

Capital Reporting Company
Formal Case No. 1119 02-09-2015

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PUBLIC SERVICE COMMISSION OF THE
DISTRICT OF COLUMBIA

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

Washington, D.C.

Monday, February 9, 2015

The procedural hearing in the
above-captioned matter began at 10:25 a.m., at The
Public Service Commission of the District of
Columbia, 1333 H Street, Northwest, Washington,
D.C., 20005.

BEFORE: BETTY ANN KANE, Chairman

JOANNE DODDY FORT, Commissioner

WILLIE L. PHILLIPS, Commissioner

Reported by: Denise M. Brunet, RPR

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1 A P P E A R A N C E S

2 On behalf of the Joint Applicants:

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14 On behalf of AOBA:

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19 On behalf of D.C. Government:

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1 APPEARANCES (continued):

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On behalf of Grid 2.0:

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15 On behalf of MAREC:

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On behalf of NCLC:

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1 P R O C E E D I N G S

2 CHAIRMAN KANE: Good morning. Today is
3 Monday, February 9, 2015. I'm Betty Ann Kane,
4 chairman of the Public Service Commission. And
5 with me on my right is Commissioner Joanne Doddy
6 Fort and, on my left, Commissioner Willie L.
7 Phillips. As I said, today is February 9, 2015.
8 It is 10:25 a.m. We are here in the hearing room
9 of the Public Service Commission at 1333 H Street,
10 Northwest.

11 We're assembled here for the commencement
12 of hearings in formal case 1119 which is the joint
13 application of Exelon Corporation, PEPCO Holdings,
14 Inc., Potomac Electric Power Company, Exelon
15 Energy Delivery Company, LLC, and New Special
16 Purpose Entity for authorization and approval of a
17 proposed merger transaction.

18 Before we begin, I have an important
19 housekeeping matter. Please turn off all cell
20 phones, pagers, anything else that might make
21 noise or emit a signal during the course of the
22 proceeding today. Also, please note that this

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1 hearing is being broadcast live on the
2 Commission's website and it will be recorded for
3 future viewing on our website through the
4 Internet.

5 And also I might note, those of you who
6 have been here before, we have, you'll notice, new
7 microphones. This is a new system that we brought
8 in, anticipating the large number of both
9 attorneys, witnesses and members of the public who
10 are here. And so as opposed to the microphones we
11 had before where you had to press a button and it
12 would turn green for you to speak, now you press
13 the button, it says talk and it turns red, and
14 wait for you to speak. So hopefully we will be
15 able to get through it with microphones working
16 well.

17 I also want to start with a summary of
18 the background and the procedural history of this
19 case so that everyone, especially the District
20 ratepayers and the general public who may be
21 listening or who may be watching it later, will
22 understand what the case is about and why we're

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1 here today.

2 On April 30th, 2014, PHI and Exelon
3 Corporation announced Exelon's intended purchase
4 of PHI. PHI is the parent company of PEPCO, the
5 electric distribution company that serves the
6 District of Columbia.

7 On June 18th, 2014, Exelon, PHI, PEPCO,
8 Exelon Energy Delivery Company, LLC, and New
9 Special Purpose Entity, LLC, who we call the joint
10 applicants, filed a joint application for approval
11 by the Commission of a change of control of PEPCO
12 to be effected by the merger of PHI with Purple
13 Acquisition Corp., a wholly owned subsidiary of
14 Exelon.

15 PHI is the public utility holding company
16 that was created in 2002 as a result of the merger
17 of PEPCO and Conectiv, and that was the merger
18 that also came before this Commission, and that
19 was the subject of a settlement, a non-unanimous
20 settlement that was approved by the Commission in
21 2002.

22 PHI directly and indirectly owns three

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1 electricity and natural gas distribution
2 utilities. PHI directly owns PEPCO, which has
3 264,000 electric companies (sic) in the District,
4 and 537,000 customers in Montgomery and Prince
5 George's County in Maryland.

6 PHI indirectly, through its Conectiv
7 subsidiary, owns Delmarva Power and Light Company
8 and Atlantic City Electric Company, which together
9 serve approximately 1 million electric customers
10 and 126,000 natural gas customers in Maryland,
11 Delaware and New Jersey.

12 Exelon Corporation is a utilities
13 services holding company, headquartered in
14 Chicago, Illinois, which, through its
15 subsidiaries, both generates electricity and
16 delivers electricity and natural gas to customers,
17 among other things.

18 Exelon Energy Delivery Company is the
19 Exelon subsidiary that directly and indirectly
20 owns three electricity and natural gas
21 distribution companies. It directly owns
22 100 percent of the common stock of Commonwealth

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1 Edison Company and PECO Energy Company, and
2 indirectly, through RF Holdco, LLC, owns
3 100 percent of the common stock of Baltimore Gas
4 and Electric, BGE. Together, Exelon-owned
5 utilities ComEd, PECO and BGE currently provide
6 distribution service to 6.6 million electric
7 companies (sic).

8 The joint applicants submit that, as a
9 result of Exelon's purchase of PHI, PHI will cease
10 to be a publicly traded company and become a
11 subsidiary of Exelon. Specifically, PHI will
12 become a subsidiary of the New Special Purpose
13 Entity, which will be owned by Exelon Energy
14 Delivery Company, that also directly or indirectly
15 controls Exelon's other distribution utilities.

16 The New Special Purpose Entity that is
17 one of the joint applicants is a, quote/unquote,
18 bankruptcy-remote special purpose entity being
19 created to ring-fence PHI and PHI's energy
20 distribution utilities. The New Special Purpose
21 Entity is similar in structure to RF Holdco, LLC,
22 that owns BGE.

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1 Exelon is proposing to purchase PHI in an
2 all-cash transaction for approximately
3 \$6.8 billion. The joint applicants state that,
4 quote, there will be no change in the outstanding
5 debt of PEPCO or PHI as a result of the merger.

6 With the purchase of PHI, Exelon
7 companies would be providing electric distribution
8 services to 10 million electric customers. In its
9 June 18th, 2014 application, the joint applicants
10 requested that the Commission issue a decision on
11 the merits of the joint application by the end of
12 April 2015.

13 The joint applicants also filed
14 applications seeking approvals from the Maryland
15 Public Service Commission, the Delaware Public
16 Service Commission, the Virginia State Corporation
17 Commission, the New Jersey Board of Public
18 Utilities and the Federal Energy Regulatory
19 Commission, or FERC.

20 On August 22nd, 2014, the Commission
21 issued order number 17597 which, number one,
22 granted ten petitions to intervene and recognized

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1 the party status of the Office of People's
2 Counsel, which is a party of right to any
3 Commission investigation under D.C. law.

4 Two, determine that this case should be
5 classified as an other investigation, as opposed
6 to a rate case for purposes of utility assessments
7 under D.C. code 34-912.

8 Three, finalize the public interest
9 factors that will be used to evaluate if this
10 merger is in the public interest for the purpose
11 of D.C. code 34-504.

12 And, four, set forth the procedural
13 schedule for this proceeding.

14 These ten -- those ten intervenors
15 approved by the Commission are the Apartment and
16 Office Building Association of Metropolitan
17 Washington, AOBA, the District of Columbia
18 Government, D.C. Solar United Neighborhoods,
19 DC SUN, District of Columbia Water and Sewer
20 Authority known as D.C. Water, General Services
21 Administration, GSA -- that's federal GSA,
22 Grid 2.0 working group, Maryland/D.C./Virginia

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1 Solar Energy Industries Association, Monitoring
2 Analytics, Incorporated, as the market monitor for
3 PJM, the National Consumer Law Center, National
4 Housing Trust and the National Housing Trust
5 Enterprise Preservation Corporation, which we'll
6 refer to as NCLC, NHT, and NRG Energy,
7 Incorporated.

8 An 11th intervenor, Mid-Atlantic
9 Renewable Energy Coalition, or MAREC, was granted
10 intervention in this case in a later Commission
11 order.

12 D.C. code 34-504 provides, in pertinent
13 part, that, quote, no public utility shall
14 purchase the property of any other public utility
15 for the purpose of effecting a consolidation until
16 the Commission shall have determined and set forth
17 in writing that said consolidation will be in the
18 public interest.

19 The Commission concluded in a previous
20 order that, under this statutory provision, it
21 must first find that the purpose of PEPCO will be
22 in the public interest, and that to be in the

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1 public interest, the proposed transaction must
2 benefit the public rather than merely leave it
3 unharmed.

4 In addition, the Commission noted in
5 prior orders that, one, it has traditionally
6 balanced the interest of shareholders and
7 investors with ratepayers and the community; two,
8 benefits to the shareholders must not come at the
9 expense of the ratepayers; and, three, to be
10 approved, the purchase of PEPCO must produce a
11 direct and tangible benefit to ratepayers.

12 Also, in prior Commission orders
13 involving the acquisition of a public utility, the
14 Commission analyzed a series of factors to
15 evaluate whether the transaction was in the public
16 interest.

17 In this case, the current case, we
18 determined that we would analyze the merger
19 transaction to determine if it is in the public
20 interest under the following seven factors.

21 The effects of the transaction on, one,
22 ratepayers, shareholders, the financial health of

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1 utilities standing alone, and as merged, and the
2 economy of the District.

3 Two, utility management and
4 administrative operations.

5 Three, public safety and the safety and
6 reliability of services.

7 Four, risks associated with all of the
8 joint applicants' affiliated, non-jurisdictional
9 business operations, including nuclear operations.

10 Five, the Commission's ability to
11 regulate the new utility effectively.

12 Six, competition in the local retail and
13 wholesale markets that impacts the District and
14 District ratepayers.

15 And, seven, conservation of natural
16 resources and preservation of environmental
17 quality.

18 While there have been some revisions to
19 the procedural schedule over the past few months,
20 the parties have conducted extensive discovery and
21 have filed their written testimony. Joint
22 applicants filed direct and supplemental direct

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1 testimony and exhibits in September 2014. The
2 intervenors filed their direct testimony and
3 exhibits in early November 2014. And the joint
4 applicants filed their rebuttal testimony and
5 exhibits in mid-December 2014.

6 Four community hearings were held this
7 past December and January to provide an
8 opportunity for ratepayers and other members of
9 the public in the District to present their
10 opinions and/or factual matters concerning the
11 proposed merger. There have also been three
12 settlement conferences among the parties prior to
13 today.

14 The evidentiary hearings were originally
15 scheduled to be held January 5th through
16 January 9th, 2015, but were moved to February 9th
17 through February 13th, 2015 in an order dated
18 October 9th, 2014.

19 In our order issued January 29th, 2015,
20 we added two additional hearing dates, February 25
21 and 26. We also held that February 27th would be
22 held in reserve in the event that an additional

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1 hearing date would be needed.

2 In that same order, the parties were
3 directed to file any corrections to their
4 testimony by Wednesday, February 4th, 2015. Each
5 party was also directed to file by February 4th a
6 list identifying the witnesses they wished to
7 cross-examine, on what public interest factor and
8 the approximate time estimated to be required.

9 The Commission's secretary was directed
10 to post on the Commission's website by the close
11 of business on Thursday, February 5th any change
12 that may be made in the order of witnesses and the
13 names of witnesses for which no cross-examination
14 has been requested.

15 In addition, because the Commission's
16 secretary expected to receive a large number of
17 exhibits due to the large number of parties in
18 this proceeding, the Commission set out, in orders
19 number 17790 and 17799, amended procedures for the
20 parties to follow to deliver cross-examination
21 exhibits on Friday, February 6th for the first two
22 days of hearings and procedures for the delivery

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1 and retrieval of cross-examination exhibits on the
2 mornings of the hearings.

3 With that as the background, the parties
4 and their witnesses and the Commission and
5 Commission staff were prepared to begin the
6 evidentiary hearings this morning. However, in
7 the late afternoon on Wednesday, February 4th, the
8 joint applicants filed a motion to provide
9 supplemental rebuttal testimony. Specifically,
10 the joint applicants have requested that the
11 Commission permit the filing of this supplemental
12 rebuttal testimony in order to complete the record
13 and provide the Commission with the most recently
14 available information regarding the customer
15 investment fund, ring-fencing and affiliate
16 transaction issues, and reliability performance
17 metrics upon which it can render a decision in
18 this proceeding.

19 At the same time, the joint applicants
20 filed a draft proposed schedule of witnesses --
21 witness testimony, but indicated that the schedule
22 was still under discussion and that the parties

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1 would file an updated schedule on Friday,
2 February 6th.

3 The lead-off witness on the draft
4 schedule was joint applicant witness Crane
5 testifying on his direct and rebuttal testimony.
6 An updated schedule was filed on February 6th.
7 However, the revised schedule still indicates that
8 Mr. Crane will be the lead-off witness and that he
9 would be crossed on his direct, rebuttal and
10 supplemental rebuttal testimony at that time.

11 On Thursday, February 5th, 2015, OPC
12 filed a motion to delay the start of the
13 evidentiary hearings for a minimum of two days and
14 to postpone the procedural deadline set out in the
15 Commission's January 29th order, including the
16 filing of cross-examination exhibits on Friday,
17 February 6th, to allow time for the parties to
18 fully analyze and adequately address joint
19 applicants' February 4th filing.

20 OPC represented that its motion was
21 supported by AOBA, D.C. Water, GSA and MAREC, and
22 not opposed by D.C. Government, DC SUN and the

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1 joint applicants. A footnote in OPC's motion
2 stated that the National Consumer Law Center
3 opposes the motion only because it may impair
4 their ability to participate in the Maryland
5 proceeding.

6 Also on February 5th, AOBA filed an
7 opposition and request for alternative relief to
8 the joint applicants' motion. AOBA states, among
9 other things, that the joint applicants' motion,
10 quote, constitutes a substantial change and
11 modification to the application for merger
12 approval previously filed, and it requests
13 sufficient time to conduct discovery on the
14 supplemental rebuttal testimony and present oral
15 rejoinder to such testimony.

16 AOBA, like OPC, also requests a
17 suspension of the hearing and procedural deadlines
18 set forth in the Commission's January 29th order.
19 However, AOBA requests that the evidentiary
20 hearings be rescheduled to commence on or after
21 March 9th, 2015.

22 To enable the Commission to expeditiously

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1 resolve these pleadings, which were filed less
2 than three business days prior to the start of the
3 evidentiary hearings in this case, the Commission
4 issued a notice to all parties and the public that
5 the hearing would commence as scheduled today and
6 that all counsel shall come prepared to address
7 the following procedural issues:

8 A, whether the joint applicants' motion
9 should be granted. With regard to this matter,
10 the joint applicants shall describe all the
11 changes made to their previous filed testimony and
12 shall also explain whether these changes were
13 previously discussed with the parties and why
14 these changes could not have been filed at the
15 Commission earlier than February 4th. The parties
16 will be asked to state their positions on the
17 joint applicants' motion.

18 B, whether additional time is needed for
19 discovery if the joint applicants' motion is
20 granted and, if so, how much time.

21 C, whether a party will need to file
22 additional testimony in the event that the joint

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1 applicants' motion is granted and, if so, whether
2 that testimony will be filed as oral or written
3 rejoinder, and the timetable needed to prepare any
4 such testimony.

5 And D, whether the evidentiary hearing
6 date should be changed as stated in the OPC and
7 AOBA motion in opposition and, if so, to what
8 dates.

9 All parties were directed to determine in
10 advance whether their party witnesses are
11 available during the following time frames in the
12 event that the Commission decides to change any of
13 the currently scheduled dates for the evidentiary
14 hearings. And those dates were February 10th to
15 13th, February 25th to 27th. March 2nd to 6th,
16 and March 16th through 20th. The parties were
17 directed to bring their calendars and to confirm
18 the availability of their witnesses on the dates
19 set out above.

20 The Commission recognized that because of
21 the last-minute filing of the joint applicants'
22 motion to file supplemental rebuttal testimony, we

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1 would need to spend today addressing the
2 procedural issues. Therefore, we inform the
3 parties that their witnesses need not attend
4 today, but should be available by phone to confirm
5 their availability for cross-examination on any
6 proposed evidentiary hearing dates after today.

7 So this morning we will proceed as
8 follows. First, we will hear oral argument from
9 the parties on the issue identified as paragraph
10 6A in our notice and that, again, is whether the
11 joint applicants' motion should be granted.

12 With regard to this matter, the joint
13 applicants shall describe all the changes made to
14 their previously filed testimony and shall also
15 explain whether these changes were previously
16 discussed with the parties and why these changes
17 could not have been filed at the Commission
18 earlier than February 4th, 2015. The parties will
19 be asked to state their position on the joint
20 applicants' motion.

21 The Commission will then recess to
22 deliberate and decide that issue. Our decision on

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1 that issue will determine whether we then need to
2 hear arguments on the issues identified in
3 paragraphs B, C and D of our order. We will
4 return and announce our decision on issue A.

5 If it is then necessary to hear argument
6 on issues in paragraphs 6B, C and D, we will then
7 hear those arguments, recess to deliberate on
8 those three issues, and return and announce our
9 decision.

10 In the interim, if any party has any
11 additional procedural issue that this Commission
12 should address before witness testimony begins,
13 they will be invited to raise those issues. We
14 will hear arguments on those issues, recess to
15 deliberate, and return and announce our decision.
16 All our decisions will be memorialized in a
17 written order to be issued following today's
18 hearings.

19 So I would at this time ask the parties
20 to please identify themselves for the record,
21 starting with the company, then Office of People's
22 Counsel, and then the intervenors.

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1 MR. LORENZO: Thank you, Your Honor.
2 Richard Lorenzo from the law firm of Loeb & Loeb
3 for the joint applicants. And I'd like to also
4 identify the following attorneys who will be
5 joining me in defending the joint applicants:
6 Mr. Ted Duver and Nicole Travers of my office,
7 Mr. John Ray of Manatt Phelps, from the Exelon
8 Corporation, Darryl Bradford, Paul Bonney and
9 Anthony Gay. From PHI Holding Company, Kevin
10 Fitzgerald, Peter Meier and Wendy Stark. And
11 finally, from the law firm of Morgan Lewis, Thomas
12 Gadsden, Ken Kulak and Brook McGlinn.

13 Thank you.

14 MR. GRAY: Good morning, Chairman Kane,
15 Commissioners Fort and Phillips. My name is Jason
16 Gray from the law firm Duncan, Weinberg, Genzer &
17 Pembroke here in the District. And I am appearing
18 today on behalf of the Office of the People's
19 Counsel.

20 Appearances for the attorneys who will be
21 representing the People's Counsel have been filed
22 in this proceeding, so I will not repeat those

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1 here, but I would note that People's Counsel,
2 Sandra Mattavous-Frye is here today.

3 MS. FRANCIS: Good morning, Your Honors.
4 I'm Frann Francis, appearing here on behalf of the
5 Apartment and Office Building Association. I
6 would also like to enter the appearance of
7 Nicola Y. Whiteman.

8 MR. COYLE: Good morning, Chair Kane,
9 Commissioners Fort and Phillips. My name is John
10 Coyle, C-O-Y-L-E, of the firm Duncan & Allen, here
11 representing the government of the District of
12 Columbia. Our appearances have also been entered
13 on the record. Here in the hearing room today
14 with me are Amy McDonnell, general counsel of the
15 District Department of the Environment, Brian
16 Caldwell, assistant attorney general of the
17 Attorney General's public interest litigation
18 division, and Hussain Karim, assistant general
19 counsel at DDOE. Thank you.

20 MR. SPECK: Good morning. I'm Randall
21 Speck, S-P-E-C-K, with Kaye Scholer, and I'm
22 representing DC SUN. And also appearing with me

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1 in this hearing will be Ollie Wright and Cara
2 Spencer, also with my firm Kaye Scholer. Thank
3 you.

4 MS. WHITE: Good morning, Chairman Kane,
5 Commissioners Doddy Fort and Phillips. My name is
6 Nancy White. I'm appearing on behalf of the
7 District of Columbia Water and Sewer Authority, or
8 D.C. Water, in this case. I'd also like to enter
9 the appearance of D.C. Water's general counsel,
10 Randall E. Hayman.

11 MR. RORIES: Good morning, Your Honor.
12 I'm Charles Rories. I'm a pro bono attorney
13 acting as counsel for Grid 2.

14 MR. FINKELSTEIN: Good morning, Chairman
15 Kane and commissioners. My name is Ben
16 Finkelstein. I'm here representing Mid-Atlantic
17 Renewable Energy Coalition, filling in for Carolyn
18 Elefant who is appearing before the Maryland
19 Commission today on the extended hearings.

20 MS. WEIN: Good morning, Commissioners.
21 My name is Olivia Wein. I'm here with the
22 National Consumer Law Center/National Housing

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1 Trust/National Housing Trust Enterprise. Also
2 appearing with me in this proceeding will be
3 Charles Harak from National Consumer Law Center.

4 CHAIRMAN KANE: Thank you. Thank you,
5 everyone.

6 All right. Are there any questions from
7 any of the parties or intervenors about the
8 procedures that the Commission has outlined for
9 our hearing today before we start with the joint
10 applicants? Any questions? All right.

11 Now we will begin the arguments on the
12 joint applicants' motion, starting with the
13 company. We remind the joint applicants they must
14 describe all the changes made to their previously
15 filed testimony. They shall also explain whether
16 these changes were previously discussed with the
17 parties, why the changes could not have been filed
18 with the Commission earlier than February 4th,
19 2015.

20 Secretary, do we want to swear in -- we
21 do not need to swear them in because they're
22 counsels, and we assume that attorneys always tell

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1 the truth. Just want to be sure.

2 Mr. Lorenzo, you may start. Just remind
3 everyone again, if you're not speaking -- only the
4 person who is speaking should have their
5 microphone on so we get used to this new system.
6 Thank you.

7 MR. LORENZO: Thank you, Your Honor.
8 Unlike a normal rate case that's tried before this
9 Commission, this merger proceeding involves four
10 simultaneous, interrelated proceedings taking
11 place in New Jersey, Delaware, Maryland and in the
12 District of Columbia. They are considering
13 substantially the same issues that will be
14 addressed here, and obviously what happens in
15 other jurisdictions may affect what happens within
16 the District, as well as what happens within the
17 District will affect what happens in the other
18 jurisdictions where the merger is being
19 considered.

20 The supplemental rebuttal testimony
21 identified a series of concessions made,
22 principally in New Jersey and Delaware -- strike

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1 that -- Maryland -- that may serve to reduce the
2 issues to be adjudicated in this proceeding before
3 this Commission. The 15 pages of testimony was
4 designed to bring the position of the joint
5 applicants closer to the position of the Office of
6 People's Counsel and the other intervenors and
7 eliminate disputes wherever possible. We hope to
8 increase the efficiency of the hearings and
9 shorten the cross-examination by filing the
10 testimony that we did.

11 Indeed, OPC recognized in its motion to
12 delay the start of the evidentiary hearings that
13 there is a likelihood that the joint applicants'
14 new position may narrow the issues to be heard in
15 this dispute among the parties and shorten the
16 hearing.

17 The supplemental testimony also put into
18 evidence the settlement reached by the joint
19 applicants with the Board of Public Utilities in
20 New Jersey which was the source of some of the
21 concessions contained in our supplemental direct
22 testimony. In particular, the joint applicants --

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1 the supplemental direct testimony identified the
2 effect on the customer investment fund if the New
3 Jersey settlement was proportionally applied in
4 New Jersey, which would then more than double the
5 fund available from \$14 million to over
6 \$30 million.

7 The joint applicants could have made
8 these concessions on cross-examination, as is
9 typical in rate cases before the Commission. On
10 numerous occasions, our witnesses would agree with
11 OPC witnesses. And I could remember on occasions
12 when Mr. Adragna and Mr. Gray would slash through
13 their cross-examination because we've agreed with
14 their positions and they no longer had to cross on
15 that.

16 But we felt it was more efficient and
17 fairer to the parties if we identified the
18 concessions prior to the time in which the joint
19 applicants' witness would take the stand and be
20 questioned on it. And that way we felt that OPC
21 and the other -- and the intervenors could better
22 prepare for hearing and cross-examination, and the

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1 hearing and cross-examination would, in fact, go
2 quicker.

3 In describing the -- a number of what we
4 actually conceded on, the most important
5 concession we made relates to reliability. Joint
6 applicants, in their initial filing, proposed a
7 yearly improvement in reliability, as measured in
8 the SAIDI and SAIFI tests, tied to a historic
9 baseline period while maintaining the capital and
10 O&M budgets projected by the company, by PEPCO,
11 and provided for a penalty mechanism should the
12 joint applicants not be able to meet that
13 standard.

14 However, at the time of our filing of our
15 initial testimony, joint applicants could not
16 commit to meeting the EQSS standards of this
17 Commission within that budget parameter. We
18 certainly were committed to meeting the standard.
19 We just couldn't meet it within the budget
20 parameter.

21 OPC's witness, Mr. Mara, as well as OPC's
22 public statements made reliability in general, and

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1 meeting the EQSS standard in particular, a key
2 issue in this proceeding, and joint applicants
3 heard and understood the position of where OPC was
4 coming from.

5 Consequently, after a review of the 2014
6 figures for SAIDI and SAIFI as well as a lot of
7 pencil sharpening that went on in the last few
8 weeks, joint applicants have determined that they
9 will commit to meeting the Commission's EQSS
10 standard for SAIDI and SAIFI within the budget
11 parameters, as described in Mr. Gausman's
12 supplemental direct testimony, through 2020.

13 We believe that this concession goes a
14 long way to -- we hope it goes a long way to
15 addressing the Office of People's Counsel's
16 reliability concerns in this proceeding.

17 The joint applicants made three other
18 additional concessions related to the New Jersey
19 and Maryland proceedings. The first two have to
20 do -- deal with ring-fencing and affiliate
21 transactions. While the joint applicants have
22 proposed a series of steps to ensure that PHI and

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1 PHI utilities are bankruptcy-remote from the
2 Exelon and other Exelon-affiliated companies,
3 through our New Jersey settlement we have more
4 detailed and granular proposals for both
5 ring-fencing and affiliate transactions which --
6 for example, where we said we would provide a
7 report, we now state what the report will say, how
8 often it will be filed, et cetera, that arise out
9 of the settlement in New Jersey.

10 Further arising out of the hearing in
11 Maryland is a tax indemnification provision which
12 would keep PEPCO companies whole for elections
13 that Exelon makes with regard to tax -- to federal
14 income taxes and local taxes, which particularly
15 should go to address some of the concerns of OPC
16 witness Ramas' testimony on tax elections.

17 As concerns New Jersey's settlement, any
18 suggestion that the parties in general, or AOBA in
19 particular, were unaware or surprised by the New
20 Jersey settlement is just belied by the facts in
21 this case. The New Jersey settlement was
22 announced by the joint applicants on January 14,

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1 2015, and widely reported.

2 In this case, joint applicants notified
3 the parties on January 15th, 2015 in a response to
4 a data request that they, in fact, had settled in
5 New Jersey. AOBA's motion rings particularly
6 hollow, as AOBA has already attached -- on
7 January 21st, 2015, AOBA attached the New Jersey
8 settlement to a piece of Mr. Oliver's testimony
9 filed in Maryland.

10 Ms. Francis has cross-examined OPC
11 witnesses -- strike -- company -- joint
12 applicants' witnesses in the Maryland proceeding,
13 including Mr. Crane, on the contents of the
14 settlement agreement in New Jersey. Indeed,
15 Mr. Crane was extensively cross-examined in New
16 Jersey on the settlement and -- on the New Jersey
17 settlement on what the implications were for the
18 Maryland proceeding in the Maryland proceeding,
19 which was in the first week of the Maryland
20 proceeding. And it was that cross-examination
21 that was the driving factor for joint applicants'
22 decision to file supplemental testimony in this

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1 proceeding and concede the ring-fencing, affiliate
2 transactions and tax indemnification provisions,
3 as well as the reliability provisions we made.

4 We -- we figured that the extensive
5 cross-examination joint applicants' witnesses had
6 in the Maryland proceeding would be unnecessary if
7 we filed it here and said, here is what we will
8 concede without -- from the settlement without
9 further negotiation.

10 We discussed with the parties the filing
11 of supplemental direct testimony during a
12 scheduling conference call on February 4th, 2015,
13 shortly before we filed the testimony. We
14 notified them both of the -- we were going to file
15 the New Jersey settlement and, in a general way,
16 the concessions we were going to make within that
17 testimony.

18 I want to make a final statement on OPC's
19 motion, which we did not oppose, for a short delay
20 in the start of the hearing testimony. As you
21 know from the scheduling, we have scheduled -- we
22 have estimated -- estimates of cross-examinations

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1 among all of the witnesses. And it turns out that
2 if the hearing were to begin on Wednesday, at a
3 minimum, the company's case would be
4 cross-examined on Wednesday, Thursday, Friday.
5 There's a good chance it will go over to the next
6 hearing date, but at a minimum, no OPC or
7 intervenor witnesses would be testifying, and
8 certainly we would not get to the company's
9 rebuttal case until the next hearing day scheduled
10 in this proceeding, which would be February 25th,
11 I believe.

12 With that in mind, it seemed a short
13 delay in the start of the hearing would allow the
14 company to put on its direct case, get
15 cross-examined on it, and then it would give the
16 parties over two weeks from the filing of our
17 supplemental direct testimony in which to consider
18 it, take discovery, and prepare for
19 cross-examination of the testimony on -- at the
20 end -- on the 25th or later as it came up.

21 In short, joint applicants believe that
22 the admission of their supplemental filing can

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1 serve to shorten the hearing by narrowing the
2 disputed issues addressed. By filing the
3 concessions in advance instead of making them from
4 the stand, joint applicants have given the parties
5 the advantage in addressing these terms on
6 cross-examination.

7 Thank you, Your Honor.

8 CHAIRMAN KANE: Thank you, Mr. Lorenzo.

9 I'm going to ask each of the parties for
10 their view on this issue. People's Counsel.

11 MR. GRAY: Just one second, Your Honor.

12 CHAIRMAN KANE: As you're doing that, let
13 me remind all the parties, what we're addressing
14 now is simply the issue of admitting the
15 supplemental direct, not the timing, not the
16 schedule.

17 MR. GRAY: Certainly, Your Honor. Jason
18 Gray on behalf of the Office of People's Counsel.
19 And, Your Honor, I'm happy to proceed in that
20 regard right now. I did have one question. It
21 may have been answered, but I would just like to
22 clarify, on issue 6A, whether there were any

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1 specific changes to what the companies have
2 previously filed as a result of the supplemental
3 testimony. I just wanted to confirm whether that
4 has been specified and stated or whether the
5 assumption is that the supplemental rebuttal
6 testimony would stand alone and the direct
7 testimony and rebuttal testimony, as filed, would
8 stand alone.

9 CHAIRMAN KANE: I'm sorry. I was talking
10 with counsel when you started. So would you
11 repeat your question?

12 MR. GRAY: Certainly. My question was,
13 issue 6A in the Commission's notice asked the
14 company to identify what changes would be made to
15 the prefiled testimony and exhibits. And I was
16 just curious, based on the opening statement from
17 the company, whether the intent was that there
18 would be no changes, and the prefiled testimony
19 and exhibits prior to February 4th would stand
20 alone, or whether there would be an actual change
21 to what has previously been filed.

22 There are differences between the two

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1 sets of testimony, and I just want to make sure
2 it's clear what those differences are, or if those
3 differences would continue in the case on a
4 standalone basis.

5 CHAIRMAN KANE: Mr. Lorenzo?

6 MR. LORENZO: Your Honor, we do not
7 intend to make any changes to our prefiled
8 testimony, and that -- the changes or the
9 concessions we made in our proposed supplemental
10 direct testimony would stand alone and obviously
11 supersede any statements that contradict them in
12 the earlier volumes of testimony.

13 CHAIRMAN KANE: Thank you.

14 MR. GRAY: Thank you. Before jumping
15 right in and addressing the fundamental issue of
16 6A of whether the motion should be granted or
17 denied, I would like to make three overarching
18 points that provide specific context into how OPC
19 views that specific question. And the first point
20 is that, on behalf of the People's Counsel, I
21 would like to thank the Commission for putting the
22 brakes on this proceeding and allowing the parties

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1 the opportunity to address the procedural issues
2 that were raised at the end of last week, and
3 particularly by the February 4th motion.

4 As all parties are aware, this is a
5 fundamental case -- excuse me -- this is a
6 landmark case, and the effect of this case will
7 have an impact on the District for decades. This
8 case, as such, has involved many months of
9 preparation, and as parties are preparing for any
10 evidentiary hearing, the days and the weeks
11 leading up to that hearing can be hectic. A late
12 filing several business days before that hearing
13 made things particularly chaotic. So again, I
14 would like to thank the Commission for recognizing
15 the need to address these procedural issues before
16 we advance any further.

17 The second point that I would like to
18 make is that OPC's view on the fundamental
19 question of whether to grant the motion is really
20 based on OPC's frame of reference for the case as
21 a whole. As Commissioner Kane noted in her
22 opening remarks, the issue in this case is whether

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1 the proposed transaction is in the public interest
2 as specified by D.C. code.

3 At one level, I would submit that a
4 public interest inquiry or determination is
5 largely a legal question that is influenced by
6 many material facts. But at another level, and
7 particularly the level that we're here to address
8 today, those legal and factual questions are
9 influenced by matters of process. As such, the
10 public, who will be affected by this proceeding
11 and by the outcome of this proceeding must have
12 confidence in the process and particularly
13 confidence that the process used to make a public
14 interest determination was fair.

15 The most recent filing of the
16 supplemental rebuttal testimony on the eve of
17 hearing raises doubt as to the fairness of this
18 process, or at least raises the potential for
19 doubt that the process may not be fair.
20 Therefore, OPC is here today to ask the
21 Commission, which is the entity in charge of
22 establishing process in this proceeding, to send a

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1 clear signal today that the public confidence is
2 important, that fairness and proper procedure are
3 paramount, and that any strategies that may place
4 a thumb on the scale in favor of one party or
5 another will not be tolerated.

6 Now, one way for the Commission to send
7 that signal would be to deny the motion and not
8 admit the supplemental rebuttal testimony. In
9 doing so, the Commission could direct the parties
10 to consider the issues identified in the
11 supplemental rebuttal testimony in the settlement
12 phase of this proceeding.

13 Another option would be for the
14 Commission to admit the testimony, or some portion
15 of the testimony, but provide all parties a
16 meaningful opportunity to conduct discovery and
17 potentially file sur-rebuttal testimony, just as
18 was done with the direct and rebuttal testimony
19 that the joint applicants filed in June and
20 December.

21 Now, the third and related point is that
22 OPC, through its testimony, raised a number of

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1 concerns with the proposed transaction. Four
2 principal concerns were that the level of the
3 customer investment fund was insufficient.
4 Another was that the proposed reliability
5 commitments were inferior to the EQSS standards
6 which PEPCO had previously committed to meet.
7 Another principal concern was that the proposed
8 ring-fencing provisions were inadequate. And OPC
9 also raised concern that the proposal failed to
10 provide a concrete commitment to sustaining the
11 District's renewable goals and achievements.

12 In the motion that was filed last
13 Wednesday and in Mr. Lorenzo's opening statement,
14 the joint applicants state that the supplemental
15 rebuttal testimony was intended to respond to
16 certain of those concerns. While OPC is certainly
17 appreciative of the joint applicants'
18 acknowledgment of those concerns, OPC is not here
19 today to argue about the merit of any provisions
20 that were made or whether any revisions are or are
21 not improvements upon the original proposal.
22 Rather, the procedural issue that we are here

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1 today to address is just that, a procedural
2 inquiry.

3 And OPC would submit that fundamental due
4 process is not malleable so as to bend to the
5 suggestion that one party has addressed factual
6 concerns or issues that another party has raised.
7 Fundamental due process is not conditional. I
8 raise this point because even if OPC were to
9 agree, and we don't have enough facts to make that
10 decision yet, but even if OPC were to agree that
11 the supplemental rebuttal testimony contains
12 revisions that are improvements, that does not
13 necessarily mean that the filing was procedurally
14 proper and it does not necessarily mean that any
15 procedural problems with the late filing would not
16 be fatal.

17 Rather, unless and until OPC or any other
18 parties are afforded an opportunity to conduct the
19 discovery necessary to make a merits determination
20 as to the revised -- or, excuse me -- as to the
21 commitments in the revised supplemental testimony,
22 we simply cannot move forward, we cannot make a

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1 determination as to the joint applicants' ability
2 to actually meet some of the commitments that they
3 have made in the supplemental rebuttal testimony.

4 So I would close that opening -- my
5 opening statements by just saying that I agree
6 with Mr. Lorenzo that this is not like a typical
7 rate case in that parties may object that
8 information came in late, but on the other hand,
9 it may raise similar concerns to the extent these
10 are not simply updates. And that is one of the
11 concerns that we are struggling with and one of
12 the concerns that we want to make sure we have
13 sufficient time to address as we analyze the
14 proposal or the -- excuse me -- the motion.

15 So with that, I will turn to the specific
16 question raised in 6A of whether the motion should
17 be granted. Now, as I just mentioned, OPC does
18 have some threshold concerns about granting a
19 motion to make substantial changes this late in
20 the process, but assuming the Commission is
21 inclined to consider whether the motion should be
22 granted, OPC really thinks that the issues -- the

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1 requested raised in 6A and 6B cannot be answered
2 independently.

3 Also, I would like to draw a distinction
4 between two components of the supplemental
5 rebuttal testimony. On the one hand, we have a
6 proposal to revise the reliability commitments.
7 On the other hand, we have the filing of a
8 settlement that was reached in New Jersey. Now,
9 the revised reliability commitments seemingly make
10 revisions to what the companies previously
11 committed to be able to achieve in terms of
12 reliability performance.

13 If the process in the Maryland proceeding
14 is any indication of the effect of the New Jersey
15 settlement, it appears that that settlement does
16 not actually modify any merger commitment that the
17 joint applicants have made, but rather was
18 presented as -- to give the parties and the
19 Commission an idea of the framework the companies
20 would consider as part of a global settlement. I
21 think those two distinctions are important, and so
22 I want to address them in that way.

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1 OPC asked the Commission to separately
2 consider whether the supplemental rebuttal
3 testimony should be granted as to the revised
4 reliability commitments, and then separately
5 consider whether the supplemental rebuttal
6 testimony should be granted as to the New Jersey
7 settlement. And I'll address the first of those
8 two points now, the revised reliability
9 commitments.

10 As I stated, OPC is certainly
11 appreciative of the joint applicants' recognition
12 of fundamental concerns OPC raised in its
13 testimony. However, we submit that the proper
14 mechanism for responding to those concerns was the
15 rebuttal testimony that was submitted in December
16 in this proceeding. I think it's important to
17 focus on why that would be appropriate as compared
18 to the situation we find ourselves in now. Had
19 these changes been made in December, OPC and all
20 parties would have had an opportunity to conduct
21 discovery on the testimony without the fear of a
22 looming hearing just days away. OPC would have

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1 the opportunity to consider responses to the
2 discovery that it conducted in formulating its
3 strategy and position for the hearing.

4 And that is not the course that was
5 taken. Instead, three days before the hearing,
6 the commitments were made, thus creating the
7 procedural uncertainty that led to the filings of
8 the motions to delay the hearing.

9 Another issue that I would like to
10 address with regard to the December filing is that
11 it's interesting, at a minimum, to look at what
12 was said in the December rebuttal versus what was
13 said in the supplemental rebuttal. I think this
14 weighs on whether the hearing in this proceeding
15 would be streamlined if the supplemental rebuttal
16 were allowed to be in.

17 In particular, joint applicants' witness
18 Gausman filed sworn testimony stating it is not
19 clear that the current standards are reasonably
20 achievable. He also testified, quote, in order to
21 meet the Commission-imposed standards, the company
22 would absolutely need to significantly increase

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1 spending beyond that which is included in the
2 existing budgets for 2014 to 2018.

3 Both of those quotes can be found at
4 pages 5 and 6.

5 Those two statements identify what the
6 joint applicants were saying in December about
7 their ability to meet the EQSS. I think it's also
8 important to look at why they were making those
9 statements. On page 11, Mr. Gausman -- of his
10 December rebuttal, Mr. Gausman explained that once
11 a company has achieved a level of reliability, it
12 is required to spend significant O&M dollars
13 solely to maintain the level of reliability that
14 has already been achieved.

15 In other words, as reliability
16 performance improves, a company must continue to
17 incur costs, e.g. O&M dollars, to ensure that the
18 reliability improvements achieved are not lost,
19 even if overall performance does not improve
20 current levels (sic), unquote.

21 And continuing on the next page,
22 Mr. Gausman explained that another relevant factor

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1 is that performance improvements are -- is -- that
2 as performance improvements are achieved on
3 specific feeders, the reliability-related spending
4 produces smaller incremental improvements in
5 overall system reliability. In order to maintain
6 the reliability performance already achieved but
7 also to comply with the Commission's 9 percent
8 annual improvement in SAIDI, it would be necessary
9 to make additional capital and O&M expenditures
10 beyond those included in the existing budget.

11 Again, I'm not here to argue the merits
12 of that position, but I think, in considering the
13 effect of the supplemental rebuttal testimony, if
14 it were to be admitted, on the current state of
15 the record, it creates confusion. In particular,
16 the supplemental rebuttal testimony appears to be
17 stating that the joint applicants can, in fact,
18 provide a level of reliability without increasing
19 budgets when the rebuttal testimony filed just
20 months before stated that absolutely the existing
21 budgets would need to be increased.

22 And I would submit that the issue is a

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1 little bit more complicated than simply updating
2 figures. It's actually a change in position, and
3 without further process, it's not clear what the
4 basis for that change in position is.

5 If the Commission were to determine that
6 the supplemental rebuttal testimony is admissible
7 and allow the joint applicants to essentially walk
8 away from the prior statements about the need to
9 increase budgets, there would certainly be
10 credibility and weight issues that would need to
11 be addressed. Again, I'm not here to address
12 those today, but those factual questions are the
13 types of issues that it would be necessary to
14 explore in discovery and potentially through
15 sur-rebuttal testimony.

16 In addition to capital and O&M
17 expenditures and the need to increase those
18 expenditures, the joint applicants have also cited
19 best practices in Exelon's management model as two
20 other factors that can improve reliability. In
21 Mr. O'Brien's rebuttal testimony from December,
22 specifically from pages 5 to 8, he states that

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1 best practices cannot be identified until after
2 the merger is consummated, and obviously Exelon's
3 management model cannot be implemented until after
4 the merger is consummated.

5 So just like the reliability budget
6 issues for capital and O&M, there's material
7 issues of fact or questions of fact that we would
8 need to explore through discovery as to what has
9 changed to allow the joint applicants to make
10 these revised commitments, given that no best
11 practices have been identified as of yet and the
12 management model has not been implemented.

13 So to conclude on this first issue of
14 whether the Commission should grant the motion as
15 to the revised reliability commitments, again,
16 OPC's view is that the Commission should not
17 consider addressing issue 6A without also
18 addressing issue 6B at the same time. To grant
19 the motion without the understanding that there
20 would not be additional process we think would
21 create just that -- due process concerns that may
22 not be overcomeable.

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1 At a bare minimum, OPC submits that
2 discovery is needed to restore OPC and the other
3 parties to the position they would have been in
4 had these changes been filed in the December
5 rebuttal. Discovery is also needed to determine
6 what facts have changed in the last two months
7 that allow the joint applicants to make the
8 revised reliability commitments.

9 And then, finally, I would note, just as
10 an overarching issue, that granting the motion
11 without allowing discovery would seem to encourage
12 the type of late submissions and substantial
13 changes late in the process that we understand
14 this hearing is designed to avoid.

15 Turning to the separate issue of whether
16 the Commission should grant the motion as to the
17 New Jersey settlement, we see that as a slightly
18 different issue than the revised reliability
19 commitments. As I stated, our understanding is
20 that the New Jersey settlement is not being
21 proposed as a firm commitment to actually make any
22 change to the merger commitments that have been

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1 filed, but rather to give the parties an idea of
2 the framework that was used to settle in another
3 jurisdiction and to attempt to overlay that
4 settlement onto the District of Columbia to show
5 what the value of that settlement would be if it
6 were to be applied in the District.

7 In other words, that settlement is not
8 necessarily relevant to any issue in this
9 litigation; rather, it's particularly relevant to
10 settlement, in the settlement phase, but if it
11 does not modify any prior commitment or if it does
12 not, on its own, constitute a firm commitment,
13 it's not clear what exactly it would be evidence
14 of.

15 And I note -- I believe Mr. Lorenzo, in
16 his opening statement, discussed the
17 cross-examination in Maryland of Exelon's CEO
18 Mr. Crane on this issue, and I have a slightly
19 different take of that cross-examination. It
20 was -- I don't think it was necessarily
21 streamlined. I think it could potentially confuse
22 the issues.

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1 One of Mr. Crane's common responses was
2 that, indeed, the settlement was not being
3 provided as a change to any merger commitment, but
4 was a settlement framework that the company would
5 consider, and that he was not there to negotiate
6 on the stand. And I don't think either of those
7 positions are reasonable. Like Mr. Crane, OPC is
8 not interested in negotiating during the
9 litigation stage of this proceeding. There's a
10 time and place for settlement, and the framework
11 that the joint applicants have presented could
12 certainly result in, I think, productive
13 settlement discussions if we were to go down that
14 road.

15 But to put the settlement before the
16 Commission in the litigation phase and then also
17 take the position that it's not actually revising
18 any merger commitment seems to put the parties at
19 an unfair advantage -- OPC and the intervenors,
20 excuse me, at an unfair advantage because the
21 joint applicants would have the benefit of being
22 able to cite to the settlement to make their

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1 proposal look more reasonable, but then avoid
2 questions about the settlement because it's not
3 actually in the case as evidence of a merger
4 commitment.

5 So OPC strongly believes that, for that
6 reason, since it's not being provided or appears
7 to not be provided as a revision to any particular
8 testimony or merger commitment, that the New
9 Jersey settlement has no place in the litigation
10 phase and should be -- the Commission should
11 direct the parties to consider that settlement
12 structure in the settlement phase.

13 Just one second, Your Honor. Thank you.

14 Before I close, I would just like to make
15 one brief comment as to timing of the filing. At
16 its heart, it obviously is a timing issue.
17 Assuming, for the sake of argument, that the
18 February 4th filing does constitute an
19 improvement, and I don't think there's any
20 disagreement that the parties, at least in -- or
21 excuse me -- the joint applicants at least
22 intended to address OPC's concern; whether they

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1 did or not is a different question.

2 But without addressing that intent or the
3 merits of the proposals, it really places the
4 filing -- or, excuse me -- it places the parties
5 at an unfair advantage in relation to the other
6 options that were available. And I would cite
7 three particular objective facts that make that
8 point rather than get into intent.

9 One objective fact is that the New Jersey
10 settlement was filed with the New Jersey Board of
11 Public Utilities on January 14th. And on that
12 same day the joint applicants in Maryland filed
13 basically an FYI, for your information, filing
14 with the Maryland commission, letting them know
15 that the filing had been -- or that the settlement
16 had been filed in New Jersey. There was not a
17 similar filing here in the District.

18 Second point is I would note that the --
19 in the Maryland proceeding, the joint applicants
20 filed rejoinder testimony on January 26th, the
21 first day of that hearing, fairly similar to what
22 the supplemental rebuttal testimony looks like in

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1 the District, noting the settlement framework that
2 the parties -- that the joint applicants would
3 consider in Maryland. And OPC is not aware of
4 anything that would have stopped the joint
5 applicants from making a similar filing at that
6 time, January 26th, in the District.

7 And then, finally, I would cite to the
8 third and final kind of objective fact, is the
9 transcript of the Maryland proceeding. On
10 cross-examination, Exelon's CEO was asked about
11 when the decision was made to make -- to attempt
12 to overlay the New Jersey settlement on some of
13 the other jurisdictions. And I have copies of
14 these two pages of the transcript if the
15 Commission and the parties would like. But
16 essentially the question was, quote, when did
17 Exelon make the decision to do this, to advance
18 this proposal in your rejoinder testimony?

19 And the answer is, quote, when we reached
20 negotiated settlement in New Jersey, we looked at
21 what the equivalent contribution would be made to
22 the customer investment fund for the proportional

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1 customer base here in Maryland and determined it
2 would best be offered at that point.

3 So clearly, at the time the New Jersey
4 settlement was reached in mid-January, there was
5 at least an idea that that framework from New
6 Jersey, at least to the customer investment fund
7 and possibly the ring-fencing provisions, would
8 have to be applied to the other jurisdictions.

9 So with that, Your Honor, I would close.
10 And just to recap, I would say clearly the
11 Commission has a full array of options, procedural
12 options, available. It can deny the motion and
13 avoid due process concerns. It can consider
14 granting the motion and mitigate the due process
15 concerns.

16 If the Commission is inclined to grant
17 the motion, OPC submits that it must not do so
18 without attempting to mitigate those due process
19 concerns. In particular, it should grant parties
20 discovery rights to test the basis for the changes
21 in the supplemental rebuttal testimony. And the
22 Commission should not foreclose the opportunity

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1 for parties to file either live or written
2 sur-rebuttal testimony to address not only the
3 changes, but the inherent conflict that OPC
4 perceives with respect to prior positions and now
5 the new position. Thank you.

6 CHAIRMAN KANE: Thank you, Mr. Gray.

7 Ms. Francis.

8 MS. FRANCIS: Thank you, Your Honor.

9 AOBA believes that the joint applicants have
10 submitted substantive changes to their merger
11 application two business days prior to
12 beginning -- I'll start over.

13 AOBA believes that the joint applicants
14 have submitted substantive changes to their merger
15 application two business days prior to the
16 beginning of evidentiary hearings. The
17 supplemental rebuttal testimony submitted by the
18 joint applicants on February 4th comprises
19 fundamental and material changes to the joint
20 applicants' merger application.

21 AOBA submits that due diligence requires
22 us to determine whether the joint applicants'

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1 late-filed amendments and revisions to their
2 merger application serves the public interest when
3 assessed against the Commission's seven public
4 interest factors. This cannot be accomplished
5 without adherence to reasonable due process.

6 If the joint applicants had included the
7 information and new positions in their scheduled
8 rebuttal testimony in this proceeding, the parties
9 would have been provided time for discovery on
10 such testimony and time for the preparation of
11 materials and questions for evidentiary hearings.
12 The joint applicants did not do so. Thus, AOBA
13 submits that the documents the joint applicants
14 characterize as supplemental rebuttal testimony do
15 not constitute timely or appropriate rebuttal to
16 the positions of the other parties.

17 The joint applicants have had more than
18 ample opportunity to respond to the positions of
19 other parties, all of which were filed on
20 November 3rd, more than three months before the
21 joint applicants' February 4th submission of the
22 supplemental rebuttal testimony. Yet, the joint

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1 applicants offered no demonstration that other
2 parties have altered the positions presented in
3 their November 3rd testimony, amended their
4 positions, or offered new information or positions
5 for the record in a manner that could not have
6 been addressed in the joint applicants'
7 December 17th rebuttal testimony.

8 Thus, the new testimony submitted by the
9 joint applicants cannot be properly characterized
10 as rebuttal testimony. To the extent that the
11 joint applicants seek an opportunity to address
12 the potential influence of their merger settlement
13 in New Jersey for consideration in this case, AOBA
14 is not necessarily opposed to the Commission's
15 consideration of the new information and new
16 positions from the joint applicants if such
17 positions and information are presented in an
18 appropriate context and if other parties are
19 provided a reasonable opportunity to understand
20 and address the implication of such new
21 information and new positions.

22 However, a fair and orderly consideration

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1 of such new information and positions cannot
2 result when additional testimony is submitted just
3 two days before evidentiary hearings are to begin.
4 If this Commission is inclined to allow
5 consideration of the additional testimony from the
6 joint applicants at this point in the proceeding,
7 then AOBA submits that the testimony the joint
8 applicants submitted must be reformed and
9 presented as affirmative proposals, not
10 negotiation positions that are only relevant
11 outside of the evidentiary process.

12 Furthermore, in order for AOBA and other
13 intervenor parties to meet their fiduciary
14 responsibilities to their clients, the intervenors
15 must not be unduly constrained in their efforts to
16 respond to the joint applicants' late filing of
17 new information and new positions. Therefore,
18 AOBA respectfully submits that the intervenors
19 must be provided the opportunity to fully
20 investigate any information and/or new amended
21 proposals that the joint applicants include in
22 additional supplemental testimony.

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1 In its efforts to address the rest of the
2 issues, particularly the time required by the
3 intervenors to address additional supplemental
4 testimony, the Commission should allow a
5 reasonable time for the intervenors to conduct
6 discovery on newly filed information, review and
7 analyze discovery responses, compare the
8 information obtained through discovery with
9 information previously provided by the joint
10 applicants, identify cross-examination exhibits,
11 and prepare additional revised cross-examination
12 questions, supplement exhibits for hearings, and
13 prepare and present either written or oral
14 rejoinder testimony.

15 Although AOBA supports reasonable efforts
16 to expedite this process, the rights of the other
17 parties must not be sacrificed due to untimely
18 efforts by the joint applicants to amend or
19 supplement their positions. AOBA submits that a
20 decision to allow additional testimony at this
21 point in the proceeding without appropriate
22 allowances for discovery, analysis and response by

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1 the intervenors would be unduly burdensome and
2 prejudicial to their procedural and substantive
3 due process rights.

4 AOBA sees four options for the Commission
5 to address the current situation. Option 1, the
6 Commission grants the joint applicants'
7 February 4th motion, but provides the parties
8 reasonable time to conduct discovery, to examine
9 and analyze the responses, to compare that
10 information to information previously provided, to
11 prepare revised cross-examination, and identify
12 hearing exhibits to supplement exhibit lists for
13 hearings and to prepare and provide written or
14 oral rejoinder. In addition, the Commission
15 reschedules hearings to accommodate intervenor
16 requirements, to prepare for cross-examination on
17 the late-filed testimony, as well as present
18 rejoinder testimony.

19 AOBA submits that allowance of the joint
20 applicants' purported supplemental rebuttal
21 testimony without providing intervenors reasonable
22 time to address it would be burdensome and would

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1 be prejudicial to our procedural and substantive
2 due process rights.

3 Option 2, the Commission denies in part
4 and grants in part the joint applicants' motion.
5 The Commission find that the testimony submitted
6 on February 4th is not appropriately characterized
7 as rebuttal. However, the Commission allows the
8 joint applicants to file additional testimony to
9 address new or revised affirmative proposals from
10 the joint applicants within the evidentiary record
11 subject to the following: A requirement that such
12 testimony be reformed to exclude references to
13 proposals that the joint applicants would only
14 consider within the context of settlement
15 discussions and amendment of the hearing schedule
16 to allow for discovery on any new supplemental
17 testimony that the joint applicants choose to
18 submit, an opportunity for intervenors to fully
19 understand the implications of such testimony and
20 address its content through cross-examination and
21 presentation of rejoinder.

22 AOBA submits that, under the second

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1 option, we would need similar safeguards as I
2 discussed before: Discovery requests on reformed
3 testimony. The joint applicants would be provided
4 time to respond. The hearing schedule would be
5 amended to provide intervenors time for receiving
6 discovery, analyzing discovery, identifying
7 additional hearing exhibits, preparing cross and
8 preparing rejoinder.

9 Third option, the Commission denies the
10 joint applicants' February 4th motion and we begin
11 hearings as soon as practical following as closely
12 as possible the order of witnesses agreed upon by
13 the parties.

14 Option 4, the Commission could terminate
15 this proceeding without prejudice to the joint
16 applicants refiling a merger application. Under
17 the circumstances, AOBA submits that option 3 is
18 the least disruptive to the procedural schedule
19 previously established by the Commission.

20 However, option 2 under which the Commission
21 denies in part and grants in part the joint
22 applicants' motion provides for the most complete

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1 and well-developed record to aid the Commission's
2 determinations in this proceeding.

3 AOBA submits that option 1 suffers from
4 the fact that it allows the joint applicants to
5 move forward with testimony regarding positions
6 that it is only willing to consider in the context
7 of a settlement. AOBA believes that both the
8 Commission and the intervenors will find efforts
9 to deal with such positions within an -- excuse
10 me -- within an evidentiary record time-consuming
11 and also unproductive.

12 To exemplify AOBA's concerns, AOBA cites
13 an exchange between counsel for AOBA and the joint
14 applicants' witness Crane in the recent hearings
15 before the Maryland Public Service Commission
16 case 9361. Mrs. Francis inquired: I'd like to
17 look at page 3, lines 3 through 14 of your
18 rejoinder testimony where, as you mentioned
19 before, you discuss the New Jersey settlement and
20 indicate that you're willing to discuss a new
21 package of direct customer benefits for Maryland
22 which would include an \$84 million customer

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1 investment fund, plus an investment of
2 approximately \$10 million in energy efficiency
3 initiatives. Is this a new offering by the joint
4 applicants or is it a hypothetical that is
5 presented for discussion for settlement purpose
6 only?

7 Mr. Crane responded: It is the
8 hypothetical to go into settlement discussions, as
9 I said previously. End quote.

10 AOBA also raises concerns regarding the
11 burdens that can be imposed on intervenors when
12 the joint applicants depart from established
13 schedules and procedures. AOBA observes, for
14 example, that the parties were originally required
15 by the Commission orders 17790 and 17799 to have
16 all exhibits for witnesses for the first two days
17 of hearings filed on February 6th by 2:00 p.m.

18 Among the witnesses scheduled for
19 hearings to begin today was the joint applicants'
20 witness Crane, who was to be cross-examined on his
21 direct, rebuttal, and now supplemental rebuttal on
22 the first day of hearings. It would be burdensome

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1 and prejudicial to have the parties to have to
2 determine what exhibits would have to be filed on
3 February 6th in light of the joint applicants'
4 late filing.

5 The exhibits to be filed for witness
6 Crane in response to the supplemental testimony
7 clearly could not have been filed on February 6th,
8 let alone this week, because frequently exhibits
9 are based upon information included in data
10 responses, and there's been no procedural
11 opportunity for data requests on this new
12 supplemental filing. Furthermore,
13 cross-examination is prepared with the information
14 provided not only in filed testimony, but also
15 based on the information included in data
16 responses.

17 Clearly, the joint applicants knew at the
18 time that they filed their January 20th opposition
19 to AOBA's motion to revise the procedural schedule
20 and add additional dates that it was premature,
21 that the joint applicants would be filing their
22 February 4th motion and request to file

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1 supplemental rebuttal.

2 With notice to the parties at that time
3 that a revised merger agreement and supplemental
4 rebuttal would be forthcoming, a more realistic
5 schedule could have been discussed with the
6 parties and presented to the Commission in a more
7 timely manner. As described in AOBA's opposition
8 and request for alternative relief, the process it
9 proposes which provides for hearings to commence
10 on or after March 9th is procedurally and
11 substantively reasonable. However, we will
12 discuss dates with the Commission at the
13 appropriate time.

14 As AOBA's opposition to the joint filing
15 reiterates, the Commission has placed an emphasis
16 in prior orders for the need to conduct a
17 comprehensive review of the complex issues that
18 arise from the proposed merger and judge whether
19 the joint applicants' request is in the public
20 interest when addressed in response to the
21 Commission's seven designated public interest
22 factors.

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1 This merger proceeding is a major
2 one-time event that could have long-lasting
3 implications for the future of PEPCO's electric
4 systems in the District. We don't want to
5 prejudice this process, emphasizing haste over
6 substance.

7 The supplemental rebuttal testimony
8 proffered by the joint applicants addressed
9 several major issues under review: The joint
10 applicants' financial commitment to the customer
11 investment fund, the scope of ring-fencing
12 commitments, affiliated transaction issues, tax
13 indemnity provisions, and the reliability of
14 performance metrics, capital expenditure
15 obligations.

16 AOBA submits that these are the core
17 issues that are fundamentally and materially
18 changed by the recent filing.

19 Furthermore, the joint applicants' filing
20 substantially and materially revises their
21 position based on the joint applicants'
22 recommendation that the New Jersey settlement

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1 value and framework be adopted to settle all
2 issues in this proceeding. Also, the joint
3 applicants' reliability commitment has been
4 revised, as has been their tax indemnity provision
5 and ring-fencing provisions.

6 AOBA submits that the supplemental
7 rebuttal of the joint applicants' four witnesses
8 requires a thorough review to determine if they
9 satisfy the Commission's seven public interest
10 factors.

11 First, witness Crane. He now sponsors
12 the New Jersey settlement as an alternative and as
13 a complete resolution of the issues. The New
14 Jersey merger was filed with the New Jersey board
15 on January 14th, and filed on that same day with
16 the Maryland commission. Witness Crane's
17 supplemental rebuttal also includes a public offer
18 of settlement, seemingly based on the New Jersey
19 agreement. Witness Crane's supplemental rebuttal
20 now dates at page 2, We would not object if the
21 Commission were to apply the value and framework
22 of the settlement package from New Jersey to a

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1 complete resolution of the issues raised in the
2 District of Columbia.

3 Your Honors, that statement in and of
4 itself raises so many questions. What does it
5 mean? Object to who? Object to the Commission?
6 Object to the parties? Does it mean the joint
7 applicants won't file for reconsideration if the
8 D.C. Commission adopts the New Jersey settlement
9 for the District of Columbia in a final order? Is
10 the New Jersey settlement even applicable to the
11 District of Columbia? And if so, how? If not,
12 why not?

13 Witness Crane continues his supplemental
14 rebuttal by stating, The New Jersey settlement is
15 offered in an effort to address the concerns
16 raised by OPC witness Dismukes and others that the
17 CIF as originally proposed was insufficient.

18 It must be noted that OPC witnesses, as
19 well as AOBA witnesses as well as other witnesses,
20 submitted their proposals and -- as well as their
21 concerns regarding the CIF in testimony filed on
22 November 3rd, and the joint applicants filed their

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1 rebuttal, as the Commission knows, on
2 December 17th.

3 Witness Crane continues his supplemental
4 rebuttal by discussing the three other witness:
5 Witness Khouzami, who discusses how to apply the
6 value and framework from the New Jersey settlement
7 to a complete resolution of the issues including
8 the increased CIF and, quote, more detailed
9 ring-fencing and affiliate transaction provisions,
10 end quote.

11 Witness Khouzami also testifies regarding
12 the tax indemnity provisions committed to by the
13 joint applicants in the Maryland proceeding. Are
14 these more detailed ring-fencing and affiliate
15 transaction measures proposed or are they
16 hypothetical too? I don't know the answer to that
17 question.

18 AOBA submits that it is confusing in and
19 of itself to try to decipher exactly what the
20 joint applicants are actually now committing to in
21 the District. The parties to this proceeding now
22 must try to analyze different and purportedly more

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1 detailed ring-fencing provisions than previously
2 provided. That's going to take analysis.

3 Next, we have witness Gausman who
4 submitted revised testimony on the
5 reliability-related capital and operations and
6 maintenance spending levels within which the joint
7 applicants commit to meeting the reliability
8 performance metrics set forth in witness Alden's
9 testimony.

10 It certainly goes without saying that
11 we're all interested in the spending levels of the
12 revised reliability commitments that are being
13 made, but are there actually any real commitments
14 being made at all? Witness Gausman's new
15 reliability commitment with respect to reliability
16 spending seems to be subject to -- I'll call it a
17 regulatory out-clause which states, The joint
18 applicants are committed to achieving the
19 reliability standards set forth in the testimony
20 of joint applicant witness Alden without exceeding
21 the aggregate capital and O&M spending levels list
22 in above table 1 absent change in law, regulation,

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1 or extreme weather events requiring increases in
2 reliability-related spending to restore service or
3 variations in the schedule of the D.C.
4 undergrounding project.

5 The joint applicants have also submitted
6 the supplemental rebuttal testimony of witness
7 Mark Alden who has changed the reliability
8 commitment of the joint applicants. Clearly,
9 witness Alden and the joint applicants could have
10 revised their reliability commitments certainly
11 without a New Jersey settlement agreement. In
12 fact, the joint applicants state in their motion
13 at pages 1 and 2, In response to concerns raised
14 in the testimony of witnesses appearing on behalf
15 of OPC and others regarding reliability
16 performance commitments included in the joint
17 application, the joint applicants have reviewed
18 the reliability performance commitment for 2018
19 through 2020.

20 Obviously, Your Honors, this revision
21 could have been done much sooner than
22 February 4th. Earlier submission of this revision

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1 would have provided the parties with the
2 opportunity to investigate in a timely manner.

3 As the Commission can readily see,
4 there's an awful lot here to analyze and examine.
5 AOBA submits that if, in fact, the joint
6 applicants' recent filing was acceptable to the
7 parties in this proceeding today, today's
8 proceedings before the Commission would be a
9 proceeding in which testimony in support of the
10 joint applicants' proffered complete resolution of
11 the issues would be provided as opposed to oral
12 arguments in opposition.

13 In summary, the joint applicants, through
14 witness Crane, are sponsoring the New Jersey
15 merger settlement as an alternative to the
16 companies' litigated positions by asserting that
17 it serves as a framework for the resolution of the
18 issues. In addition, the other witnesses in the
19 joint applicants' February 4th motion support
20 various aspects of the companies' revised merger
21 alternative.

22 Neither the Commission nor any party in

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1 this proceeding can reasonably be expected to make
2 a determination as to whether the joint
3 applicants' original application or their
4 February 4th alternative revised filing serves the
5 public interest without the due process requested
6 by AOBA. We must be able to determine the
7 relationship of the new testimony to what has
8 already been filed.

9 AOBA submits that the parties are now
10 placed in the untenable position of negotiating
11 publicly a settlement in a litigated proceeding
12 and to do so under burdensome and prejudicial
13 conditions. Your Honors, we respectfully request
14 that the Commission reject this unreasonable
15 juxtaposition in which the joint applicants have
16 placed the Commission as well as the parties. We
17 respectfully request the Commission grant the
18 relief sought by AOBA in our February 4th
19 opposition.

20 As I stated before, this is a major
21 one-time event and, when it's done, it's done. We
22 may do frequent rate cases, but those proceedings

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1 will be litigated under the parameters of what we
2 decide in this case. The parties must be afforded
3 all procedural and substantive due process rights
4 to ensure that the public interest is served. We
5 must get this right.

6 Your Honors, I sincerely want to thank
7 the Commission for holding this procedural hearing
8 today. We appreciate it. I say thank you on
9 behalf of AOBA.

10 CHAIRMAN KANE: Thank you, Ms. Francis.

11 D.C. Government. Mr. Coyle.

12 MR. COYLE: Thank you, Chair Kane,
13 commissioners. I don't have a great deal to add
14 to Ms. Francis' presentation, and I'll certainly
15 be a lot shorter. You have a very weighty
16 decision awaiting you when you get the record in
17 this case. You've had two mergers before you
18 previously. If you approve this one, it will
19 pretty certainly be the last one that ever comes
20 before you. The importance of getting it right is
21 difficult to overstate.

22 The joint applicants' February 4th filing

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1 is not, with all due respect to my friend
2 Mr. Lorenzo, really a clarification of the joint
3 applicants' positions. It's really pretty
4 difficult to tell what it is. Perhaps Ms. Francis
5 and Mr. Crane had it about right in Maryland.
6 It's a hypothetical.

7 As to that, I would offer two aphorisms
8 from Samuel Johnson. The first is marry in haste;
9 repent in leisure. The timing of the submission
10 of this proposal is not accidental. It is a
11 disruptive act, requiring the parties to adjust
12 their strategies to something new at the 11th hour
13 and 59th minute.

14 Our primary objection is to the timing.
15 If you're going to let it in, then you must
16 provide the parties with additional time to digest
17 the supplemental rebuttal, or whatever you want to
18 call it, and to adjust their evidentiary
19 presentations, including cross-examination, in
20 response.

21 The second aphorism from Dr. Johnson that
22 I want to offer today originated as a comment on a

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1 young playwright's premiere as to which Johnson
2 stated, there's much in it that is both original
3 and good. Unfortunately, the part that is good is
4 not original and the part that is original is not
5 good.

6 One could say the same thing about the
7 rebuttal testimony. Not that a party in this or
8 any other proceeding isn't entitled to make an
9 offer of settlement, if that's what they want to
10 do. The real issue is whether that party is
11 entitled to repackage its concessions as, in
12 effect, a new proposal to the Commission and the
13 intervenors within three working days of the start
14 of the hearing.

15 We believe there's less to the new
16 proposal than meets the eye, but to be able to
17 advance that proposition credibly, the District
18 Government and other parties will need time to
19 sort out the real changes from the repackaging and
20 to make an intelligent presentation to the
21 Commission. I thank you.

22 CHAIRMAN KANE: Thank you.

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1 Mr. Speck.

2 MR. SPECK: Thank you, Your Honor. I'll
3 be very brief. We generally -- DC SUN generally
4 supports OPC and AOBA in the arguments that
5 they've made. I think they've made them very
6 cogently. We'd just make a couple of additional
7 point or emphasize a couple of additional things.

8 First, with regard to the Commission's
9 order in paragraph 6A and its direction to the
10 companies to describe all the changes made to
11 their previously filed testimony, that may be the
12 heart of the problem here because Mr. Lorenzo was
13 really unable to do that today. He said that the
14 new supplemental testimony will be stand-alone and
15 that if there are contradictions between that new
16 supplemental testimony and the previously filed
17 testimony, it's for the parties to figure out
18 where those contradictions are, and then the
19 supplemental testimony will prevail.

20 I submit that that's not really our job.
21 That should be their job to tell us where there
22 are contradictions and then to identify those and

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1 let the parties then examine the testimony as it's
2 finally presented by the company. And the
3 Commission, I think, will have a better idea then
4 on what really is in the record at that point.
5 And Mr. Lorenzo really hasn't done that to this
6 point.

7 The second point I'd make -- and this is,
8 I think, important for all of us -- is that if
9 these are new -- if this is new, material
10 information that the company is submitting in its
11 supplemental testimony, I think it behooves the
12 Commission and the parties to try to let that new,
13 material information into the record. As all of
14 the parties have talked thus far, this is an
15 important proceeding, and we ought to get it
16 right. And to do that, we ought to have all of
17 the new material information in the record.

18 If that means that we have to change the
19 schedule, so be it. The schedule is not
20 immutable, and if there is a way that we can
21 accommodate this new information and give all the
22 parties their due process rights, then that should

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1 happen.

2 Now, I will also mention that because we
3 don't know exactly what testimony is being revised
4 or modified from the previous filings, it's a
5 little difficult for DC SUN to pinpoint this, but
6 it does appear to us that none of the new
7 concessions affect what is our biggest concern,
8 and that is public interest factor 7.

9 And apparently there's really nothing
10 here that changes anything with regard to
11 environmental protections in the District. And we
12 want to make sure of that, we want to see if
13 there's anything in there that we've missed, and
14 we think it's the company's obligation to advise
15 us of that if there's been something that they've
16 modified and changed. But to this point, it
17 doesn't appear that they have.

18 So in sum, we would support OPC and
19 AOBA's position, and I think probably Ms. Francis'
20 option 2 with granting in part and denying in part
21 the company's motion is probably the best way to
22 proceed in a way that will give all the parties

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1 all of their rights and permit the record to be as
2 complete as possible. Thank you, Your Honors.

3 CHAIRMAN KANE: Thank you.

4 D.C. Water.

5 MS. WHITE: Thank you, Madam Chair. I
6 don't have much to add in the way of substantive
7 response to PEPCO's motion. My -- counsel for OPC
8 and AOBA have ably argued the case, I believe. I
9 would like to just make two clarifications with
10 respect to a couple of comments that Mr. Lorenzo
11 made.

12 First, the fact that AOBA had the
13 settlement and was able to cross Mr. Crane in the
14 Maryland commission is neither here nor there for
15 purposes of whether that settlement and that
16 supplemental testimony should come in here. The
17 parties to this case are not necessarily all
18 participating in the Maryland proceeding.
19 D.C. Water, for example, is not in the Maryland
20 case. We've had no opportunity to give
21 substantive consideration to the supplemental
22 testimony, obviously, no opportunity to conduct

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1 discover on it.

2 That leads me to my second point.

3 Mr. Lorenzo was suggesting, I believe, that when
4 PEPCO -- the joint applicants decided that they
5 would not oppose OPC's request for, at a minimum,
6 a two-day delay in the hearing, that it was the
7 joint applicants' thinking that that delay,
8 coupled with the schedule of witnesses, would
9 provide some kind of a window for the parties in
10 this case to conduct discovery on the additional
11 testimony. That's the first I've heard about any
12 opportunity to conduct discovery.

13 But that's not workable. It puts the
14 matters in the untenable position of trying to
15 prepare for, present their cross-examination at
16 the same time they're trying to conduct discovery
17 on testimony.

18 In sum, D.C. Water strongly supports
19 AOBA's option 2 and thanks the Commission for the
20 opportunity to discuss these important procedural
21 issues today.

22 CHAIRMAN KANE: Grid 2.0. Mr. Rories.

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1 MR. RORIES: Your Honor and fellow
2 commissioners, thank you for holding this
3 proceeding today. Grid 2 supports the positions
4 that have been so well-presented by the
5 intervenors since the party has spoken. Grid 2
6 would not oppose granting the joint applicants'
7 motion only if the parties are provided with
8 adequate time to prepare discovery and to consider
9 the issues raised by the supplemental rebuttal.

10 And we believe that to create the most
11 accurate and complete record of the testimonies in
12 this important proceeding, that the parties must
13 be provided with the opportunity to provide
14 sur-rebuttal testimony to both the joint
15 applicants' direct rebuttal and the supplemental
16 rebuttal testimonies. Thank you again.

17 CHAIRMAN KANE: Thank you.

18 MR. FINKELSTEIN: Chairman and
19 commissioners, I will keep it brief and endorse
20 what --

21 CHAIRMAN KANE: Identify yourself for the
22 stenographer.

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1 MR. FINKELSTEIN: This is Ben Finkelstein
2 for MAREC. I will keep it very brief and endorse
3 the positions and the statements from OPC, AOBA
4 and the other parties who support them, with great
5 emphasis on appreciation to you for -- to the
6 Commission for holding this hearing and allowing
7 us to put our concerns on the table. Thank you.

8 CHAIRMAN KANE: Thank you. And National
9 Consumer Law Center?

10 MS. WEIN: Thank you, Commissioners.
11 National Consumer Law Center/National Housing
12 Trust is supportive of the arguments laid out by
13 OPC and AOBA, and our support of AOBA's option
14 number 2. And just as a clarification, we did
15 appear in the footnote of the OPC, not in terms of
16 a substantive objection; it was a concern that two
17 days was not enough to remedy the situation,
18 especially in light of the timing with the
19 Maryland hearing which we're also involved in. So
20 two days would have made it worse for us in
21 particular, but in the larger context, would not
22 have remedied the situation as laid out by

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1 counsel. Thank you.

2 CHAIRMAN KANE: Thank you. I note we
3 have other intervenors who do not appear to be --
4 and I'm just going to be sure. Is anybody here
5 from federal GSA? From the Maryland/Virginia
6 Solar Energy Industry Association? From
7 Monitoring Analytics? Or from NRG Energy?

8 We have not heard from them. I believe
9 either -- check with counsel. Any filings from
10 any of those? No, we have not, just to make the
11 record clear.

12 All right. Questions from the
13 commissioners? Commissioner Fort?

14 COMMISSIONER FORT: This is for
15 Mr. Lorenzo for the joint applicants. You didn't
16 speak to why the reliability changes were made at
17 the time that they were made, why that couldn't
18 have been done at an earlier period in time.

19 MR. LORENZO: Yes, Your Honor. In
20 effect, it took a month to analyze the data from
21 the 2014 period and for the joint applicants, for
22 Mr. Gausman and Mr. Alden, to become reasonably

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1 certain -- the joint applicants do not want to
2 make a commitment to this Commission if it
3 doesn't -- if they do not have the reasonable
4 possibility that the -- they could fulfill that
5 commitment. And it wasn't until very recently
6 that the company determined that there was a
7 reasonable possibility that we could meet the EQSS
8 standards.

9 I mean, if -- it would have been so easy
10 to say that in December, but there wasn't -- we
11 didn't have either the analysis, nor the
12 pencil-sharpening done by that time in order to
13 make that commitment and believe it ourselves.

14 And what happened is, since the 2014
15 numbers came out and since the company has
16 analyzed them, the engineering folks in the
17 company have analyzed those things, is where we
18 came to the conclusion that we could -- it's going
19 to take hard work, and they have to move some
20 things around, but they're going to do it by 2020
21 to meet the EQSS within the budget.

22 And, you know, if we could have said it

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1 earlier, I -- believe me, I think we would have
2 said it earlier in order to comply or to address
3 OPC's concerns.

4 COMMISSIONER FORT: Well, then, this goes
5 to the issue that a number of the counsel have
6 raised: What additional testimony that the joint
7 applicants have filed would be changed as a result
8 of this new conclusion? Just, you know, by
9 example, both for the reliability conclusion and
10 as to the commitments that the joint applicants
11 are making. And those commitments are
12 specifically identified in Mr. Crane's
13 supplemental 3A and exhibit. I notice that was
14 not changed.

15 MR. LORENZO: Yes, Your Honor. I think
16 the -- what changed, first going to the
17 reliability, we would revise Mr. Alden's table on
18 the reliability commitment, as we revised it in
19 the supplemental direct testimony, the
20 supplemental rebuttal testimony -- I'm so used to
21 supplemental direct before this proceeding, I keep
22 getting it wrong -- the supplemental rebuttal

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1 testimony in this proceeding. The table in
2 Mr. Alden's supplemental rebuttal would replace
3 the table in Mr. Alden's direct testimony here,
4 with the new updated numbers for that.

5 As far as ring-fencing, affiliate
6 transaction rules and the tax indemnification, the
7 new ring-fencing provisions, as stated in the New
8 Jersey settlement, would be put in as -- these are
9 real commitments to put in the more detailed
10 ring-fencing and affiliate transaction provisions
11 from the New Jersey -- the New Jersey settlement
12 into our ring -- as a substitute for our
13 ring-fencing provisions that we previously put
14 forth.

15 Again, we don't think there's a -- there
16 are more detailed than granular, and they have to
17 be adapted slightly to replace ACE with PEPCO, but
18 we would be committing to put those into effect,
19 those three substitutions.

20 COMMISSIONER FORT: Have the joint
21 applicants looked at all of the testimony to see
22 whether or not there is additional testimony that

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1 would need to be changed? For example, just take
2 the example that AOBA counsel identified in
3 Mr. Gausman's testimony where, in prefiled
4 testimony, you've told us why you could not do the
5 EQSS. Wouldn't that need to be changed,
6 particularly -- in order to have an accurate
7 record before the Commission at the time that we
8 started or to eliminate the necessity of counsel
9 conducting cross to make sure that that testimony
10 is not still in the record that's being proposed?

11 MR. LORENZO: The testimony that
12 Mr. Gausman put in in his rebuttal testimony on
13 the difficulty as seen from December 2014 in
14 meeting the Commission's EQSS standard I think
15 stands on its own at that point in time. It shows
16 the difficulty in doing it and how the -- how the
17 joint applicants, subsequent to that time, have
18 striven to surmount that difficulty.

19 The difficulties expressed by Mr. Gausman
20 in 2000 still exist, but the joint applicants feel
21 comfortable enough that they could overcome those
22 difficulties, and I think I've relayed to the

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1 Commission just how hard they're striving to meet
2 the companies' standard without going over the
3 budget that's out there.

4 So I'm not sure that that needs to be
5 revised. It's still a statement of the difficulty
6 in meeting -- it still could be used to
7 demonstrate the difficulty in meeting the EQSS
8 standard within the budgetary constraints.

9 COMMISSIONER FORT: So the first part of
10 my question was whether or not the joint
11 applicants went through the testimony at the time
12 they were preparing the supplemental rebuttal
13 testimony to identify whether or not there was
14 other testimony that needed to be changed?

15 MR. LORENZO: I don't believe we had a
16 systematic review. There was not enough -- there
17 was insufficient time. As -- as I stated, the
18 impetus to file supplemental rebuttal came about
19 at the end of the first week of the Maryland
20 hearing, and we had it drafted and got it
21 submitted only within less than a half a week from
22 that time. There wasn't enough time to go through

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1 the -- all of the testimony to address it at that
2 point.

3 COMMISSIONER FORT: But that would not be
4 true for the reliability part of the testimony
5 that we were just discussing; wouldn't that be
6 correct?

7 MR. LORENZO: Well, to the extent that
8 Mr. Alden's chart has to be adjusted to reflect
9 the new SAIDI and SAIFI numbers, that could be
10 adjusted rather easily, just substituting the
11 chart from his supplemental rebuttal testimony for
12 the chart in his direct testimony.

13 COMMISSIONER FORT: But that's your
14 opinion. So if I were to ask -- you know, if the
15 Commission were to direct the company to review
16 the testimony and identify other testimony that
17 needs to be amended, are you confident that that
18 would be the only testimony that would be
19 identified on that issue, that one chart?

20 MR. LORENZO: Could I have a minute, Your
21 Honor?

22 (Discussion held off the record.)

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1 MR. LORENZO: Thank you for the break. I
2 think I would capture all the reliability changes
3 that would have to be made because the other
4 cross-reference is a cross that...

5 COMMISSIONER FORT: Would there need to
6 be any amendments made to Mr. Crane's 3A-1 exhibit
7 which lists the commitments -- it lists the
8 commitments for ring-fencing, it lists the
9 commitments for CIF, it lists the commitments for
10 reliability. Would that need to be changed?

11 MR. LORENZO: Yes. That's what I started
12 off with, that we are offering -- unlike our
13 presentation in Maryland, we are offering firm
14 commitments to substitute the ring-fencing,
15 affiliate transaction and the tax indemnity, which
16 is a whole new provision, but to certainly
17 substitute the ring-fencing provisions in the New
18 Jersey settlement for the ring-fencing provisions
19 in Mr. Crane's 3A, substitute the affiliate
20 transaction commitments from New Jersey -- and
21 they're listed in -- Mr. Khouzami's testimony
22 lists the particular paragraphs of the New Jersey

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1 settlements which relate to both ring-fencing and
2 affiliate transactions, and those would be
3 substituted for the affiliate transaction
4 provisions in Mr. Crane's Exhibit 3A.

5 COMMISSIONER FORT: So just so I'm clear,
6 when would that happen? It didn't happen when you
7 attached the supplemental rebuttal. I would think
8 that if that was an analysis and you were taking
9 certain issues out of the list and putting others
10 into the list, I would have seen a revised 3A-1
11 attached to 4A. Why didn't that occur?

12 MR. LORENZO: I guess we just didn't
13 think of it at the time, Your Honor.

14 COMMISSIONER FORT: So would there be
15 other parts of the testimony that you didn't think
16 of? That's my concern. And I think that's the
17 concern of the parties. And I don't think we've
18 had the opportunity to know whether or not this is
19 a minor change or a major change, whether or not
20 it flows through the testimony of other parties.
21 And that is the -- one -- you know, a major issue
22 that's facing the Commission as we are considering

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1 the joint applicants' motion.

2 CHAIRMAN KANE: I have a question about
3 the timing again on the reliability standards. I
4 don't want to go into the substance of them,
5 because presumably we will at some point get to
6 that. But the reliability standards that you're
7 talking about that are at issue here are the
8 reliability standards adopted by the Commission,
9 correct?

10 MR. LORENZO: Yes, Your Honor.

11 CHAIRMAN KANE: And what was the date
12 that the Commission adopted those standards?

13 MR. LORENZO: 2012 or 2013 at that point.
14 Yes. For the EQSS process.

15 CHAIRMAN KANE: And you're saying that
16 even though these standard were adopted by the
17 Commission in our new rules -- I believe it was
18 2012, subject to check -- that you, the company --
19 I'm speaking of PEPCO now, not particularly the
20 joint applicants -- did not believe that you could
21 meet those standards until you sat down and did
22 some analysis in December of 2014.

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1 MR. LORENZO: No, Your Honor.

2 CHAIRMAN KANE: Okay.

3 MR. LORENZO: The question is whether we
4 would meet the standards within the budgetary
5 constraints -- within the anticipated PEPCO
6 reliability, O&M and capital budgets.

7 CHAIRMAN KANE: As a result of the
8 merger, after the merger?

9 MR. LORENZO: Actually -- after the
10 merger, right. Mr. Gausman's group has a
11 five-year capital budget and an annual O&M budget
12 for reliability purposes. It projects it out.
13 And as was pointed out in some of the rebuttal
14 testimony -- I think of Mr. Chang (phonetic) from
15 the D.C. Government -- at 1103, it shows -- in the
16 testimony in 1103, Mr. Gausman showed that around
17 2016 he would not be able, within the budgetary
18 constraints, to meet the EQSS standards, which
19 would mean that he would have to increase his
20 budget in order to meet them, which we would do in
21 order -- if the Commission directed -- to meet the
22 EQSS standards on the ground.

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1 What the new commitment is is basically
2 that we believe today and we commit today, or at
3 least on the 4th, that we will meet the EQSS
4 standards within the budgetary constraints of the
5 projected O&M and capital budget -- reliability
6 budgets.

7 CHAIRMAN KANE: I don't want to pursue
8 this any further because we get into substance
9 of --

10 MR. LORENZO: Yes, Your Honor.

11 CHAIRMAN KANE: -- the issue, but I
12 wanted to be clear on the timing of this, that
13 these were not new standards --

14 MR. LORENZO: Yes.

15 CHAIRMAN KANE: -- and that it was known
16 for several years now that these are the
17 requirements. Okay. Thank you.

18 COMMISSIONER PHILLIPS: I just have one
19 quick question. I just want to confirm the
20 companies' position on the customer investment
21 fund and whether or not that's a firm commitment
22 or not.

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1 MR. LORENZO: Yes, it is, Your Honor.

2 COMMISSIONER PHILLIPS: Thank you.

3 CHAIRMAN KANE: So let me follow up on
4 this. This is different than -- what you're
5 saying than what you filed on February 4th where
6 it talked about it being a -- similar to the New
7 Jersey. In New Jersey, it is a framework or
8 it's --

9 MR. LORENZO: New Jersey, it's a
10 settlement.

11 CHAIRMAN KANE: A settlement.

12 MR. LORENZO: In Maryland --

13 CHAIRMAN KANE: Maryland, it is --

14 MR. LORENZO: -- we introduced it as a
15 framework which led to the discussions that some
16 of the parties have referred to with Mr. Crane,
17 when he was on the stand, about, what does that
18 mean? Are you negotiating in public?

19 As we introduce it or as we -- we learn
20 from what happened in Maryland, maybe not well,
21 but we try to learn, and we introduced it here to
22 make firm commitments on aspects of that

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1 settlement, particularly with regard to -- aspects
2 of that settlement, particularly with regard to
3 ring-fencing, the CIF and the affiliate
4 transaction rules.

5 And outside of the context of a global
6 settlement, we will accept those and move in the
7 direction, hopefully bridging the gap between the
8 joint applicants' positions and those of the
9 parties by making those commitments.

10 CHAIRMAN KANE: And could you point to
11 where in your filing on February 4th it indicates
12 that these are firm commitments?

13 MR. LORENZO: If you go to Mr. Khouzami's
14 testimony -- well, part of it -- it starts with
15 Mr. Crane, that we would not object if the
16 Commission were to apply the value of the
17 framework of the settlement package from New
18 Jersey to this provision.

19 CHAIRMAN KANE: Read that again.

20 MR. LORENZO: Okay.

21 CHAIRMAN KANE: "We would not object."

22 MR. LORENZO: Yes, if the Commission were

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1 to apply the value and framework of the settlement
2 package from New Jersey to a complete resolution
3 of the issues raised in the District of Columbia.

4 CHAIRMAN KANE: Value and framework.

5 MR. LORENZO: Including expanded customer
6 benefits to the level comparable to that agreed
7 upon in New Jersey as one element of the overall
8 package.

9 CHAIRMAN KANE: You're going too fast.

10 MR. LORENZO: I'm sorry. Excuse me, Your
11 Honor.

12 In addition, we would not object if the
13 Commission were to apply the value and framework
14 of the settlement package from New Jersey to a
15 complete resolution of the issues raised in the
16 District of Columbia proceeding, including
17 expanded customer benefits to a level comparable
18 to that agreed upon in New Jersey as one element
19 of the overall package, as discussed by
20 Mr. Khouzami in his supplemental rebuttal
21 testimony.

22 CHAIRMAN KANE: Thank you.

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1 Commissioner Fort?

2 COMMISSIONER FORT: Counsel for DC SUN,
3 Mr. Speck, asked whether or not there was anything
4 in issue 7 that is being amended or that would be
5 considered to be amended by the New Jersey
6 settlement. Can you give him an answer to that
7 question?

8 MR. LORENZO: Not that we are committing
9 to in our supplemental rebuttal testimony. There
10 is nothing -- no new additional commitments on
11 issue 7.

12 CHAIRMAN KANE: One more follow-up
13 question. Ms. Francis for AOBA presented four
14 options, actually: Granting the motion, giving
15 enough time to address all of the procedural
16 issues, which I believe have been what AOBA's
17 original filing was -- and we're not going to talk
18 how much time, because there's an issue later;
19 denying in part and granting in part finding that
20 it is not rebuttal testimony, or supplemental
21 rebuttal testimony, but requiring a refiling of
22 everything that is a firm proposal with added time

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1 for discovery and exhibits; denying and starting
2 as planned tomorrow or the next day; or
3 terminating the proceeding without prejudice.

4 Could you give us what the joint
5 applicants' thoughts are on the second option --
6 all of these -- let's do it with all of these.
7 I'm just presuming what your position is on
8 denying.

9 MR. LORENZO: We would -- on the first
10 option, we think through giving the parties time
11 to discover, as at least we anticipated, that
12 given the hearing schedule, they would have some
13 reasonable time for discovery of -- and analysis
14 of our supplemental testimony, would be the most
15 expeditious option to resolve this dispute.

16 We don't believe that some form of
17 refiling and additional rounds of testimony
18 afterwards are necessary for the parties to
19 analyze the concessions made by the joint
20 applicants in order to bring (sic) the gap.

21 I would say if the Commission denied the
22 filing of the supplemental rebuttal testimony, the

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1 companies' position would remain the same and we
2 would commit -- if Mr. Alden gets up on
3 cross-examination, he's going to say, we can now
4 meet -- we now want to commit to meeting the --
5 much like meeting the EQSS standards. So much the
6 same testimony would come out, I believe, during
7 the course of cross-examination, which is the
8 course of how rate cases at least have been tried
9 before this Commission when parties come into
10 agreement at some point during the hearing at that
11 point.

12 But we would favor -- we think the most
13 expeditious way to proceed would be to grant the
14 parties some additional time for discovery. We're
15 still willing to put up at least our direct case,
16 which we don't think is affected by this, on an
17 expeditious basis, if the Commission desires that,
18 so at least we get that part of the testimony --
19 that part of the proceeding out of the way, and
20 address then the additional testimony and the
21 intervenors' direct and rebuttal testimony, and
22 our rebuttal and supplemental rebuttal at some

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1 later date.

2 CHAIRMAN KANE: So it's your position
3 that the supplemental rebuttal that is filed does
4 not affect the direct testimony; the direct
5 testimony would still stand, the company -- joint
6 applicants' direct testimony?

7 MR. LORENZO: Clearly, on the aspects of
8 the matters we're committing to, particularly the
9 ring-fencing, the affiliate transaction and the
10 new EQ -- and meeting the EQSS standards would be
11 positions in the direct testimony that would
12 change. As we've discussed, the ring-fencing
13 provisions from New Jersey would be brought in and
14 substituted -- the more detailed provisions would
15 be substituted for the ring-fencing provisions
16 discussed in the direct or supplemental direct,
17 more likely.

18 CHAIRMAN KANE: I would like to hear from
19 the other parties that have a -- comments on the
20 proposed -- proposal to go forward with the direct
21 testimony unchanged and dealing with the changes
22 as part of the cross-examination.

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1 MR. GRAY: Your Honor, Jason Gray again
2 on behalf of OPC. I think at a very simple, basic
3 level, it's easy to look at the issue and say
4 aspects of the direct testimony have been
5 supplanted by the supplemental rebuttal;
6 therefore, we can streamline the hearing because
7 we don't have questions on those.

8 Unfortunately, I think it's a little bit
9 more complex than that, and I'll give you two
10 examples, one in regard to Dr. Tierney's extensive
11 testimony of the -- of her quantification of the
12 benefits related to reliability. Dr. Tierney's
13 quantification is based on the company meeting
14 reliability commitments that have substantively
15 changed in the supplemental rebuttal.

16 In response, OPC submitted voluminous
17 testimony by Dr. Dismukes and Mr. Mara, among a
18 couple of others, that take issue with
19 Dr. Tierney's analysis.

20 Now, I'm not getting into the substance
21 of that debate, but this is not a situation like
22 you may see in a rate case where OPC proposes an

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1 adjustment and the company simply accepts OPC's
2 adjustment, and that's no need for
3 cross-examination on that issue.

4 What we've seen here, if you take the
5 motion from February 4th at face value, is that
6 the companies have come up with a new proposal in
7 their attempt to address OPC's concerns. So in
8 other words, they have not accepted OPC's
9 position; they have tried to address it in a way
10 that we have not yet had a chance to respond to.

11 So just with the example of
12 Dr. Tierney -- and I'm still grappling with this,
13 and it's one of the issues that we're trying to
14 identify, and that Commissioner Fort aptly noted,
15 it's not clear what exactly has changed and the
16 extent that it has changed and the basis for that
17 change.

18 So while on the front end,
19 cross-examination may be more streamlined on the
20 direct, that may not be the case on the back end.
21 For example, we view some of Mr. Gausman's
22 statements about what must occur in order to get

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1 an output level as more general statements that
2 would apply in any circumstance. And then, as you
3 start to get more specific, that's what we will be
4 addressing.

5 We have not had a full opportunity to
6 analyze the supplemental rebuttal testimony, but
7 it looks like, at least based on our initial
8 review, that some of those general statements that
9 would apply in any situation, the joint applicants
10 are saying do not apply now. And we would need
11 obviously the discovery that I mentioned earlier,
12 but the cross-examination could be more
13 complicated based on a comparison of what we
14 understood the companies' positions to be in
15 direct and rebuttal as to what they are now and
16 why they are now.

17 And those -- that discussion and that
18 fact-finding process may raise additional issues
19 of weight and credibility that we would have to go
20 into that otherwise would not be in the case.
21 Also, back to Dr. Tierney's analysis, it's not
22 clear to me the extent we would need to get into

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1 cross-examination on the direct, on a quantitative
2 analysis that really, I think, at best, may
3 directionally show what it was initially intended
4 to show, but at this point it's not an analysis of
5 what level of performance the joint applicants are
6 committing to meet.

7 So I think it's more than a hypothetical,
8 but it's not actually a direct analysis of these
9 new revised reliability commitments.

10 Just one second, Your Honor.

11 (Discussion held off the record.)

12 MR. GRAY: I have not yet had a chance to
13 address Ms. Francis' four options, I think. I do
14 want to clarify, OPC's request for a minimum of a
15 two-day delay in the hearing was not
16 necessarily -- and I think it's clear from the
17 face of the motion -- was not necessarily a
18 statement that two days would be sufficient. We
19 were trying to come to grips with how, in fact,
20 this testimony impacts the case that was scheduled
21 to go to hearing in two days. And that's still
22 the issue we're grappling with today.

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1 And I think it's been illuminated a
2 little bit more as to why that struggle is
3 occurring, because it's still not clear what's in
4 the case. If something has been replaced, I
5 cannot say today that I think it's appropriate
6 that that testimony be struck, because it could go
7 to weight and credibility, so the joint applicants
8 may not want to sponsor that testimony, but we may
9 be in a position to sponsor that testimony as a
10 statement against interest or something like that.

11 That's all I have. Thank you.

12 CHAIRMAN KANE: And the same question, I
13 guess, to any of the other intervenors or parties,
14 is if the motion is denied and the company makes a
15 commitment during cross, what would be the
16 parties' reaction to this method? And that would
17 go to the -- you know, the first of the -- I guess
18 it's option 3 of AOBA's, just deny it.

19 Ms. Francis?

20 MS. FRANCIS: Your Honor, we would not
21 support going ahead with the other witnesses.
22 First of all, for an intervenor like AOBA, we

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1 can't be cross-examining, writing cross, putting
2 on exhibits, doing data requests, analyzing data
3 requests all at the same time. That would be a
4 feat that I don't even think I could come close to
5 accomplishing.

6 But at this point -- and I have to say
7 I'm a little bit disappointed in the joint
8 applicants' presentation this morning, because I
9 was hoping to be a little bit more clear on
10 exactly what changed. And we were also going to
11 bring up Dr. Tierney's testimony. I don't have it
12 with me, but a lot of it was based on the EQSS
13 standards and what the joint applicants were
14 proposing.

15 I did hear Mr. Lorenzo say that they
16 hadn't gone through and analyzed the specific
17 witnesses and what's changed. That does somewhat
18 surprise me. But I think that is a process that
19 should be done, because it is Dr. Tierney -- who
20 else would it be?

21 There's a lot of overlap between the
22 witnesses. And during hearings, as is common

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1 practice, one witness refers a question to another
2 question (sic). That happens frequently. Not to
3 bring the Maryland case into it, but that's a
4 typical practice that happens. Most likely that
5 will happen here. So I do think that that process
6 should be undertaken.

7 In terms of the ring-fencing, they didn't
8 even provide a track changes. I would like to
9 know what's more granular, what's different.
10 Maybe they are better; maybe they're not. But
11 I -- at this point, we were prepared to go through
12 the original ring-fencing, and now I hear that
13 they're replaced. Well, the testimony of
14 Mr. Crane doesn't comport with what Mr. Lorenzo
15 says it says. Mr. Lorenzo says they are
16 affirmative proposals. These appear to be public
17 offers of settlement to me. I'll go back and read
18 it another four times, but I didn't read it the
19 same way that Mr. Lorenzo presented it.

20 So I really would like the joint
21 applicants to refocus and to see what of their
22 witness testimony has changed, and particularly in

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1 regard to the ring-fencing which is a very
2 important issue for AOBA, we would like to see
3 specifically what's more granular and what's
4 changed. Thank you, Your Honor.

5 CHAIRMAN KANE: I believe I wrote down
6 that Mr. Lorenzo said that they had insufficient
7 time to go through their own prefiled testimony in
8 detail to identify the changes.

9 MS. FRANCIS: I'm hoping he will take the
10 time to do that. Thank you, Your Honor. And I
11 request that he do so.

12 CHAIRMAN KANE: Mr. Coyle?

13 MR. COYLE: Thank you, Madam Chair. Just
14 to add a little grist to the mill, the idea of
15 denying the motion and proceeding leaves us in a
16 lot the same undesirable place. I found, as I
17 tried to reorient my cross-examination around the
18 notion that the supplemental direct was there,
19 that there was really a lot of complexity involved
20 in the adjustment to it. I'll give you two
21 examples.

22 Mr. Alden's supplemental rebuttal, which

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1 offers the commitment of meeting the EQSS with no
2 budgetary increase on schedule, says, This revised
3 commitment is contingent on the D.C. PLUG
4 initiative moving ahead on schedule, such that the
5 current forecast that year one feeder work is
6 completed and in service in 2016 and that, for
7 each plan year in the D.C. PLUG initiative from
8 2017 to the beginning of 2020, it stays on
9 schedule.

10 Now, this was filed -- I'm reading, by
11 the way, from page 2, line 15, through page 3,
12 line 2. This was filed February 4th. You will
13 get your first schedule update in docket 1116
14 today, I think.

15 So what does that mean? I'm puzzled.
16 And I am, frankly, concerned, if I could revert to
17 my English major past, that we're not getting
18 promises made to our hearing that are broken.

19 That was one. The other has to do with
20 ring-fencing. There's supplemental direct from
21 witness Ellen Lapson which talks pretty
22 extensively about the rationale for ring-fencing

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1 and why the applicants' proposal is good because
2 that was all there was at the time before.

3 I struggle with how to adapt cross on
4 that to what the applicants are now proposing to
5 do with ring-fencing. It might wipe out a great
6 deal of it. Other the other hand, it also, I can
7 tell you without getting into the substance,
8 raises some new questions as to what, in fact, is
9 the level of commitment here.

10 I can't tell you, as I sit here, whether
11 there is a convergence or not. So I don't think
12 denial and moving forward is a feasible option as
13 far as we're concerned. I think the facts are
14 what the facts are. And in fairness, if the
15 applicants want to, you know, converge their
16 position with the positions of OPC and the
17 intervenors, it's to be encouraged, I would think,
18 you know. But it requires additional deliberate
19 process in order to make sure that's what's really
20 happening. Thank you.

21 CHAIRMAN KANE: Anyone else?

22 Mr. Lorenzo, I just want to go back again

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1 to that statement on page 2 of the filing which
2 was -- supplemental testimony; it's the New Jersey
3 settlement. Witness Crane, I'm sorry. Witness
4 Crane. And it's on page 2 on the New Jersey
5 settlement.

6 Again, I want to get a grasp on what it
7 is before us that you're asking to have admitted
8 as supplemental rebuttal testimony. Starting,
9 again, on line 10, In addition, we would not
10 object if the Commission were to apply the value
11 and framework of the settlement package from New
12 Jersey to a complete resolution of the issues
13 raised in the District of Columbia proceeding.

14 And then you cite expanding the customer
15 benefits. There are other issues in this case
16 besides ring-fencing, taxes, the EQSS standards
17 and customer benefits. And when you say applying
18 the value and framework of the settlement package
19 from New Jersey to a complete resolution of the
20 issues, is this supplemental rebuttal intended to
21 address all of the issues that are in this case
22 when you say complete resolution?

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1 MR. LORENZO: The supplemental rebuttal
2 is intended to address the issues we've raised,
3 particularly the CIF, the ring-fencing, affiliate
4 transactions and the tax indemnity provisions.
5 The -- there's lots in the New Jersey settlement
6 which is unique to New Jersey and unique to ACE.
7 And what Mr. Crane is discussing there, I believe,
8 is the value and framework. Obviously, if there
9 is a commitment there regarding employees at ACE,
10 that is not immediately adaptable. It has a
11 value, but it's not immediately transferable into
12 a commitment regarding PEPCO and the District of
13 Columbia because that sort of thing cannot be
14 immediately translated directly, as the
15 ring-fencing and the affiliate transaction rules
16 can be immediately translated into District of
17 Columbia.

18 The other provisions of the settlement
19 with New Jersey are unique to New Jersey, and only
20 their value can be appreciated in that way.

21 CHAIRMAN KANE: Aren't there issues --
22 other issues in the case that are unique to the

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1 District of Columbia that would not be addressed
2 even though you say a complete resolution?

3 MR. LORENZO: Absolutely. And that is
4 the reason the New Jersey settlement can't be
5 used -- you just can't take the New Jersey
6 settlement and plop it into the District of
7 Columbia. You can take elements of it, which is
8 what we tried to do, and commit to those elements
9 on the -- particularly the four elements that I
10 mentioned -- into the District.

11 But there are other -- there are unique
12 issues in the District that are different from the
13 issues in New Jersey for ACE, for Atlantic City
14 electric, and you would have to address them
15 differently. That's all.

16 CHAIRMAN KANE: Thank you. Anything
17 further?

18 Ms. Francis?

19 MS. FRANCIS: Just one other thing. I
20 would like to note that there were no work papers
21 filed with the supplemental rebuttal. I know that
22 Mr. Lorenzo did mention that now there was a 2014

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1 analysis on which they relied. I'm sure somebody
2 asked for that somewhere, so whether they're going
3 to be updating a previously provided data
4 response, it would be helpful if this Commission
5 does require the joint applicants to provide
6 something else -- if we could get that new study,
7 get the analysis, get it all right up front with
8 their filing to save some time, I think that would
9 be more helpful. Thank you, Your Honor.

10 CHAIRMAN KANE: Thank you. All right.
11 Anything further?

12 Mr. Lorenzo, you get the final word.

13 MR. LORENZO: Thank you, Your Honor. I
14 have learned something new today, that if I turn
15 on my mike before someone else shuts it off, we
16 get a feedback loop in here --

17 CHAIRMAN KANE: Yes.

18 MR. LORENZO: -- so have to be very
19 careful.

20 Your Honor, I believe that the 2014
21 SAIDI/SAIFI numbers were provided to the parties
22 in response to several data requests that were out

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1 there. If there are any work papers, I will
2 inquire and provide them to the parties, but I
3 think the specific question that Ms. Francis asked
4 about the numbers that came out of the -- the 2014
5 reliability numbers have been provided to the
6 parties.

7 CHAIRMAN KANE: Do you know the date that
8 those were available?

9 MR. LORENZO: I'm sorry, Your Honor, I
10 don't know the date those were available. But I
11 seem to remember reviewing a data request where
12 those were being provided. But I will find out.
13 And if they haven't been, I will have them
14 provided expeditiously.

15 CHAIRMAN KANE: I thought you said that
16 it was only after your rebuttal testimony -- this
17 goes again to our initial question about why this
18 could not have been filed sooner than
19 February 4th. Let me clarify -- give you a chance
20 to clarify. You indicated, if I recall correctly,
21 that when Mr. Gausman filed his testimony, his
22 rebuttal testimony, in December, that you did not

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1 have those numbers and --

2 MR. LORENZO: Correct.

3 CHAIRMAN KANE: -- that, therefore,
4 after, it could not -- that analysis could not
5 have been done at the time that he filed that
6 testimony and that his testimony -- rebuttal
7 testimony filed in December still stood because
8 those were the numbers you had. That sometime
9 subsequent to that, after December --

10 MR. LORENZO: Yes, after --

11 CHAIRMAN KANE: -- those 2014 --
12 obviously, 2014 numbers would not be available
13 until the end of 2014. Then you're indicating
14 that there was a data request after December 2014
15 in which you provided those numbers to a party?

16 MR. LORENZO: I believe so. I believe
17 there either was a specific data request that
18 asked to update the numbers for 2014 or we updated
19 the data request because it asked for reliability
20 numbers generally and -- when they became
21 available. If I'm wrong, we will provide them
22 immediately. But I --

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1 CHAIRMAN KANE: Well, it really goes to
2 the question of when you could have filed this
3 revision earlier than February 4th.

4 Let me ask one other question. There was
5 a settlement hearing, or settlement conference, I
6 should say, meeting, on January 22nd, I believe.

7 MR. LORENZO: Yes, Your Honor.

8 CHAIRMAN KANE: Was this information that
9 you have included in the February 4th filing about
10 the ability to meet the EQSS after your revision
11 of the numbers, or the company's willingness to --
12 or proffered willingness, alleged willingness to
13 meet these commitments of the New Jersey
14 settlement on ring-fencing, et cetera, made
15 available and discussed -- well, were they known?
16 I realize that settlement conferences are
17 confidential. Were the possibility that the
18 company would make these changes known to the
19 company as of January 22nd?

20 And really it goes to the timing of the
21 company's decision to file this information on
22 February 4th, not to what you actually discussed

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1 at the settlement conference. I'm not asking
2 about that.

3 MR. LORENZO: The commitment to make --
4 and this is -- the commitment to make these
5 proposals as part of the -- of our filing was made
6 after the merger commitment was had. In other
7 words, we are --

8 CHAIRMAN KANE: After the what?

9 MR. LORENZO: After the -- the commitment
10 to make these commitments --

11 CHAIRMAN KANE: Yes.

12 MR. LORENZO: The decision to make these
13 commitments was as part of our filing and not as
14 part of a settlement negotiation, different from,
15 again, what happened in Maryland. We were making
16 these without getting anything back from the
17 intervenors or OPC -- just part of our new
18 commitments -- was made after the first week of
19 testimony in Maryland.

20 CHAIRMAN KANE: Okay. Thank you.

21 COMMISSIONER FORT: I'm sorry, but we're
22 going back, again, to two different things. There

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1 are a set of your commitments that are related to
2 the New Jersey settlement, and I understand that
3 that part was made in connection with what went on
4 in the Maryland Public Service Commission; is that
5 correct?

6 MR. LORENZO: Yes, Your Honor.

7 COMMISSIONER FORT: All right. Let's go
8 back, then, to the reliability update that we're
9 dealing with now. Was that involved in any way in
10 the Maryland Public Service Commission proceeding?

11 MR. LORENZO: No. That's a uniquely D.C.
12 issue. But again, the commitment to actually make
13 it as a commitment in our testimony to do it
14 within the budget was made after the first week of
15 the Maryland hearing.

16 COMMISSIONER FORT: But what did the
17 first week of the Maryland hearing have to do with
18 the reliability issue? I thought you had said in
19 response to me earlier that it took a month from
20 the end of 2014 to determine that the standards
21 could be met?

22 MR. LORENZO: That the standards could be

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1 met and the company was willing to commit to them
2 in a sense of -- I think it's just a confluence of
3 time when we -- if the -- it's hard to rewrite
4 history, but if that were the only change, I think
5 we would have had Mr. Alden make that in
6 cross-examination rather than file additional
7 testimony. He would have -- or Mr. Crane make it
8 when he took the stand, saying we've sharpened our
9 pencils and we want to say that we could now do
10 this within the constraints of the original budget
11 estimates, if that were the only change to be made
12 at the time to avoid what we're proceeding through
13 now.

14 COMMISSIONER FORT: Just so I'm also
15 clear, the -- you indicated that the 2014
16 SAIDI/SAIFI numbers were provided to the parties
17 pursuant -- you believe, pursuant to an update of
18 a data request?

19 MR. LORENZO: I believe so. And if not,
20 we will provide them expeditiously. But I've seen
21 so many data requests...

22 COMMISSIONER FORT: Would the work papers

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1 related to the calculations of the O&M and the
2 financial commitments also have been provided in
3 the same work papers?

4 MR. LORENZO: I -- I don't believe so,
5 because I think the requests were for SAIDI/SAIFI
6 numbers as opposed to financial numbers.

7 CHAIRMAN KANE: All right. There being
8 nothing further on this first issue, the
9 Commission will stand in recess. We will
10 deliberate on the matter of admitting the -- on
11 the motion to admit the supplemental rebuttal
12 testimony. We will reconvene -- we will reconvene
13 at 2:00 p.m.

14 (Whereupon, at 12:51 p.m., a lunch recess
15 was taken.)

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1 AFTERNOON SESSION

2 (2:24 p.m.)

3 CHAIRMAN KANE: Good afternoon. We are
4 back on the record in formal case 1119. It is
5 2:24 p.m. on Monday, February 9th, 2015.

6 The Commission has taken into
7 consideration the testimony that was presented
8 this morning and has deliberated on that testimony
9 and has reached this decision. The joint
10 applicants' motion to file supplemental rebuttal
11 testimony which was filed on February 4th, 2015 is
12 hereby denied with respect to that testimony. We
13 are instead treating the motion as a request to
14 file new testimony to reflect any new commitments
15 that the joint applicants are making. This new
16 testimony is to be filed as supplemental direct
17 testimony, not as supplemental rebuttal.

18 In addition, the joint applicants are
19 directed to file amended direct and amended
20 rebuttal testimony to reflect the changes that
21 represent firm commitments in the new testimony
22 being filed and, pursuant to our rules, these

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1 filings -- is to include an index indicating the
2 page and lines that are being changed, any changes
3 in direct and supplemental testimony, along with
4 any work papers that support the changes that are
5 being proposed.

6 Now, we will hear from the parties on
7 what would be an appropriate schedule to address
8 this new testimony. Supplemental -- excuse me,
9 direct -- supplemental direct testimony and -- the
10 index is to indicate any changes in amended direct
11 and amended rebuttal testimony -- yes, that's what
12 I said -- amended rebuttal testimony to reflect
13 the changes that represent firm commitments in the
14 new testimony being filed.

15 Now we will hear from the parties in what
16 would be an appropriate schedule to address this
17 new filing.

18 Mr. Lorenzo?

19 MR. LORENZO: Thank you, Your Honor. We
20 want one -- I just want to make sure I understand
21 the order.

22 CHAIRMAN KANE: Sure.

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1 MR. LORENZO: We want one filing which
2 would contain new supplemental direct testimony
3 with all the new commitments that are listed,
4 plus -- would it be a new filing of physical
5 testimony, or would we be filing errata or changes
6 to our original direct, supplemental direct and
7 rebuttal testimony? It's a matter of how much
8 paper we file.

9 CHAIRMAN KANE: We're asking for new
10 testimony that reflects the new commitments that's
11 going to be filed as supplemental direct
12 testimony --

13 MR. LORENZO: Right.

14 CHAIRMAN KANE: -- not as supplemental
15 rebuttal.

16 MR. LORENZO: Yes, ma'am.

17 CHAIRMAN KANE: And then, in addition,
18 we're asking you to look at your original direct
19 testimony and your original rebuttal testimony and
20 indicating any changes by line and page -- page
21 and line, that the -- that is now changed.

22 MR. LORENZO: So we're filing a chart or

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1 an indice --

2 CHAIRMAN KANE: An index. An index.

3 MR. LORENZO: An index, rather than

4 refiling any testimony. That's what --

5 CHAIRMAN KANE: An index, yes.

6 MR. LORENZO: -- I wanted to clarify.

7 MR. GRAY: Your Honor, I have one

8 question.

9 CHAIRMAN KANE: Hold on a minute.

10 I think you're clear. We want new

11 testimony and an index.

12 MR. LORENZO: Yes, Your Honor.

13 CHAIRMAN KANE: And the work papers.

14 Yes.

15 COMMISSIONER FORT: And if your question

16 was, do you need to file conformed copies of the

17 testimony that reflects the fact that the

18 testimony has been amended or changed, the answer

19 is, yes, so we have that on the record.

20 CHAIRMAN KANE: I suspect, to clarify,

21 we're going to get supplemental direct testimony,

22 document 1 -- okay, an index indicating changes

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1 that were made to the original direct testimony,
2 the original rebuttal testimony. That's probably
3 three documents. And then conformed direct
4 testimony and conformed rebuttal testimony with
5 those changes that are in the index reflected in
6 there, corrected.

7 MR. LORENZO: Now I understand.

8 CHAIRMAN KANE: And the work papers --

9 MR. LORENZO: And the work papers.

10 CHAIRMAN KANE: -- so that's six things.

11 MR. LORENZO: Okay.

12 CHAIRMAN KANE: Well, I don't know how
13 many work papers there are, but however many work
14 papers there are that back up the changes.

15 All right. Schedule.

16 MR. GRAY: Your Honor, I have a question
17 first.

18 CHAIRMAN KANE: Yes, Mr. Gray.

19 MR. GRAY: I may be jumping ahead, but
20 just to clarify, is it the Commission's intent for
21 the six groups that you just discussed to be filed
22 at one time, and that's the date that we would be

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1 looking at? Or, since the supplemental direct
2 testimony would be changing the filing and OPC and
3 intervenors have not had an opportunity -- or
4 would not have had an opportunity to file
5 testimony responding to the supplemental direct,
6 would there be an intervening date for
7 supplemental answering from OPC and intervenors,
8 and then would there subsequently be rebuttal from
9 the joint applicants?

10 CHAIRMAN KANE: That's what we're going
11 to talk about now. First, we'll deal with the
12 date for the filing that we just requested --
13 filings.

14 MR. LORENZO: Your Honor, we would
15 suggest that we -- that the joint applicants would
16 file those documents on Tuesday, February 16th --
17 17th. The 16th is a holiday.

18 CHAIRMAN KANE: 16th is a holiday.

19 MR. LORENZO: So by close of business on
20 the 17th we would file the six documents by
21 midnight.

22 CHAIRMAN KANE: Midnight, you said?

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1 MR. LORENZO: What's the Commission's
2 preference?

3 CHAIRMAN KANE: Our preference is close
4 of business --

5 MR. LORENZO: Okay.

6 CHAIRMAN KANE: -- in order that they can
7 be then posted and processed so that the other
8 parties have them.

9 MR. LORENZO: Okay. We will do that.

10 CHAIRMAN KANE: Thank you.

11 MR. LORENZO: Your Honor, would it be
12 more expeditious, now that we have the parties in
13 the room, if we adjourn for a bit and had the
14 parties confer on a schedule? We certainly -- it
15 was not the intent of the joint applicants to
16 cause this much trouble. We really were trying to
17 bridge the gap and not gain a tactical advantage.

18 And now that we're in this process, maybe
19 it would be -- we want to make sure all the
20 parties have all the rights they need and the time
21 they need to decide this. And maybe if we took a
22 half hour and the parties discussed amongst

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1 themselves what they think they need, that would
2 be a more expeditious way to proceed.

3 CHAIRMAN KANE: I will ask the parties on
4 that, but I think that sounds like it's going in a
5 good direction. I would do two things. First of
6 all, we did set out a list of dates that we were
7 considering for whatever the ruling was for
8 availability. And those were -- with now the
9 filing being on the 17th of February, of course
10 February 10, 11, 12 and 13 are off the table. But
11 starting with February 17, we had set out, I
12 believe, February 25, 26, 27, the week of
13 March 2nd and the week of March 16th as those
14 dates that the Commission wanted to consider in a
15 revised schedule. That's number one.

16 Number two, if the parties are going to
17 be conferring, we would discuss maybe some ways,
18 with all respect to due process, if there are some
19 things, such as a technical conference on data, or
20 something that could help shorten the normal time
21 it takes for discovery and back and forths,
22 et cetera, that that could be part of your

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1 discussion.

2 MR. LORENZO: Yes, Your Honor.

3 CHAIRMAN KANE: All right. Then we will
4 recess till 3:00.

5 MR. GRAY: Can I ask one more question?

6 CHAIRMAN KANE: Yes, sir.

7 MR. GRAY: Sorry. I just want to make
8 sure we're clear.

9 CHAIRMAN KANE: Yes.

10 MR. GRAY: Obviously, refiling the
11 commitments would not be entirely analogous to a
12 new filing, because the OPC and other intervenors
13 have seen what they are, so it's not like --

14 CHAIRMAN KANE: It won't be a surprise.

15 MR. GRAY: Exactly. We would not be
16 getting information for the first time, but even
17 with that, it's difficult to say what type of
18 process we would need until we see exactly what
19 the package looks like reformulated.

20 Are the date ranges that you provided the
21 only date ranges available? And certainly we
22 don't want to extend this for three or four

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1 months, but if the last week in March does not
2 work and we may need to go to the next week, is
3 that an option? Or are we trying to confine the
4 process that the parties could agree upon to these
5 dates that the Commission has identified?

6 CHAIRMAN KANE: The last week in March,
7 which is the week that starts March 30th, would be
8 possible to consider, not the week of the 9th and
9 not the week of the 23rd. Due to other
10 preexisting commitments, those weeks are not
11 available for the Commission.

12 MR. GRAY: Thank you.

13 CHAIRMAN KANE: Thank you. Anything
14 further from any other party? Intervenor? Then
15 we will recess --

16 COMMISSIONER FORT: Let me raise one
17 other issue while you all are conferring. In the
18 draft proposed schedule that we were provided,
19 Mr. Crane was speaking to his direct and his
20 rebuttal on the first day of hearings at the same
21 time. In his rebuttal, he actually rebuts several
22 of the parties by name. I'm going to ask whether

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1 or not those parties are agreeing to that
2 procedure.

3 The Commission is still considering that
4 procedure because, one, it's not usual for someone
5 to do that at the same time; two, if they were
6 going to do that at the same time, there is an
7 advantage if you do it -- there's advantage to
8 certain parties if you do it when your direct is
9 presented as opposed to when your rebuttal is
10 presented.

11 So one of my questions was going to be --
12 and I think I should put it on the table now
13 because you all can have your discussions as you
14 look to your scheduling -- is if we were to permit
15 Mr. Crane to just testify one time, is the
16 appropriate time when he presents rebuttal at the
17 beginning of the case or is the appropriate time
18 at the end of the case -- I'm sorry, when direct
19 is presented at the beginning or when rebuttal is
20 presented at the end?

21 And if it is at the beginning, then I
22 would need to know who can commit the company in

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1 their testimony in a rebuttal phase, what
2 authority does that person have: What authority
3 does that person need to have, how do you get that
4 authority to that person so that when they are
5 talking, we know that we are hearing from somebody
6 who can make the commitments that they're making?

7 That's only an issue if he's only
8 testifying once, and it's particularly an issue if
9 he's testifying once during the direct phase as
10 opposed to the rebuttal phase.

11 MR. LORENZO: Understood, your Honor.
12 Thank you.

13 CHAIRMAN KANE: I also note, again, as I
14 noted earlier this morning, that GSA, the
15 Maryland/D.C./Virginia Solar Association,
16 Monitoring Analytics and NRG Energy, I observe,
17 are not at the table this afternoon either. We
18 have not heard from them, but they were informed.
19 Just, you know, be sure that they were all
20 informed of the schedule for today. Okay. Thank
21 you. We will recess now until five after 3:00.

22 (Discussion held off the record.)

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1 COMMISSIONER FORT: I'm sorry. If you
2 all need additional time and you're making
3 progress, don't stop and come in because it's five
4 minutes to 3:00. We are here. Send a message to
5 somebody maybe at 3:00 to tell us how you're
6 doing, do you need an additional half-hour. Our
7 goal is to have everything resolved in the most,
8 you know, expeditious manner, and we would not
9 want you to stop a productive discussion in order
10 to see us at 3:00.

11 MR. LORENZO: Can we use this room to --

12 CHAIRMAN KANE: Yes.

13 MR. LORENZO: -- have a discussion?

14 Thank you.

15 CHAIRMAN KANE: Yes.

16 (Whereupon, a short recess was taken.)

17 CHAIRMAN KANE: We're back on the record
18 in formal case 1119. It is 3:29 p.m. We took
19 that recess to see if the parties could come to an
20 agreement on a proposed schedule for proceeding,
21 starting with the filing of the revised testimony
22 by the joint applicants on February 17th.

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1 Mr. Lorenzo?

2 MR. LORENZO: Thank, Your Honor. And I
3 think we have agreed on a schedule. Initially,
4 the joint applicants will entertain data requests
5 on our filing that we made that we're going to
6 conform, starting immediately, and we will turn
7 those around on a ongoing basis through -- for
8 discovery purposes.

9 As Your Honor points out, the joint
10 applicants will file their supplemental direct
11 filing with all of the pieces by -- on
12 February 17th. OPC and intervenor discovery --
13 final OPC and intervenor discovery is due
14 February 27th. The joint applicants will serve --
15 complete all of the discovery responses by
16 March 5th. OPC and intervenors will file
17 answering testimony by March 18th. Joint
18 applicants will propound data requests on the
19 answering testimony by close of business
20 March 20th. OPC and intervenor responses are due
21 to that answering testimony on March 26th. And we
22 would propose that the hearing commence on

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1 March 30th, Monday, March 30th.

2 And we -- in discussing among ourselves,
3 we believe that eight days of hearings probably
4 will be necessary, which would bring us through
5 April 8th.

6 Joint applicants -- just on the hearing
7 schedule, we have a number of suggestions for
8 consideration by the Commission in order to speed
9 the hearing. One is that joint applicants be
10 allowed to give limited live responsive testimony,
11 rejoinder testimony, at the hearing.

12 We also would propose using a procedure
13 that is used in some other proceedings where the
14 joint applicants will put on their entire case,
15 direct, supplemental direct, the new supplemental
16 direct and our rebuttal at one time. And then OPC
17 and intervenors would put on their case and would
18 be crossed, instead of having the procedure of
19 joint applicants, OPC, intervenors. We think that
20 would just speed up the hearing process by having
21 the joint applicants on once.

22 In addition, we would handle cross

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1 exhibits in the same way we traditionally do,
2 which would be -- just because is this is a
3 condensed schedule at the end, cross exhibits
4 would be due the day of the hearing, the day of
5 the cross-examination. We then, moving forward,
6 would have motions to correct the transcript and
7 final exhibit lists due April 22nd, initial briefs
8 April 29th, and reply briefs May 13th.

9 And one additional bit of housekeeping.
10 The settlement conference that is currently
11 scheduled for February 18th would be moved to
12 February 20th at 9:30 a.m.

13 CHAIRMAN KANE: The only thing I would
14 note in your proposed schedule, I believe that
15 Friday, April 3rd is Good Friday. I don't know if
16 that makes a difference for any of the
17 participants. It's not a legal holiday, but for
18 some people it is a religious holiday.

19 Ms. Francis?

20 MS. FRANCIS: Your Honor, I did state
21 that it was a holiday. So as not to hold up
22 anything, I will need to leave no later than 1:00.

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1 We can have another attorney here. However, the
2 parties have agreed to work with me so I don't
3 miss any cross-examination. I'm not asking for
4 two attorneys to cross. I just need a little help
5 with a little work-around.

6 CHAIRMAN KANE: Very good.

7 MR. LORENZO: And that's acceptable to
8 all the parties.

9 CHAIRMAN KANE: I don't recall when
10 Passover is.

11 MR. FINKELSTEIN: Passover begins that
12 evening. Carolyn will not be able to make it on
13 the 3rd, but we can work around that also.

14 CHAIRMAN KANE: Thank you.

15 All right. And you are representing,
16 Mr. Lorenzo, that this is agreeable to all of the
17 parties. If I could hear that from each of the
18 parties, please, for the record.

19 MR. GRAY: Yes. It is agreeable to OPC.

20 MS. FRANCIS: AOBA is agreeable to the
21 schedule.

22 MR. COYLE: District Government is

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1 agreeable.

2 MR. SPECK: DC SUN is agreeable.

3 MS. WHITE: D.C. Water is agreeable.

4 MR. RORIES: Grid 2 is agreeable.

5 MR. FINKELSTEIN: MAREC is agreeable.

6 MS. WEIN: NCLC/NHT is agreeable.

7 CHAIRMAN KANE: We will notify those
8 other intervenors who are not present.

9 Well, I want to thank you all. Although
10 it extends it longer than we had hoped and longer
11 than we intended, if the parties believe and we
12 accept that this will provide adequate due
13 process, adequate opportunity to address the
14 issues and adequate opportunity to have accurate
15 information on which this Commission may make a
16 decision...

17 We had raised the issue -- also the issue
18 of Mr. Crane providing his direct and rebuttal
19 testimony at the same time. Am I to conclude that
20 since your proposal includes that process for
21 everyone, that that's not an issue that we need to
22 deal with because it's included in the overall?

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1 All right. Then there being -- anything
2 further? We will memorialize this in an order.
3 We will memorialize the schedule. And in that
4 order we will also, of course, then deal with the
5 requests that were filed by People's Counsel and
6 by AOBA for two days, at least, and for 30 days'
7 delay, as they are swept up into the decision on
8 this.

9 I want to thank everyone for their
10 efforts in this and their cooperation. And there
11 being nothing further, this hearing is adjourned.

12 (Whereupon, at 3:38 p.m., the above
13 proceedings were adjourned.)

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1 CERTIFICATE OF COURT REPORTER

2 I, DENISE M. BRUNET, Certified Court
3 Reporter, do hereby certify that the statements
4 and testimony that appear in the foregoing
5 transcript are the statements and testimony taken
6 by me in shorthand and thereafter reduced to
7 computerized transcription by me or under my
8 direction; do hereby certify that the foregoing
9 transcript is a true and correct record of the
10 statements and testimony given; that I am neither
11 counsel for, related to, nor am employed by any of
12 the parties to the action; and further, that I am
13 not a relative of employee of any attorney or
14 counsel employed by the parties thereto, nor
15 financially or otherwise interested in the outcome
16 of the action.

17

18

19

20

21

22

Denise M. Brunet

Denise M. Brunet
Certified Court Reporter



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