 the customers would be?

7 A. Yes, ma'am.

8 Q. And that it was not yet determined?

9 A. Yes, ma'am.

10 Q. Given all of those, do you still
11 believe, on behalf of your client, that there is
12 not questionable or vague information related to
13 some of the -- associated with some of the
14 proposed benefits?

15 A. I think that there may be some
16 outstanding questions about how those benefits may
17 get distributed, but I don't think it undermines
18 or changes the breadth or the significance of the
19 benefits that are created and the fact that they
20 were benefits that were vaguely asserted, that we
21 are going -- for instance, the Joint Applicants
22 asserting that we're going to support workforce

1 development, employment in the District, without
2 any real firm, broad commitments in there, or
3 limited broad commitments in there. We're going
4 to support renewable without a defined set of
5 renewable commitments that had been itemized and
6 prioritized.

7 I mean, there were certainly general
8 references. There was a CIF, as you recall, that
9 was originally proposed, but we were critical of
10 the fact that the companies had just pitched that
11 back to parties and said, How do you want to split
12 it up? How do you want to deal with it? That,
13 now, we have clarity on.

14 So in looking at this settlement and
15 this proposal relative to where we are, all of
16 those things represent very significant amenable
17 benefits to ratepayers, I believe, even though
18 there are going to be instances where we are going
19 to have to hammer out some details on them. And I
20 think even within some of the language in the --
21 in the stipulation, at least in some ways, I think
22 it kind of understands those kinds of clarities

1 that are going to have to be made.

2 For instance, within the CIF with the
3 Rate Stabilization Fund, there was some discussion
4 that you had yesterday with, I think Mr. Khouzami,
5 in terms of how are those credits going to be
6 going back and forth across the classes? How are
7 you going to allocate it in the master meters?

8 There's also some provisions in the
9 Settlement Agreement related to some of the
10 Commission's past orders with regards to cost of
11 service and the negative rates of returns on some
12 of the classes. You know, I see some of those
13 ideas as being inter-tied, excuse me, and when we
14 get into the first rate case, those probably will
15 be details that we will work out.

16 But that doesn't change the fact that
17 ratepayers are still going to get \$25.6 million.
18 I think that's unequivocal; that's going to
19 happen; that's a benefit. How we wind up
20 accounting for that and allocating it, I'm not
21 going to suggest it's not unimportant, but it
22 still represents -- and I don't see that the

1 allocation or difficulties in figuring out that
2 allocation today will prevent that allocation from
3 ever materializing or that 25.6 from ever
4 materializing.

5 You know, I think the same is true with
6 regards to wind. The fact that the Joint
7 Applicants have a five-year time period to go out
8 to the market and see what makes the most sense in
9 terms of a wind procurement, again, it's the
10 commitment that they are making, they are on
11 record, and they have to abide by that hundred
12 megawatts if the Commission approves this. And I
13 would expect them to use the time and use market
14 conditions to their best advantage to procure the
15 best, most cost-effective, reliable source of wind
16 that's out there in the market that will provide
17 benefits for the market broadly and individually
18 for ratepayers in the District.

19 There may be changes in market
20 conditions where you want to front load that. The
21 production tax credits may get changed, you may
22 get new changes in laws and regulations that you

1 may want to defer a decision on because there may
2 be a new package in Congress to put in new
3 provisions and tax breaks for wind when the new
4 solar credits expire. Why wouldn't you want to
5 wait to see where that goes that you can get more
6 wind development during that time period?

7 There may be changes in technology, say,
8 between year boxes and direct drive turbines that
9 are out there in the market that in the next year
10 or two will change the performance statistics of
11 these wind turbines and you may want to wait for
12 those to occur, as well.

13 I think the fact that the companies have
14 made that commitment is important and having a
15 little bit of flexibility in that matter is not
16 unreasonable, and I think ultimately benefits the
17 market and just a more productive use of
18 resources, even though ratepayers are not going to
19 be paying for the cost of those.

20 The other thing to keep in mind, I
21 think, with regards to -- the micro grids and some
22 of the ambiguity with that. Again, I think that

1 the commitment of going in and doing four projects
2 is firm, it's a dedicated benefit, and it's
3 something that did not exist in our previous
4 discussions with the company and prior to the
5 Commission's past order. We would hope that the
6 company would -- that the Joint Applicants would
7 go in and do a relatively exhaustive research on
8 what locations are the best, which ones would
9 provide the best benefits in terms of reliability,
10 grid security, et cetera, for these micro grids.

11 There's obviously a lot of public
12 considerations that you have to think about when
13 you're looking at micro grids because many of
14 those successful pilots that are out there today
15 tend to be around public type of institutions,
16 like hospitals or campus-type complexes, like
17 universities. So you certainly would want to take
18 those factors into consideration.

19 So the fact that there is some ambiguity
20 -- and then there's cost issues. What is it going
21 to cost? Those are things that not only are the
22 Joint Applicants going to have to consider, but

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1 Public Counsel is going to want to have to look at
2 those, too. While we agree that there are
3 significant benefits associated with these micro
4 grids and, this is a positive, new commitment
5 that's been made by the Joint Applicants, Public
6 Counsel hasn't signed off on this completely, at
7 least in the sense that we are giving a blank
8 check to the companies to go in and do whatever
9 they want; we are just going to approve that.
10 We're going to look at that, just like we would
11 look at any other investment in terms of making
12 sure it's prudent, it's been decided prudently,
13 the costs associated with that are prudent, and
14 that's going to take some time and certainly
15 probably work back and forth between the Joint
16 Applicants, OPC, the Commission and various other
17 stakeholders depending upon the venue in which
18 that decision is decided, whether it's in a rate
19 case or it's in some other proceeding.

20 So yeah, I do hear you, I do -- there
21 are some ambiguities in some of those particular
22 terms. I think some of those ambiguities are just

1 inherent because there is still additional work
2 that needs to be done, and I think it's prudent to
3 provide that kind of flexibility in some of those
4 terms and conditions.

5 And then in some of the other ones, I
6 think there are clearly workable types of
7 ambiguities that can be solved within the rate
8 case, but they don't take away, I think, from the
9 net benefits, in the fact that many of them are
10 very big differences from where we were prior to
11 the Commission's Order.

12 Q. Thank you. Just one quick follow-up on
13 the micro grid issue.

14 You, I believe, said just a couple
15 minutes ago that the ratepayers won't be paying
16 for them; is that what you said?

17 A. I said -- let me clarify that. I don't
18 think ratepayers are going to be given a blank
19 check for that.

20 Q. So your statement that ratepayers won't
21 be paying, which I wrote down, is not accurate, or
22 do you want to clarify?

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1 A. I don't believe that's true, no.

2 Q. Okay.

3 A. I think that would be part of the
4 company's cost of service. I think that that's
5 part of the agreement, which is one of the reasons
6 why we, and why Public Counsel has not abrogated
7 in any way in this agreement our ability to go
8 back in and look at this and scrub it and make
9 sure that it's done right, that the right projects
10 were picked, that the companies did their due
11 diligence in picking the locations, and that the
12 installed cost and the operating costs of doing
13 the projects makes sense.

14 Q. In paragraph 128, there is a reference
15 to Commission approval and for cost recovery.

16 A. Yes, ma'am. And that's the thing.
17 They'll have to provide -- they'll have to
18 identify the projects, the cost and the cost of
19 recovery, so that can be in rates, it can be
20 through a surcharge, it can be through something
21 else. And again, Public Counsel leaves open his
22 right to challenge that.

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1 Q. Thank you. Let me then --

2 A. And excuse me, Madam Chairman --

3 Q. Yes.

4 A. -- just to clarify that. And challenge
5 those costs in other items. I don't want to
6 suggest that if we would go back on the agreement
7 in the settlement, itself, that there would be
8 four micro grid projects, just that OPC hasn't
9 waived any of its traditional responsibilities
10 that would be the other kind of costs.

11 Q. Again, I do want to follow-up on that.
12 The last sentence in Commitment No. 128 says,
13 "Nothing in this paragraph shall obligate the
14 District to use Pepco for the development,
15 financing, ownership or construction of the micro
16 grids referred to herein, and the District is free
17 to pursue micro grid development independent of
18 Pepco subject to applicable law, including
19 interconnection rules and procedures."

20 Would you take this to mean that then
21 those four micro grids might not be done?

22 A. No, ma'am, I don't.

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1 Q. Okay. Well, then, explain, Pepco will -
2 - the first sentence says, "Pepco will coordinate
3 with the District to interconnect and develop at
4 least four micro grids." And then the last
5 sentence says, "Nothing in this paragraph shall
6 obligate the District to use Pepco for the
7 development, financing, ownership or construction
8 of the micro grids referred to herein."

9 A. Yes, ma'am. So what does that mean?

10 Q. So -- yes, reconcile those two things to
11 me.

12 A. The way I interpret it is --

13 Q. How People's Counsel determines that.

14 A. You could put it out for competitive
15 bid.

16 Q. Who could?

17 A. The company could be required to do a
18 competitive solicitation for the four projects and
19 to get independent parties to come in and bid on
20 them. And if they could beat the company's
21 estimates on developing the micro grids, then
22 those would enter into rates, they would get rate

1 recovery, and then the company would pass those
2 costs on.

3 Q. But it says in the last sentence,
4 "Nothing in this paragraph shall obligate to use
5 the District for the development, financing,
6 ownership, et cetera," whereas the first sentence
7 says "Pepco will coordinate with the District to
8 interconnect and develop." The first sentence
9 seems to say that Pepco is going to be used to
10 develop it in some way, and the last sentence says
11 no, nothing obligates anybody.

12 So my question is, does this open the
13 possibility that there might not be four micro
14 grids developed with Pepco?

15 A. I don't believe it does. I mean, I
16 think that --

17 Q. So -- go ahead. I'm sorry. I didn't
18 mean to interrupt you.

19 A. I think that Pepco will be supporting
20 these projects, whether they be through direct
21 development, through the analysis or development
22 of the facilities that need to be provided, and if

1 the decision was to contract those out or use
2 another developer for those, they are free to do
3 that, or if they want to work through a government
4 institution to develop those, they are, as well.

5 Q. Could the District do that now, absent
6 the merger?

7 A. They could, but they're not, and so as
8 an incremental benefit, I think relative to the
9 merger, this is something that is defined and
10 moves us forward in that particular area.

11 Q. On this whole issue of what's binding
12 and what's not binding, let me also ask you, and
13 I'm going to ask a couple of other witnesses --
14 other parties also, if you'd look at paragraph
15 135, which is in the Additional Provisions
16 section, because I'm trying to get my mind around
17 what this specific means as we're going through
18 some of these other commitments.

19 And it says in 135, "This Settlement
20 Agreement contains terms and conditions, each of
21 which is interdependent with the other and
22 essential in its own right to the signing of this

1 Settlement Agreement. Each term is vital to the
2 Settlement Agreement as a whole since the settling
3 parties expressly and jointly state that they
4 would not have signed the Settlement Agreement had
5 any term been modified in any way."

6 Then it goes on to say "None of the
7 settling parties shall be prohibited from or
8 prejudiced in arguing a different policy or
9 position before the Commission in any other
10 proceeding, as such agreements pertain only to
11 this matter and to no other matter."

12 Can you explain to me what that means?
13 For example, you just mentioned that there would
14 be a -- perhaps a cost recovery issue in micro
15 grids.

16 A. Um-hmm.

17 Q. And I'm going to ask you about another
18 one that's even more specific later. So the fact
19 that -- the first sentence, again, here says they
20 wouldn't have signed the agreement unless things
21 were exactly as they said they were in the
22 agreement.

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1 A. Yes, ma'am.

2 Q. But once this case is over, do I
3 interpret the second sentence to mean that you can
4 take a totally different position in some other
5 case, like paying for micro grid or a rate
6 increase?

7 A. So I will defer in some ways to lawyers
8 on what that means, but I will tell you what I
9 think it means, and that is -- I think this is
10 standard language that you would get in a typical
11 settlement-type proceeding that it doesn't
12 prejudice you in a future proceeding from taking
13 some different position.

14 So if, for instance -- and for some
15 reason if OPC wanted to take a position that
16 differs from what is agreed to in this settlement
17 with regards to acquisition premiums in a future
18 case, we're not prohibited or this doesn't create
19 precedential value from that.

20 Q. Or if, were it to be approved, Exelon
21 wanted to come back and say, We don't want to do
22 four micro grids, we don't want to buy any wind,

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1 is this an out for that? Is that --

2 A. Ma'am, I do not interpret this as an out
3 for that.

4 Q. I'll follow up with that. Now, I do
5 want to talk about rates, which we've got into a
6 little bit. You were here yesterday when I was
7 asking Mr. Velazquez based on the work papers that
8 were filed?

9 A. Yes, ma'am.

10 Q. Do you recall this was the work papers
11 that were filed in conjunction with either Mr.
12 Khouzami's or Mr. Velazquez's testimony, document
13 labeled Pepco Key Assumptions For Forecast. Are
14 you familiar with that?

15 A. Yes, ma'am.

16 Q. Okay. Do you have that before you?

17 A. No, ma'am. Is it in the exhibits here
18 or --

19 Q. It was 5, yes, Joint Applicants No. 5.
20 PSC-5, sorry. Thank you for reminding me.

21 PSC-5.

22 MR. EILBOTT: Your Honor, may we

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1 approach in an attempt to assist --

2 CHAIRWOMAN KANE: Certainly. It may
3 take some time. Is that exhibit marked? I do want
4 to ask about some specific numbers in there.

5 THE WITNESS: Okay. I have it.

6 BY CHAIRWOMAN KANE:

7 Q. And I wanted to first ask about the
8 reliability, the numbers associated with the
9 reliability commitment, if I can find it in here.
10 Let me go back. Let me ask about the third page
11 there, the third page of numbers after the cover
12 page which has a schedule of rate cases to be
13 filed. Do you see that?

14 A. You know, I don't see a work paper here.

15 Q. It's PSC-5. It has a cover letter dated
16 October 30th, 2015, from Mr. Lorenzo.

17 A. Okay. I have one November 13th, 2015,
18 from Mr. Lorenzo.

19 Q. This is October 30th.

20 A. No, I don't see. I have something
21 November the 13th here. Wait a minute.

22 CHAIRWOMAN KANE: Counsel --

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1 THE WITNESS: I think I found it. I
2 think I was looking in the wrong tab. I was
3 looking behind instead of in front. I see it now.

4 BY CHAIRWOMAN KANE:

5 Q. Okay. And so we have a cover page, or
6 first page is a letter, then you have three -- go
7 to the third page that has numbers on it.

8 A. Okay.

9 Q. And the title is Pepco DC Summary of
10 Residential Rate Deferral Balances.

11 A. Yes, ma'am.

12 Q. And this was submitted as an
13 illustration of how the 25.6 million in the
14 residential rate credit would be spent down, if
15 you will, be used up.

16 A. Yes, ma'am.

17 Q. And it is, as Mr. Velazquez testified,
18 it's illustrative, but it shows three rate
19 increases being filed on July 1st, 2016, on
20 October 1st, 2017, and January 1st, 2019. Do you
21 see that?

22 A. Yes, ma'am.

1 Q. And it shows a dollar amount that was
2 predicted or projected to be requested in the
3 amount of a rate increase, and then breaking it
4 down to residential and mass to meter allocation
5 in percentages and an increase in dollar amounts.
6 Do you see that?

7 A. Yes, ma'am.

8 Q. And then the credits that would be
9 offset against that increase, and how it would be
10 used up.

11 Now, you recall my questioning with Mr.
12 Velazquez through which we established that using
13 those dollar amounts, the 12,288 and the 8,325,
14 that we would come up with a -- a rate increase
15 just for those two of about -- increasing the
16 distribution rate from \$23 to a little over \$30
17 for a residential customer?

18 A. Yes, ma'am.

19 Q. And that that was about a 33 percent
20 increase?

21 A. Yes, ma'am.

22 Q. Does People's Counsel agree that that's

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1 the appropriate way to recover the \$25.6 million
2 in that time period?

3 A. Through using the Rate Stabilization
4 Fund?

5 Q. Through spending it down in that two-
6 year time period based on rate increases of those
7 amounts.

8 A. If I understand your question, I think
9 the answer is yes, rate counsel does support using
10 the Rate Stabilization Fund to help offset
11 potential rate increases.

12 Q. Does People's Counsel agree that those
13 are the appropriate rate increases; in order to
14 spend down the money in two years, that these
15 would be the rate increases that would occur?

16 A. No. And if you're asking me do I agree
17 that the company needs to have a \$55 million rate
18 case, no, that's not what we're agreeing to. And
19 I think the company said these were illustrative
20 numbers, but they were based on numbers that they
21 anticipated would arise from existing cost and the
22 reliability budgets that have already been

1 provided.

2 But again, much like the discussion that
3 we had earlier with regards to the micro grids,
4 Public Counsel would still be doing its due
5 diligence in future rate cases with regards to
6 company's entire cost of services whenever they
7 decide to file a future rate case, regardless of
8 this Rate Stabilization Fund.

9 Q. And in terms of the specific rate
10 increases for residential of 12.2 million and \$8.3
11 million during that time period to use up the \$25
12 million rate credit, if you will, does People's
13 Counsel agree that those are appropriate numbers?

14 A. No, we're not agreeing to the specifics,
15 just the overall conceptual ideas.

16 Q. Speaking of conceptual ideas, let me
17 direct you to Item No. 48 in the Settlement
18 Agreement.

19 A. Are we off of this particular section?
20 Are we coming back to it?

21 Q. Just keep it in mind because we'll come
22 back to it, as well as to the reliability numbers.

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1 A. Okay.

2 Q. And I want you to turn to, and I want to
3 talk about just residential rate increases for the
4 moment, Item No. 48.

5 A. Okay.

6 Q. And this is called Future Rate Design in
7 Pepco DC Base Rate Cases?

8 A. Yes, ma'am.

9 Q. Okay. And Item No. 48 is just one
10 sentence. It says, "Nothing in this Settlement
11 Agreement shall be construed as a change to the
12 Commission's stated goal to move in a quote,
13 deliberate and reasonable fashion over a series of
14 Pepco rate cases to put an end to negative class
15 return -- RORs, return on rates, return of
16 revenues, "as set forth in Formal Case 1087, Order
17 No. 16930, paragraph 329 and affirmed in Formal
18 Case 1103, Order No. 17424, paragraph 437 and
19 438." Do you see that?

20 A. Yes, ma'am.

21 Q. Now, that is something that People's
22 Counsel agrees with?

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1 A. Yes, ma'am.

2 Q. And I will get to it when I'm
3 questioning AOBA, but this is a provision that is
4 of paramount importance to them.

5 Now, we talk about negative class rates
6 of return. Which classes under the current -- do
7 you know under the current approved rate design,
8 which classes of customers experience a negative
9 rate of return?

10 A. I do not have that in front of me.

11 Q. Would you agree, subject to check, that
12 pursuant to the Order that is cited here, which
13 would be the most recent rate case, Order No.
14 17424, in Formal Case 1103, in paragraph 441,
15 actually, pursuant to paragraphs 437 and 438, that
16 there's a chart that shows where the residential
17 are a minus 2.54 percent rate of return? I can
18 give that to you. This is from our previous rate
19 case.

20 A. Sure.

21 Q. And that for RAD, which is the
22 Residential Aid Dose customers who are on the low

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1 income program, a minus four percent rate of
2 return, and that for the RAD all electric, there
3 is a minus 1.96 percent rate of return, and that
4 the only other class that has a negative rate of
5 return is streetlight energy, which has a minus
6 2.93 rate of return.

7 A. Okay. I can agree that's in check.

8 Q. And that's in Formal Class 287.

9 Subject to check, would you agree that
10 in Formal Case 1087, which was the prior rate
11 case, that the rate of return for residential R is
12 minus 2.54 percent, that for Residential Aid
13 Discount, it's minus 4.0 percent, that for RAD AE,
14 it's minus 1.96 percent, and that for streetlight
15 energy, it is minus 2.93 percent?

16 A. Yes, ma'am.

17 Q. And other ones going back further into
18 Formal Case 1076, which was -- that at least for
19 the residential class was minus 3.10 and in Formal
20 Case 1053, it was minus 3.05 percent?

21 A. Yes, ma'am.

22 Q. That for the residential class, there

1 has been a negative rate of return that has gone
2 from minus 3.05 to minus 3.10, actually becoming
3 more negative in 1087 to minus 3.8, and in the
4 most recent case, minus 2.54.

5 Now, what is your interpretation of a
6 change to the Commission -- no change to the
7 Commission's goal to move in a deliberate,
8 reasonable fashion over a series of Pepco rate
9 cases to put an end to negative class rate of
10 returns? How would the Commission put an end?
11 What kinds of things would be involved in putting
12 an end to negative rate of return? And as we've
13 established, except for streetlights, all of the
14 negative rate of returns are in the residential
15 classes.

16 A. Okay. So if you'll recall a discussion,
17 I don't remember if it was with Mr. Velazquez or
18 Mr. Khouzami, but you all had a discussion about
19 how this would work in a rate case. The companies
20 can still come in for a rate case in the future.
21 They may -- as we went through this hypothetical
22 example earlier, they would come in and make a

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1 request, their cost of service would yield a
2 particular set of numbers in terms of what the
3 class revenue responsibilities would be, and then
4 there would be an offset out of the \$25.6 million
5 credit to do that.

6 As I interpret this, two ways -- well,
7 there's two things I think you need to be mindful
8 of. One is there's nothing in the agreement that
9 presumes or states any particular rate design in
10 the future. Just from a big picture, just because
11 we're doing these things doesn't necessarily mean
12 that it obligates the Commission to continue the
13 existing revenue distribution of rate design --
14 decisions that were in the last several rate
15 cases.

16 What you could do, though, and I suspect
17 where maybe -- well, I won't speak for AOBA, but -
18 -

19 Q. I'm going to ask AOBA.

20 A. Yeah, but one of the things the
21 Commission could do relative to its policy in this
22 is looking at how they could use the 25.6 million

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1 to start bringing the class rates of return closer
2 to a positive number by using the credit to temper
3 the potential increases that would arise from,
4 let's say, a differing revenue distribution than
5 what you've used in the past for rate making
6 purposes.

7 So if, historically, you've tried to cap
8 the increases to residential customers by, let's
9 say, 10 percent, 1.1 -- 1.1, you could use some of
10 these dollars to maybe bring the rates up to 1.25,
11 use the differential between 1.25 and 1.1 on the
12 rates of return as a credit, allow those rates to
13 go up, but to offset the bill impacts by a credit
14 at the end of the bill.

15 Q. Now, the amount of the credit is limited
16 to 25.6; correct?

17 A. Well, it would be limited by the total
18 amount --

19 Q. Yes.

20 A. -- so if you were to use that, there is
21 a possibility you might burn through that much
22 quicker than normal.

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1 Q. Much quicker than the two years that's
2 shown in the illustrative case?

3 A. It's a possibility, but it depends on
4 what you do, how you decide to do it, how much you
5 decide to do it, how big rate cases are. There are
6 a lot of other variables out there that you would
7 need to consider, but that is one thing to think
8 about, and it would be the thing that you would
9 need to consider if you were to go down that road
10 and looking at that within the context of the rate
11 case.

12 Q. Well, those will be things we consider.
13 I'm trying to determine what does People's Counsel
14 mean by agreeing to Item No.

15 48?

16 A. Well, by agreeing to Item 48, we're not
17 precluding anybody, ourselves or any other party,
18 from making policy recommendations in the future
19 that we believe are consistent with what the
20 Commission has done and said in its last two
21 Orders. And Public Counsel may take a differing
22 position on the use of this money as a way of

1 rebalancing those unitized rates of return. I'm
2 not saying that we would or wouldn't, but I don't
3 think we're precluded from making that argument in
4 doing this, nor is any other party precluded from
5 making an argument for using it.

6 Q. So --

7 A. Nor is the settlement, because we have
8 the 25.6 million, a basis to say, Well, for the
9 next several years, as we use this Rate
10 Stabilization Fund, we can't tinker with the
11 unitized rates of return. We got to keep them,
12 let's say, within this general order of magnitude
13 of minus .25, let's say, for residential, or
14 somewhere thereof, until we get to 2019. And when
15 we get to 2019, then we can consider that.

16 I think that language in there says no,
17 you can look at other things. But I think at the
18 end of the day, you still get that credit. It
19 does give you a tool that you wouldn't have had
20 but for the merger to provide a certain degree of
21 mitigation to those changes and rates that you
22 wouldn't have had if you wanted to use it for

1 those purposes.

2 Q. Do you know what kind of a rate increase
3 -- we talked about what aspect -- just in dollar
4 amount, would be required to move the residential,
5 let's just start with the R class that is now at
6 .2 -- minus 2.54 to a unitized, to 1?

7 A. I do not know.

8 Q. Do you know whether the illustrative
9 rate increases that I discussed with Mr. Velazquez
10 yesterday, which was \$3.75 in the first case and 2
11 something in the second case, where that would
12 move us -- would move the rate design in terms of
13 being less negative?

14 A. I do not know what it -- I don't know.
15 I don't know.

16 Q. So again, when People's Counsel is
17 agreeing to paragraph 48, that nothing in the
18 Settlement Agreement shall be construed as a
19 change, the Commission's stated goal to move in a
20 deliberate and reasonable fashion over a series of
21 Pepco rate cases to put an end to negative class
22 RORs, can I interpret that to mean that People's

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1 Counsel supports putting an end to negative RORs?

2 A. That, I do not -- I don't think you
3 should imply that from our agreement of this.

4 Q. Okay.

5 A. What this says is nothing in this
6 agreement should be interpreted as forcing the
7 Commission's hand to put this policy statement at
8 bay until 2019, or until the regulatory -- the
9 Rate Stabilization Fund is expended.

10 Q. So nothing in this agreement should be
11 interpreted to be that the Commission should not
12 consider rate design changes that would put an end
13 to negative class RORs before 2019?

14 A. I think I'll agree with what you said.

15 Q. Okay. That's on the record. Okay.

16 Page 10 of your testimony, on line 9,
17 you're asked, "Is there any concern that
18 ratepayers may experience rate shock from
19 increasing rates after 2019 and the close of any
20 regulatory asset provision?" I assume this refers
21 to using up the rate credit?

22 A. Yes, ma'am.

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1 Q. You say, "I have no reason to believe
2 that ratepayers will see a significant increase in
3 residential rates post 2019 as a result of this
4 merger."

5 Would you consider the increase from \$23
6 to \$30 and some change per month that was used in
7 the illustrative discussion yesterday of Mr.
8 Velazquez as a significant increase?

9 A. Oh, it may be a significant increase.

10 Q. Okay.

11 A. But those -- what I would -- I think the
12 important thing to keep in mind here, and the
13 point I'm trying to make is that those increases
14 wouldn't be the consequence of the merger. It
15 could very well be the case that those rate
16 increases would occur even without the merger.

17 Keep in mind that while those numbers
18 are illustrative, as I have understood the Joint
19 Applicants' testimony, they are based generally on
20 the projections that fall out from the capital
21 budgets that are included in the settlement, and
22 so while they are illustrative, they're not

1 entirely hypothetical. And so -- and those
2 budgets are based on Pepco's current projections
3 today without the merger.

4 So the point I'm trying to make here is
5 there aren't going to be any significant increases
6 in cost that come in because of the merger. There
7 may be some other related costs because of
8 reliability related spending that will continue to
9 occur even without the merger. But because of the
10 merger, there are a number of provisions, as I
11 went through here, that would keep any significant
12 merger-related costs from going into rates and
13 creating shocks.

14 Q. Thank you. Let me -- my final question
15 has to do with reliability costs.

16 A. Okay.

17 Q. And if you would turn to Witness
18 Velazquez's testimony, it's in the record as
19 number -- direct testimony, is it item -- exhibit
20 number marked yesterday, Joint Applicants 6.
21 Thank you. But we just remarked -- renumbered
22 them, didn't we?

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1 A. Okay. I have it.

2 Q. Yes, M, we are now doing letters. Thank
3 you. That's what I was searching for because I
4 had the number. Joint Applicants Exhibit M, as in
5 mother, and page 22, Table 3. There's a table at
6 the top of the page, Table 3.

7 A. Okay. I have it.

8 Q. And this is Reliability Driven Capital
9 Expenditures 2016 to 2020. This is the kind of --
10 this is the numbers you were referring to, were
11 you not, just now where you were talking about
12 increases that would occur as part of the already
13 known or planned capital budget?

14 A. Yes, ma'am.

15 Q. Okay. And if you'll recall yesterday, I
16 asked Mr. Velazquez particularly about the bottom
17 set of numbers, bottom line, which are total
18 reliability net of plug and emergency restoration
19 and the increase from 93 to 163 million.

20 Do you recall Mr. Velazquez indicated
21 that that was a significant driver of the need for
22 -- projected need for rate increases in the next

1 cases?

2 A. Yes, ma'am.

3 Q. And then we also discussed the fact that
4 in the non-unanimous settlement as opposed to the
5 prior proposal, prior application, there is no
6 escape clause, shall we say, or loophole, or
7 saying that if -- contingency, yes, thank you.

8 I'm trying to search for the right neutral word.

9 There is no contingency based on the DC -- for
10 meeting the reliability standards for meeting DC -
11 - for the fact that DC Plug may be off schedule?

12 A. I remember that discussion, yes.

13 Q. Okay. And do you remember the
14 discussions, I asked Mr. Velazquez if DC Plug was
15 off schedule, and they -- could they still meet
16 the reliability within this budget, and his
17 indication that they would probably need to do
18 something else, which might include additional
19 money?

20 A. Yes, ma'am, I remember that.

21 Q. So are you aware whether or not the DC
22 Plug's program project is off schedule?

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1 A. It's my understanding, it is.

2 Q. And it is off schedule because of a
3 legal challenge that is pending in the DC courts?

4 A. I wasn't aware of the reason.

5 Q. Okay. And are you aware that it's also
6 -- may be off schedule because the General
7 Services Administration has determined that the
8 costs that would be assigned to them in terms of
9 the surcharge is a tax and that they're not going
10 to pay it?

11 A. I wasn't aware of that.

12 Q. You weren't aware of that. Well, we'll
13 put that -- it's a generally known fact now
14 because it's become public because it's actually
15 been in the paper, in the newspaper, and I guess
16 if it's on the Internet and the Washington Post,
17 it's true, but it is true.

18 So what is People's Counsel's view on
19 the rate impact of the DC Plug being behind
20 schedule or going to meet -- does People's Counsel
21 support holding the Joint Applicants to meeting
22 the reliability improvements that are needed, even

1 if it means a rate increase?

2 A. So let me see if I can answer this way.
3 Public Counsel is committed to the agreements for
4 reliability that have been made in the Settlement
5 Agreement. We are also committed to the capital
6 expenditure cap that the Joint Applicants have
7 agreed to in this.

8 I think this discussion we're having
9 underscores a benefit that OPC sees in this
10 relationship and that this shifts the risk of the
11 company trying to meet these standards within
12 cost, time and schedule to them, not to
13 ratepayers. And now we have a bogey, now we have
14 targets, both in terms of cost, as well as
15 performance. And as Mr. Velazquez said yesterday,
16 they'll find a way to do it. They now have
17 targets and they've got to do it, and we certainly
18 hope that they do.

19 If it requires additional expenditures,
20 it doesn't in any way waive the requirements that
21 are in the Settlement Agreement. They'll still
22 have to -- if they bust the budget on this,

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1 they'll still have to make that 63,000 per
2 million, and it doesn't in any way preclude Public
3 Counsel or any other stakeholder from reviewing
4 and potentially challenging the prudence of any
5 cap-backs associated with these changing
6 reliability plans because they need an offset to
7 meet the targets to offset for DC Plug.

8 But it also doesn't presume that the
9 company would automatically be -- I mean, it's a
10 typical prudence issue that would arise in a rate
11 case, and we would all evaluate that at that time,
12 and if the company were found -- they would enter
13 those rates. They would still be subject to the
14 penalty, as I understand the agreement. And then
15 in 2021 could refer to the decision that was made
16 in the prior rate case, that those expenditures
17 were prudent and could, again, remake its case
18 based on its baseline projections to the updates
19 it's required to provide later at that time period
20 to get its -- to get that money back out of
21 escrow, given the prudence of the investment.

22 But I can't answer the question do we

1 support a rate increase to meet that because I
2 don't know that you can presume that there will
3 be. We'll just have to see what happens. And
4 again, that pressure is going to be on the company
5 to do that. But if they don't, it doesn't change
6 the agreement. And again, I would say it's a
7 benefit of the agreement for ratepayers because
8 now we have -- we have both output and input
9 targets that the company has to meet, and they've
10 agreed to abide by that. And that's not something
11 we've had in the last several rate cases, as you
12 fully well know.

13 Q. The removal of the contingency for
14 meeting the reliability standard, the contingency
15 of DC Plug being on schedule is cited by your
16 client as a benefit, as a positive; correct?

17 A. I believe so, yeah.

18 Q. That it had been cited as removing --
19 well, a contingency that under the previous
20 proposal would have essentially reduced or
21 modified the requirement to meet the reliability
22 standards?

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1 A. Right.

2 Q. But now they have to be met even if DC
3 Plug is not on schedule. Does the People's
4 Counsel agree that absent any delay in the
5 schedule for DC Plug that the caps -- you spoke of
6 the caps. Do you support those particular caps?

7 A. Yes, ma'am.

8 Q. Even if they mean a rate increase?

9 A. Well, if they do mean a rate increase,
10 we are getting something for that rate increase,
11 which is a substantially improved reliability that
12 goes beyond the USS, I guess.

13 CHAIRWOMAN KANE: Thank you. I think
14 that concludes my questions for you.

15 THE WITNESS: Oh, and for the record, so
16 with this Tab 5, I did want to note, and maybe the
17 company wants to note that some of the front pages
18 seem to be missing. The cover page that you were
19 talking about isn't here.

20 CHAIRWOMAN KANE: The transmittal
21 letter?

22 THE WITNESS: The transmittal letter.

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1 I've got two pages out of what you seem to
2 reference were five.

3 CHAIRWOMAN KANE: Yes, yes. The entire
4 document with all those charts I believe is five
5 or six pages.

6 THE WITNESS: Okay.

7 CHAIRWOMAN KANE: We'll be sure that the
8 full one gets in the record as filed. Thank you.

9 THE WITNESS: Yes, ma'am. Miss Fort?

10 BY COMMISSIONER DODDY FORT:

11 Q. Good afternoon.

12 A. Good afternoon.

13 Q. So as a general question, if the
14 Commission adopts new rules concerning an issue
15 that's covered in the Settlement Agreement and the
16 new rules require the Joint Applicants to do
17 something that's different from a commitment
18 contained in this Settlement Agreement, which
19 would be controlling, according to the Office of
20 People's Counsel, its new rules or the Settlement
21 Agreement?

22 A. Yes, ma'am, the Commission's rules.

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1 Q. Were you in the hearing room yesterday
2 when I asked joint witness -- Joint Applicants'
3 Witness Khouzami a series of questions focused on
4 different paragraphs in the Settlement Agreement?

5 A. Yes, ma'am, I was.

6 Q. I'm going to just go through some of
7 those major paragraphs that I asked him questions
8 and ask you a broad general question for each one.

9 A. Okay.

10 Q. And that is, do you agree with the
11 answers and the explanations he gave, and then I
12 will ask you if there's anything in those answers
13 and explanations that you -- that the Office of
14 the People's Counsel would like to clarify or
15 answer differently, if you would indicate what
16 that is.

17 A. Okay.

18 Q. Do you understand?

19 A. Yes, ma'am.

20 Q. This may move quickly or not, depending
21 on the answers.

22 So I spent some time with paragraph 4,

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1 which was the residential customer base rate
2 credit to \$25.6 million. That's what you were
3 discussing a bit with the Chair a few moments ago.
4 And I asked Mr. Khouzami how certain credits which
5 costs would be in or out. Do you remember a
6 series of questions?

7 A. Vaguely, yes, ma'am.

8 Q. Was there anything that you heard
9 yesterday that the Office did not agree with?

10 A. I don't recall anything right now.

11 Q. I asked him whether or not interest --
12 whether or not there had been any discussions
13 about whether or not interest would be paid on the
14 \$25.6 million that would be transferred from
15 Exelon to Pepco to pay for the credit, and he
16 indicated that there was no agreement to pay
17 interest on those funds.

18 A. That's correct.

19 Q. Is that correct?

20 A. Yes, ma'am.

21 Q. Okay. I asked him how the bill
22 stabilization adjustment would work in connection

1 with this particular provision. I'm not sure he
2 had an answer for that.

3 Do you have any thoughts on whether or
4 not there would be a need to adjust anything in
5 our bill stabilization adjustment, our BSA and how
6 it records revenues that are being collected as a
7 result of anything in the Settlement Agreement?

8 A. So this is for the alleged BSA's
9 decoupling account, the revenue decoupling
10 account?

11 Q. Yes.

12 A. I don't think so. I think it's a
13 mechanical issue of essentially developing an
14 adjusted target revenue per customer, and if you
15 were to do that, then you would go in and set the
16 BSA based on that adjusted revenue per customer
17 target.

18 Q. And I heard you say in response to the
19 Chair's question that the accounting treatment for
20 this particular credit adjustment is still under
21 consideration or --

22 A. Oh, so the cost of service --

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1 Q. Yes.

2 A. -- implications, yes, ma'am, are.

3 Q. Okay. So in paragraph 5, which is the
4 residential customer bill credit of \$14 million,
5 same thing. Did you hear the questions that we
6 discussed with Mr. Khouzami yesterday?

7 A. Yes, ma'am.

8 Q. Was there anything different, you know,
9 that the Office of the People's Counsel would say
10 in response to any of the questions on how that
11 operates or any additional information that you
12 have?

13 A. No, ma'am. I agree with how he
14 characterized it. It's my understanding, as well.

15 Q. With respect to assistance to low and
16 limited income customers, there was some
17 discussion within that \$16.15 million of the
18 \$400,000 that would be used to cover accounts
19 receivables that are more than two years old, and
20 we asked whether or not that was for low and
21 limited income customers only or if it was for all
22 customers, and his response was that it was

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1 intended for all customers. Does the Office agree
2 with that?

3 A. Yes, ma'am.

4 Q. On workforce development, we went
5 through some questions on workforce development,
6 the fact that the details of workforce development
7 are not yet finalized as to where the monies would
8 go.

9 A. Yes, ma'am.

10 Q. Anything to add on that?

11 A. I don't, other than the conversation
12 that I had earlier with the Chair that despite the
13 ambiguity, it's still Public Counsel's position
14 that there is now a bona fide and defined
15 commitment that the Joint Applicants have to
16 workforce development within the District, and
17 that is a public benefit. There are some details
18 on where it will go, but it still doesn't, I
19 think, negate the fact that it's a benefit.

20 Q. I talked to him about paragraph 25 which
21 is economic benefits reporting --

22 A. Yes, ma'am.

1 Q. -- both as a description of what would
2 be included in those reports and how those reports
3 differ from what is reflected in -- for reporting
4 in paragraph 29, I think it was. There were two
5 different reporting that was coming.

6 A. Okay.

7 Q. Any additional comments the Office has
8 on the kind of economic benefits reporting that
9 would be done?

10 A. No. I remember that discussion. I
11 think, if I remember Mr. Khouzami's testimony and
12 explanation, I think I would agree. There's
13 probably some flexibility in that economics
14 benefit report, because if you think broadly about
15 what the benefits are, they could include a
16 variety of things. So I suspect they will be
17 accounted for.

18 I think there's two ways of looking at
19 the synergy savings and the cost to achieve as I
20 see it in the agreement that maybe I could
21 clarify, and that is from a broad public policy
22 perspective, what are those benefits and how are

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1 they materialized for ratepayers on a year-in,
2 year-out basis, which we'll get in that five-year
3 report.

4 And then there is a more specific
5 technical issue related to okay, what are the
6 numbers we're going to be using for rate making
7 purposes? And I think that is what we're
8 addressing here with Item No. 29. So 29 is a
9 little bit more technical in the sense that that's
10 what we'll be using for rate making purposes.

11 Q. And agreed, he said that there would be
12 at least two different reports, an economic
13 benefits report was broader than the reporting to
14 track costs to achieve synergy savings?

15 A. Yes, ma'am. I agree.

16 Q. There was a question of whether or not
17 we would also be using any of the information that
18 is in Dr. Tierney's charts in terms of how those
19 quantitative benefits are reporting or being
20 reported.

21 A. Um-hmm.

22 Q. And that was not on the table. Do you

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1 agree with that?

2 A. Yes, ma'am.

3 Q. Okay. We talked about the root and
4 cause analysis to improve customer satisfaction,
5 which was in paragraph 61. Do you agree with the
6 matrix and the measurements that he identified
7 that would be used to measure customer
8 satisfaction?

9 A. Yes, ma'am.

10 Q. And that we would need to have some type
11 of baseline in order to decide if it is being
12 improved?

13 A. Yes, ma'am, I would agree with that.

14 Q. We talked a bit about the cost to
15 achieve and synergy savings that you and I were
16 just previously discussing. Is there anything
17 that the Office of People's Counsel would add or
18 would differ or is there anyplace where the
19 People's Counsel differs or would want to clarify
20 anything that Mr. Khouzami said about costs to
21 achieve and synergy savings?

22 A. Not on that issue, no, ma'am.

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1 Q. Same series of questions with respect to
2 paragraph 62 which was on safety. Any difference
3 in or any clarifications of the answers that we
4 heard on safety?

5 A. No, ma'am.

6 Q. I was going to ask you about micro
7 grids, but you had a discussion with the Chair on
8 micro grids, so I'm going to skip that.

9 We didn't talk about yesterday with Mr.
10 Khouzami the paragraph 107 which has divestiture
11 provisions in it.

12 A. Yes, ma'am.

13 Q. And one of those divestiture provisions
14 is due to bankruptcy filing. Does the Office have
15 any additional comments or clarifications or
16 concerns on whether or not bankruptcy filings adds
17 any additional risk or cost for District
18 ratepayers and whether or not those are adequately
19 handled under paragraph 107?

20 A. I would say they're adequately handled
21 under not only paragraph 107, but the other
22 paragraphs associated with ringfencing measures.

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1 Q. Okay. I want to ask you a question that
2 we didn't talk about yesterday with Mr. Khouzami,
3 and that's on paragraph 26 in the -- so I'm going
4 to ask you to get paragraph 26 in front of you,
5 and that's one that deals with the arrearage
6 management program.

7 And the paragraph says, "Pepco will work
8 with the District Government and other interested
9 stakeholders, including the National Consumer Law
10 Center, to develop in good faith a mutually
11 agreeable arrearage management program for LIHEAP
12 and RAD qualifying customers in arrears, which
13 would include the provisions of credits or
14 matching payments for customers who make timely
15 payments on their current bills," and then it goes
16 on.

17 What's the source of funding for the
18 credits or the matching payments under that
19 provision?

20 A. I believe the Joint Applicants would be
21 providing that. This is part of the CIF.

22 Q. So this would come -- this would be part

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1 of the CIF funding --

2 A. That's my understanding.

3 Q. -- for that provision?

4 COMMISSIONER DODDY FORT: Okay. I think
5 that's the end of my list. Thank you.

6 CHAIRWOMAN KANE: Thank you,
7 Commissioner Fort.

8 Redirect?

9 MR. EILBOTT: I have a little bit, Your
10 Honor.

11 CHAIRWOMAN KANE: Yes.

12 MR. EILBOTT: Thank you.

13 REDIRECT EXAMINATION

14 BY MR. EILBOTT:

15 Q. Dr. Dismukes, do you recall at the
16 beginning of the Chair's examination, she had
17 asked you some questions about her examination
18 yesterday of Director Wells regarding some past
19 diversion of sustainable energy on other funds?

20 A. Yes, sir, I remember that.

21 Q. Do you have -- do you believe any of
22 those past diversions were caused by or related to

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1 this proposed merger?

2 A. Not to my understanding, no.

3 Q. Thank you.

4 And do you think that the fact that
5 those diversions had happened might somehow make
6 the Joint Applicants' commitments in the
7 Settlement Agreement any less in good faith or any
8 less of a firm commitment?

9 A. No, they do not.

10 Q. Would you agree that those diversions
11 might be more of a legislative issue than a
12 regulatory issue?

13 A. I would agree with that
14 characterization.

15 Q. Next Chairman Kane asked you some
16 questions regarding some provisions of the
17 Settlement Agreement that perhaps don't have a
18 hundred percent certainty on implementation
19 measures. Some examples I believe she gave
20 referred to micro grids and future wind purchases.
21 Do you recall that?

22 A. Yes, sir, I remember that.

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1 Q. Do you see any ambiguity in Joint
2 Applicants' commitments in the Settlement
3 Agreement that they will not seek cost recovery in
4 the areas where they say they will not seek cost
5 recovery, such as the CIF, the wind purchases,
6 exceedances of reliability, O & M budgets, and so
7 on?

8 A. No, I don't see any ambiguity there.

9 Q. Okay. And do you see any ambiguity in
10 the settlement -- in the Joint Applicants'
11 commitments in the settlement that OPC, and indeed
12 all parties, preserve all rights to protest future
13 rate filings by the applicants on any issue?

14 A. Yeah, there is nothing in the agreement
15 that precludes that from occurring. I think it's
16 quite clear in the Settlement Agreement.

17 MR. EILBOTT: That's all I had, Your
18 Honor. Thank you.

19 CHAIRWOMAN KANE: Thank you.
20 Commissioner Fort, you had one more thing?

21 COMMISSIONER DODDY FORT: I did have one
22 more thing.

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1 We had discussions yesterday with Mr.
2 Khouzami about the fact that paragraph 29 in the
3 Settlement Agreement that deals with costs to
4 achieve and synergy savings did not specifically
5 state that the deferred -- it be a deferred
6 amortized expense that would be handled as a
7 regulatory asset on which the rate of return would
8 become --

9 THE WITNESS: Yes, ma'am.

10 MS. DODDY-FORT: Was it the OPC's
11 understanding that that is how that would be
12 handled?

13 THE WITNESS: Yes, ma'am.

14 COMMISSIONER DODDY FORT: Okay. Thank
15 you.

16 CHAIRWOMAN KANE: I want to put a data
17 response into the record, so if you could look at
18 data response which has been preliminarily marked
19 as PSC Commission Exhibit 7, this is the Office of
20 People's Counsel's response to PSC Data Request
21 No. 2. It's a two-page document dated November
22 13th -- oh, I'm sorry, preliminarily marked No. 1,

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1 yes. I'm going to mark it as No. 7. I crossed it
2 out there. Preliminarily marked as No. 1, PSC.

3 THE WITNESS: Yes.

4 MR. EILBOTT: May I approach, Your
5 Honor?

6 THE WITNESS: I see it. It's front and
7 back. Got it.

8 CHAIRWOMAN KANE: Yes. It's front and
9 back. That's why it's two pages. Trying to
10 conserve paper.

11 Do you recognize these documents?

12 THE WITNESS: Yes, ma'am.

13 CHAIRWOMAN KANE: And did you or someone
14 under your direction prepare this response?

15 THE WITNESS: Yes, ma'am.

16 CHAIRWOMAN KANE: And if I asked you
17 this question again, would your response be the
18 same?

19 THE WITNESS: Yes, ma'am.

20 CHAIRWOMAN KANE: And I want to now
21 preliminarily mark this as -- I want to mark it as
22 Commission Exhibit 7. All right. Move into the

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1 record?

2 MR. EILBOTT: Yes, Your Honor, I would
3 like to move Dr. Dismukes' testimony which had
4 been premarked as OPC-A, now marked as OPC-3A into
5 the record.

6 CHAIRWOMAN KANE: It is so moved, and I
7 will move what has been preliminarily marked as
8 Commission Exhibit 6, which is the People's
9 Counsel response to PSC Data Request No. 2. We'll
10 move that into the record.

11 There being nothing further for this
12 witness, you are excused.

13 (Witness excused.)

14 CHAIRWOMAN KANE: We will now take a
15 lunch break, and then we will resume with AOBA --
16 I'm sorry, one more thing. Yes?

17 MR. RORIES: We, too, would respectfully
18 inquire if the witnesses for Grid 2, Scott
19 Hempling and Larry Martin, are expected to be
20 called today?

21 CHAIRWOMAN KANE: That is our
22 expectation, yes --

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1 MR. RORIES: Thank you.

2 CHAIRWOMAN KANE: -- that we will
3 proceed after lunch with Mr. Oliver and then Mr.
4 Smith for DC Government, Mr. Hawkins and then Mr.
5 -- Mr. Hawkins -- I'm sorry, Mr. Hawkins is on
6 tomorrow.

7 MR. RORIES: Yes.

8 CHAIRWOMAN KANE: So we will do Mr.
9 Oliver, Mr. Smith and then Mr. Hempling this
10 afternoon.

11 MR. RORIES: Thank you.

12 CHAIRWOMAN KANE: And I assume we will
13 get to Mr. Martin, also.

14 All right. We will come back in one
15 hour. Thank you.

16 (Whereupon, a luncheon recess was taken
17 at 12:35 p.m.)

18 (Whereupon, the proceedings resumed at
19 1:57 p.m.)

20 CHAIRWOMAN KANE: We're back on the
21 record in the Formal Case 1119. It is 1:57 p.m.

22 As a preliminary matter, in the prior --

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1 before lunch, I was asking Witness Dismukes about
2 the history of negative rates of return in rates
3 for the approved rate design by the Commission in
4 the last four electric rate cases and read orally
5 from some documents, and I want to now put as
6 Commission Exhibit 7, preliminarily marked as
7 Commission Exhibit No. 7, Historical Residential
8 Class Rates of Returns. It is a chart and it
9 references which particular order the information
10 was taken from. I think it's a clearer
11 representation than what I was reading orally. So
12 I'd put that in the record, have that
13 preliminarily marked as Commission Exhibit 7.
14 Does everyone have that? Passing that out now?
15 Thank you very much.

16 This is for the four residential
17 classes.

18 And now we can proceed, Ms. Francis,
19 with your witness.

20 MS. FRANCIS: Good afternoon, Your
21 Honor. The Apartment and Office Building
22 Association would like to call Bruce R. Oliver to

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1 the stand.

2 WHEREUPON,

3 BRUCE R. OLIVER,

4 having first been duly sworn and/or affirmed, was

5 examined and testified as follows...

6 DIRECT EXAMINATION

7 BY MS. FRANCIS:

8 Q. Mr. Oliver, would you please state your
9 name and business address for the record.

10 A. My name is Bruce R. Oliver. My business
11 address is 7103 Laketree Drive, Fairfax Station,
12 Virginia, 22039.

13 Q. And on whose behalf are you appearing
14 here today?

15 A. I'm appearing on behalf of the Apartment
16 and Office Building Association.

17 Q. And do you have a document before you
18 entitled Direct Testimony of AOBA Witness Kirsten
19 Bowden in Support of the Settlement Agreement
20 filed on October 30th, 2015, consisting of 21
21 pages of testimony?

22 A. I do.

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1 Q. Do you also have a document before you
2 entitled Work Papers to the Direct Testimony of
3 AOBA Witness Kirsten M. Bowden in Support of the
4 Settlement Agreement filed on November 5th, 2015,
5 consisting of two pages?

6 A. I do.

7 MS. FRANCIS: Your Honor, just for the
8 record, the Apartment and Office Building
9 Association passed out an extra copy of those work
10 papers with our cross-examination exhibit list and
11 labeled it AOBA NSA Exhibit 1.

12 BY MS. FRANCIS:

13 Q. Mr. Oliver, are you familiar with the
14 work papers filed on November 5th, 2015, in
15 support of the testimony that was filed by AOBA on
16 October 30th, 2015?

17 A. I am.

18 Q. And did you participate in the
19 development of those work papers?

20 A. I did.

21 Q. Have you previously submitted direct
22 testimony in this proceeding on November 3rd,

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1 2014, and supplemental testimony on March 20th,
2 2015, and are your qualifications set forth in
3 your direct testimony on pages 2 through 4?

4 A. Yes.

5 Q. Is this testimony true and are these
6 exhibits true and correct to the best of your
7 knowledge, information and belief?

8 A. They are.

9 Q. Do you adopt this testimony and these
10 work papers as your sworn testimony in this
11 proceeding?

12 A. I do.

13 MS. FRANCIS: Your Honor, I ask that the
14 direct testimony of Kirsten M. Bowden, adopted by
15 Bruce R. Oliver, be marked for identification as
16 AOBA Exhibit B in support of the Non-Unanimous
17 Settlement Agreement, and I also ask that the work
18 papers be marked as AOBA Exhibit NSA-1.

19 CHAIRWOMAN KANE: So marked.

20 MS. FRANCIS: Your Honor, if I might ask
21 Mr. Oliver one question in regard to his work
22 papers?

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1 CHAIRWOMAN KANE: Yes.

2 BY MS. FRANCIS:

3 Q. Mr. Oliver, I'm going to ask you to
4 please explain your work papers that have just
5 been marked for the record as AOBA Cross-
6 Examination Exhibit NSA-1.

7 A. In AOBA's efforts to gain comfort with
8 the terms of the settlement, one of our concerns
9 was the adequacy of the level of rate credits that
10 was provided for for residential customers in that
11 settlement, and the implications that it would
12 have if it were not adequate. To assess that, we
13 examined and tried to estimate what we thought
14 would be reasonable expectations for rate
15 increases going forward and apply those in the
16 context of the settlement provisions, particularly
17 paragraph 48 which called for adherence to the
18 Commission's determinations in past regulatory
19 proceedings.

20 In each of the company's last four rate
21 cases, they requested an increase in the order of
22 magnitude of 50 -- 50 some million dollars, and

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1 were granted increases between roughly 20 and 25
2 million. Based on that, we assumed the rate cases
3 -- the rate increases that would be approved would
4 be roughly of that magnitude, and just based on
5 information that had been discussed in the main
6 part of this case, we presumed that there would be
7 roughly annual rate filings.

8 Using those assumptions and applying 40
9 percent -- 47 percent of the increase to
10 residential customers so that we can have movement
11 toward elimination and negative rates of return,
12 the Commission took a step toward, in Formal Case
13 1103, and also in Case No. 1087, we compute that
14 the rate credits would be approximately adequate
15 under those assumptions. And so we believe we've
16 used reasonable assumptions and we believe that
17 they're consistent with the terms that we found
18 important to AOBA's interest in the settlement.

19 MS. FRANCIS: Your Honor, Mr. Oliver is
20 available for cross-examination.

21 CHAIRWOMAN KANE: Thank you. Any cross-
22 examination?

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1 (No response.)

2 CHAIRWOMAN KANE: Commissioner Fort, any
3 questions?

4 BY COMMISSIONER DODDY FORT:

5 Q. Good afternoon, Mr. Oliver.

6 A. Good afternoon.

7 Q. Were you here in the hearing room
8 yesterday --

9 A. I was.

10 Q. -- for testimony? Okay.

11 And were you here earlier this afternoon
12 when I asked OPC a series of questions based on
13 the questions I asked Mr. Khouzami?

14 A. I was here for at least most of it. I
15 did step out for a minute.

16 Q. All right. I'm going to do the same
17 thing, at least initially with you. I'll first
18 ask you a general question. If the Commission
19 adopts new rules concerning an issue that's
20 covered in the Settlement Agreement and the new
21 rules require the Joint Applicants to do something
22 that is different from a commitment contained in

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1 the Settlement Agreement, which document would be
2 controlling, the Settlement Agreement or the new
3 rules of the Commission?

4 A. The new rules adopted by the Commission.

5 Q. Given your interest in paragraph 48,
6 I've got a more specific question for you on that.
7 What does that paragraph mean, the Commission can
8 or cannot do with respect to rate design,
9 paragraph 48 being the one that we just -- you
10 were just discussing with counsel.

11 A. Right. Bear with me. I'd just like to
12 look at the specific language as I'm answering
13 that.

14 Q. I think because it's important, maybe
15 I'll put the specific language on the record so
16 we're all looking at the same specific language
17 for paragraph 48. It says, "Future Rate Design in
18 Pepco DC Based Rate Cases. Nothing in the
19 Settlement Agreement shall be construed as a
20 change to the Commission's stated goal to move
21 quote, in a deliberate and reasonable fashion over
22 a series of Pepco rate cases, to put an end to

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1 negative class RORs," rate of returns, "as set
2 forth in Formal Case No. 1087, Order No. 16930 in
3 paragraph 329 and affirmed in Formal Case 1103,
4 Order No. 17424, paragraphs 437 and 438."

5 A. I'm not an attorney, but my reading of
6 this as a rate expert would be that it doesn't
7 constrain the Commission. The Commission
8 maintains its authority to make determinations.
9 It does say that the parties support the
10 Commission's past determinations and encourage
11 continued pursuit of those, the objectives set
12 forth in those past decisions.

13 Q. I'm going to ask you to turn to page 9,
14 since we're on this topic, so the record will read
15 kind of consistently. And on page 9, in lines 12
16 through 18 --

17 A. Of my testimony?

18 Q. Of your testimony, yes, your adopted
19 testimony. Lines 12 through 18 read, "At the
20 expiration of the rate credits, future rate
21 increases and class rate of return determinations
22 must be measured from the actual distribution

1 rates applicable to all classes of customer.
2 Future claims of either rate shock or the need to
3 apply gradualism by ignoring the actual
4 distribution rates would inappropriately deviate
5 from the Commission's stated goal and proper
6 effectuation of the Settlement Agreement."

7 With respect to that language, is the
8 Commission -- would the Commission still be able
9 to accept and consider the concepts of rate shock
10 or rate gradualism when reviewing future rate
11 increases?

12 A. The Commission is always considered --
13 always considers those factors as part of its
14 determinations; however, the settlement, and I
15 believe all of the parties, or at least the
16 parties who submitted testimony, support and
17 recognize up front that the increases -- that
18 there will be increases proved for the residential
19 class as we move forward in time, likely before
20 the end of March 2019. So during the period in
21 which the rate credits are intended to be
22 effective, there will be increases.

1 But when we get to the end of that
2 period and we're calculating what the -- what a
3 future increase would be, the percentage increase,
4 whether you perceive that there is rate shock or
5 not is based on the approved rates. Maybe the
6 language in here was a little bit loose when they
7 said the applicable rates, but it's the rates in
8 the tariff, the approved rates from which you
9 measure whether there would be rate shock in an
10 increase.

11 Customers essentially over the next
12 three years will be paying the approved rates less
13 any credits. They're not just frozen at the
14 current rates, which I think is an important
15 distinction. One of our concerns in this process,
16 and I think it's referenced here in the testimony,
17 is that when we went through the divestiture and
18 connective merger process, we had rate freezes
19 that were implemented, and our own assessment is
20 that the rate freeze process has contributed
21 significantly to the subsequently experiencing the
22 negative rates of return, and we didn't want to

1 see a repeat of that process.

2 And by making these credits against
3 approved levels of rates, I think you can avoid
4 that, if when it comes to the end of that period,
5 you don't say, Oh, well, the rates that we're
6 comparing against were what customers paid after
7 the deduction of credits as opposed to the tariffs
8 that were approved in the -- or the rates that
9 were approved in the company's tariff.

10 Q. In establishing what would be the
11 improved tariff during any rate increase
12 proceeding in that interim period, do I understand
13 you correctly that the concepts of gradualism
14 would still be something that the Commission could
15 consider as it moves rates from the current rate
16 to whatever the next approved tariff rate would
17 be?

18 A. As I previously stated, the Commission
19 always will consider these concepts. I would
20 encourage them to also recognize that, you know,
21 with the rate credit mechanism, we've provided for
22 gradualism. If the credits are not sufficient,

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1 there's a deferral mechanism which allows for any
2 amount that might be deferred to be distributed
3 over time. So just in that mechanism, we help to
4 avoid future rate shock.

5 Q. Thanks for that clarification.

6 Now I'm going to go back and do a
7 version of what I did with counsel from OPC, and
8 if you'd like, I can actually put several of the
9 paragraphs together.

10 A. You can do them separately. I don't
11 mind at all.

12 Q. I guess I'll do them separately. All
13 right. So for paragraph 4, which is the
14 residential customer base rate credit of \$25.6
15 million that we've been talking about, does AOBA
16 agree with the answers that Mr. Khouzami gave and
17 the explanations that he gave on how that rate
18 credit will be administered? And if you do not or
19 you would like to clarify a portion of it, please
20 do so now.

21 A. Well, I think it's important to
22 recognize that you cannot achieve movements toward

1 eliminating negative rates of return, you cannot
2 achieve changes if positive changes in relevant
3 rates of return by applying essentially across the
4 board increases.

5 So the pursuit of paragraph 48
6 necessitates that a greater than average increase
7 be applied to residential customers. You know,
8 exactly what that will be, probably will be
9 dependent on the size of the increase the
10 Commission finds -- determines to be appropriate
11 at that time, whatever that may be.

12 Q. I'm looking at your exhibit which has
13 now been marked AOBA Cross-Examination Exhibit
14 NSA-1 and how you figure allocations in your work
15 papers as you considered the \$25.6 million spread.
16 One of the questions that I asked Mr. Khouzami was
17 whether or not that amount would be allocated,
18 4.3, specifically to MMA and the remainder of the
19 \$21.3 million in that base rate credit going to
20 all the other residential customers?

21 A. My understanding --

22 Q. That's one reading of paragraph 4.

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1 A. Sorry.

2 Q. So I was going to ask what your
3 understanding of that is and then -- first of all,
4 what's your understanding of that paragraph?

5 A. My understanding is that the 4.3 would
6 be signed or provided for MMAs and that the
7 remainder would go to the rest of the residential
8 class.

9 Q. And then in terms of tracking, then
10 there would be a dual tracking mechanism
11 established to track the increase to the MMAs
12 against the \$4.3 million in one column and the
13 increase amount of -- that's the credit amount for
14 the remainder categories of residential customers,
15 and that would be tracked against a \$21.6 million
16 credit; is that how I understand?

17 A. That's correct.

18 Q. If I look at your Exhibit NSA -- AOBA
19 NSA-1, it doesn't appear that that is done in a
20 fashion that recognizes a dual tracking in any
21 way. Did you do that mechanism to figure out
22 calculations in that format when you did your --

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1 when the work papers were -- I'm sorry, the work
2 papers don't reflect that; would you agree?

3 A. This was done before -- you know, well
4 before the testimony was filed. We were working
5 with best available information, and while the 4.3
6 may vary somewhat from a straight uniform
7 allocation across all classes, that would be very
8 hard to assess exactly how that would impact
9 things going forward.

10 So there is a simplifying assumption
11 here that it would be proportional.

12 Q. So my question --

13 A. I don't expect that to make -- have
14 major impacts on the overall result.

15 Q. That was going to be my follow-up
16 question. I realize this may have been done
17 before that was done. If the exhibit was
18 recalculated, would there be a significant change
19 to either -- to any of the categories if the dual
20 tracking mechanism was put into effect?

21 A. Well, once again, that's going to depend
22 somewhat on the discretion of the Commission in

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1 determining how the increase gets distributed, but
2 using the assumptions that we have here, it would
3 not have a major impact.

4 Q. I asked Mr. Khouzami how the Bill
5 Stabilization Adjustment would work in conjunction
6 with the residential customer base rate credit and
7 whether or not any adjustments would have to be
8 made to that decoupling mechanism for the
9 recognition of revenues that were coming in or not
10 coming in. Do you have any comments on that?

11 A. Yes. I believe that there would need to
12 be some adjustments to that process. I don't
13 think that they're difficult or material, but the
14 revenue targets, the revenue per customer targets
15 would need to be computed based on the approved
16 rates, not the rates actually being paid. And
17 then when you're comparing actually collected
18 revenues for the residential class and separately
19 for the mass metered class to the target revenue
20 per customer, then you would take the actually
21 collected revenues and add to that an adjustment
22 for the rate credit amount which the company,

1 because it's necessarily going to have to track
2 the credit accumulation over time, will be
3 producing, I would expect on a monthly basis, an
4 accurate calculation of what that amount is.

5 So as they're doing their BSA
6 calculations, they will take their accrual of rate
7 credits for each of those groups and add it in to
8 get to their assessment of the over/under recovery
9 of revenue for the residential class.

10 Q. In the discussions that you had, was it
11 AOBA's understanding that there would be no
12 payment of interest on the \$25.6 million that was
13 transferred from Exelon to Pepco to pay for the
14 base rate credit?

15 A. I would certainly hope not.

16 Q. Turning to paragraph 5 and the bill
17 credit for \$14 million, did you hear Mr.
18 Khouzami's answers as to how that bill credit
19 would be calculated?

20 A. Yes, I did.

21 Q. Do you have any comments or anything
22 that needs to be modified in terms of his

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1 explanation of that credit, or that you're dying
2 to add to our record?

3 A. I think what you label the source of the
4 funds for that maybe raised some questions, but I
5 think that's something that can be addressed
6 later, whether you label the equity infusion or
7 something else in where it's appropriately
8 classified within the transaction.

9 Q. And the discussion yesterday was that it
10 was unclear how that was being done or how it
11 would be labeled, and you think that that is an
12 issue to be decided by the -- let me ask, would
13 that be something that the Commission would need
14 to reflect in its Order, or is that something that
15 needs to be clarified in the Settlement Agreement?

16 A. I think it's a rate case issue.

17 Q. You think it's a rate case issue. Okay.
18 That's a third option. Okay.

19 Anything else before I move to paragraph
20 9?

21 A. Anything?

22 Q. Paragraph 9 was a discussion of the

1 assistance for low and limited income customers.
2 Basically it set out the programs that would be
3 used for that, and it talked about the \$400,000
4 program that would be used for accounts
5 receivables of four residential ratepayers in the
6 District without income limitations. Any comments
7 on that one?

8 A. Just conceptually, I have a little bit
9 of the problem with some of the answers I heard,
10 particularly in terms of broadly extending that to
11 all ratepayers. You know, AOBA always encourages
12 its customers to pay their bills on a timely
13 basis.

14 My understanding of the intent of these
15 funds is to help customers who have ability-to-pay
16 problems. If you're -- you know, and if customers
17 have disputes with the utility, you know, the
18 Commission has dispute resolution processes to
19 work that out. But to take a customer who doesn't
20 have ability-to-pay problems and -- or is, you
21 know, affluent as opposed to in need of bill
22 payment assistance, and write off or forgive their

1 debts, I'm not sure how far I'd want to stretch
2 that.

3 Q. I asked him whether or not those
4 provisions would raise any questions with respect
5 to any treatments of accounts receivables that had
6 already been recognized in rate cases or would
7 come up through a rate case or through the
8 purchase of receivables program. Any comments on
9 that issue?

10 A. Well, any funds that should be -- that
11 have already been covered through the rate case
12 process, and included in uncollectible accounts
13 expense, shouldn't be double counted in this
14 process. It's not an incremental benefit at that
15 point.

16 If the company, as part of the
17 transaction, agrees to forego further pursuit of
18 recovery of funds that may -- that are already
19 included in uncollectibles, that's not an
20 additional expense to the company and should not
21 be reflected in future rate cases.

22 Q. I didn't ask Mr. Khouzami about the

1 arrearage management program because I didn't
2 actually have that on my list, you know, when we
3 were talking yesterday, but I did notice today,
4 and so I asked OPC about paragraph 26, which has,
5 as one of the elements of that, the design of an
6 arrearage management program which would include
7 the provision of credits or matching payments for
8 customers who make timely payments on their
9 current bills, and this would be for customers for
10 LIHEAP or RAD qualifying customers in arrears.
11 And I asked what the source of that funding would
12 be, because it is not identified specifically in
13 the Settlement Agreement.

14 Did AOBA have any comment on what the
15 source of the funding or any understanding of what
16 the source of the funding would be for the funding
17 of paragraph 26?

18 A. My reading of the settlement is that
19 this is a concept of a program that can be
20 pursued, and to the extent that there is something
21 agreed upon, the dollars to fund that would come
22 out of the CIF. I don't see any provision for a

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1 program extending beyond CIF funding.

2 Q. Thank you.

3 And then moving on to paragraph 24,
4 which is the \$5.2 million for workforce
5 development, which are funds that are not within
6 the customer improvement fund, did you have any
7 additional comments on that program?

8 A. I think that's a future rate case issue.

9 Q. Economic benefits reporting was one of
10 the paragraphs, paragraph 25, and that would track
11 the economic benefits that come out of the merger.
12 Any comments on that, on what should be tracked,
13 how economic benefits would be described for
14 tracking purposes?

15 A. I think we all appreciate that tracking
16 economic benefits is not the easiest of tasks.
17 It's a subjective process in most cases.
18 Measurement is always an activity that different
19 analysts can view from different perspectives.

20 I think it is helpful that there is some
21 basis of measurement that will be presented. It
22 can be the starting point for future discussions.

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1 Q. Do you agree that the tracking of the
2 economic benefits is different from the tracking
3 of the cost to achieve and synergy savings?

4 A. I do.

5 Q. Paragraph 29 did not specifically state
6 that the costs to achieve which were not covered
7 by synergy savings and would be deferred as an
8 amortized expense would be handled as a regulatory
9 asset on which rate of return would be paid. Did
10 AOBA understand that that -- that that would be
11 handled in that fashion? You raised the question
12 because the language, itself, was not in the
13 Settlement Agreement.

14 A. My understanding of the Settlement
15 Agreement is that it provides for funds to be
16 deferred. I wasn't clear that that was
17 necessarily a regulatory asset and if, in fact, in
18 a subsequent rate case or subsequent rate cases we
19 don't find that they're offsetting synergy
20 savings, then those costs would never be recovered
21 and to continue to carry those dollars on the
22 books would be, in my assessment, inappropriate.

1 Q. We talked about paragraph 61 where there
2 was a root cause analysis to improve customer
3 satisfaction. Do you have any additional comments
4 on how that would be done?

5 A. No, I don't.

6 Q. Same question on paragraph 62 on safety?

7 A. 62?

8 Q. 62, which is the paragraph that deals
9 with safety. The representation in the Settlement
10 Agreement is that the company would move to first
11 quartile and ask questions as to based on what
12 type of measurement that would occur.

13 A. Well, I think the targeted first
14 quartile safety results are certainly an audible
15 objective. My problem with these quartile
16 measures is to say today that you're going to
17 achieve a given quartile or a given, you know,
18 decile result in the future when you don't know
19 what everybody else is going to be doing during
20 the same period. I mean, if you say that we're
21 going to achieve two, three, five years from now a
22 result that's equivalent to what the top decile or

1 the top quartile was today, that is doable -- a
2 potentially doable result.

3 But given that you don't know what
4 improvements other utilities will be making, to
5 assume that that will necessarily be achievable
6 with a given level of expenditure at a future
7 point in time is a rather heroic step.

8 Q. So we have a heroic step in our
9 Settlement Agreement?

10 A. Well, it's -- as I said, it's an audible
11 objective. I would not take that as a mandate
12 that we have to spend any specific amount of money
13 to achieve something that we really don't know
14 what that will require in a future period.

15 Q. With respect to paragraph 128, which is
16 the development of micro grid facilities, there's
17 been a lot of discussion about the four -- what
18 Pepco's role would be --

19 A. I'm sorry, what was the paragraph?

20 Q. Paragraph 128. We're jumping ahead.

21 A. 128. Yes.

22 Q. I'm skipping a lot of paragraphs on

1 ringfencing. I guess before I skip them, do you
2 have any comments, you know, that you want to make
3 on ringfencing? We haven't had any particular
4 comments made so far, but --

5 A. Well, ringfencing, I think, is an
6 important concern for the Commission; it always
7 has been throughout this proceeding. And I think
8 the Commission has to be confident that whatever
9 they do will continue to provide sound protection
10 of District ratepayers on an ongoing basis. It's
11 not something just because you got settlement
12 terms, it's all the sudden dead and you put it to
13 bed and everything is fine. I think it requires
14 someone to monitor sensitivity to events as we go
15 forward in time.

16 Q. Okay. Can we move on then to paragraph
17 128 on the development of micro grid facilities.
18 Did AOBA have any additional comments to make on
19 the issue of micro grids?

20 A. This is an evolving area. I think there
21 have been efforts to make some strides forward
22 here. I don't believe this is necessarily the end

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1 of the discussion of micro grid issues, and it's
2 certainly not the end of the Commission's
3 requirements for consideration of micro grid
4 issues.

5 Q. We welcome participation of AOBA and
6 everybody else in Formal Case 1130 where we are
7 discussing that issue.

8 A. Okay.

9 COMMISSIONER DODDY FORT: And with that,
10 I'm finished my questions, Chairwoman.

11 CHAIRWOMAN KANE: Thank you Commissioner
12 Fort. I have a couple of questions, Mr. Oliver.

13 BY CHAIRWOMAN KANE:

14 Q. I want to go to your testimony on page
15 3, first of all, where you have the summary of
16 your page -- excuse me, the summary of your
17 testimony, and the question asked is "What's your
18 overall assessment of the Joint Applicants Non-
19 Unanimous Settlement Agreement and Stipulation?"

20 And your answer is that it includes some
21 terms and conditions that are considerably
22 improved from the February 2015 supplemental

1 direct testimony AOBA is now able to support. And
2 I'm focused on your second sentence, "Of paramount
3 importance to AOBA is the inclusion of a
4 settlement term which supports the Commission's
5 goal of elimination of negative class rates of
6 return," and you cite orders in our last two rate
7 cases.

8 And then on the next page, on page 5, on
9 line -- starting on line 14, you say, "Since the
10 commercial classes in the Settlement Agreement do
11 not receive any direct benefits for Pepco's
12 operations as a result of this merger," you then
13 go on to say that "Assuring that the Commission
14 continues to achieve the goal of the elimination
15 of negative class rates of return is of paramount
16 importance," you use that phrase again, "to AOBA
17 and its members." I want to ask a few more
18 questions on this because this is obviously such
19 an important issue.

20 A. It certainly is.

21 Q. And would you describe it as the sole
22 issue?

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1 A. No.

2 Q. No. But a very important issue?

3 A. Absolutely.

4 Q. Paramount, of paramount importance.

5 You submitted the work papers of Ms.

6 Bowden which showed a -- your calculation of how

7 you would get to satisfy yourself that the 26

8 million was the proper amount; is that correct, or

9 an adequate amount, reliable amount?

10 A. There is a reasonable basis for assuming

11 that it's a number in approximately the right

12 ballpark, but all of this is hypothetical.

13 Q. Right.

14 A. You know, there are a lot of parameters

15 that aren't known specifically, but our concern

16 was given paragraph 48 and an agreement that we

17 were going to be attempting to continue to

18 eliminate negative rates of return, was that even

19 achievable within the limited amount of rate

20 credits?

21 And what we show is that within certain

22 ranges of increases, it is achievable. And even if

1 there are somewhat higher increases, there's a
2 mechanism provided to deal with that without rate
3 shock.

4 Q. Miss Bowden's work papers that you have
5 adopted show about 47 percent of any rate increase
6 during this, we'll call it the interim period,
7 going to the residential class; is that correct?

8 A. It's 47 percent, it's not about.

9 Q. Okay. 47.39 percent, to be exact.

10 A. It is what the Commission did in
11 1103.

12 Q. In 1103.

13 A. And our intent was to tie directly to
14 that decision.

15 Q. Looking back at the work papers that the
16 Joint Applicants submitted --

17 A. Yes.

18 Q. -- which we have referred to, I referred
19 to previously, their work papers presume -- and
20 again, it is illustrative -- that the allocation
21 of a -- any resident -- any future rate increase
22 during that interim period on those three rate

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1 cases, the allocation to residential and MMA would
2 be 22 percent in the first one, 22 percent in the
3 second and 23 percent in the third rate case. Do
4 you see that?

5 A. I see that, yes.

6 Q. And again, that is a chart that shows
7 you would achieve during that time period using up
8 the 26 -- the \$25.6 million in rate credits. The
9 Joint Applicants' illustration was not -- or is
10 the Joint Applicants' illustration an allocation
11 that continues the goal of reducing negative rate
12 of return?

13 A. By my calculations, it reflects
14 essentially an across the board increase, and as
15 I've testified in numerous prior proceedings, you
16 cannot achieve movement in class rates of return,
17 positive movement in class rates of return where
18 you have existing disparities when you apply an
19 across the board increase.

20 The only way you're going to move a
21 negative rate of return towards zero or a positive
22 number is by applying a greater than average

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1 increase to the residential class in this case or
2 any class that has a negative rate of return.

3 Q. So again, when we look at Provision No.
4 48, where all the parties commit to the goal of
5 continuing to eliminate negative rates of return,
6 this illustrative work paper from the Joint
7 Applicants would not support that goal; is that
8 what you're saying?

9 A. I think the company can speak to their
10 own work paper, perhaps --

11 Q. But in your evaluation?

12 A. -- but from my assessments of it, the 22
13 percent is not consistent with that.

14 Q. With that goal?

15 A. Yeah, but there are also assumptions in
16 there regarding the magnitude of the increases.
17 And, you know, if you had lesser increases, you
18 can still stay within the rate credit allotment
19 amount allocated for residential rate credits or
20 in that range with something other than what the
21 company has assumed there.

22 Q. But you did hear the testimony from the

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1 company that those total rate increases were
2 necessary to support the capital budget to release
3 -- to achieve their reliability commitments?

4 A. See, now, that's where we get in other
5 provisions of the settlement and other facets of
6 it that we believe are important.

7 Q. Okay.

8 A. Our position in the main part of this
9 case was that the company had failed to establish
10 a direct tie between budgeted capital expenditures
11 and the achievement of specific levels of
12 reliability. And as we showed that in 2014, the
13 company achieved much greater than expected
14 reliability levels without -- while still under-
15 spending their budgets.

16 I certainly believe it is possible that
17 the company can achieve new lower targets which,
18 by the way, while they lower the targets, their
19 2014 level that was already achieved is adequate
20 to meet those targets out through I believe it's
21 2018. So you have three years where the existing
22 level of expenditures could conceivably be

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1 adequate. It's not clear that you need all that,
2 and that's why it's important that the Commission,
3 as part of the settlement, maintains its ability
4 to review the company's expenditures.

5 We had discussion earlier about what
6 happens if the undergrounding program doesn't go
7 forward? Will the company need additional
8 expenditures? Well, I'd like to turn that around
9 and say what happens if the undergrounding program
10 at some point does go forward and what happens if
11 it produces greater reliability improvements than
12 were expected? Does that mean we can back off on
13 some of the other budgeted expenditures? I
14 certainly believe it may. I certainly believe
15 that that's something this Commission would have a
16 responsibility to look at.

17 You know, certainly we want reliability,
18 but we cannot do that without an eye on
19 affordability, as well. And when you're doubling
20 rate base over a relatively short period of time,
21 a rate base that's been established over a hundred
22 years and you're going to double it in five years,

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1 affordability is a very important issue.

2 Q. Thank you.

3 We had some questions earlier, again,
4 about the rate credit and the rate credit -- the
5 25,6 million will go to both MMA and to single
6 metered residential; correct?

7 A. That's correct.

8 Q. But the \$14 million, 50, 55, \$60 one-
9 time credit, is it your understanding of the
10 agreement that that is not going to be available
11 to MMA, category of class of residential
12 customers?

13 A. I believe that's the agreement.

14 Q. And does AOBA agree with that?

15 A. The document is a set of compromises.

16 Q. MMA, the actual rate of return on MMA as
17 a result of our Formal Case 1087 is 12.21 percent?

18 A. Yes, it is.

19 Q. And in Formal Case 1103, it actually
20 went up to 13.19 percent.

21 A. Yes, it did.

22 Q. So when we're looking at, again,

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1 Provision 48, Commitment 48, to eliminate negative
2 rate of return, which is your testimony, it says
3 it's the worst in the nation, would you expect
4 that a fulfillment of that commitment by all the
5 settling parties to move towards eliminating
6 negative rates of return would require a much
7 larger decrease or avoidance of increase for MMA,
8 the category of customers as opposed to the other
9 residential couple classes?

10 A. Yes, we would.

11 Q. And would it be your understanding that
12 everyone who signed the Settlement Agreement would
13 agree with that? If everybody says we should
14 continue to move towards eliminating negative rate
15 of return?

16 A. Yes, I believe they would.

17 CHAIRWOMAN KANE: I think that concludes
18 my questions. Thank you.

19 Ms. Francis?

20 MS. FRANCIS: Some recross -- redirect,
21 please?

22 CHAIRWOMAN KANE: Yes.

1 REDIRECT EXAMINATION

2 BY MS. FRANCIS:

3 Q. Mr. Oliver, taking a look at paragraphs
4 61 and 128 --

5 A. Give me a second here.

6 Q. -- that I believe you discussed, AOBA
7 does not object to those paragraphs as written
8 being part of the Settlement Agreement, does it?

9 A. I'm sorry, I'm leafing -- 68 and --

10 Q. No, paragraph 61 and paragraph 128, AOBA
11 has no objection to those paragraphs as written --

12 A. No.

13 Q. -- as part of the Settlement Agreement;
14 isn't that correct?

15 A. No, we've accepted the settlement, we've
16 support the settlement.

17 MS. FRANCIS: Thank you, Your Honor. I
18 believe I have no more questions.

19 And at this time, I would like to
20 move the admission of Mr. Oliver's testimony as
21 AOBA Exhibit B and move the Cross-Examination
22 Exhibit AOBA as AOBA Exhibit NSA-1.

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1 CHAIRWOMAN KANE: So moved.

2 Thank you. Mr. Oliver, thank you very
3 much.

4 (Witness excused.)

5 CHAIRWOMAN KANE: Mr. Smith, go back to
6 DC government. Mr. Caldwell, call your second
7 witness.

8 MR. CALDWELL: Thank you, Your Honor.
9 The District Government calls Ralph Smith to the
10 stand.

11 WHEREUOPN,

12 RALPH SMITH,
13 having first been duly sworn and/or affirmed, was
14 examined and testified as follows...

15 DIRECT EXAMINATION

16 BY MR. CALDWELL:

17 Q. Can you please state your name for the
18 record.

19 A. Ralph C. Smith.

20 Q. And on whose behalf are you appearing
21 today?

22 A. I'm appearing on behalf of the District

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1 Government.

2 Q. And are you the same Ralph Smith that
3 submitted testimony in this matter on October
4 30th, 2015, in support of the Non-Unanimous
5 Settlement Agreement?

6 A. Yes.

7 Q. And was that document preliminarily
8 marked DCG-2A, with one attached exhibit marked
9 DCG-2A-1?

10 A. Yes.

11 MR. CALDWELL: I'd like to have Mr.
12 Smith's prefiled testimony marked a DCG-2A, with
13 the attached exhibit marked DCG-2A-1.

14 CHAIRWOMAN KANE: So marked.

15 BY MR. CALDWELL:

16 Q. Was this testimony prepared by you or
17 under your direct supervision?

18 A. Yes, it was.

19 Q. If I asked you the same questions today,
20 would your answers be the same?

21 A. Yes, they would.

22 MR. CALDWELL: Thank you. The witness

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1 is available for cross-examination.

2 CHAIRWOMAN KANE: Cross-examination?

3 (No response.)

4 CHAIRWOMAN KANE: Commissioner Fort, do
5 you have any questions?

6 COMMISSIONER DODDY FORT: Thank you.

7 (Brief pause.)

8 CHAIRWOMAN KANE: Okay. I'll start then
9 with some questions.

10 BY CHAIRWOMAN KANE:

11 Q. Mr. Smith, you are testifying for the DC
12 Government, and when Director Wells was here, we
13 did ask him -- there were some questions that were
14 part of his testimony, too, that we thought you
15 might be able to answer those to the best of your
16 ability; correct?

17 A. I'll answer to the best of my ability.

18 Q. Thank you. I first want to ask you,
19 direct you to page 6 of your testimony, line 9.
20 We were talking about jobs and commitment on
21 workforce development, as well as the movement of
22 positions to the District. Line 9, which I've

1 highlighted, you have said, "Obtaining the synergy
2 savings will likely result in layoffs at PHI's
3 service company." PHI's service company, Phisco,
4 is that located in the District?

5 A. That's where the PHI's service company
6 headquarters is, yes, there are a large number of
7 PHI service company employees at offices located
8 in the District.

9 Q. Okay. And so you're saying that there
10 will most likely be layoffs in those positions?

11 A. That is one of the primary areas in
12 which applicants expect to achieve synergy
13 savings, so that's correct.

14 Q. On page 11, to put it to context, you
15 have spoken in your testimony about things that
16 have happened in other mergers and sort of what's
17 typical; correct, to some extent?

18 A. Well, I have spoken about other mergers.

19 Q. Yes.

20 A. We've seen a lot of different things
21 happening, so I'm not sure I would say that any
22 particular merger is typical. They all have their

1 own issues.

2 Q. And the discussion that I want to focus
3 on on page 11 and going over to page 12, on cost
4 accounting and synergy savings, you cite on line
5 21 Commitment No. 28 where Pepco shall track and
6 account for merger-related savings and the cost to
7 achieve those savings in each of its base rate
8 cases filed within the three-year period following
9 the merger close.

10 In other mergers that you have looked
11 at, has a three-year period accounting for
12 services -- excuse me, for savings, synergy
13 savings, been the norm or have you seen longer
14 times?

15 A. I'm not sure I would say it's the norm.
16 I think usually applicants will try to limit that
17 to one rate case tracking synergy savings through
18 their first rate case after the merger. The three
19 years, we believe, provides strengthening to the
20 previous version of that similar commitment.

21 You know, it's possible that Pepco will
22 have more than one rate case within the next three

1 years, and this will continue to assure that the
2 synergy savings are tracked through that process.

3 Q. Actually, if you look at their
4 illustrative example, they're going to have three
5 over the next three years. But I assume that
6 means it depends on how much time there is between
7 rate cases. My distinction was, was three years
8 to you as a professional a reasonable amount of
9 time or an adequate, I should say, amount of time
10 to track savings?

11 A. I think in this instance, it's
12 reasonable and it seems likely that it will result
13 in savings being tracked to at least two rate
14 cases. And again, this is one of the items that
15 was negotiated. I think it would have been
16 Applicants' preference to just track this through
17 the first rate case and then not track it anymore.

18 One of the issues is that as you get out
19 in time, you know, the utility operations are
20 changing and it becomes a lot more difficult to
21 track savings. Usually it's easier to track
22 costs, but it becomes more difficult the further

1 you go out in time to track savings.

2 So we believe that in this instance, the
3 three-year period was a very reasonable compromise
4 and will likely result in tracking savings even
5 beyond their first rate case, possibly in their
6 first two rate cases.

7 Q. Should a commission that approves a
8 merger expect savings to continue for longer than
9 three years, whether they're tracked or not?

10 A. Yes, in applicants and some of their
11 evidence actually showed anticipated savings
12 throughout a 10-year period, and then presumably
13 the savings would continue beyond then, as well,
14 because some of the savings are in the form of
15 permanent adjustments to their operations that
16 will produce ongoing savings. So the savings will
17 occur probably beyond three years, but in terms of
18 tracking them and measuring them and accounting
19 for them and being able to present to the
20 Commission those dollar amounts, we felt that the
21 three-year period was a reasonable time frame for
22 doing that.

1 Q. Going on to the next page, again, we're
2 talking about accounting, you refer to Commitment
3 No. 30 starting on line 4. "Exelon shall ensure
4 that merger accounting is rate neutral for Pepco
5 customers." Could you explain what you mean by
6 "rate neutral"?

7 A. Yes. We meant that the accounting
8 wouldn't result in rate increases. That's what we
9 meant by rate neutral, that it's not going to
10 result in rate increases to Pepco customers.

11 Q. Explain to me a little more how
12 accounting could result in a rate increase. Give
13 me examples.

14 A. Yeah, Pepco, PHI and Exelon are both
15 very large companies and they don't necessarily
16 follow the exact same accounting implementations
17 and there may be differences between the way PHI
18 and Exelon are then accounting for certain items.
19 And if the adoption of the Exelon accounting would
20 result in increased costs being recognized by
21 Pepco, then this provision is intended to provide
22 protection that that won't -- just because the

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1 accounting is different, that that won't result in
2 a rate increase to Pepco customers.

3 Q. You mean like a cost that would be
4 charged to one company would certainly get charged
5 to another company, and therefore, would increase
6 their expenses and could lead to a rate increase?
7 Is that an example?

8 A. No, usually when two companies merge,
9 they will try to adapt consistent accounting
10 throughout the entire organization, and what this
11 is trying to address is that adopting the
12 accounting which is probably going to be Exelon's
13 way of accounting, if switching over from the PHI
14 or Pepco accounting implementation details to the
15 Exelon accounting implementation results in Pepco
16 recognizing increased costs in a particular period
17 that happens to be a test year, that this would
18 essentially call that out and say that that's not
19 going to result in a rate increase to Pepco
20 customers.

21 Q. And this is something the Commission
22 could track?

1 A. I think it will be tracked. I know that
2 there's another commitment in the stipulation that
3 results in -- it's going to require a side-by-side
4 comparison of service company costs, which is
5 probably a big area where these accounting
6 interpretational differences could arise. So you
7 will have a side-by-side, and that may reveal
8 where accounting is being changed to conform with
9 the standardization throughout the new
10 organization.

11 And also I would expect that this would
12 be explored in discovery requests, in Pepco's rate
13 cases that follow the merger.

14 Q. It could add to the complication of rate
15 cases to try to track these things or figure them
16 out? I mean, it's another element to be looked at
17 in the rate cases; right?

18 A. It's another element to be looked at in
19 the rate cases, and this was actually intended as
20 an additional protection for Pepco customers.

21 Q. The next sentence in Item -- Commitment
22 No. 30 says "Any acquisition premium or goodwill

1 shall be excluded from the rate making capital
2 structure and Exelon will not record any of the
3 impacts of purchase accounting at the PHI's
4 utility company maintaining historical costs," et
5 cetera. We know what an acquisition premium would
6 be, that's the extra -- is acquisition premium, am
7 I correct, refers to the additional price that
8 goes to a stockholder because the stock is being
9 sold and being bought by Exelon? Is that what an
10 acquisition premium is?

11 A. Yes, it's the amount being paid to
12 acquire the system.

13 Q. Right.

14 A. Over the net depreciated book value.

15 Q. What does goodwill refer to?

16 A. Goodwill is essentially a similar
17 concept. It's typically the -- it's a concept
18 that is articulated more clearly in financial
19 accounting, and it results when a company is
20 acquired usually for more than its net book value
21 and additionally for more than its current stock
22 traded value, its current market value in the

1 stock market. The premium for financial reporting
2 is accounted for as goodwill.

3 Under regulatory accounting, if this
4 ends up hitting the utility's books, it's
5 accounted for as an acquisition premium. But
6 typically at the parent company level, this would
7 be, at an Exelon level, and possibly the PHI
8 level, it would be accounted for as goodwill. And
9 goodwill is -- there are specific financial
10 accounting requirements to test goodwill for
11 impairment periodically. And if it's become
12 impaired, then the company upon whose books the
13 goodwill is recorded has to reflect the impact of
14 that impairment.

15 And impairments can be pretty
16 substantial, as I had discussed in my direct
17 testimony in the earlier phase, and typically, the
18 result of recognizing an impairment is a
19 significant write-down in the company's assets,
20 and also it ends up, when it hits the liabilities
21 and shoulder equity side balance sheet, it also
22 entails a significant reduction to the shareholder

1 equity. So it can have a big impact on the parent
2 company capital structure, as well, by resulting
3 in a large reduction to the equity amounts that
4 are shown on their financial statements.

5 Q. So goodwill can be positive or if it's
6 negative, it's called impairment; is that --

7 A. No, goodwill is positive, but it can be
8 impaired. And when it's impaired, it gets reduced
9 and the reductions can reduce it to zero.

10 Q. Is there a dollar amount associated --
11 we know -- go back.

12 We know what the acquisition premium is
13 from the record in this case, how much more the
14 shareholders are being offered for their stock
15 than its current value, and where there's a dollar
16 amount associated with that that's in the record.
17 Is there a dollar amount associated with goodwill?

18 A. I think there is in my direct testimony
19 from the earlier phase. I had a discussion about
20 goodwill and I thought I had dollar amounts in
21 mine.

22 Q. Okay. We can look back and see it. So

1 goodwill doesn't mean the reputation of the
2 company or than kind of intangible value?

3 A. No, not really. It's an accounting
4 concept that results in a goodwill which is an
5 asset being recognized on a company's financial
6 statements, typically when it acquires another
7 company for more than that company's net book
8 value.

9 Q. So when a company does something like,
10 you know, sponsor a charity or puts -- pays to put
11 their name on a street or something, that's not
12 goodwill?

13 A. Not in the same sense as the accounting.

14 Q. Okay. So that's not what you're talking
15 about here?

16 A. That's not what I'm talking about here.

17 Q. Okay.

18 A. I would call it corporate image
19 building.

20 Q. Corporate image building. Where does
21 that get accounted for, corporate image building,
22 in a system of accounts?

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1 A. It may be in advertising expense or it
2 may be in a below the line expense.

3 Q. Is that something that normally goes
4 into rate pays?

5 A. No, it would typically be a period
6 expense and it may be, you know, in the form of an
7 advertising or marketing expense which I think
8 would be in account 912 or 913 or 911, or it could
9 be in this lady's general expenses, 930.2 or it
10 could be worldwide, if it's like a donation or a
11 charitable-type expenditure.

12 Q. But is that -- are you saying that
13 that's not normally a kind of expense that
14 ratepayers would be subject to cost recovery for?

15 A. Well, most commissions in my experience
16 require that corporate image building type
17 expenditures be borne by the shareholders.

18 Q. Thank you. I just want to be sure
19 because goodwill, kind of in layman's terms, means
20 something different than accounting terms as you
21 educated me.

22 A. Right. In the accounting context it has

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1 a different -- specialized meaning.

2 Q. Okay. Okay.

3 Page 21 of 43 your testimony, speaking
4 to a new commitment 53, again, it says that -- you
5 use Exelon Utility CEO, the PHI CEO, the Pepco CEO
6 and the Pepco Regional President will annually
7 offer to appear publicly before the Commission to
8 review and provide documentation concerning
9 Pepco's reliability safety, customer service
10 performance, and to answer questions about Pepco's
11 performance in the District of Columbia and this
12 shall not be construed as approval of any
13 particular temp program or expenditure by the
14 Commission to simply review.

15 Isn't this something that would normally
16 be done in the course of business anyway? I mean,
17 why is this any particular special commitment?

18 A. I'm not sure they would do this in the
19 normal course of business. And this was addressed
20 --

21 Q. But if we invited them in, we'd want to
22 assume they would come; right?

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1 A. I would hope so.

2 Q. And there would go the goodwill, yes.

3 A. I think there were a number of these
4 additional commitments that were added to what the
5 applicants had previously offered, and these were
6 intended to address some of the items that the
7 Commission called out in their Order 17947. There
8 were a list of items there, you know, where the
9 Commission kind of ticked off, you know, the
10 applicants are proposing to do this and this is
11 neutral or this is negative and the -- getting the
12 attention and keeping the attention of the Pepco
13 executive officers and making sure that the
14 element of, you know, local control and local
15 responsiveness of the company's officers in the
16 post merger environment seem to be a concern that
17 didn't seem to be adequately addressed in what the
18 applicants had previously offered. And this is
19 one of a number of elements that was I think
20 intended to help address that item and make sure
21 that the local attention, the responsiveness of
22 the Pepco and PHI and Exelon utility officers,

1 they continue to have the dialogue and attention
2 of the Commission's needs and there's an ongoing
3 dialogue there, that they're engaged in what the
4 District needs and are going to be responsive to
5 that.

6 Q. Just two more questions. On page 26 of
7 your testimony, you reference Commitment No. 56
8 achieving reliability targets set out in
9 Commitment 56 without exceeding certain annual
10 reliability related capital O & M expenditure
11 levels that are specified in Tables 3 and 4 of
12 Commitment 57, and we've asked questions about
13 that before.

14 On behalf of the District Government, is
15 it your understanding that these expenditures,
16 both the Cap X expenditures, net of a DC Plug and
17 emergency restoration and the O & M reliability
18 budget, are these numbers that you would support,
19 the District Government?

20 A. Well, I think they are the numbers that
21 the applicants are committed to in terms of not
22 exceeding those amounts in order to achieve the

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1 reliability targets. So I think in that context,
2 they become part of the settlement and they are
3 supported. You know, I do think it's still the
4 intention to review the company's actual spending
5 in the context of a rate case for reasonable -- is
6 it reasonable, is it prudent and, you know,
7 subject that to the normal review in Pepco's next
8 rate case.

9 Q. And then finally, I did not have a
10 chance to ask Mr. Wells on behalf of the
11 government, in Commitment No. 48, which we have
12 discussed with other witnesses, "Nothing in the
13 Settlement Agreement shall be construed to change
14 the Commission's stated goal to move in a
15 deliberate, reasonable fashion, over a series of
16 Pepco rate cases, to put an end to negative class
17 rates of returns." I read into the record or
18 provided for the record before the negative rates
19 of return and the history of it over the last four
20 rate cases for the residential classes did point
21 out orally that the streetlight class is also
22 negative, although it's a small class.

1 But what is the District Government's
2 understanding of the meaning of Commitment No. 48?

3 A. Well, I think our understanding is
4 similar to the other parties. Nothing in the
5 settlement is construed as a change of that
6 previously articulated policy to move in a
7 deliberate and reasonable fashion over a series of
8 Pepco rate cases to put an end to negative class
9 rates of return.

10 So it's an articulated goal that in a
11 deliberate and reasonable fashion the Commission
12 will -- and over a series of Pepco rate cases,
13 these negative rates of return will be addressed.
14 So it looks like it has to be done in a
15 deliberate, reasonable fashion, and it can take a
16 series of Pepco rate cases.

17 So I guess in the next Pepco rate case,
18 you know, we would expect to see the negative
19 rates of return not becoming more negative, that
20 we would expect to see some continual movement of
21 those to eliminate the negativeness, but then, you
22 know, it depends -- the degree of movement I think

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1 will depend on a lot of other factors that the
2 parties will need to be examining in those
3 subsequent Pepco rate cases.

4 CHAIRWOMAN KANE: Thank you. Those are
5 all my questions.

6 Commissioner Fort?

7 BY COMMISSIONER DODDY FORT:

8 Q. Good afternoon, Mr. Smith. I only have
9 a few questions for you.

10 A. Good afternoon.

11 Q. Were you here when Mr. Khouzami
12 testified yesterday?

13 A. No.

14 Q. You were not. Your list just got
15 shorter by a bit.

16 How about if I get you to focus on page
17 4 of your testimony. At lines 13 to 18, you state
18 that the Settlement Agreement compares favorably
19 with the settlement under recent mergers. I'm
20 kind of paraphrasing. Actually, I'm reading it
21 pretty close. "The Settlement Agreement being
22 presented to the Commission for approval in the

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1 current case compares favorably with settlements
2 in other recent mergers/acquisition cases with
3 which I'm familiar."

4 Would you tell us how it compares and
5 why it compares favorably? So could you just
6 summarize briefly what elements of the settlement
7 compare favorably with other mergers that -- with
8 which you're familiar?

9 A. Yes. It compares favorably in several
10 respects, and keeping in mind that each merger, at
11 least the ones I've alluded to here, the Fortis
12 UniSource Energy Merger in Arizona, and the
13 Iberdrola United Illuminating Merger, which is
14 currently pending approval in Connecticut and
15 Massachusetts, it compares favorably in several
16 respects. The ringfencing, I believe, compares
17 favorably. All of those mergers include elements
18 which have now become fairly standard in effective
19 utility ringfencing, including use of the Special
20 Purpose Entity that's bankruptcy remote; use of a
21 golden share; requiring utility to obtain an
22 opinion about the separateness and the bankruptcy

1 remoteness and so dividend restrictions and
2 several audit provisions.

3 I believe, and I believe the Applicants'
4 Witness Velazquez also testified that the
5 ringfencing measures in this particular merger
6 represent the state-of-the-art, the most detailed
7 set of measures that I'm aware of that have been
8 applied in the context of utility merger
9 approvals, and those were even -- I think those
10 were probably okay in what the applicants said
11 previously provided, but they've even been
12 improved more in the Settlement Agreement that you
13 are being asked to approve.

14 And a number of significant items have
15 been added, including a divestiture provision and
16 also another provision that requires applicants to
17 do a risk assessment and then to report back if
18 there's any other risks that hadn't previously
19 been contemplated or protected against by the
20 existing ringfencing.

21 So the ringfencing, I believe, is
22 superior in this merger. Actually, the

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1 ringfencing here was used as a model for the
2 ringfencing that was adopted in the
3 Iberdrola/United Illuminating. That ringfencing
4 was tailored a little bit to their specific
5 conditions which were a little bit different than
6 Exelon and PHI.

7 The customer benefit amounts here are
8 significantly larger. On page 5, footnote 3, I
9 tried to provide a rough comparison of level of
10 benefits. In this one, they approximate
11 equivalent is \$215.94 per distribution customer.
12 I tried to calculate the rough approximations from
13 the Connecticut Iberdrola United Illuminating
14 Merger. There was a total of approximately \$83.6
15 million of benefits there divided by 645,000
16 Connecticut utility customers equated to
17 approximately \$129.61 of quantified public benefit
18 per customer.

19 And then I also compared them to the
20 Fortis UniSource Energy amount. There, there were
21 approximately \$30 million of benefits and 654,000
22 customers of their three utilities, and that

1 equated to a per customer benefit equivalent of
2 approximately \$45.87. So the dollar amounts of
3 benefits of this particular merger are quite a bit
4 larger.

5 In addition to those two areas, you
6 know, the reliability has been an issue for the
7 District. It has been kind of an ongoing concern
8 and how can we get Pepco to improve its
9 reliability in a manner that's feasible without
10 giving them a blank check to just go spend money
11 on it. And it seemed like this merger has
12 resulted in commitments to improve the reliability
13 that are being made, also with keeping an eye on,
14 you know, budgetary targets, and there's also
15 provisions in the stipulation that result in
16 monetary penalties that will be incurred if the
17 reliability targets are not met. And these
18 provisions, I also believe are a substantial
19 improvement over what was previously on the table
20 and what the Commission considered when you issued
21 your Decision No. 17947.

22 So I think what the parties basically

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1 tried to do was they read this Order very
2 carefully, including Commissioner Phillips
3 dissent, which said Step 2, and they tried to
4 basically address all these concerns that the
5 Commission articulated in the Order and work out
6 improvements over what had previously been offered
7 and to work those improvements out in a manner
8 that all the diverse interests that represent the
9 settling parties found to be reasonable.

10 And just to kind of add one further item
11 to that discussion, because I mentioned the
12 Iberdrola United Illuminating Merger, and earlier
13 I was asked a question about, Well, what is normal
14 in these mergers? Well, I didn't think it was
15 normal for a commission to reject a merger and
16 then to have it come back as a Phase 2, but that's
17 exactly what happened in the Connecticut
18 proceeding. Their commission had issued a proposed
19 decision where they were going to reject the
20 merger. There was no settlement among the
21 parties. The parties had talked, but they just
22 couldn't agree on reasonable commitments.

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1 As the hearing had progressed, the
2 applicants started putting more and more, you
3 know, tidbits of commitments out on the table, but
4 the major parties to that case felt that that
5 wasn't nearly enough, so the commission issued a
6 recommended decision that was going to reject the
7 merger. Iberdrola and United Illuminating came
8 back in saying we'd like more time. We want
9 additional time to file a reconsideration. The
10 public utility regulatory authority said no, and
11 then they withdrew that case so they wouldn't get
12 a bad decision out of it, and then they engaged in
13 very intense and meaningful settlement discussions
14 with the major parties and they ultimately were
15 able to work out something that all -- not all the
16 parties, but all the major parties -- well, most
17 of the parties, it's not a unanimous settlement
18 there. It is still pending before the Connecticut
19 Public Utility Regulatory Authority and there are
20 some -- I believe the Alliance For Solar Energy is
21 still opposing it, I believe there may be one more
22 other party that's opposing it, but they do have a

1 settlement.

2 The Public Utility Regulatory Authority
3 has issued a proposed decision that now approves
4 that merger with all the additional commitments
5 that the parties have agreed to, and I believe
6 their timeline for rendering a final decision on
7 it is actually next week. So, I mean, before I
8 thought that was a weird -- you know, that this
9 would never happen. When a commission turns down
10 a merger, that's like the end of it. But, you
11 know, we've seen the United Illuminating Iberdrola
12 one and now with this one that sometimes there's a
13 Step 2.

14 Q. Thank you.

15 You looked at cost to achieve and
16 synergy savings as part of your review. In doing
17 that, on paragraph 29, did you understand that to
18 include a regulatory asset that would be used to
19 track the deferred cost to achieve, paragraph 29?

20 A. Paragraph 29 doesn't really call out the
21 use of a regulatory asset, but they would need
22 some type of accounting to track that. So it could

1 be a regulatory asset, it could be some type of
2 deferred debit account.

3 Q. And I guess my question was, did you
4 understand that in the case -- in this case, it
5 was going to be a regulatory asset that was going
6 to be used?

7 A. It would have to be tracked as some sort
8 of asset account, and I don't -- this provision
9 doesn't call out exactly what count the deferred
10 cost would be accounting for.

11 Q. All right. You note throughout your
12 testimony new commitments, or a number of the new
13 commitments that came in with this Settlement
14 Agreement, and I think you mentioned that when you
15 talked to the Chair, you said they all appeared to
16 be commitments that are addressing specific issues
17 that had been raised either by intervenors or that
18 are reflected in the Commission's Order that was
19 issued on the 27th of August.

20 Are any of the new commitments you saw
21 things that were not directly related to issues
22 that were already before the Commission in the

1 first -- in the earlier case and addressed in the
2 earlier order?

3 A. I think the major focus was on looking
4 at the Order, looking at were all the different
5 diverse parties that have signed on to the
6 Settlement Agreement were coming from, and through
7 intensive discussions and negotiations, finding
8 something that appeared to the parties to address
9 all of the concerns that were expressed in the
10 Commission's Order, but still were viewed as being
11 reasonable from each of the settling parties
12 somewhat different perspectives.

13 COMMISSIONER DODDY FORT: Thank you. I
14 have no further questions.

15 CHAIRWOMAN KANE: Redirect, if any?

16 MR. CALDWELL: Just a few questions,
17 Your Honor.

18 REDIRECT EXAMINATION

19 BY MR. CALDWELL:

20 Q. Mr. Smith, at the beginning of your --
21 of the questioning from -- from the commissioners,
22 you talked about layoffs at Phisco, and that being

1 a large source of the synergy savings. But in
2 addition to the synergy savings which may flow
3 from those layoffs, is there anything in the
4 Settlement Agreement that provides for the
5 bringing in of new jobs into the District of
6 Columbia?

7 A. Yes, there are a number of revisions in
8 the stipulation that address jobs in the District,
9 which was a very important issue for District
10 Government, and I guess I can point to which ones
11 those are, if you want me to, but they are in the
12 stipulation, and there's commitments for job
13 growth and to keep the workforce in the District.
14 I believe it's on a net positive basis for some
15 period of time, at least a couple of years.

16 So the District Government had very
17 strong concerns about the potential impact on jobs
18 in the District, and we believed that those have
19 been recently addressed with these other
20 settlement provisions.

21 Q. So would the source of the new jobs
22 moving into the District be the transfer of

1 certain Exelon corporate and affiliate functions
2 into the District?

3 A. That's one of the sources. Then there
4 are a couple other sources. One of the items that
5 applicants had committed to during the earlier
6 round of hearings was moving some jobs from a
7 Virginia office into the District. And paragraph
8 19 of the settlement provides for moving 100
9 positions to the District as part of the co-
10 headquarters -- energy utility headquarters
11 relocations.

12 Q. I think you meant Exelon utilities, but
13 that's okay.

14 A. Exelon utilities, right. And --

15 Q. So --

16 A. And paragraphs 14 through 23, I think,
17 in combination with each other, are the ones that
18 address the issues concerning employment in the
19 District.

20 Q. So it is possible to achieve synergy
21 savings and also increase or maintain employment
22 levels at the same time as a result of this

1 agreement; correct?

2 A. To maintain employment levels in the
3 District.

4 Q. Okay.

5 A. I mean, it looks like the synergy
6 savings are going to come at least, in part, from
7 downsizing at the combined service company, some
8 of which are located in the District and some of
9 which are located in other locations. I believe
10 there's a significant service company operation in
11 the Chicago area, so this agreement provides for
12 achieving synergy savings and preserving jobs in
13 the District in a relatively balanced manner.

14 Q. Thank you.

15 And you discussed several other mergers
16 specifically on page 5 of your testimony, footnote
17 3, and the sort of per customer benefit, dollar
18 benefit from each of those merger proceedings.
19 Were you personally involved in any of those?

20 A. Yes. I was personally involved in all
21 those.

22 Q. Okay. So -- and as your testimony says,

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1 this particular Settlement Agreement, if this
2 merger is approved and the terms of this
3 Settlement Agreement would compare favorably to
4 the other merger proceedings that you have
5 personally been involved in; is that right?

6 A. Yes. And especially with the ones that
7 I've -- the recent ones that I've cited on page 5,
8 footnote 3.

9 MR. CALDWELL: Okay. Thank you. I don't
10 have any further questions.

11 CHAIRWOMAN KANE: Thank you.

12 MR. CALDWELL: The District would like
13 to move into evidence what was premarked DCG-2A
14 along with DCG-2A-1.

15 CHAIRWOMAN KANE: It is so moved.

16 MR. CALDWELL: Thank you.

17 CHAIRWOMAN KANE: Thank you, Mr. Smith.

18 (Witness excused.)

19 CHAIRWOMAN KANE: We do need, I think,
20 the last of the settling parties, National
21 Consumer Law Center.

22 BY MS. WEIN:

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1 Q. Good afternoon. Mr. Nedwick, please
2 state your full name, title and address.

3 A. Todd Nedwick, Housing Energy Efficiency
4 Policy Director, 1101 30th Street, Northwest,
5 Washington, DC, 20007.

6 Q. And who are you representing today?

7 A. National Housing Trust.

8 CHAIRWOMAN KANE: Would counsel for the
9 Housing Trust introduce herself, please, for the
10 transcriber.

11 MS. WEIN: Yes. My name is Olivia Wein,
12 staff attorney with the National Consumer Law
13 Center.

14 WHEREUPON,

15 TODD NEDWICK,
16 having first been duly sworn and/or affirmed, was
17 examined and testified as follows.

18 MS. WEIN: Your Honor, I just have one
19 question before we begin.

20 DIRECT EXAMINATION

21 BY MS. WEIN:

22 Q. Good afternoon, Mr. Nedwick. Are you

1 familiar with the portion of the testimony of
2 Scott Hempling for Grid 2.0 at page 52 starting at
3 line 9 regarding the settlement provision 9(c) of
4 -- where Mr. Hempling characterizes Exelon as
5 having bought NHT support in exchange for
6 influence and access to corporate decision-making?
7 Mr. Hempling also characterizes NHT of giving
8 preferred access to government decision-makers
9 referring to the District Government and excluding
10 others from access to those decision-makers.

11 Has Mr. Hempling fairly characterized
12 paragraph 9(c) of the settlement as it involves
13 NHT and the other parties who would want access to
14 government decision-makers?

15 A. No, he has not. No, I think Mr.
16 Hempling mischaracterizes our motives for
17 participating in this proceeding, and I think he
18 grossly misinterprets the intent behind the
19 language in paragraph 9(c) as it relates to the
20 District of Columbia consulting with the National
21 Housing Trust and the National Consumer Law Center
22 on developing those programs.

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1 Our intent was simply to make sure that
2 any process that does go forward for designing
3 those programs includes the National Housing Trust
4 and National Consumer Law Center. At no point do
5 we intend to exclude any other stakeholders from
6 that process. We fully expect that the process
7 for developing those programs and those plans for
8 expending that funding will be very open, will
9 include many different stakeholders. So yeah --
10 no.

11 Q. Thank you.

12 Mr. Nedwick, before you, do you have the
13 testimony of Michael Bodaken and Todd Nedwick in
14 Support of the Settlement on Behalf of National
15 Consumer Law Center, National Housing Trust and
16 the National Housing Trust-Enterprise consisting
17 of 13 pages and dated October 30th, 2015?

18 A. Yes, I do.

19 Q. Was this testimony prepared by you or
20 under your supervision?

21 A. Yes, it was.

22 Q. Are there any corrections, additions or

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1 modifications that you'd like to make to that
2 testimony?

3 A. No.

4 Q. If I asked you the same questions today,
5 would your answers be the same?

6 A. Yes, they would.

7 Q. Is this testimony true to the best of
8 your information, knowledge and belief?

9 A. Yes, it is.

10 MS. WEIN: Your Honors, at this time,
11 I'd like to mark this testimony as NCLC/NHT
12 Exhibit B.

13 CHAIRWOMAN KANE: So marked.

14 MS. WEIN: And Mr. Nedwick is now
15 available for cross-examination.

16 CHAIRWOMAN KANE: Thank you. Any
17 parties have cross-examination of Mr. Nedwick?

18 (No response.)

19 CHAIRWOMAN KANE: Commissioner Fort?

20 BY COMMISSIONER DODDY FORT:

21 Q. Just briefly. Good afternoon, Mr.
22 Nedwick.

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1 A. Good afternoon.

2 Q. I have a clarifying question and it goes
3 to paragraph 26 in the Settlement Agreement, and
4 that's the paragraph that talks about the
5 development of an arrearage management program.
6 And it says that Pepco will work with the District
7 Government and other interested stakeholders,
8 including the National Consumer Law Center, to
9 develop in good faith a mutually agreeable
10 arrearage management program for LIHEAP or RAD
11 qualifying customers in arrears which would
12 include the provision of credits or matching
13 payments for customers who make timely payments on
14 their current bill. Such discussion to be
15 initiated no later than 60 days after the closing
16 of the merger, with the understanding that the
17 parties will reach an agreement in six months.

18 With respect to that provision, what is
19 your understanding of where the funding for that
20 provision would come from?

21 A. I believe it is -- it would be something
22 that would be brought before the Commission, and

1 so I think it might be from the ratepayer.

2 Q. So it's not your understanding that
3 those -- the funding would be coming from any of
4 the other sources of Customer Investment Funds,
5 the CIF in this program?

6 A. No, I think with respect to this
7 program, this concept, no. I think the 400,000
8 arrearage forgiveness is from -- is set, but I
9 don't think this is -- relates to the CIF.

10 Q. Currently RAD customers receive a bill
11 credit and could also receive LIHEAP benefits if
12 they're deemed qualified by the District
13 Department of Energy and Environment. Is it your
14 understanding that the credit discussed here in
15 paragraph 26 would be in addition to those other -
16 - in addition to those sources that are already
17 provided to low income customers?

18 A. I don't -- I don't know. I think that's
19 a detail that's to be worked out as the program is
20 developed, is my understanding.

21 Q. So is there a role for the Commission in
22 the development of that program? As it is

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1 written, it says, "Pepco will work it out with the
2 District Government." Would the Commission then
3 expect to receive from those two entities a
4 proposal to the Commission in our existing case,
5 which is in Formal Case 1120 something -- 6, where
6 we are looking at the program for low income
7 customers?

8 A. I'm not familiar with that particular
9 case, but it is my understanding that this program
10 would be developed and then presented to the
11 Commission for approval.

12 Q. Okay. And then just so I'm clear in
13 your understanding, on the \$400,000 that's coming
14 from the Customer Investment Fund to pay for
15 arrearages that are two years old or older, what's
16 your understanding of who is eligible to receive
17 those funds?

18 A. I believe that it's all residential
19 customers.

20 Q. And it would be used to pay all bills or
21 just distribution bills?

22 A. I don't know the answer to that.

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1 COMMISSIONER DODDY FORT: Thank you.

2 CHAIRWOMAN KANE: Thank you.

3 BY CHAIRWOMAN KANE:

4 Q. Just a couple of questions to follow up
5 on the question, first of all, of the arrearages,
6 the two-year arrearages. This is Commitment 9(a).
7 It says "To help reduce the burden of longstanding
8 energy debt for limited income and other
9 families." Your organization works with low
10 income families and low income housing. Is it
11 your understanding that 9(a) would or would not be
12 limited to low income, to forgiving receivables
13 over two years old, regardless of income, or is it
14 limited income? I'm not sure what the difference
15 is between limited income and low income, but --

16 A. As I read it with -- it says "Limited
17 income and other families." That suggested to me
18 that it was open to all residential.

19 Q. And there is no mention in this
20 particular 9(a) for the involvement of any
21 stakeholders in designing that program; is that
22 correct?

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1 A. That's correct.

2 Q. Going down to 9(c), \$6.75 million for
3 energy efficiency programs which would be
4 developed by the District in consultation with the
5 National Consumer Law Center, National Housing
6 Trust, is it your understanding that you would be
7 the sole people consulting with the District in
8 designing this program?

9 A. No, not at all. We fully expect that
10 there would be an open process where interested
11 stakeholders would participate to help in
12 designing that program. Simply, the National
13 Housing Trust and National Consumer Law Center are
14 perhaps not as well known before this Commission
15 as maybe some of the other parties. We just
16 wanted to ensure that our voices weren't excluded
17 from that process.

18 Q. Thank you.

19 And it is your -- is it your
20 understanding that -- well, what is your
21 understanding on how the money would actually be
22 distributed?

1 A. So I think that's -- that's a detail
2 that's to be discussed and determined. We
3 mentioned -- it's mentioned here, Community
4 Development Financial Institutions, CDFIs was a
5 potential vehicle, DCSEUs could be a potential
6 vehicle. I think that's something that would be
7 discussed during the development process.

8 Q. And it says "Within 60 days after
9 receiving direction from the District Government."
10 So would that lead one to conclude that the
11 District Government will be the ultimate decider
12 of how the money is used?

13 A. Yes, but I assume that it would be in
14 consultation with the Commission.

15 Q. So you see that -- you're assuming that
16 9(c) would also involve consultation with the
17 Commission; is that what you're saying?

18 A. Yes.

19 Q. Yes. And do you read Exelon will
20 provide 6.75 million as providing it to the
21 District Government or could it be provided
22 directly to organizations?

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1 A. I think based on this morning, I think
2 it could be provided directly to organizations.

3 Q. And finally, I asked a number of the
4 previous witnesses about Commitment No. 48 having
5 to do with future rate design and with the issue
6 of moving or supporting the Commission's stated
7 goal to move in a deliberate reasonable fashion
8 over a series of Pepco rate cases to put it into
9 negative class rates of return.

10 As put in the record, the classes that
11 have negative rates of return are the residential,
12 the residential all electric and the RAD that is
13 the -- that is the low income customers who are
14 not in multi -- in master-metered apartments. The
15 RAD customers have a negative rate of return, the
16 highest negative rate of return, of all of those
17 residential classes.

18 Do you understand the charts from the
19 previous discussion that eliminating -- putting an
20 end to negative rates of return will involve rate
21 increases?

22 A. So rate design is something that's

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1 beyond my expertise, so I'd prefer not to --

2 Q. Not to answer. Okay.

3 CHAIRWOMAN KANE: Thank you. That's all
4 the my questions.

5 Commissioner Fort?

6 COMMISSIONER DODDY FORT: Can I just ask
7 one more question.

8 BY COMMISSIONER DODDY FORT:

9 Q. You, in paragraph 9, the assistance says
10 for low and limited income customers. I thought
11 the Chair was going to ask this because she
12 started to talk about limited income. What do you
13 understand limited income customers to be? Who
14 are those people?

15 A. So I think generally speaking, it would
16 include households that make 80 percent area
17 median income or less, is what I typically
18 understand that definition.

19 Q. And what do you understand low income
20 customers to mean?

21 A. You know, I think low income is 60
22 percent AMI. I think very low income is 30

1 percent AMI.

2 Q. So in the District, the Department of
3 Energy and Environment certifies certain residents
4 for programs like for our RAD programs. Do you
5 see this as being expansive of the people who are
6 in the District who are already eligible to be
7 certified for our low income programs?

8 A. I think it could be, yes. I don't know
9 exactly what income level those programs target.

10 Q. I guess the difference is we have
11 programs that are available to people who go
12 through the process of getting certified for the
13 programs, and I'm trying to understand whether or
14 not this would have that requirement that somebody
15 be RAD eligible for these provisions in terms of
16 how you describe who the target population is?

17 A. I mean, I think it certainly can include
18 RAD eligible, but, you know, I think from our
19 perspective, we would want to restrict it to that
20 population.

21 Q. In your testimony, you indicate that
22 even though paragraph 6, 7 and 8 don't indicate

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1 specifically that they would also be for low
2 income customers, that you would still expect that
3 they might benefit from some of those provisions
4 in those paragraphs. Am I reading that correctly?

5 A. That's correct.

6 COMMISSIONER DODDY FORT: Okay. Thank
7 you.

8 CHAIRWOMAN KANE: Thank you. Any
9 further questions?

10 Redirect?

11 MS. WEIN: No.

12 CHAIRWOMAN KANE: No?

13 MS. WEIN: But at this time I'd like to,
14 when we're finished, move the testimony into
15 evidence.

16 CHAIRWOMAN KANE: So moved.

17 MS. WEIN: Thank you.

18 CHAIRWOMAN KANE: Thank you. Excused.

19 (Witness excused.)

20 CHAIRWOMAN KANE: And that completes our
21 witnesses, except for Mr. Hawkins who will be here
22 tomorrow for the settling parties, and we have

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1 three witnesses for the non-settling parties. I
2 think we can take a 10-minute break, let the
3 stenographer have a break. We will be back in 10
4 minutes and take those three witnesses.

5 (Whereupon, a recess was taken at 3:45
6 p.m.)

7 (Whereupon, the proceedings resumed at
8 4:05 p.m.)

9 CHAIRWOMAN KANE: We're back on the
10 record in Formal Case 1119. It is 4:05 p.m.
11 We're going to accommodate some scheduling
12 requests and we're going to take Mr. Burcat next.
13 We understand that he is only available today.

14 MS. ELEFANT: Yes. He has a little more
15 flexibility, but if you can take him, we would
16 appreciate that.

17 CHAIRWOMAN KANE: Yes.

18 MS. ELEFANT: Thank you.

19 CHAIRWOMAN KANE: And then we're
20 consulting with the other two, because we are
21 going to be here tomorrow, also.

22 WHEREUPON,

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1 BRUCE BURCAT,
2 having been first duly sworn and/or affirmed, was
3 examined and testified as follows.

4 MS. ELEFANT: My name is Carolyn
5 Elefant. I represent the Mid-Atlantic Renewable
6 Energy Coalition.

7 DIRECT EXAMINATION

8 BY MS. ELEFANT:

9 Q. Mr. Burcat, would you please state your
10 name and spell it for the reporter.

11 A. Sure. It's Bruce Burcat and --

12 CHAIRWOMAN KANE: We can't hear you, Mr.
13 Burcat.

14 THE WITNESS: It's Bruce Burcat and the
15 last name is spelled B-U-R-C-A-T.

16 BY MS. ELEFANT:

17 Q. And can you tell me what organization
18 you are here with today?

19 A. Yes. I'm with the Mid-Atlantic
20 Renewable Energy Coalition.

21 Q. Do you have in front of you a copy of
22 the testimony that's been marked as MAREC 2A?

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1 A. I do.

2 Q. Do you have any changes to the
3 testimony?

4 A. I do. On page 10 of that testimony, on
5 Line No. 4.

6 Q. And can you tell me -- tell us what it
7 is and maybe speak into that microphone a little
8 bit more.

9 A. Sure. The -- at the end of the line,
10 line 4, it puts a value for the Production Tax
11 Credit, PTC, and that should -- that's not
12 correct. It should be 0.023, basically 2.3 cents.

13 Q. Okay. And did you prepare this
14 testimony or was it prepared under your
15 supervision?

16 A. Yes, it was.

17 Q. And would your answers to the questions
18 in the testimony be the same today as when you
19 prepared it?

20 A. They are.

21 MS. ELEFANT: At this time, I am ready
22 to tender the witness for cross-examination and

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1 questions from the Commission.

2 CHAIRWOMAN KANE: Thank you. Commission
3 Fort -- excuse me, does anybody -- yes, sorry,
4 getting a little ahead of myself -- Joints
5 Applicants?

6 MR. GAY: Thank you, Chair Kane. Good
7 afternoon, Your Honor. My name is Anthony Gay.
8 I'm counsel appearing on behalf of the Joint
9 Applicants and it's certainly a pleasure to be
10 able to appear before you.

11 CROSS-EXAMINATION

12 BY MR. GAY:

13 Q. Good afternoon, Mr. Burcat.

14 A. Good afternoon.

15 Q. We've had the pleasure of meeting early
16 in our career, so it's good to see you again.

17 A. Good to see you, too.

18 Q. So Mr. Burcat, it's been awhile since
19 we've been at hearings, not including yesterday,
20 but really the hearings took place several months
21 ago, the initial hearings, and I'd just like to
22 ask you a few level-setting questions, if I may.

1 So your position with MAREC, and for
2 purposes of court reporter, the Mid-Atlantic
3 Renewable Energy Coalition, you're the executive
4 director of that organization?

5 A. That's correct.

6 Q. And would you refresh me as to your role
7 as executive director of that organization?

8 A. Well, I -- I basically run the everyday
9 operations of the organization, and I am the
10 person who is directly involved in all of the
11 different various matters that MAREC, as we call
12 our organization, does, such as working before a
13 PJM, working with state commissions, to facilitate
14 renewable energy development in the region, also
15 working on legislation and appearing before
16 legislative bodies.

17 Q. And so with those duties, would you say
18 it's fair to say that your role is to advocate for
19 the growth of wind energy on behalf of MAREC?

20 A. I would say that's fair.

21 Q. Thank you, sir.

22 Could you refresh me as to the member

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1 companies that comprise MAREC?

2 A. Yes. We have AES Eastern Wind, the
3 American Wind Energy Association, Algonquin Power,
4 Apex Clean Energy. Not a company, but public
5 interests group, Citizens For Pennsylvania Future,
6 Clean Line Energy Partners. We have several law
7 firms that are actual members. Do you want me to
8 list those or just the wind-related ones?

9 Q. Well, here's how I understand MAREC, and
10 obviously I'll defer to you since you're the
11 executive director, but there are companies that
12 are involved, and they may or may not pay
13 different membership dues, and then there are
14 organizations that are involved and law firms, as
15 well, and I'm specifically talking about the
16 companies.

17 A. Yeah, okay. So EDF Renewables, EDP
18 Renewables, two different companies, EverPower
19 Wind Holdings, E.ON Climate & Renewables North
20 America, GE Energy, Iberdrola Renewables,
21 Invenergy Wind, OwnEnergy and Vestas American Wind
22 Technology.

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1 Q. Thank you, sir.

2 And is it fair to say that many of these
3 companies are national or multi-national companies
4 or affiliated with national or multi-national
5 companies?

6 A. Yes.

7 Q. Could you share with me and the
8 commissioners about how many of these companies
9 have businesses within the District or do business
10 with the District?

11 A. Well, there are -- I mean, because we're
12 in a broad market like PJM, in essence, you know,
13 they sell wind to PJM like other generation
14 suppliers. So in a sense, all of these companies
15 have business in the District in a way, the way
16 PJM works.

17 We also -- there is a specific contract
18 that Iberdrola Renewables has with the city, a
19 recent announcement a few weeks ago -- a few
20 months ago for a long-term purchase power
21 agreement with the city government. One of the
22 companies -- one of the organizations, American

1 Wind Energy Association, is actually headquartered
2 here, and there are basically a number of
3 companies that have registered their particular
4 projects in the region to be used or to be
5 considered as potential projects for REC purchases
6 as part of the Commission's eligible -- eligible
7 companies that can provide Renewable Energy
8 Credits and energy into the District directly as
9 part of the RPS.

10 Q. Very good. We'll come back to the
11 contract, the RP with the District.

12 So my question really was a little bit
13 more specific, though, but I'm glad you raised the
14 wind arrangement with the District. So do you know
15 how many of your member companies or how many
16 employees your member companies have within the
17 District?

18 A. I don't know offhand. I know there are
19 employees who work out of District. A lot of the
20 companies have offices in the District because
21 they do work on Capitol Hill or they -- obviously,
22 you know, Washington is a hotspot for a lot of the

1 energy policy that goes on throughout the country,
2 so they do have offices in the District. I can't
3 tell you how many employees are involved in those
4 particular offices.

5 Q. Thank you, sir.

6 I'd like for you to look at an exhibit
7 which, Your Honors, I'd like to introduce as Joint
8 Applicants NSA-5.

9 CHAIRWOMAN KANE: So marked.

10 MR. GAY: Oh, I'm sorry, Your Honor.
11 I'm going out of order. It will be -- it's
12 premarked as actually 7 -- or 8, I'm sorry.
13 Excuse me.

14 CHAIRWOMAN KANE: Can you identify it by
15 its title?

16 MR. GAY: Yes, I'm sorry, Your Honor.

17 CHAIRWOMAN KANE: Thank you.

18 MR. GAY: Mr. Burcat was so
19 knowledgeable, we were able to skip over a few
20 exhibits. Yes, the title is Mayor Bowser
21 Announces Groundbreaking Wind Power Purchase
22 Agreement, and it was premarked as 8, Joint

1 Applicants 8.

2 CHAIRWOMAN KANE: Yes.

3 BY MR. GAY:

4 Q. And, Mr. Burcat, do you have that in
5 front of you?

6 A. I do.

7 Q. And so this was the Wind Power Purchase
8 Agreement that you're referring to?

9 A. It is, or it's an article talking about
10 the Wind Purchase Power Agreement.

11 Q. Yes. Thank you, sir.

12 And can you tell me how many megawatts
13 that Power Purchase Agreement, which I'll describe
14 as PPA from here on out, involves?

15 A. I see and I think that's correct, it
16 says 46 megawatts.

17 Q. And who is the agreement with, meaning
18 who has the District contracted with?

19 A. Iberdrola Renewables.

20 Q. And I think I heard you say -- and
21 correct me if I'm wrong -- that Iberdrola is one
22 of the MAREC member companies; is that correct?

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1 A. That is correct.

2 Q. Thank you, sir.

3 I'd like to now refer you to your
4 supplemental testimony, page 9 of your
5 supplemental testimony that you submitted as part
6 of the settlement public interest hearings, page
7 9, specifically lines 12 through 13. And let me
8 know when you've had a chance to read that.

9 A. Yes.

10 Q. If I read that correctly, you state the
11 position that the merger should not be approved
12 because quote, the merged companies would be a
13 behemoth in the region and could potentially yield
14 unprecedented power due to its size and regional
15 dominance, unquote; is that correct?

16 A. No. What I actually said was not only
17 should the Commission be concerned with the stance
18 that the company has consistently taken over the
19 last three years against renewable energy
20 development, but the fact that the merged
21 companies would be a behemoth in the region and
22 could potentially yield unprecedented power due to

1 its size and regional dominance.

2 So -- and I have other provisions or
3 other statements made within the document
4 explaining other reasons why the merger also
5 raises a number of concerns.

6 Q. Okay. Well, let's deal with these
7 lines, and then we'll touch on something else you
8 raised here. So I did read that provision of your
9 testimony correctly; right, that one of your
10 concerns was that you think the merged companies
11 will be a behemoth in the region?

12 A. That's one of the concerns, yes.

13 Q. Okay. And when you refer to "the
14 region," are you referring to the region including
15 the District, surrounding states like New Jersey
16 and Delaware?

17 A. Yes, and also Maryland and also
18 Philadelphia region. Yeah, the whole good part of
19 the Mid-Atlantic Region, but specifically within
20 that frame where Exelon has territory in that
21 particular area, which is quite extensive.

22 Q. Okay. And it's my understanding that in

1 New Jersey, which is part of this region, MAREC
2 did not oppose the settlement; is that correct?

3 A. We did not sign on to the settlement. We
4 basically took a non-opposition position in that
5 particular case, but primarily we determined that
6 we had other places where we would -- such as that
7 case moved very quickly, and we had other
8 jurisdictions that we would emphasize our
9 positions and take a different stance in those
10 other states.

11 Q. Okay. And Delaware was one of those
12 other states, and you signed on to the settlement
13 with Delaware; is that correct?

14 A. We did. Again, Delaware moved almost as
15 quickly as New Jersey. We knew Maryland and DC
16 were the two states that we were pushing to not --
17 you know, to have the merger hopefully rejected,
18 and so we looked at Delaware as basically a state
19 that already -- Delmarva Power already had a
20 number of long-term contracts, one of our main
21 asks in this case, and in that particular
22 situation, the company was willing to do some more

1 long-term contracting on top of all of that. So we
2 felt that at least if somehow this merger got
3 approved in all of the jurisdictions, and it sure
4 was heading that way in Delaware, that we should
5 at least sign on to that particular agreement, but
6 continue to fight on in some other states.

7 Q. So I want to be clear, because I'm a
8 little confused. So in that state, you signed the
9 agreement, but you hoped what, that you wouldn't
10 get it approved in other states?

11 A. Well, we basically have taken a position
12 that we don't think the merger is warranted, but
13 if the commissions in those states wanted to
14 approve the merger, then they should have very
15 significant conditions that would be imposed on
16 the merger applicants regarding renewable energy
17 that would be enforceable and sort of at least
18 present that Exelon was maybe at least willing to
19 enter into these long-term contracts of a very
20 significant quantity, which would be diametrically
21 opposed in a way to their position on renewable
22 energy.

1 Q. Well, in that regard, I think you
2 offered testimony to that effect, and I'd like to
3 refer you to your direct testimony in this
4 proceeding, sir. Bear with me for a moment.

5 (Brief pause.)

6 BY MR. GAY:

7 Q. Could you look at your amended direct
8 testimony, sir. It should be before you, page 20,
9 lines 15 through 17.

10 A. Okay. The amended direct testimony,
11 what was the date on that, because there's at
12 least three different filings we made, and I
13 looked and I don't see it.

14 Q. This one was filed in March.

15 A. Oh, the one filed in March. Okay.

16 Q. Exact date, it should be in the binder
17 you have, was March 20, 2015.

18 A. Okay. I was looking in my own. Okay. I
19 have that. What page? What page, yes?

20 Q. We're going to go to page 20. Why don't
21 you take a look at lines 15 through 17, please.
22 And I wanted to go to something that you raised.

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1 You said that one of the conditions that was of
2 key interest to you, and I'll just quote from your
3 testimony actually here, was that "There should be
4 a requirement for competitively sourced long-term
5 Purchase Power Agreements or substantial
6 procurement from resources eligible for the
7 District of Columbia RPS." Is that -- did I quote
8 that provision of your testimony correctly?

9 A. Yeah. To complete that would be which
10 would help mitigate adverse cost increases. But
11 yes, that's correct.

12 MR. GAY: Your Honors, I'd like to
13 introduce an exhibit which was originally marked,
14 and I'll give you the identification for it
15 momentarily, it was originally marked as Joint
16 Applicants 7, and given where we're at, this will
17 be Joint Applicants 6 -- you know what, I'm sorry,
18 Your Honors. Because we went out of order, we had
19 this marked in the order, so this will be Joint
20 Applicants 3.

21 CHAIRWOMAN KANE: And the original
22 number was?

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1 MR. GAY: Joint Applicants 7.

2 CHAIRWOMAN KANE: Joint Applicants 7?

3 MR. GAY: And the document is --

4 CHAIRWOMAN KANE: Will now be

5 JA-NSA-3?

6 MR. GAY: That is correct, Your Honor.

7 CHAIRWOMAN KANE: And your previous one,
8 which you said was preliminarily marked as NSA-8
9 was not given a new number?

10 MR. GAY: It will be given 2, Your
11 Honor.

12 CHAIRWOMAN KANE: Thank you. So marked.

13 MR. GAY: Thank you, Your Honor.

14 BY MR. GAY:

15 Q. So I'd like you to take a look at your
16 response to Interrogatory 8, particularly 8(a).

17 A. Um-hmm.

18 Q. And the question there was, Define the
19 term substantial as it was used in the next
20 section of testimony that I just shared with you.
21 And your response was, sir?

22 A. It says "Minimum of 100 megawatts."

1 Obviously to put that into context, there were a
2 number of other conditions that we were looking
3 for, and most importantly, in our opinion, was the
4 need for Exelon to discontinue and maybe even
5 affirmatively reject its position against the
6 Production Tax Credit. And so you can't just look
7 at these things in a vacuum.

8 If in the case that that was not done,
9 then 100 megawatts is clearly insufficient.

10 Q. Okay. But at least one of the things
11 you asked for has been provided by the Joint
12 Applicants as part of the settlement; is that
13 correct?

14 A. No.

15 Q. Did you ask for a minimum of 100
16 megawatts?

17 A. No, but the provision is extremely weak.
18 It takes --

19 Q. Well, I'd like you to answer my question
20 and then you can expound. Did you, in your
21 testimony --

22 A. I did answer your question, sir. I said

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1 no.

2 Q. You did ask for 100 megawatts as part of

3 --

4 A. Oh, I answered that question, as well.

5 I said yes, and I gave you my answer, 100

6 megawatts.

7 Q. And your other answer was that Exelon

8 should renounce the Production Tax Credit?

9 A. Yes.

10 Q. Is the Production Tax Credit still in

11 effect?

12 A. It isn't, but it's up for consideration

13 again, which whether it's another one-year

14 extension or two-year extension or three or five-

15 year extension, there's a number of different

16 opportunities out there, and through its

17 lobbyists, Exelon continues to oppose the

18 Production Tax Credit.

19 Q. Just so we can make sure it's on the

20 record, the Federal Production Tax Credit that

21 you're referring to currently is expired; correct?

22 A. It's currently expired, but there are a

1 number of provisions in there that are still
2 applicable as companies are in the process of
3 complying with the 2014 requirements of the
4 Production Tax Credit.

5 Q. Mr. Burcat, I'd like you to refer to
6 pages 6 to 7 of your supplemental testimony, so
7 your most recent testimony. And I'm referring to
8 lines 20 to 25 on page 6 and lines 1 through 10 on
9 page 7.

10 A. Yes.

11 Q. So I just want to be clear on your
12 position with regard to the 100 megawatts of wind,
13 which we established that was one of your requests
14 in this proceeding. And then you list, on pages 6
15 to 7, several of the Factor 7 Commitments that are
16 now part of the settlement.

17 So it's your position that after having
18 offered 100 megawatts as part of the settlement,
19 and after offering several additions to address
20 Factor 7, that the Commission should deny the
21 merger because Exelon will not renounce the now
22 expired Federal Production Tax Credit?

1 A. No, that's not our position. There's a
2 lot more to our position. We are concerned with
3 the level -- we've talked about this primarily in
4 our initial direct testimony, but we talked about
5 the size and scope of this merger and how it
6 impacts the region, talked about the market
7 monitors' concern that's in the record here about
8 the massive size of the transmission ownership
9 within PJM as it should be a very serious concern
10 to the Commission, and we made a number of other
11 points with the various other factors that the
12 Commission has presented throughout this
13 proceeding, not just in my testimony for the
14 settlement, but in our previous testimony, we do
15 talk about the other provisions. And there are
16 other parties who handled some of those issues
17 very well, and we would obviously support what was
18 stated previously by those companies who maybe
19 went into some more detail than we did, not
20 companies, but parties to this proceeding.

21 MR. GAY: All right. Thank you, Mr.
22 Burcat. I have no further questions.

1 Your Honors, I'd like to end my
2 questioning now, and I think you folks or other
3 folks may have redirect?

4 CHAIRWOMAN KANE: Cross-examination? Do
5 any of the parties have cross-examination for Mr.
6 Burcat?

7 MR. CALDWELL: The District Government
8 has a few questions, Your Honor.

9 CHAIRWOMAN KANE: Yes, Mr. Caldwell.

10 CROSS-EXAMINATION

11 BY MR. CALDWELL:

12 Q. Good afternoon, Mr. Burcat. I'm Brian
13 Caldwell on behalf of the District of Columbia
14 Government.

15 You are aware that for purposes of
16 Public Interest Factor 7, the Commission found, in
17 its final Order, that the effect of the merger,
18 based on the original application, was neutral;
19 correct?

20 A. For No. 7, that's correct.

21 Q. Yes. Wouldn't you agree that the
22 commitments to build 10 to 7 megawatts of solar,

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1 procure 100 megawatts of wind, contribute \$3.5
2 million to the Renewable Energy Development Fund,
3 contribute \$3.5 million to the Sustainable Energy
4 Trust Fund, contribute over \$10 million to the
5 Green Building Fund, and \$6.75 million towards
6 energy efficiency programs targeting affordable
7 multi-family units and master-metered multi-family
8 buildings, that these commitments individually and
9 collectively represent incremental improvements
10 over the original application with respect to
11 Factor No. 7?

12 A. Well, they're so small that I really
13 can't agree with that statement. I mean, we're
14 talking about a company that owns 35 gigawatts of
15 energy, and we're talking about 100 megawatts of
16 wind of multi-built for almost eight years, or
17 potentially eight years under this agreement, if
18 all the other requirements in the particular
19 Clause 130 are met. And there are other issues
20 with some of those other provisions, so
21 incrementally, minuscule, yes.

22 Q. Okay. I just wanted to be sure. So you

1 agree that the settlement provides an incremental
2 benefit; you just think the improvement should be
3 larger than it was in the agreement?

4 A. It should be dramatically larger.

5 Q. Okay. Now, I want to turn your
6 attention to page 7, lines 13 through 15 of your
7 testimony. There you say that, "First off, I note
8 that the proposed merger remains opposed by all
9 intervenors that support and promote renewable
10 energy. That fact alone should give the
11 Commission pause as it considers whether the
12 Applicants have satisfied Public Interest Factor
13 7."

14 A. I don't remember, what page was it on?
15 I'm sorry.

16 Q. That's on page 7, lines 13 through 15.

17 A. Yes, I do remember that.

18 Q. And you're aware that the District of
19 Columbia Government is a signatory to the
20 Settlement Agreement?

21 A. I am. And you have to realize that
22 we're talking about the parties that their primary

1 purpose is to promote renewable energy, and those
2 were the specific parties I was talking about. I
3 wasn't specifically referring to the city or other
4 parties that are supporting the settlement in that
5 sense. I was talking about the parties that are
6 primarily focused, sort of like DC Sun and Grid
7 2.0, MAREC and other parties and MDV-SEIA, and
8 they are the parties that are primarily concerned
9 with the renewable energy and have that as their
10 primary focus in this proceeding.

11 Q. Would you agree that the District
12 Department of Energy and Environment, as an agency
13 of the District Government, is concerned with
14 promoting renewable energy?

15 A. I suspect that's part of their mission.

16 Q. Okay. Are you aware that today in
17 Paris, France, the District of Columbia was
18 awarded the Global Award For Green Energy at the
19 2015 C40 Cities Award and the District was
20 recognized for its Groundbreaking Wind Power
21 Purchase Agreement with the District Government
22 and Iberdrola Renewables, LLC that will reduce

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1 DC's carbon footprint and save \$45 million over
2 the next 20 years and that DOE Director Tommy
3 Wells was there to receive that award?

4 A. Well, let me first comment. You just
5 talked about how much savings that --

6 (Applause.)

7 CHAIRWOMAN KANE: Thank you for that
8 breaking news.

9 THE WITNESS: And personally, I think
10 that's great, but let me remind you, you actually
11 made a good point for me there, that the contract
12 is \$45 million in savings for customers. And one
13 of our main points is that renewable energy and
14 long-term contracts will actually save customers,
15 ratepayers, in the District significant amounts of
16 dollars over just simply buying RECs out of the
17 wholesale market or retail market.

18 So you made a really good point for me
19 there, but I do -- I do think that's a wonderful
20 accomplishment. But again, that's not the primary
21 purpose. The renewable energy piece is not the
22 primary purpose, but I do applaud the city for

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1 entering into that contract. I think it was a
2 very good thing, and obviously, one of my members
3 are probably very happy about it, as well.

4 MR. CALDWELL: I have no more questions,
5 Your Honor. Thank you.

6 CHAIRWOMAN KANE: Any other parties have
7 cross-examination of this witness?

8 (No response.)

9 CHAIRWOMAN KANE: Commissioner Fort?

10 BY COMMISSIONER DODDY FORT:

11 Q. Good afternoon, Mr. Burcat.

12 A. Good afternoon.

13 Q. Did you review the whole Settlement
14 Agreement and all of its parts?

15 A. I've read through it, but I have to
16 admit, I have not focused in on any specific area,
17 except primarily the renewable energy parts, some
18 of the energy efficiency sections, and I have not
19 done any kind of detailed review of the settlement
20 in all other respects.

21 Q. Did you review the Commission's Order
22 that we issued on August 27th, Order No.

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1 17947?

2 A. I did.

3 Q. Did you read paragraph 344 wherein the
4 Commission rejected the arguments, you know, that
5 some of the parties that Factor 7 should be
6 controlling or be given more weight than the other
7 factors when we are assessing the transaction as a
8 whole?

9 A. Yes, but I did consider that as part of
10 what you're considering the transaction as a
11 whole, that that certainly is one of the
12 considerations among the others that are critical,
13 you know, all the other six factors that are
14 critical to your review.

15 Q. If I told you that for this Public
16 Interest review, we are also considering all seven
17 factors, does that come as a surprise to you?

18 A. No.

19 Q. Would there be a reason why if you have
20 only looked at one of the seven factors that we
21 should take your conclusion that it should be
22 rejected based on that single factor, if we have

1 said that Factor 7 should not be controlling?

2 A. Well, I've looked at this as we have
3 looked at it in the beginning of the case, that
4 there are significant concerns about the size of
5 this company. We have to realize that this is
6 going to be the largest utility in the United
7 States on a customer basis after the merger.

8 The significant impact on the region,
9 significant impact on PJM are all factors that I
10 don't believe, in my generic review, but also just
11 in general, because this is such a large merger
12 and such a far-reaching impact, that I strongly
13 believe that I don't see how they overcome those
14 concerns under your review, under the seven
15 factors. There are a number that --

16 Q. Do you understand that we are not
17 reconsidering our Order? At the moment, we're not
18 reconsidering our Order; we are actually just
19 looking at the Settlement Agreement, itself?

20 A. Yes, I do understand that.

21 Q. Okay. And my last question is on page
22 7, lines 16 through 20, we have a question, "Do

1 you have other concerns about the commitments?"
2 And you said, "Yes, given there is no indication
3 that Exelon has budged on its position opposing
4 programs like the PTC, I still have very serious
5 concerns about the merger and the harm that it
6 would cause to District ratepayers."

7 Tell me what the harm to District
8 ratepayers is and have you quantified that harm?

9 A. Well, yeah, the harm is that since the
10 PPC, for instance, is a 2.3 cent kilowatt-an-hour
11 credit, tax credit, that gets down to the bottom-
12 line ratepayers' bills. So either it's going to -
13 - if that's not included or if that's expired, and
14 the extensions that they're working on today in
15 Congress are not -- is not approved, and partly,
16 you know, because of the vociferous opposition by
17 companies like Exelon, that is going to have a
18 detrimental effect any way you look at it. It's
19 going to come to the bottom line in a long-term
20 contract. It's going to come to the bottom line
21 in RECs, because without that incentive, the cost
22 of renewable energy credits is going to go up

1 because there will be fewer of them because there
2 will be less development. There will clearly be
3 an impact on ratepayers.

4 We've sort of done the down and dirty on
5 what the impact is, but it's basically taking the
6 impact of the 2.3 cent credit and multiplying it
7 by the amount of the load that is remaining on the
8 RPS for the next few years and come up with some
9 figures that way to show that this could be a very
10 significant millions of dollars, in fact.

11 Q. Have you done any calculation of the
12 benefits under the Settlement Agreement from the
13 100 megawatts of wind that's included?

14 A. No, we haven't. And the main reason for
15 that is they're not for another eight years down
16 the road.

17 COMMISSIONER DODDY FORT: Thank you.

18 CHAIRWOMAN KANE: Thank you. Mr.
19 Burcat, I've got a couple of follow-up questions.

20 BY CHAIRWOMAN KANE:

21 Q. First of all, Joint Applicants did put
22 into the record as an exhibit a press release from

1 this summer where the mayor was announcing
2 Groundbreaking Wind Power Purchase Agreement.
3 Were you familiar with that Power Purchase
4 Agreement or the fact the city had purchased?

5 A. Yes. We did talk about it here and so
6 yes, I'm certainly familiar with it. I was
7 familiar with it in discussions with my member who
8 is involved in that.

9 Q. And did some of your members bid on
10 that?

11 A. I couldn't tell you.

12 Q. So --

13 A. Well, obviously, one did.

14 Q. I'm not sure if the press release says
15 it, but the legislative record, would you agree,
16 subject to check -- well, since you know that one
17 of your members bid, that this was a competitive
18 procurement?

19 A. Yes, and we as an organization only
20 espouse competitive agreements when we're trying
21 to do legislation or work with commissions,
22 because we think that's the appropriate way to get

1 the lowest price.

2 Q. And I'm asking you in terms of your --
3 is part of your objection or your concern about
4 Commitment No. 130 that a particular company is
5 already designated as to who would be the
6 purchaser of this wind or the --

7 A. I don't remember that being -- that was
8 not specifically the concern. I do think there's
9 some concern there that Exelon would have, you
10 know, the sole decision-making power over that.
11 That would be my concern. They could conceivably
12 hire -- they could conceivably have an affiliate
13 become the supplier in that situation.

14 Q. One of the Exelon facility. What is
15 your understanding from 130 as to what role Pepco
16 would be in this? Does Exelon or maybe you want
17 to look at 130 and then refresh your memory.

18 A. Yep.

19 Q. "Exelon or its non-utility subsidiaries
20 will, within five years from the merger," et
21 cetera, "conduct one or more requests for
22 proposals or other competitive processes to

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1 solicit to purchase a total of 100 megawatts of
2 Renewable Energy Capacity and ancillary services
3 in environmental attributes, associated repair
4 with, including but not limited to Renewable
5 Energy Credits from one or more new or existing
6 wind generation facilities located within the PJM
7 territory, and then delivery approximately three
8 years following the applicable RFP date." So
9 that's where the eight years comes from?

10 A. Yes.

11 Q. This calls for Exelon or one of its non-
12 utility subsidiaries to conduct an RFP. What is
13 your understanding of what would be the purpose,
14 what would Exelon do with the wind that they had
15 purchased?

16 A. As far as this agreement is concerned --

17 Q. Yes, yes.

18 A. -- or what we were looking for?

19 Q. No, what this provides so that I can get
20 to what -- how it may differ from what you were
21 looking for.

22 A. I think that's a good question. It's

1 not clear in the document. I think that's a very
2 good question. It's one of our concerns about
3 this particular provision. It's really not clear.
4 It talks about not necessarily being applied to
5 the RPS requirements, and interestingly enough,
6 eight years from whenever this gets done, it
7 starts to go through, you know, pretty much go
8 through your RPS law at that point in time, but
9 it's just really not clear. It's not a provision
10 that we would have ever supported in its
11 construct, current construct.

12 Q. If you'd look at 130(b) or 130(a),
13 "Bidders will be asked to provide credit
14 assurances satisfactory to Exelon in its
15 reasonable discretion as needed to assist Exelon
16 in evaluating each bidder's existing and continued
17 creditworthiness," and (b), "Exelon will evaluate
18 each proposal received in response to each RFP and
19 will select one or more bidders based on the
20 proposal that Exelon determines, in its sole
21 discretion, represents the best value to Exelon."

22 Now, I want to contrast that with the

1 competitive procurement that the District
2 Government just conducted that actually won the
3 award, or one of the reasons it won the award in
4 Paris, in which the DC counsel did approve this
5 summer where there were 21 bidders and where, you
6 can read through the documents, the criteria was
7 best value for the District Government, which is
8 buying that power to power district buildings.

9 Is one of your concerns either that this
10 is not clear or what would be -- what does this
11 have to do with the benefit for District
12 ratepayers?

13 A. Well, I think it's fairly clear that
14 it's not a hundred percent clear, but it clearly
15 could be used not necessarily to benefit the
16 District ratepayers, because it's just -- it seems
17 open-ended and I think it provides too much leeway
18 to Exelon to make those decisions.

19 I do agree on (a), and one of the
20 important things is that you do want creditworthy
21 companies to get in, but again, that may be
22 something that the Commission would oversee or

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1 make sure that -- well, not oversee, but make sure
2 that there's an appropriate safeguard, that you're
3 not excluding competitive bidders.

4 Q. Do you see this as a procurement for
5 energy that would be sold -- is there anything in
6 this provision that indicates this wind, whichever
7 subsidiary of Exelon is purchasing it, is
8 procuring it, would be required or would offer it
9 to customers in District?

10 A. No, there's nothing requiring that.

11 Q. So it could be offered anywhere in PJM,
12 I guess; right, intended to promote wind within
13 PJM to facilitate meeting state removal for
14 standard requirements.

15 A. Yeah, I mean, let me be clear that it is
16 a good thing, if this was a well-written provision
17 and substantially more megawatts involved, it's a
18 good thing that wind would be getting built from a
19 -- even in the region. And even if not necessarily
20 directed to DC ratepayers, because it would be a
21 good thing to have for carbon reduction purposes,
22 for stable electricity prices, for meeting RPS,

1 the provisions, if there was some provision there
2 to have that as part of this. I think that would
3 make the provision much better from that point of
4 view, but there are just too many uncertainties
5 there -- here to get anywhere close to supporting
6 the mechanics of this, let alone the -- let alone
7 the size of the procurement, which is eight years
8 down the road.

9 CHAIRWOMAN KANE: Thank you.

10 THE WITNESS: Thank you.

11 CHAIRWOMAN KANE: Thank you very much.

12 MS. ELEFANT: I have some --

13 CHAIRWOMAN KANE: Redirect?

14 MS. ELEFANT: Yes, redirect.

15 REDIRECT EXAMINATION

16 BY MS. ELEFANT:

17 Q. Mr. Burcat, can you turn your attention
18 to your supplemental direct testimony at page 7.
19 That's the testimony that you offered in this
20 proceeding, and turning your attention to line 19,
21 you testified, "In its Order rejecting the merger,
22 the Commission stated that, on the record in this

1 proceeding, we cannot find that the District and
2 its ratepayers would be benefited by having the
3 Joint Applicants as a partner as the District
4 moves forward to embrace a cleaner and greener
5 environment and pursues its goals of having 50
6 percent renewable energy sources by 2032." Do you
7 recall giving that testimony?

8 A. Yes.

9 Q. In your opinion, does that concern that
10 the Commission specifically articulated in its
11 Order, has that concern been addressed by the
12 Settlement Agreement?

13 A. Not at all.

14 Q. Okay.

15 Can you also turn your attention to your
16 original direct testimony. This is the testimony
17 that you filed back in March of 2015 that Mr. Gay
18 had questioned you about.

19 A. Okay.

20 Q. If you'd turn to pages 20 to 21, you
21 stated at line 2, "MAREC has suggested" --

22 MR. GAY: Excuse me, Your Honor. This

1 goes beyond the scope of the question that we
2 asked earlier.

3 MS. ELEFANT: You questioned him about
4 his direct -- his amended direct testimony.

5 MR. GAY: That doesn't mean you can ask
6 him questions about the entire document.

7 MS. ELEFANT: I'm not asking about the
8 entire document; I'm asking about one line. And
9 you had questioned him about his use of the term
10 "substantial" in that direct testimony, and then
11 you questioned him about how he defined
12 substantial testimony in the follow-up request,
13 data requests, so I have another question for him
14 about that, to put it in context.

15 CHAIRWOMAN KANE: About the issue of
16 substantial?

17 MS. ELEFANT: Not about substantial,
18 about the substantial and also long-term Power
19 Purchase Agreements. I was just going to ask Mr.
20 Burcat his proposed condition in his initial
21 direct testimony was for substantial competitively
22 procured long-term contracts, and I wanted to ask

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1 him about his understanding of the term -- of what
2 he meant by long-term and how that compares to
3 what's in the Settlement Agreement here. That's my
4 sole question.

5 CHAIRWOMAN KANE: Limited to crossing on
6 something that he already answered; is that what
7 you're saying?

8 MS. ELEFANT: Yes.

9 CHAIRWOMAN KANE: Go ahead, quickly.

10 BY MS. ELEFANT:

11 Q. So, Mr. Burcat, you recall you responded
12 to questions about how initially MAREC had
13 proposed a condition for a minimum -- do you
14 recall being asked about what you considered to be
15 a substantial commitment for a wind purchase?

16 A. Yes, I do.

17 Q. Okay. And when MAREC had originally
18 proposed a substantial wind purchase as a
19 condition, isn't it true that MAREC also had asked
20 for a substantial long-term purchase agreement as
21 part of the condition?

22 A. That's correct.

1 Q. And are the -- what is the term of the
2 Power Purchase Agreement, or what is the term of
3 the Settlement Agreement that's been proposed, the
4 length of that Power Purchase Agreement?

5 A. It would be 10 years, if it ever gets
6 signed.

7 Q. In your opinion, is 10 years a long-term
8 Power Purchase Agreement?

9 A. Well, I would say 10 years would be the
10 minimum, but we usually consider 10 to 20 years as
11 -- with the hopes that it would be 15 or 20 years,
12 because ratepayers get the higher benefits of a
13 longer term contract.

14 Q. Okay.

15 And finally, earlier, there was
16 testimony from one or two witnesses to the effect
17 that the 100 megawatt purchase --

18 MR. GAY: Your Honor, I think now
19 counsel --

20 CHAIRWOMAN KANE: I think you're going
21 beyond the cross. You're going to go beyond the
22 cross-examination --

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1 MS. ELEFANT: Okay. You're right. I
2 have nothing further.

3 CHAIRWOMAN KANE: -- of what is
4 substantial. Substantial may include the term but
5 --

6 MS. ELEFANT: Sure. Thank you. I have
7 nothing further except to ask to move the
8 testimony into evidence.

9 CHAIRWOMAN KANE: It's moved into
10 evidence.

11 Joint Applicants?

12 MR. GAY: Yes, Your Honor, I'd like to
13 move the exhibit that was premarked as 8, but I'd
14 like to move that into the record as Joint
15 Applicants NSA-2, and the document that was
16 premarked as Joint Applicants 7, I'd like to move
17 that into the record as Joint Applicants NSA-3.

18 CHAIRWOMAN KANE: They are so marked.

19 MR. GAY: Thank you.

20 CHAIRWOMAN KANE: Thank you. You are
21 excused, Mr. Burcat. Thank you.

22 (Witness excused.)

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1 CHAIRWOMAN KANE: All right. It's 5
2 o'clock. We will -- are there any -- I think
3 that's all we're going to do today. We will start
4 tomorrow morning with Mr. Martin and then Mr.
5 Hempling and come back to Mr. Hawkins for DC
6 Government, and that should probably take in the
7 morning tomorrow, it should not go past lunchtime
8 tomorrow.

9 That being nothing else, unless anybody
10 has any other procedural questions -- yes, sir?

11 MR. EILBOTT: What time are we starting
12 tomorrow?

13 CHAIRWOMAN KANE: 10. We'll start at 10
14 tomorrow. We will reconvene at 10 a.m.

15 tomorrow with those three witnesses, and
16 then any wind-up procedural issues, and we should
17 probably be finished by around lunchtime tomorrow.

18 Okay. Thank you very much. Nothing
19 further. We are adjourned.

20 (Whereupon, the proceeding adjourned at
21 5 o'clock p.m.)

22

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1 C E R T I F I C A T E

2 I do hereby certify that I am a Notary Public
3 in good standing, that the aforesaid testimony was
4 taken before me, pursuant to notice, at the time
5 and place indicated; that said deponent was duly
6 sworn and/or affirmed to tell the truth, the whole
7 truth, and nothing but the truth; that the
8 testimony of said deponent was correctly recorded
9 in machine shorthand by me and thereafter
10 transcribed under my supervision with computer-
11 aided transcription; that the proceedings are a
12 true and correct record of the testimony given by
13 all witnesses; and that I am neither of counsel
14 nor kin to any party in said action, nor
15 interested in the outcome thereof.

16 WITNESS by hand and official seal this 4th
17 day of December, 2015.

18

19

20

21

22



Notary Public

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