

Capital Reporting Company
Formal Case No. 1119 03-30-2015

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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 : 1119
NEW SPECIAL PURPOSE ENTITY, LLC :
FOR AUTHORIZATION AND APPROVAL OF :
PROPOSED MERGER TRANSACTION. : VOLUME I
-----:

Washington, D.C.

Monday, March 30, 2015

The evidentiary hearing in the
above-captioned matter began at 10:02 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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(Appearances continued on the next page.)

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22 (Appearances continued on the next page.)

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

2 CHAIRMAN KANE: Good morning. For the
3 record, I'm Betty Ann Kane, Chairman of the Public
4 Service Commission, and with us today are
5 Commissioners Joanne Doddy Fort and Willie L.
6 Phillips. For the record, today is March 30th,
7 2015. We're assembled here for the commencement
8 of hearings in formal case number 1119, the joint
9 application of Exelon Corporation, PEPCO Holdings,
10 Incorporated, Potomac Electric Power Company,
11 Exelon Energy Delivery Company, LLC, and New
12 Special Purpose Entity for authorization and
13 approval of a proposed merger transaction.

14 Before I begin, we have an important
15 housekeeping matter. Please turn off all cell
16 phones, pagers, anything else that might make a
17 noise or emit a signal during the course of the
18 proceeding today. Also, please note that this
19 hearing is being carried live on the Commission's
20 website, and it will also be recorded for future
21 viewing on our website over the Internet.

22 I summarized the rather lengthy

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1 background and procedural hearing in this case at
2 the start of the hearing that was held on
3 February 9th, 2015, and I'd like to refer
4 interested parties and the public to that summary
5 if they prefer more detailed information. So I'm
6 not going to repeat the whole procedural history.
7 However, I do want to highlight some of the
8 background and procedural history of this case, as
9 well as update the status of the case since the
10 February 9th hearing so everyone, especially
11 District ratepayers and the general public, will
12 understand what this case is about and why we are
13 here today.

14 On April 30th, 2015, PHI and Exelon
15 Corporation -- 2014, April 30th, 2014, PHI and
16 Exelon Corporation announced Exelon's purchase of
17 PHI. PHI is the parent company of PEPCO, the
18 electric distribution company that serves the
19 District of Columbia. Exelon Corporation is a
20 utility services holding company headquartered in
21 Chicago, Illinois, which, through its
22 subsidiaries, including Commonwealth Edison

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1 Company, PECO Energy Company and Baltimore Gas and
2 Electric Company, both generates and delivers
3 electricity and natural gas to customers.

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

12 The joint applicants submit that, as a
13 result of Exelon's purchase of PHI, PHI will cease
14 to be a publicly traded company and become a
15 subsidiary of Exelon.

16 On August 22nd, 2014, the Commission
17 issued order number 17597 which, number one,
18 granted ten petitions to intervene and recognized
19 the party status of the Office of People's
20 Counsel, which is a party of right to any
21 Commission investigation under D.C. law. Two,
22 determined that this case should be classified as

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1 an other investigation as opposed to a rate case
2 for purposes of utility assessments under D.C.
3 code 34-912. Three, finalized the public interest
4 factors that will be used to evaluate if this
5 merger is in the public interest for the purposes
6 of D.C. code 34-504. And, four, set forth the
7 procedural schedule for this proceeding.

8 Now, D.C. code 34-504, which I just
9 referred to, provides in pertinent part that,
10 quote, no public utility shall purchase the
11 property of any other public utility for the
12 purpose of effecting a consolidation until the
13 Commission shall have determined and set forth in
14 writing that said consolidation will be in the
15 public interest.

16 The Commission concluded in a previous
17 order that under this statutory provision, it must
18 first find that the purchase of PEPCO will be in
19 the public interest and that to be in the public
20 interest the proposed transaction must benefit the
21 public rather than merely leave it unharmed.

22 In addition, the Commission noted in

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1 prior orders that, one, it has traditionally
2 balanced the interests of shareholders and
3 investors with ratepayers and the community; two,
4 benefits to the shareholders must not come at the
5 expense of ratepayers; and, three, to be approved,
6 the purchase of PEPCO must produce a direct and
7 tangible benefit to ratepayers.

8 In this case, we determined that we would
9 analyze the merger transaction to determine if
10 it's in the public interest under the following
11 seven factors. And they are the effects of the
12 transaction on, one, ratepayers, shareholders, the
13 financial health of the utility standing alone and
14 as merged, and the economy in the District; two,
15 utility management and administrative operations;
16 three, public safety and the safety and
17 reliability of services; four, risks associated
18 with all of the joint applicants affiliated,
19 non-jurisdictional business operations, including
20 nuclear operations; five, the Commission's ability
21 to regulate the new utility effectively; six,
22 competition in the local, retail and wholesale

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1 markets that impact District and District
2 ratepayers; and, seven, conservation of natural
3 resources and preservation of environmental
4 quality.

5 While there have been some revisions to
6 the procedural schedule over the past few months,
7 the parties have conducted extensive discovery and
8 have filed their written testimony. Four
9 community hearings were held during this past
10 December and January to provide an opportunity for
11 ratepayers and other members of the public in the
12 District to present their opinions and/or factual
13 matters concerning the proposed merger. There
14 have also been several settlement conferences
15 among the parties prior to today.

16 Evidentiary hearings were originally
17 scheduled to be held January 5th through
18 January 9th, 2015, but were moved to February 9th
19 through February 13th, 2104 in an order dated
20 October 29th, 2014.

21 However, in the late afternoon of
22 February 4th, the joint applicants filed a motion

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1 to provide additional rebuttal testimony. Both
2 OPC and AOBA requested that the hearing scheduled
3 for February be postponed as a result of this
4 joint applicants filing.

5 At the hearing that was held on
6 February 9th, 2015, the Commission addressed the
7 procedural issues created by the joint applicants'
8 last-minute filing of its motion to provide
9 supplemental rebuttal testimony and the request by
10 OPC and AOBA to postpone the hearing.

11 At the end of the day, we denied the
12 joint applicants' motion to submit supplemental
13 rebuttal testimony and instead granted the joint
14 applicants leave to file amended supplemental
15 direct testimony. We also, among other things,
16 postponed the hearing scheduled for that week and
17 set new dates for the filing of the supplemental
18 direct testimony by the joint applicants and
19 responsive testimony by OPC and the intervenors.

20 Additional time for discovery on the new
21 testimony was also set, and the evidentiary
22 hearings were scheduled for today, March 30th,

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1 through April 8th, 2015.

2 The joint applicants' supplemental direct
3 testimony was filed on February 18th. A data
4 conference attended by the parties was held on
5 March 12th to resolve any outstanding discovery
6 issues. OPC and the intervenors filed their
7 responsive testimony on March 20th. On
8 March 19th, OPC and AOBA filed a joint pretrial
9 motion which, as amended on March 25th, requested
10 admission of certain documents involving the joint
11 applicants' testimony and exhibits that were filed
12 prior to their February 18th filing. The joint
13 applicants opposed that motion. We will entertain
14 oral argument on this motion during the hearing
15 when a party seeks to move its admission.

16 At this time, I ask the parties to please
17 identify themselves for the record, starting with
18 the company, then OPC, and then the intervenors.

19 MR. LORENZO: Good morning, Your Honors.
20 Richard Lorenzo of Loeb & Loeb for the joint
21 applicants. And at counsel table with me is Tom
22 Gadsden of the law firm of Morgan Lewis. Other

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1 attorneys' appearances have already been entered
2 into the record.

3 CHAIRMAN KANE: Thank you.

4 OPC?

5 MR. DANIELS: Good morning, Your Honor.
6 My name is Lawrence Daniels. I'm from the Office
7 of People's Counsel. With me in the room today
8 are people's counsel, Sandra Mattavous-Frye, Karen
9 Sistrunk the deputy people's counsel, a number of
10 other attorneys from the Office of People's
11 Counsel.

12 MR. GRAY: Good morning. Jason Gray from
13 the law firm of Duncan, Weinberg, Genzer &
14 Pembroke on behalf of the Office of People's
15 Counsel.

16 MS. FRANCIS: Thank you, Your Honor.
17 Good morning. I'm Frann Francis appearing on
18 behalf of the Apartment and Office Building
19 Association. We have previously filed notices of
20 appearance for W. Shaun Pharr, Margaret O. Jeffers
21 and Nicola Y. Whiteman.

22 MR. COYLE: Good morning, Chair Kane,

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1 Commissioners. My name is John Coyle of the law
2 firm Duncan & Allen. I'm here today appearing for
3 the District of Columbia government. With me at
4 counsel table is Brian Caldwell of the District of
5 Columbia Attorney General's public interest
6 litigation branch. And also in the room is Amy
7 McDonnell, general counsel of the District
8 Department of the Environment and various other
9 representatives of DDOE. Thank you.

10 MR. SPECK: Good morning, Your Honors.
11 I'm Randall Speck with law firm of Kaye Scholer,
12 and I represent DC SUN. And we've entered the
13 appearance of Cara Spencer and Ollie Wright, also
14 of Kaye Scholer. Thank you.

15 MS. WHITE: Good morning, Madam
16 Chairwoman and Commissioners. My name is Nancy
17 White. I'm with the law firm of Squire, Patton,
18 Boggs. I'm appearing today on behalf of the
19 District of Columbia Water and Sewer Authority,
20 D.C. Water. We have previously entered the
21 appearance of Randy Hayman, general counsel for
22 D.C. Water. Thank you.

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1 MS. ELEFANT: Good morning, Your Honors.
2 Carolyn Elefant from the Law Offices of Carolyn
3 Elefant. I'm here today on behalf of the
4 Mid-Atlantic Renewable Energy Coalition, or MAREC,
5 and I've previously entered the appearance of Ben
6 Finkelstein on behalf of MAREC as well.

7 MS. WEIN: Good morning, Commissioners.
8 My name is Olivia Wein. I am with the National
9 Consumer Law Center and I am representing the
10 National Consumer Law Center, the National Housing
11 Trust and the National Housing Trust Enterprises.
12 And with me in the room today is Andrew Pizor and
13 I've entered the appearance for him previously.

14 CHAIRMAN KANE: Couple of other matters.
15 First of all, the parties have proposed a
16 cross-examination schedule under which the joint
17 applicants' witnesses would be cross-examined on
18 all their testimony, direct, rebuttal, et cetera,
19 at one time instead of being cross-examined first
20 on direct and then crossed on their rebuttal
21 testimony after OPC and the intervenors are
22 cross-examined on their direct testimony as is our

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1 usual practice. We accepted that proposal and we
2 will proceed in that manner.

3 We're giving notice that the Commission
4 may recall a joint applicant witness to respond to
5 a bench question if we need more information in
6 order to resolve a matter raised as a result of
7 the cross-examination of an OPC or intervenor
8 witness, or if a bench question is deferred to a
9 later witness who cannot subsequently answer the
10 question.

11 A second matter that I want to raise is
12 the matter of confidential material. There is
13 material filed in this case that is confidential
14 and there will, therefore, I'm assuming, be
15 questions from the intervenors or from OPC on that
16 confidential material. Our usual, often, is that
17 we then recently -- closed the -- we clear the
18 room, we go into confidential, we come back.

19 I'm going to propose that in this case
20 what we do is we go through the entire witness
21 with all the public testimony. And then, when
22 each of the -- when the OPC and the intervenors

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1 have had their opportunity to ask all the
2 questions that have to do with anything that is
3 not confidential, we will then go into
4 confidential session for any confidential material
5 questions related to that particular witness.
6 That's one way to do it.

7 The other way to do it is to go through
8 all of the witnesses on public and then come back
9 and go through all of the witness (sic) on
10 confidential. Our proposal is to do it witness by
11 witness. I don't think we'll get to needing to do
12 any of that until noontime, so I would like to
13 hear from the applicants and the parties as to
14 whether there is any objection to doing it public,
15 then confidential, witness by witness.

16 MR. LORENZO: Your Honor, we believe that
17 doing it witness by witness is the most efficient
18 way. We've also requested of the parties that
19 they provide us advance notice of any use of
20 confidential material so that we could consider it
21 and see if we can de-designate it as confidential.
22 This procedure worked very well in the Maryland

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1 hearing on this matter, and we've, in fact, worked
2 with some of the parties to get -- already get
3 some of the material de-designated that they're
4 going to -- specifically going to use in the
5 cross, and we hope, if we can get through this,
6 that we could eliminate the need for a
7 confidential session.

8 CHAIRMAN KANE: Any other -- any
9 objection from any of the intervenors on that?
10 Good. I think that will also be much better for
11 the public because it's very confusing,
12 particularly when we have to clear the room and
13 open it up again, and then when we show the
14 rebroadcast, if you will, or the re-streaming of
15 it, it will flow a lot more smoothly. I think it
16 will be easier for people to follow also. All
17 right.

18 Do the parties have any other preliminary
19 matters to be addressed prior to the joint
20 applicants calling their first witness?
21 Mr. Lorenzo?

22 MR. LORENZO: I just have one courtesy

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1 request of the parties, that when they provide us
2 their daily cross-examination exhibits in the
3 morning, that they give us an extra copy so that
4 we can populate the witness books on the stand.
5 We get them at 8:30 and to do the production by
6 10:00 is a challenge. So if they would give us
7 just an extra copy of their cross exhibits.
8 That's all.

9 CHAIRMAN KANE: Thank you.

10 Mr. Daniels?

11 MR. DANIELS: Chairman Kane, the Office
12 does have an opening statement, if -- we would
13 like to proceed at your convenience.

14 CHAIRMAN KANE: Go ahead.

15 MR. DANIELS: Good morning, Chairman Kane
16 and Commissioners Fort and Phillips. The case
17 before you is undoubtedly one of the most
18 important you will be called upon to decide during
19 your respective tenures on this Commission. The
20 issue this Commission must decide is whether the
21 Exelon/PEPCO application styled as a merger, but
22 in reality is a corporate acquisition, is in the

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1 public interest.

2 OPC submits what lies at the heart of the
3 public interest is whether D.C. consumers and the
4 city can be assured that the takeover will leave
5 them better off than before. Indeed, the
6 applicants must convince you, the final arbiter,
7 with clear and convincing evidence, that they have
8 met their burden of proof.

9 This proceeding presents unique
10 propositions. First, while this is not a,
11 quote/unquote, rate case, any decision emanating
12 from this case will largely predetermine the
13 parameters of the next filed rate case.

14 Second, public participation and concern
15 over the proposed acquisition has been
16 unprecedented. In addition to the applicants and
17 OPC in its statutory role, over ten intervenors
18 are participating. Council members McDuffie,
19 Cheh, Silverman and Allen have submitted letters
20 on the record for your consideration. Council
21 members Orange and Cheh have convened public
22 hearings. Over 180 community witnesses testified

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1 at the four public hearings you held.

2 Numerous individual consumers have
3 submitted comments on the record, and more than 20
4 AMC commissioners have voted on resolutions
5 opposing the merger. In that ANCs are elected
6 officials that represent the public interest, the
7 Commission should grant great weight to these
8 resolutions in opposition to the merger.

9 The evidentiary basis for the
10 Commission's decision is comprised of the evidence
11 you will hear over the next week and a half, the
12 briefs that follow, and the opinions of the
13 community voiced over the last several months.
14 The pivotal questions that should frame the
15 consideration as to whether consumers in the city
16 are better off include, one, are the short and
17 long-term benefits -- what are the short and
18 long-term benefits that will enure to D.C.
19 consumers? Two, what -- will short-term payoffs
20 be eviscerated by long-range and foreseeable risk?
21 Three, what assurances do we have that today's
22 commitments will be enforceable in the future?

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1 Four, why should consumers be confident about a
2 company whose primary purpose for this transaction
3 is to shore up the revenues of a corporation
4 headquarters over 700 miles away? What are the
5 financial implications of a non-local corporation
6 on the District of Columbia, particularly a
7 corporation with varied and conflicting interests
8 throughout several states? Six, why should a city
9 that has laid a foundation to incorporate
10 renewable resources into its electrical grid seek
11 to partner with an entity that opposes these very
12 measures? Seven, why should the Commission
13 approve the request of a company that has yet to
14 provide a clear commitment to meet or exceed
15 established reliability standards on a
16 year-to-year basis at rates that are just and
17 reasonable?

18 Perhaps the most important question is
19 this: If the takeover is approved and it becomes
20 apparent thereafter that Exelon's priorities are
21 not aligned with the city's priorities, what
22 ability will this Commission have to address the

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1 conflict?

2 At the end of the day, the Commission
3 will have three choices: Approve the proposal as
4 is; approve a hybrid of the proposal; or deny it
5 outright.

6 The impact of approving this merger is
7 stark and far-reaching. A decision approving this
8 merger will not only impact every proceeding
9 involving PEPCO; it will potentially impact the
10 legislative initiatives that currently exist
11 concerning renewables and distributed generation.

12 An order approving this merger will not
13 be a static document. It will well serve as a
14 guidebook that will be referred to for decades to
15 come. Should the proposal be approved, in order
16 to facilitate the public's ability to appreciate
17 any benefits from this merger, the Commission's
18 order must clearly articulate what Exelon will be
19 required to provide consumers and must outline
20 what steps the Commission will take if these
21 requirements are not met.

22 Additionally, the Commission's order must

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1 articulate how the agency will use the full
2 breadth of its authority to regulate and control
3 this new entity in such a manner that consumers
4 and the city are confident the public interest
5 will continually be met.

6 More importantly, the Commission's order
7 approving the proposal must impose sufficient
8 enforceable conditions to ensure that consumers
9 receive tangible financial benefits to make
10 certain that the public interest standard is met
11 and that the new entity is effectively regulated.

12 In setting these conditions, the
13 Commission should not feel constrained by the
14 terms established in other jurisdictions, as
15 decisions like these are tailored solutions to
16 meet the priorities of each state. The Commission
17 could also use its broad discretion to disapprove
18 the filed application.

19 This begs the question, what happens if
20 the application is denied? Will it be a missed
21 opportunity or the end of the world?

22 If nothing else, this case has opened the

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1 conversation regarding the potential future of the
2 electric regulatory market in the District of
3 Columbia. For example, over the past several
4 months, there has been a robust discussion about
5 this case that has revealed a number of things
6 about PEPCO. First, it is a financially viable
7 entity. Next, after new reliability standards
8 were established five years ago, PEPCO's
9 reliability performance has begun to improve and
10 the undergrounding project will likely build upon
11 that progress.

12 Lastly, in recent years, PEPCO has been
13 supportive of legislative efforts advancing
14 renewables and distributed generation. Rejecting
15 the proposal can serve as a springboard to
16 encourage further discussion as to how further
17 improve the electric company that has been here
18 for over a century.

19 An additional benefit of rejecting the
20 merger is that consumers would not have to face
21 the uncertain outcomes of being taken over by a
22 large corporation that has profits as its primary

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1 priority. To be clear, PEPCO and the District of
2 Columbia can survive and make great strides
3 without Exelon.

4 In conclusion, the bottom line is simple.
5 The public interest demands that the District of
6 Columbia have an electric utility company that at
7 a minimum provides quality electric service at
8 affordable rates, cooperatively works with the
9 city stakeholders to enhance the availability of
10 renewable and distributed generation resources,
11 and is a responsible corporate partner that will
12 demonstrably support the economy of the District
13 of Columbia through charitable contributions and
14 job creation.

15 As policy and decision-makers, the public
16 is looking to us to make decisions that benefit
17 them and provide a future that is fair and
18 equitable. History will ultimately judge our
19 actions. Thank you.

20 CHAIRMAN KANE: Thank you, Mr. Daniels.

21 Do any of the other parties have an
22 opening statement? D.C. Government.

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1 MR. COYLE: Thank you, Chair Kane,
2 Commissioners. Again, my name is John Coyle of
3 the firm Duncan & Allen. It's my privilege to
4 appear here before you this morning as counsel to
5 the government of the District of Columbia.

6 The proceeding before you involves the
7 third electric utility merger to come before this
8 Commission under D.C. code section 34-504 and
9 34-1001. If you approve this proposed merger, it
10 is likely to be the last, as approval would place
11 the retail supply of electricity between the
12 Schuylkill and the Potomac under a single company,
13 albeit one run from Chicago and having merchant
14 generating interests that span the country.

15 16 years after this Commission approved
16 PEPCO's divestiture of its generation, which
17 divestiture contributed to the generation -- to
18 the development of a reasonably robust market for
19 wholesale power, you now find yourselves asked to
20 approve a reconsolidation that brings generation
21 back into the same corporate family that runs the
22 District's transmission and distribution

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1 infrastructure.

2 Seven years after the D.C. council
3 enacted the Clean and Affordable Energy Act, you
4 are asked to approve the transfer of the local
5 franchise from a utility that has no economic
6 motive to resist localized renewable generation
7 and energy efficiency to one that has opposed
8 public support for renewables and that has
9 economic motives that are very different from
10 PEPCO's and PHI's.

11 As we are all aware, the Commission's
12 precedent requires three things for a utility
13 merger to pass muster: One, a showing that the
14 merger will benefit the public rather than merely
15 leave it unharmed; two, a showing that the
16 benefits to shareholders as a result of the merger
17 do not come at the expense of ratepayers; and,
18 three, the merger must produce a direct and
19 tangible benefit to ratepayers, meaning that any
20 savings that result from a proposed merger must be
21 shared with the ratepayers and be shared in such
22 proportion that the ratepayers are compensated for

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1 the risks inherent in the companies' decision to
2 merge.

3 To perform the necessary evaluation of
4 this proposed consolidation, we need to take a
5 step back from arguments about what are and are
6 not merger, quote, synergies, unquote, or how to
7 count those could so-called synergies, and inquire
8 instead why this merger is really being proposed
9 at this time.

10 PHI's definitive proxy statement filed
11 with the Securities and Exchange Commission on
12 August 12th, 2014 reports that the merger involves
13 a premium of more than 24 percent over the market
14 value of PHI's stock which translates, again,
15 according to the proxy statement, to a premium of
16 1.6 billion -- with a B -- dollars to PHI
17 stockholders.

18 That premium is over and above the market
19 price of PHI stock which, owing in part to an
20 earlier consolidation that formed PHI, is
21 substantially over book value. In fact, the
22 substance of this transaction is that Exelon is

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1 proposing to pay \$6.8 billion to acquire a holding
2 company with balance sheet equity of about \$4.3
3 billion.

4 To be absolutely clear, the District is
5 indifferent as to what one company wants to pay to
6 acquire another, so long as the District and its
7 retail electric customers have enforceable
8 assurances that the transaction will satisfy the
9 Commission's merger approval criteria in fact and
10 will not put them in harm's way.

11 But the sheer size of the premium begs
12 the question why it is being offered. That
13 \$1.6 billion premium is not being offered for the
14 privilege of creating 33.75 million, up from
15 14 million, in synergies to be allocated to the
16 District attributable mainly to the consolidation
17 of corporate functions and resulting job losses --
18 primarily, we believe, well-paying professional
19 jobs at PHI based in the District.

20 The logic of that proposition simply does
21 not tally. Exelon tells us that its recently
22 improved customer investment fund of 33.75 million

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1 represents 94 percent of the proposed value of the
2 merger synergies it expects to achieve over the
3 first ten years following consummation of the
4 merger.

5 No business pays a \$1.6 billion premium
6 over market price of stock in a \$6.8 billion stock
7 purchase transaction for the privilege of
8 generating 2.1 percent of the 1.6 billion in
9 premium in savings over ten years and then giving
10 the claimed savings away.

11 Any analyst who has looked at this
12 transaction has expressed the understanding that
13 its point is to acquire a great deal of reliable,
14 regulated cash flow to ease the costs of Exelon's
15 generating fleet, and particularly its nuclear
16 assets, over the shoal of wholesale power market
17 prices, depressed for the time being by the
18 availability of shale gas and oil in unprecedented
19 quantities and at unusually low prices.

20 In the words of Exelon's chief financial
21 officer, Jack Thayer, on the announcement of the
22 proposed merger -- and I'm quoting -- as you do

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1 the math, you will see synergies is a very small
2 element of the accretion in this transaction. It
3 is really the opportunity for incremental leverage
4 at the holding company that this transaction
5 afford. It's the monetization of certain assets
6 at a higher value than what would be implied in
7 our price to earnings multiple.

8 And so the arguments about synergies, or
9 the lack thereof, serve primarily in this case as
10 a distraction from the real point of the
11 transaction.

12 To understand what you are really being
13 asked to approve, you need to instead observe a
14 time-honored District of Columbia tradition and
15 follow the money. What is the incremental
16 leverage? What assets are being monetized at what
17 value? Where does the money really come from and
18 where does it really go?

19 The answers to those questions, we
20 submit, are the ones that will determine your
21 finding, that should determine your finding, as to
22 whether or not this proposed merger is consistent

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1 with the public interest.

2 Does the transaction produce net benefit
3 to consumers? The District thinks not. Among
4 other things, as District witness John Wilson
5 points out in his testimony, the merger results in
6 massive savings in the cost of capital embedded in
7 PEPCO's current rates, but none of those savings
8 are proposed to be shared with customers.

9 On the reliability front, the other
10 claimed merger benefit, we're offered a
11 contingency-riddled promise of attainment of the
12 Commission's electric quality of service
13 standards, quote, on average, unquote, between
14 2018 and 2020.

15 District witness Max Chang explains that
16 no merger is required in order to attain
17 compliance with the Commission's EQSS on a
18 year-by-year basis, as the Commission has already
19 required it and, in fact, PEPCO is fairly far
20 along the road toward attaining compliance with
21 those standards on its own and without the merger.

22 Apart from the lopsided allocation of

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1 claimed benefits and distraction from the
2 examination of its real benefits and
3 beneficiaries, does this merger as proposed pose
4 risks to District electricity consumers? The
5 District thinks it does.

6 District witness Ralph Smith identifies a
7 number of those risks in his testimony. District
8 witness Brendan Shane, formerly with the
9 District's Department of the Environment, explains
10 the merger's potential adverse impacts on the
11 District's implementation of its Clean and
12 Affordable Energy Act and subsequent policy
13 initiatives aimed at increasing energy efficiency,
14 reducing the District's carbon footprint and
15 moving toward a more local and sustainable power
16 supply.

17 District witness Mark Chambers will
18 explain the impacts of the proposed merger on the
19 District as one of PEPCO's largest retail
20 customers, if not the largest.

21 Could this proposed be merger be made to
22 satisfy the Commission's merger criteria -- merger

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1 approval criteria? That would be a very heavy
2 lift at this point. The possibility could exist
3 only if sufficient effort and attention were to be
4 devoted to the protection of the interests of the
5 District -- of the interests that District law
6 requires to be protected in this context,
7 including the local economy and the environment,
8 but that hasn't happened yet.

9 We have had a long process so far in this
10 case, and will have a longer one yet. There may
11 remain some unvanishing possibility that the
12 District's retail electric franchise could be
13 transferred in circumstances that protect and
14 advance the public interest. But that will not
15 and cannot happen without the Commission's
16 vigorous intervention to reshape the terms of that
17 transfer to comply with the Commission's
18 established public interest criteria because the
19 much amended merger proposal before you, like the
20 versions that preceded it, fails to satisfy those
21 established public interest criteria.

22 I thank you.

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1 CHAIRMAN KANE: Thank you, Mr. Coyle.

2 Mr. Speck.

3 MR. SPECK: Thank you, Your Honors.

4 DC SUN doesn't have a separate opening statement,
5 but we would like to subscribe enthusiastically to
6 the OPC's and District government's opening
7 statements. Thank you.

8 CHAIRMAN KANE: Thank you. And let me
9 ask, at least the first couple of times each
10 person speaks if you would identify yourself for
11 the court reporter so that she can recognize the
12 voice.

13 Anyone else? All right.

14 Mr. Lorenzo, you may present your first
15 witness.

16 MR. GADSDEN: Chairman Kane, honorable
17 Commission, my name is Thomas Gadsden representing
18 the joint applicants along with Mr. Lorenzo. We
19 call as our first witness Christopher Crane.

20 WHEREUPON,

21 CHRISTOPHER CRANE,

22 called as a witness, and after having been first

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1 sworn by the secretary, was examined and testified
2 as follows:

3 DIRECT EXAMINATION

4 BY MR. GADSDEN:

5 Q Mr. Crane, by whom are you employed and
6 what is your position?

7 A I'm employed by Exelon Corporation. I'm
8 the president and CEO.

9 MR. GADSDEN: Your Honors, this morning
10 Mr. Crane will be sponsoring three statements of
11 written testimony and four exhibits which we will
12 go through seriatim at this time.

13 BY MR. GADSDEN:

14 Q Mr. Crane, do you have before you a fully
15 conformed copy of the statement of direct
16 testimony which was premarked as Joint Applicants'
17 Exhibit A consisting of 26 pages of questions and
18 answers?

19 A I do.

20 Q Attached to that statement of testimony
21 do you have a map which was premarked as
22 Exhibit A1?

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1 A I do.

2 Q Were those documents prepared by you or
3 under your direct supervision?

4 A Under my supervision.

5 Q If I were to ask you the questions set
6 forth in Exhibit A today, would your answers
7 contained therein?

8 A Yes.

9 Q And they be true and correct to the best
10 of your knowledge?

11 A Yes.

12 Q And similarly, is the data depicted on
13 Exhibit A1 true and correct to the best of your
14 knowledge?

15 A Yes.

16 Q Do you also have before you fully
17 conformed copies of your rebuttal statement
18 premarked as Joint Applicants' Exhibit (3A),
19 consisting of 27 pages of questions and answers?

20 A I do.

21 Q And do you also have attached to that a
22 17-page document premarked as Exhibit (3A)-1 which

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1 is entitled the Joint Applicants/District of
2 Columbia merger commitments?

3 A I do.

4 Q Were those documents also prepared under
5 your direct supervision?

6 A Yes.

7 Q If I were to ask you the questions set
8 forth in statement (3A) today, would your answers
9 be as contained therein?

10 A Yes.

11 Q And would they be true and correct to the
12 best of your knowledge?

13 A Yes.

14 Q And, similarly, is the information
15 provided in (3A) true and accurate to the best of
16 your knowledge?

17 A Yes.

18 Q Finally, Mr. Crane, do you have fully
19 conformed copies of Joint Applicants'
20 Exhibit (4A), a statement of supplemental direct
21 testimony comprised of five pages of questions and
22 answers?

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1 A Yes.

2 Q And do you also have two attached
3 exhibits, the first premarked as Joint Applicants'
4 Exhibit (4A)-1 which comprises 42 pages and
5 includes both a news release issued by the New
6 Jersey Board of Public Utilities as well as a
7 stipulation of settlement submitted at New Jersey
8 VPU docket number EM14060581?

9 A Yes.

10 Q Do you have a second exhibit premarked as
11 Joint Applicants' Exhibit (4A)-2, which is a
12 17-page document entitled the Joint
13 Applicants/District of Columbia merger
14 commitments?

15 A I do.

16 Q Were those documents similarly prepared
17 under your direct supervision?

18 A Yes.

19 Q And if I were to ask you the questions
20 set forth in statement (4A) today, would your
21 answers be as contained therein?

22 A Yes.

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1 Q And would they be true and correct to the
2 best of your knowledge?

3 A Yes.

4 Q And is the information set forth in
5 Exhibits (4A)-1 and (4A)-2 true and correct to the
6 best of your knowledge?

7 A Yes.

8 MR. GADSDEN: Your Honors, that's all we
9 have. Mr. Crane is available for
10 cross-examination.

11 CHAIRMAN KANE: People's Counsel.

12 CROSS-EXAMINATION

13 BY MR. GRAY:

14 Q Good morning. I'm Jason Gray from the
15 law firm of Duncan, Weinberg, Genzer & Pembroke on
16 behalf of the Office of People's Counsel. I have
17 a few questions.

18 MR. GRAY: But first, Your Honor, just as
19 a housekeeping matter, order 1770, I believe -- it
20 was the Commission's January 29th order --
21 indicated that the parties, to save time, could
22 stipulate to marking the prefiled testimony and

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1 exhibits. So I just wanted to affirm OPC's
2 understanding of that process and that we don't
3 have any objection to that process.

4 CHAIRMAN KANE: Thank you. Yes, that is
5 the process.

6 BY MR. GRAY:

7 Q Mr. Crane, I have a few general questions
8 for you before we jump into some of the major
9 issues in this case. Could you please turn in
10 your direct testimony to page 1. Do you see at
11 line 15 where you testified that, in 1998, you
12 moved to Commonwealth Edison Company?

13 A Yes.

14 Q Was ComEd owned by Unicom at that time?

15 A Yes.

16 Q Were you an employee of ComEd or Unicom?

17 A ComEd.

18 Q If you look over on page 2, lines 4 and
19 5, you indicate that Exelon was formed in 2000
20 through the merger of Unicom and PECO. Do you see
21 that?

22 A Yes.

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1 Q Following that merger, am I correct that
2 both Unicom and PECO stopped issuing stock, and
3 the new corporate entity was Exelon?

4 A Yes. There was some preferred stock at
5 PECO, but that -- for all intents and purposes,
6 the major stock was issued at the holding company
7 of Exelon.

8 Q You go on to state that in June of 2003,
9 you joined Exelon Nuclear. Were you employed by
10 Exelon from 2000 to June 2003?

11 A Yes.

12 Q Staying on page 2, if you skip down to
13 line 15, beginning on line 15, you talk about your
14 promotion to the role of president and chief
15 operating officer of Exelon. Do you see that?

16 A Yes.

17 Q And you testified that, among other
18 things, your responsibilities included directing
19 acquisitions; is that correct?

20 A Yes.

21 Q From 2008 to 2012, when you took over in
22 your current role, how many acquisitions would you

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1 say you directed?

2 A Asset acquisitions, there were multiple.
3 There were a wind company, John Deere Wind. We
4 acquired multiple power plants. And then the
5 final was the -- led the negotiation on the
6 acquisition and merger with Constellation.

7 Q When you say the acquisition and merger
8 with Constellation, as someone who has been
9 involved in a number of transactions, do you have
10 an opinion on whether the term "acquisition" can
11 have a negative connotation, but the term "merger"
12 can be more palatable?

13 A No, I don't. It usually is the size of
14 it that differentiates what word we use.

15 Q You do agree that the proposed
16 transaction involving PHI and Exelon is an
17 acquisition?

18 A We are acquiring through this process,
19 yes.

20 Q If I use the term -- I'll try to use the
21 term "acquisition," but I my use the term
22 "merger." I just want to make sure we have a

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1 common understanding that, if I'm referring to
2 merger, my intent is to refer specifically to the
3 merger of SPE and PHI.

4 A Okay.

5 Q Could you please now turn to page 4 of
6 your direct testimony. I direct your attention to
7 lines 16 and 17 where you testify that you
8 introduced other witnesses submitting direct
9 testimony in support of the merger. Do you see
10 that?

11 A Yes.

12 Q I believe if you'll flip to page 24,
13 that's actually the section, is it not, where you
14 introduce or at least begin introducing the other
15 witnesses?

16 A Yes, it is.

17 Q To prepare this section of your
18 testimony, were you required to review the
19 testimony of these other witnesses before it was
20 filed?

21 A Yes, I did.

22 Q And you have similar introductions in

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1 your December 17th rebuttal and your February 17th
2 supplemental direct testimony; is that correct?

3 A Yes. That's correct.

4 Q And did you review the other witnesses'
5 testimony before making those introductions as
6 well?

7 A Yes.

8 Q I don't want you to get into too much
9 detail on the drafting and review process, but
10 just as a general matter, in your role as Exelon's
11 CEO, do you have final authority to sign off on
12 all the testimony that's been filed in this
13 proceeding?

14 A With advice of counsel, yes.

15 Q Let's turn now to your February 17th
16 supplemental direct testimony which has been
17 marked as Exhibit (4A).

18 A Is that (4A) in my book, Tom?

19 Q I want you to turn to page 1 to start off
20 with. I have one question, and it's on three
21 different statements, so I'm going to read those
22 statements first and then I'll ask you the

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1 question, and I'll track through with you as I'm
2 reading the statement.

3 The first is page 1, beginning on -- the
4 question beginning on line 10. It's basically, to
5 paraphrase, the purpose of your testimony is to
6 bring to the Commission's attention the settlement
7 agreement that was reached in New Jersey. Is that
8 essentially what that question and answer states?

9 A Yes.

10 Q The second one, if you turn over to
11 page 2, do you see on line 8 where you testify
12 that the joint applicants have significantly
13 enhanced their commitments with respect to the CIF
14 ring-fencing, affiliate transactions issues,
15 taxes, as well as reliability performance metrics?

16 A Yes.

17 Q And then the third statement is also on
18 page 2, line 18. You state that you believe the
19 joint applicants have already offered a
20 significant and meaningful package of commitments.
21 Do you see that?

22 A Yes.

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1 Q My question with regard to each of these
2 three statements is, are you comparing the merger
3 commitments that are contained in the
4 February 17th filing to the joint applicants'
5 pre-February 17th testimony and exhibits?

6 A Yes.

7 Q I'm not asking you to agree, but do you
8 understand that one of OPC's criticisms in this
9 case has been with the manner in which the case
10 has been presented by the joint applicants?

11 A I'm not aware of that point, no.

12 Q Let me ask you a question, see if we can
13 walk through a potential example. On page 3, at
14 line 3, do you see where you refer to
15 Mr. Khouzami's February 17th testimony?

16 A Yeah.

17 Q And in particular, I want to call your
18 attention to the statement that says, The joint
19 applicants are now increasing their proposed CIF
20 commitment in the District of Columbia to
21 33.75 million.

22 Do you see that?

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1 A Yes.

2 Q Now, if we flip back to your direct
3 testimony, Exhibit A, I call your attention to
4 page 12. Let me know when you're there.

5 A I'm there.

6 Q On line 20, lines 19 and 20, do you see
7 the reference to customer investment fund of
8 \$33.75 million?

9 A Yes.

10 Q So the confusion -- it's kind of a
11 procedural confusion, I guess that I'd like for
12 you to clear up -- but you have direct testimony
13 referring to a \$33.75 million customer investment
14 fund, and then you have supplemental direct
15 testimony saying you've increased the customer
16 investment fund to that same amount. Do you
17 agree?

18 A Yes, I see that. My understanding is the
19 PEPCO D.C. original customer investment fund was
20 14-7, I thought was the number. I'm not sure if
21 this is all of PEPCO including Maryland or not.
22 But it says the District. So I understand the

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1 confusion. We'll have to look at that.

2 Q Well, let's see if we can hopefully clear
3 it fairly easily.

4 MR. GRAY: Your Honor, at this time I
5 would like to mark the two exhibits that have been
6 premarked as Joint Parties' Hearing Exhibits
7 Number 1 and 2.

8 BY MR. GRAY:

9 Q I believe you should have those in your
10 binder, Mr. Crane.

11 CHAIRMAN KANE: They are so marked.

12 (Joint Parties' Exhibit Numbers 1 and 2
13 were marked for identification.)

14 BY MR. GRAY:

15 Q Let me know when you've identified the
16 document that's been identified as Joint Parties'
17 Hearing Exhibit 1.

18 A The map?

19 Q No. It should be an 85-page filing -- or
20 an 85-page document in table form.

21 MR. LORENZO: Your Honor, may we approach
22 the witness?

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1 THE WITNESS: I have a lot of 1s here.

2 If somebody could just --

3 CHAIRMAN KANE: Yes, Mr. Lorenzo, you may
4 approach and help.

5 THE WITNESS: I have it.

6 BY MR. GRAY:

7 Q Have you got it? Okay. And do you see
8 that this is an 85-page index of changes?

9 A Yes.

10 Q Have you seen that document before?

11 A I don't recall seeing this, no.

12 Q Would you agree, subject to check, that
13 the index of changes was part of the joint
14 applicants' February 17th submission?

15 A I could, yes.

16 Q And I believe you testified that you
17 reviewed the filings that were submitted in this
18 case; is that right?

19 A Yes.

20 Q Have you identified the document that's
21 marked as Joint Parties' Hearing Exhibit 2? It is
22 a consolidated document that's 113 pages.

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1 A Yes.

2 MR. GRAY: Your Honor, just so the record
3 is clear, this document is excerpts of the
4 originally filed testimony from June, and then
5 some of the June testimony was corrected in a
6 September errata. That's been reflected. And it
7 also contains the testimony from the September
8 supplemental direct filing that changed on
9 February 17th, as well as the testimony from the
10 December 17th rebuttal filing that changed on
11 February 17th.

12 And, in total, there are 90 pages of
13 testimony that changed. And what we did was put a
14 slip sheet in between each set of testimony, so
15 there's 23 slip sheets; hence, the 113-page
16 exhibit.

17 And we have also, for the parties -- to
18 explain to the parties, we've grouped each of the
19 sets of testimony by witness. And I don't intend
20 to make it an exhibit, but I have a index
21 explaining the page breakdowns if it would be
22 helpful for the Commission and the parties.

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1 CHAIRMAN KANE: Again, for the record,
2 the exhibit that you're referring to is?

3 MR. GRAY: This would be Joint Parties'
4 Hearing Exhibit 2.

5 May I approach with copies, Your Honor?

6 CHAIRMAN KANE: Yes.

7 MR. GRAY: How many do you need?

8 CHAIRMAN KANE: Give them to the
9 secretary.

10 BY MR. GRAY:

11 Q Have you had a chance to look at the
12 document that's been marked as Joint Parties'
13 Hearing Exhibit 2, Mr. Crane?

14 A I breezed through just looking at the
15 pages, yes.

16 Q Would you agree or accept, subject to
17 check, that those are the originally filed
18 versions of the testimony and exhibits that were
19 changed on February 17th?

20 A Yes.

21 Q Thank you. We'll have some questions
22 about those later, but you can put those two

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1 exhibits down for now.

2 I want to turn really to the first
3 substantive issue that we'll talk about today, the
4 customer investment fund? Initially, I believe
5 you stated the joint applicants proposed a
6 \$100 million customer investment fund for all
7 jurisdictions; is that right?

8 A Yes.

9 Q And of that original amount of
10 100 million, about 14 was allocated to the
11 District of Columbia?

12 A Yes.

13 Q Am I correct that the \$100 million figure
14 for the original customer investment fund was
15 linked to the synergies -- the expected
16 synergies -- associated with PHI's regulated
17 operations?

18 A Yes.

19 Q Do you understand that a number of
20 parties to this proceeding, including OPC, have
21 taken the position that the \$100 million customer
22 investment fund was inadequate?

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1 A Yes.

2 Q Although this testimony has been
3 superseded in Joint Parties' Hearing Exhibit 2 --
4 if you want to look, but you may be able to
5 confirm -- am I correct that you filed rebuttal
6 testimony in this proceeding on December 17th that
7 did not propose any change to the customer
8 investment fund level?

9 A I'd have to go back and a look at when we
10 were revised it. I think it was in a February
11 filing, but that's...

12 Q And then on January 14th, the joint
13 applicants entered into a settlement agreement in
14 New Jersey; is that right?

15 A Yes.

16 Q And among other things, one provision of
17 that settlement agreement was to increase the
18 amount of the customer investment fund that would
19 be allocated to New Jersey?

20 A Yes.

21 Q When you agreed to increase the amount of
22 the customer investment fund in New Jersey, did

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1 you do so with the understanding that you may need
2 to increase the customer investment fund for the
3 other jurisdictions?

4 A Yes.

5 Q Did you have that understanding as of the
6 time that you reached that settlement on
7 January 14th?

8 A Yes.

9 Q And as you indicated, in the District,
10 you have increased the customer investment fund in
11 the February 17th filing, correct?

12 A Yes.

13 Q Have the joint applicants formally
14 proposed to increase the customer investment fund
15 in the other two jurisdictions, Maryland and
16 Delaware?

17 A Yes.

18 Q Do you know --

19 A Proportional to New Jersey, yes.

20 Q Do you know when those commitments were
21 made?

22 A They were through settlement

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1 negotiations. I don't have the exact dates.

2 Delaware was sooner, and Maryland more recently.

3 Q With those four revised commitments, do
4 you know the total of the customer investment fund
5 now?

6 A No, I don't have it off the top of my
7 head. I'm sorry.

8 Q Do you know whether the revised customer
9 investment fund exceeds the synergy savings that
10 are expected to be generated from PHI's regulated
11 operations?

12 A I think that -- my recollection is the
13 customer investment fund is approximately ten
14 years worth of the synergies to be paid up front,
15 approximately ten years.

16 Q And when you say the synergies, are you
17 referring to the synergies of the total
18 transaction or of regulated operations only?

19 A The regulated operations. It's a
20 reduction in cost, and the costs are allocated by
21 the business services organization.

22 Q The New Jersey settlement -- for the

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1 record, that's your exhibit -- your February 17th
2 Exhibit (4A)-1, I believe -- that has a most
3 favored nations clause; am I correct?

4 A Yes.

5 Q And that's a two-part clause; is that
6 right?

7 A I'd have to go back and look at it.

8 Q Sure. And I think -- if you want to look
9 at it, it's paragraphs 91 and 92. This can be
10 found on page 37 and 38 of your Exhibit (4A)-1.
11 Let me know when you're there.

12 A I'm here.

13 Q At the bottom of page 37 of 42 -- not the
14 actual page at the bottom of the original
15 document -- it explains the breakout of the most
16 favored nations clause. Let me just see if I can
17 summarize it.

18 The first part essentially says that if
19 another jurisdiction increases the customer
20 investment fund above the allocation that New
21 Jersey got as a result of this agreement, New
22 Jersey would get the benefit of that increased

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1 amount. And then the second part says that if
2 there are other financial or non-financial
3 benefits beyond the customer investment fund, New
4 Jersey would get comparable benefits; is that
5 right?

6 A Yes.

7 Q When you revised the merger commitments
8 in the District of Columbia on February 17th, did
9 you include a most favored nations clause?

10 A I do not recall one being in there.

11 Q Does the existence of the first part of
12 the most favored nations clause from the New
13 Jersey settlement indicate that Exelon has not
14 ruled out additional increases to the customer
15 investment fund?

16 A We -- we hope to within the District, and
17 in the other jurisdictions, enter settlement
18 negotiations to satisfy the stakeholders in a
19 process if we could. If that required some
20 balancing or alternate amounts, we would have to
21 make -- keep everybody whole across the negotiated
22 jurisdictions.

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1 Q Do you have a timetable in mind as to
2 when those settlement discussions would take
3 place?

4 A Well, I know they've been ongoing with
5 the folks that you represent and others in the
6 District here. We've been involved in Maryland
7 and have come to settlements with some major
8 parties in Maryland, and previously settled --
9 came with a larger group settlement in Delaware.

10 Q Do you recall during the evidentiary
11 hearing in Maryland cross-examination by
12 Mr. Strauss (phonetic) on the tipping point?

13 A Not -- you have to give me more.

14 Q Essentially it was at the point at which
15 the merger commitments would mean that Exelon is
16 losing money on the integration of PHI.

17 A Yes, there is a point that it becomes
18 dilutive and we would not be able to execute it.

19 Q Has Exelon conducted an analysis of what
20 that tipping point is?

21 A I have not seen one.

22 Q Based and your experience as someone who

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1 has directed a number of acquisitions, is it
2 common to not perform that type of analysis?

3 A You would perform the accretion analysis
4 which would show you the value creation, the net
5 present value of an acquisition. And if your net
6 present value was decreased significantly that it
7 no longer could accept -- you could no longer, as
8 an entity, accept the risk that's inherent with
9 the acquisition, that would be a point of
10 discussion with the board.

11 Q With respect to that analysis that you
12 just described, am I correct that Exelon has not
13 performed that analysis with regard to the
14 proposed transaction with PHI?

15 A I have not reviewed an analysis if it's
16 been performed. I do not know of an analysis like
17 that.

18 Q Would an analysis like that come at your
19 direction or request?

20 A It could.

21 Q Who would perform an analysis like that
22 that did not come at your direction?

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1 A Multiple leaders within the company could
2 request it: The chief financial officer, the head
3 of strategy. But I'm unaware of it being done.

4 Q Is there another witness in this
5 proceeding that we should ask?

6 A I'm not aware of which one would be the
7 best. Not having the study, I'm not sure who
8 would answer.

9 MR. GRAY: Your Honor, at this time I
10 would like to mark for identification the document
11 that's been premarked as OPC Cross-Examination
12 Exhibit Number 5. It is a two-page response --
13 supplemental response to OPC data request 21-2. I
14 ask that you mark that as OPC 3.

15 CHAIRMAN KANE: So marked.

16 BY MR. GRAY:

17 Q That document should be in your binder,
18 Mr. Crane. Let me know when you've found it.

19 A Is it -- could I get help with that?

20 MR. GRAY: I'm sorry, Your Honor. I said
21 OPC 3. The first two exhibits were joint parties
22 hearing exhibits. So this document that's been

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1 marked as -- premarked as OPC Cross-Examination

2 Exhibit Number 5 will be marked as OPC 1.

3 (OPC Exhibit Number 1 was marked for
4 identification.)

5 BY MR. GRAY:

6 Q Do you have it? Mr. Crane, if you look
7 at the top of the document, just below the header,
8 you'll see your name, Witness Crane, Exhibit Joint
9 Applicants' (4A). Do you see that?

10 A Yes.

11 Q And then in the paragraph that follows
12 the Q, under question 2, about halfway down on the
13 left, do you see your last name, Crane there? Do
14 you see that?

15 A Yes.

16 Q And then if you turn to page 2 and look
17 down at the bottom where it says sponsor, the
18 sponsor of this is joint applicants, and there's
19 not an individually named sponsor; is that right?

20 A Yes.

21 Q Are you able to verify that this
22 supplemental response here on page 2 is true and

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1 accurate?

2 A Yes.

3 Q Did you prepare this response?

4 A It was prepared under my direction.

5 Q Thank you. Let's turn back to page 1. I
6 want to just briefly walk through this document
7 and then I'll get to a couple of questions. Take
8 a look at the paragraph under Q. Would you agree
9 with me that there's not actually a question in
10 that paragraph, but rather it's more of a
11 background contextual explanation?

12 A Let me read it. Just a second.

13 Q Sure.

14 A Yes. It's a statement.

15 Q And then there are four questions below
16 that, A, B, C and D. I'm going to focus on
17 question A. Do you see basically that question
18 asks to identify the data on which the decision
19 was made to revise the merger commitments in the
20 District of Columbia rather than present the New
21 Jersey settlement as a framework for a settlement
22 in the District. Is that correct?

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1 I'm just asking you to verify your
2 understanding of the question A.

3 A My understanding is we took the value of
4 the New Jersey settlement, the monetary value, and
5 we updated, revised the commitment in the District
6 to the equivalent on a pro rata basis, customer
7 basis.

8 Q Sure. And I think, you know, we'll get
9 to that. You're a little bit ahead of me. I just
10 want to confirm that the question asks to please
11 identify the date on which you decided to revise
12 the merger commitments.

13 Let me back up. This may be more
14 helpful. The question -- the paragraph that we
15 talked about above, it says, At the evidentiary
16 hearing in Maryland, Mr. Crane confirmed that the
17 New Jersey settlement was not a proposal to revise
18 any merger commitments. Is that an accurate
19 statement?

20 A If you read the paragraph in total, yes.

21 Q And then as we read it in total, the
22 second half basically says, in contrast, that's

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1 not the approach that the joint applicants used in
2 the District of Columbia proceeding; is that
3 accurate?

4 A That's accurate.

5 Q So getting to your response just a minute
6 or two ago, you indicated that you were trying to
7 apply the value, I believe, of the New Jersey
8 settlement; is that right?

9 A Yes.

10 Q And I understand in the February 4th
11 filing there were also revisions to the merger
12 commitments. I want to set those aside for a
13 second and let's just focus on the aspects of that
14 filing that pertained to the New Jersey
15 settlement.

16 When did you decide to apply the value
17 rather than take -- apply the value in D.C. rather
18 than take the approach that you took in Maryland?

19 A The approach in New Jersey and the
20 approach in Maryland was a negotiated settlement
21 where we took other elements besides the monetary
22 value that stakeholders thought were important in

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1 those jurisdictions to come to an agreed-upon
2 settlement. We have not got to that point in D.C.

3 We -- as you are aware, we're in process
4 of those discussions. And if issues like that
5 became a priority, or a priority for the
6 Commission, we could have those discussions.

7 Q Let me see if I understand. Are you
8 saying that you want -- in the February 4th filing
9 your intention was to inform the Commission and
10 the parties that you would increase the CIF
11 commitment -- that was a firm revision -- and then
12 there were other aspects of the New Jersey
13 settlement that you would consider in settlement
14 discussions?

15 A We could. To be real clear about it,
16 versus the way all the questions are, it was very
17 awkward to have a settlement in New Jersey of a
18 monetary value and then be sitting with a
19 settlement of less value in the District. So
20 that's the basis of the revision.

21 If we were going to have a higher
22 monetary settlement per customer in one

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1 jurisdiction, we're obviously willing to have that
2 same value translated. And that was the way that
3 we conveyed it.

4 What we didn't realize at the time is it
5 started the clock over again in the process. And
6 so that part we didn't understand, but that was
7 the basis of it.

8 Q Let me ask you about another example. We
9 had just talked about the most favored nations
10 clause of the New Jersey settlement. Do you
11 recall that?

12 A Yes.

13 Q When the joint applicants submitted the
14 February 4th filing, was it your intention to
15 apply a most favored nations clause to the
16 District?

17 A It hadn't come up in discussion as a
18 priority. It was a priority in New Jersey. If it
19 is a priority for the Commission, we would be
20 willing to take that condition on.

21 But short of having a discussion to know
22 that that was somebody's priority, it was -- the

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1 commitment was not made.

2 Q So I may have asked this, but I'm still
3 not clear. The intention of the February 4th
4 filing was to affirmatively revise the customer
5 investment fund level and then kind of highlight
6 other issues that were resolved in New Jersey,
7 that that type of framework could be used in
8 settlement in the District; is that accurate?

9 A I believe so, yes.

10 Q For example, did the New Jersey
11 settlement resolve issues that are comparable to
12 public interest factor number 7 in this case?

13 A We'd have to go back and look. I don't
14 know what 7 is off the top of my head.

15 Q Would you accept, subject to check, 7 is
16 essentially the District's interest in
17 conservation of natural resources?

18 A Yes.

19 Q Was there any comparable provision to
20 address issues like that in the New Jersey
21 settlement?

22 A I do not recall all the conditions off

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1 the top of my head. I'd have to go back and look.

2 Q Let's assume hypothetically there was
3 not. The fact that there was not a comparable
4 provision, that would not mean that Exelon was not
5 willing to consider a provision that was specific
6 to D.C.; is that right?

7 A We understand we have to meet the test,
8 and there's variations in each jurisdiction, but
9 the specific jurisdiction test has to be made, and
10 we would accept that.

11 Q Staying with this exhibit, OPC
12 Cross-Examination Exhibit Number 1, I want to call
13 your attention to the last sentence. About six
14 lines up from the bottom right, it begins, The
15 joint applicants determined.

16 Do you see that?

17 A Are we still on Exhibit 5?

18 Q Yes.

19 A Page?

20 Q Page 2.

21 A Page 2 of 2? Okay.

22 Q Yeah. And if you look down six lines up

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1 from the bottom, the sentence that begins, The
2 joint applicants determined.

3 A Yes.

4 Q Do you agree that sentence essentially
5 states that after the February 9th oral argument,
6 the joint applicants decided to formally reflect
7 revised merger commitments in a new filing?

8 A Yes.

9 Q That new filing was the February 17th
10 filing; is that correct?

11 A Yes.

12 Q Are there any differences in what the
13 joint applicants intended on February 4th, as
14 opposed to the filing on February 17th with
15 respect to revised merger commitments?

16 A I'm not aware of any.

17 Q Do you know if there's another witness
18 who would be aware of any who we should direct
19 that question to?

20 A No. The -- it's with counsel, the
21 conversation on what commitments we revised. It's
22 just been a while. And I don't recall how that

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1 dialogue took place over those two weeks, or close
2 to two weeks. The essence was there's a monetary
3 value, and it was just awkward having a filing in
4 one proceeding that was less per customer than
5 another one. So how did we true that up was the
6 determination, and we would make the filing, which
7 we did on the 17th.

8 Q If there are no intended differences
9 between the filing on the 4th and the 17th, is it
10 fair to say that the filing on February 17th also
11 expresses the joint applicants' intent to consider
12 other issues that were contained in the New Jersey
13 settlement or D.C.-specific issues that may be
14 similar to the New Jersey-specific issues in the
15 New Jersey settlement?

16 A We've always had the intent of meeting
17 the tests within the jurisdictions or trying to
18 resolve through settlement the specifics for those
19 individuals. If they were the same as New Jersey,
20 then that would be the case. And if there were
21 additional because of unique regulatory
22 requirements, that we would have those

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1 discussions.

2 Q Let's talk about another specific
3 example. We talked about the most favored nations
4 clause. In New Jersey, just like in the District,
5 there was an issue about levels of involuntary
6 attrition; is that right?

7 A Yes.

8 Q Just so I'm clear, the commitment in the
9 District is that there will be no reduction due to
10 net voluntary attrition for a period of two years
11 following the merger; is that right?

12 A So non-voluntary.

13 Q Yes.

14 A Yeah, there is the commitment to no
15 reductions of the utility staff for two years.
16 Actually, a commitment to hire, increase
17 employment.

18 Q Are you aware of the provision in the New
19 Jersey settlement that contains an employment
20 provision for years 3, 4 and 5 that's not capped
21 at year 2?

22 A Yes. I remember there was a negotiated

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1 term extension. I thought it was a three-year,
2 but you have -- there was a difference.

3 Q If you want to refer to it, I believe
4 it's paragraph 20 of your Exhibit (4A)-1 which is
5 on page 13. Pages 13 of 42, not the page on --

6 A I've got it.

7 Q Do you see the two lines up from the
8 bottom for years 3 to 5?

9 A Yes, I do. I see it.

10 Q So in submitting the New Jersey
11 settlement as an exhibit to your February 17th
12 testimony, was it your intention to apply the
13 value and framework of that particular provision
14 to the District?

15 A I don't believe we made that revision in
16 the February 17th filing to the District. Again,
17 we did this through settlement discussions and we
18 haven't reached that point here in the District.

19 Q Can you tell me what's the basis for the
20 two-year period and the commitment that you have
21 made here in the District?

22 A We used that similar commitment in a

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1 previous merger that met the test. So that -- as
2 far as I know, that's the basis of it.

3 Q What merger was that?

4 A The Constellation/BGE.

5 Q Acquisition?

6 A The acquisition, merger. I'm not sure of
7 the difference.

8 Q Let's turn to a new topic. I want to
9 talk about the reliability commitments that the
10 joint applicants have made. If you have your
11 direct testimony available, could you please turn
12 to page 14? Let me know when you're there.

13 A Yes.

14 Q Do you see at the top of page 14, line 1,
15 where you testify, It is important to acknowledge
16 the significant improvement and reliability that
17 the PHI utilities, including PEPCO, have
18 accomplished which Exelon plans to build upon?

19 A Yes.

20 Q I want to see if we can explore that
21 significant improvement a little bit.

22 MR. GRAY: Your Honor, at this time, I

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1 would like to mark for identification a document
2 that's been premarked as OPC Cross-Examination
3 Exhibit 7.

4 CHAIRMAN KANE: So marked.

5 MR. GRAY: I would ask that it be marked
6 as OPC 2.

7 CHAIRMAN KANE: As 2.

8 (OPC Exhibit Number 2 was marked for
9 identification.)

10 MR. GRAY: And this is a data response by
11 joint applicants' witness Mr. Gausman, and we will
12 ask him, when he takes the stand, if he can
13 authenticate the document. But I would like to
14 ask Mr. Crane a question about it.

15 CHAIRMAN KANE: Yes. Go ahead.

16 BY MR. GRAY:

17 Q Do you have that document? It's OPC
18 Cross-Examination Exhibit 7.

19 A Yes, I have it.

20 Q It's a one-page document that says at the
21 top, Joint applicants' response to commission
22 staff data request 6. Do you see that?

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1 A Yes.

2 Q This document purports to reflect PEPCO's
3 2014 outage performance; is that right?

4 A Yes.

5 Q Do you see the references to SAIFI and
6 SAIDI?

7 A Yes.

8 Q Those are the frequency and duration
9 index for outages; is that right?

10 A Yes.

11 Q To put these numbers in context, do you
12 have Mr. Gausman's testimony available?

13 A I do not, no.

14 Q I just want to show you one page, and I
15 have an extra copy if you need it.

16 MR. GRAY: For the record, this is page 4
17 of Mr. Gausman's direct testimony. I have extra
18 copies if the Commission would like.

19 THE WITNESS: I have his testimony here
20 in front of me.

21 BY MR. GRAY:

22 Q Do you see at the top --

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1 A Which page, please.

2 Q Page 4, sorry, of the direct testimony.

3 A Yes.

4 Q Do you see at the top there's a table
5 showing SAIDI and SAIFI?

6 A Yes.

7 Q And there's a sentence just above that
8 table that states, Under the EQSS, PEPCO is
9 required to meet the following levels of
10 reliability under the above metrics.

11 A Yes.

12 Q Do you agree that if we compare these
13 two -- the figures from OPC Cross-Examination
14 Exhibit premarked 7 to Mr., Gausman's testimony,
15 that PEPCO would meet the SAIFI requirement
16 through 2020 and would meet the SAIDI requirement
17 through, I believe, 2017 -- 2018, I'm sorry?

18 A Yes, 2014 was a very strong year with
19 less storm activity. I think Mr. O'Brien can give
20 you the details when he testifies, go into more
21 details on that.

22 Q The significant improvement that you

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1 referred to in your direct testimony on page 14
2 that we just discussed, did you have something
3 different in mind than this type of improvement in
4 14?

5 A It was not only the numbers, but there
6 was a significant customer dissatisfaction a few
7 years back. I think we all remember the headlines
8 that PEPCO had gone through bad storm season
9 reliability issues, and there was an outcry of
10 performance on the system.

11 Since that point, there has been work
12 done and the groundwork laid through a unique
13 proposal of undergrounding which we think will be
14 supporting further improvement.

15 Q Thank you.

16 MR. GRAY: Your Honor, at this time, I
17 would like to mark OPC Cross-Examination Exhibit 6
18 as OPC 3.

19 CHAIRMAN KANE: So marked.

20 (OPC Exhibit Number 3 was marked for
21 identification.)

22 BY MR. GRAY:

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1 Q Let me know when you have that,
2 Mr. Crane, and it relates to what you just
3 referenced in your response, the outcry a few
4 years back of PEPCO's reliability performance.

5 A Yes.

6 Q So from 2011, PEPCO was among one of the
7 worst-rated companies. 2014 represents
8 significant improvement. Is that the type of
9 improvement that you're talking about?

10 A Yes.

11 Q And I'm not -- I don't mean to suggest
12 that you're saying otherwise, but Exelon had
13 nothing do with that improvement, right? It was
14 pre-existing programs at PEPCO?

15 A Yes.

16 Q And then Exelon's position is that they
17 will improve upon those preexisting programs?

18 A Yes.

19 Q I understand that Mr. Alden presents the
20 metrics for the reliability commitment, but I want
21 to talk through some of your testimony on kind of
22 the narrative of how you describe it.

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1 If you could turn -- I guess we're
2 already there on page 14 of your direct testimony.
3 Do you still have that available?

4 A Yes, I'm here.

5 Q On line 4, you say, Exelon acknowledges
6 the regulatory performance requirements that are
7 already in place for PEPCO.

8 When you make that statement, are you
9 referring to the EQSS?

10 A Yes.

11 Q Then the next sentence you say, Exelon
12 intends not only to achieve compliance with the
13 current regulatory performance requirements --
14 I'll stop there.

15 When you say current regulatory
16 performance requirements, that's the EQSS, right?

17 A Yes, it's my belief -- understanding.

18 Q And Is it your understanding that EQSS
19 are annual requirements that go through 2020?

20 A Yes.

21 Q Then picking up --

22 A Now -- yes. And we're committing to

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1 those, and I believe the out years have not been
2 committed to by PEPCO, was my understanding in
3 this -- the intent of this statement.

4 Q When you say the out years, what are you
5 referring to?

6 A My understanding -- and Mr. Alden can
7 clarify this -- or Mr. Rigby -- it's from 2018 on,
8 is what I recall. But they'll be closer to that.

9 Q But your understanding is the joint
10 applicants have committed to meeting both SAIDI
11 and SAIFI for 2015, '16 and '17; is that correct?

12 A We're committing to the EQQS (sic)
13 standard and committing to a penalty if we don't
14 make it.

15 Q I understand. I just want to make sure
16 we're clear. When you use the phrase "committing
17 to the EQSS standard," what does that mean to you?
18 Does that mean meeting each year's annual target
19 through 2020?

20 A There's dialogue, and I think there's
21 differences within settlements. So I think the
22 best conversation is with Mr. O'Brien and Mr. -- I

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1 think it's Khouzami -- I think with Mr. O'Brien to
2 start on what those commitments are for the
3 District.

4 In settlement conversations, I think we
5 went from a multiple-year average in locations to
6 a point year, and that was some confusion earlier.

7 But I may be mixing up the jurisdictions,
8 so they would be closer to that data.

9 Q And I'm not sure if I want to go here,
10 but when you say in settlement discussions, are
11 you referring to settlement discussions in the
12 District or in another jurisdiction where a
13 settlement has been reached?

14 A In -- specifically in Montgomery and
15 Prince George's County, is my recollection.
16 Settlement discussions there.

17 Q Okay. So just so we're clear, from
18 lines 4 to 6, you say you acknowledge the
19 requirements, and you understand that to mean the
20 EQSS. And then you say, Exelon intends not only
21 to achieve compliance with the current regulatory
22 performance requirements -- and what you mean by

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1 that is achieve compliance with the EQSS on the
2 front end and then an average on the back end?

3 A No. What I'm asking you to do is ask the
4 witnesses that have the most detail on it. My
5 understanding is there were two ways that we made
6 commitments, one in settlement and one prior to
7 that. There was an averaging versus a point year.
8 And I do not recall what -- the District number,
9 if it was an average or a point year, for the EQQS
10 (sic).

11 Q Without getting into detail, I'm just
12 curious, when did that change occur? And really
13 the question is, in what month or week did that
14 settlement offer come out that changed the
15 original -- your original understanding of the
16 commitment?

17 A The Maryland settlement was a few weeks
18 ago -- time kind of blurs, but that was in
19 discussion with Prince George (sic) and Montgomery
20 County.

21 Q Okay. So I want to talk about the period
22 before that. What did you intend on lines 5 to 6

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1 before you ever engaged in settlement discussions?

2 A We intended to commit here to the
3 regulatory requirements within the District?

4 Q And do you understand that to mean the
5 annual EQSS metrics through 2020?

6 A Yes. If it is -- if there's the
7 requirement. What I've said is I don't have the
8 details to remember if it was a point or an
9 average. I'm not trying to confuse this. But
10 whatever the Commission has required, we're
11 committing to meet. And if that's a point, it's a
12 point.

13 Q So this is the last question; then we'll
14 move on -- but I just weren't to make sure we're
15 clear. There's an average that's out there, and
16 then there's the EQSS, and it's your testimony
17 that whatever the EQSS requires, whether it's the
18 average or the year-by-year, that is what the
19 merger commitment in this proceeding is?

20 A That is my understanding. Whatever this
21 Commission has issued, we're committing to achieve
22 and take penalties if we don't.

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1 Q When you refer to the penalties, the
2 original penalty was a 25 basis point penalty and
3 then you've increased that to 50 basis points in
4 the February 17th filing; is that correct?

5 A Yes.

6 Q And then you also commit to achieving the
7 reliability commitment without increasing PEPCO's
8 reliability-related capital and O&M budgets; is
9 that correct?

10 A Yes.

11 Q Do you understand that PEPCO does not
12 develop long-term O&M budgets?

13 A I'm not aware of that. When you say
14 long-term, over what?

15 Q For more than the next year ahead.

16 A I'm not aware of that. We would
17 typically have a five-year projection at Exelon.

18 Q And we can confirm with Mr. Gausman.

19 A Okay.

20 Q But when you refer to the commitment not
21 to increase budgets, you're essentially referring
22 to the budgeted levels that Mr. Gausman has

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1 provided in his February 17th testimony; is that
2 right?

3 A Yes. I thought those were long-term
4 projections.

5 Q Would you please turn to page 18 of your
6 direct testimony. And I direct your attention to
7 the sentence that begins on line 3, Upon
8 completion, the merger will create a real
9 partnership to achieve a level of utility service
10 reliability that not only meets the future
11 requirements that the PHI utilities have today,
12 but exceeds those requirements.

13 Is it your understanding that that
14 statement that I just read is consistent with the
15 discussion we had on the nature of the joint
16 applicants' reliability commitment, and that's to
17 meet whatever the EQSS standard requires?

18 A Yes.

19 Q Is it your understanding that PEPCO has
20 committed to meet the EQSS standards through 2020?

21 A It's my understanding that they have not.

22 Q What's the basis for your understanding

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1 of PEPCO's lack of a commitment?

2 A The financial capabilities was my
3 understanding.

4 Q Without getting into any privileged
5 discussions, is that an understanding that you
6 gained from a witness in this proceeding?

7 A I think it's with counsel. But the best
8 witness to discuss it with is Mr. Rigby.

9 Q We can walk through the joint parties'
10 hearing exhibit if you would like, but I want to
11 confirm that the two pages we just discussed of
12 your direct testimony, 14 and 18, and the
13 statements we discussed there, those were not
14 revised on February 17th; is that correct?

15 A I don't believe we revised those, no.

16 Q So that's the original commitment from
17 the June filing?

18 A I believe it is.

19 MR. GRAY: I would offer, Your Honor, for
20 the record, that information can be found on
21 page 1 of Joint Parties' Hearing Exhibit 1. And
22 if you look there, you can confirm that those

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1 pages are not listed, meaning they were not
2 revised.

3 CHAIRMAN KANE: Thank you.

4 MR. GRAY: Your Honor, I'd like to mark
5 at this time the document that's been premarked as
6 OPC Cross-Examination Exhibit 4 -- mark it as
7 OPC 4.

8 CHAIRMAN KANE: It is so marked.

9 (OPC Exhibit Number 4 was marked for
10 identification.)

11 BY MR. GRAY:

12 Q Let me know when you have that document
13 in front of you, Mr. Crane.

14 A I have it.

15 Q Now, as background, since proposing the
16 transaction, you've been engaged and
17 representatives of Exelon have been engaged in
18 meetings with community members to explain the
19 transaction; is that right?

20 A Yes.

21 Q Do you present written materials at some
22 of those meetings?

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1 A I've participated in ward meetings with
2 community leaders, and it's been mostly
3 dialogue -- ward 3 and 4, 6, and then 7 and 8. I
4 don't remember us having a leave-behind, but
5 communications could have left, had some
6 documents. Mine was just dialogue and learning
7 what was on the community leaders' minds.

8 Q This document that I've asked you to take
9 a look at, it's a 12-page document. It was
10 provided in discovery in this processing in
11 response to a D.C. Government data request, and it
12 appears to be a presentation -- a joint
13 presentation about the benefits of the
14 transaction. Do you agree with that?

15 A Yes.

16 Q If you look at the bottom of page 1, the
17 cover page, it says, Updated, February 18th, 2015.
18 Do you see that?

19 A Yes.

20 Q That's the day after the February 17th
21 filing. Am I right?

22 A Yes.

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1 Q If you turn to page 10 of this document
2 and look at the bottom, it says, Existing
3 commitments for enhanced reliability, local
4 presence, community support and employment stand.

5 And I want to focus on the first one,
6 enhanced reliability --

7 A Let me make sure I'm getting -- this is
8 the exhibit page 10 of 12 or --

9 Q Yes. They should both be the same.

10 A Page -- it says page 12 of 14, and then
11 10 of 12.

12 Q It should be 10 of 12. Do you have a
13 black and white copy?

14 A Yeah.

15 Q That would probably help. I have one
16 color copy.

17 MR. LORENZO: May I approach the witness,
18 Your Honor?

19 CHAIRMAN KANE: Yes, you may.

20 COMMISSIONER FORT: And, Counsel, I have
21 the same question that Mr. Crane just asked. If
22 we're going by the numbers in the top -- upper

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1 right-hand corner, what you described appears to
2 be, on your exhibit, 12 of 14.

3 BY MR. GRAY:

4 Q Yeah. Let's go by the, if the document
5 is horizontal, the number in the bottom right, the
6 14-page, which I believe includes the actual data
7 response as well.

8 A I've got this one. Page 14 is a
9 forward-looking statement.

10 Q That one in your right hand is right.

11 A Okay.

12 Q Please look at the last line. It says,
13 Existing commitments with respect to a few things,
14 one of which is enhanced reliability --

15 A Yes.

16 Q -- and it says, will stand.

17 A Yes.

18 Q Did the joint applicants revise their
19 reliability commitments on February 17th?

20 A I don't believe we did.

21 Q Okay. You can put that one down for now.

22 I want to focus on the commitment not to

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1 increase reliability and O&M budgets.

2 A Can you rephrase that, or restate that?

3 Commitment not to increase reliability?

4 Q The commitment not to increase the
5 budgets, I'm sorry. I want to focus on the aspect
6 of your reliability commitment which is to
7 maintain the reliability-related capital and O&M
8 budgets in Mr. Gausman's February 17th testimony.

9 I want to consider a hypothetical with
10 you and --

11 A Those are always fun.

12 Q Yes. There's three parts to it. I hope
13 they're fairly simple. The first part is the
14 transaction is approved as filed. The second part
15 is, after the transaction is consummated, Exelon
16 does a circuit-by-circuit review of PEPCO's system
17 and determines that more work is required than
18 initially anticipated. And then the third
19 component of the hypothetical is that that extra
20 work that was not anticipated would require Exelon
21 to exceed the capital and O&M budgets that it had
22 committed not to exceed.

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1 Do you understand that?

2 A I do.

3 Q All else being equal.

4 A Right. I do.

5 Q If that situation arose, would Exelon
6 make the expenditures that exceed the budgeted
7 levels?

8 A We would make the expenditures that are
9 required to drive the level of reliability. We're
10 committed to that. And if those did exceed what
11 this budget is, we would have to explain that to
12 the Commission and we would be at their will to
13 make that recovery.

14 But the number one priority is
15 reliability and safety of the system, and our
16 responsibility is to invest whatever money it
17 needs to accomplish those -- fix those conditions.

18 Q Thank you. So your position is
19 essentially that it would be an issue for the next
20 rate case, and Exelon is not committing not to
21 seek recovery of those increased amount?

22 A We're not saying we would or we wouldn't.

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1 Hypothetical -- they are always dangerous to get
2 into. What we would do is if work -- further work
3 was required to be performed than was in the
4 budget, we would find every way to -- and this is
5 what we do across our other companies -- to find
6 efficiencies to be able to shift monies into those
7 locations.

8 You can levelize spending, you can move
9 projects around that may not be the same high
10 priority, you drive efficiencies with your
11 productivity. In the hypothetical, all of those
12 would go first.

13 If we got to a large expenditure, we
14 would have to inform the Commission and the staff
15 of what we think is the issue, start dialogue with
16 the stakeholders. And if -- if it was
17 significant, we don't anticipate that at all with
18 the work that we've done to review the system and
19 the budgets, but we would have to have a
20 conversation potentially in a future rate case.

21 Q If we consider that the situation in the
22 hypothetical actually arose and the increased

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1 expenditures were made and the reliability
2 commitment was met, how would the 50 basis point
3 penalty be impacted?

4 A So we're back on the hypothetical. If we
5 had to overspend to achieve -- I think the essence
6 of the question is to get to the reliability
7 number, we overspent, so we could get -- not take
8 the penalty, the 50 basis point penalty -- is that
9 the question?

10 Q Not exactly with that characterization.
11 Basically what I want to know is -- I wouldn't
12 consider it an overspend. You spend the amount
13 you feel necessary to meet the reliability target
14 you need to meet. And the effect of that is that
15 the ROE penalty is not triggered whereas it
16 otherwise would have been had you not increased
17 the expenditures.

18 What's the effect of the penalty in that
19 situation?

20 A If we made the reliability, the penalty
21 would not be triggered. That's the way it is set
22 up. But I've got to say, since this is a

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1 hypothetical, we don't anticipate that happening.
2 We think it's adequate funds, and we believe that
3 it's a very comprehensive program that's been laid
4 out. Now we just have to execute on schedule, on
5 budget with the correct project management
6 oversight so we efficiently implement and spend
7 the dollars wisely.

8 Q Is there any protection or accountability
9 measure in the current merger commitments to --
10 that would kick in in that type of situation?
11 What I'm really getting at is, the ROE penalty is
12 supposed to be either a carrot or a stick to meet
13 this commitment. The ability not to -- or the
14 commitment not to increase budgets above the
15 levels that Mr. Gausman has identified is some
16 sort of -- or some degree of protection.

17 But if both of those are fairly fluid,
18 what is the ratepayer protection that is firmly
19 established by the reliability commitment?

20 A I'm not sure why you're terming them as
21 fairly fluid. I mean, they're numbers that can be
22 looked at, based off of the response in Gausman's

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1 reply, that this Commission and staff could go
2 back to on future rate cases and validate if we
3 exceeded those or not. So it's --

4 Q When I say fluid, in my mind, a firm
5 commitment not to increase the budget means we
6 will not increase the budget. And if we have to,
7 that money will come out of shareholders funds and
8 not ratepayers'.

9 And what I'm hearing you say is it's a
10 statement of intent; you don't believe you will
11 need to increase the budgets, but if you do need
12 to, you will consider -- you may not seek
13 ratepayer recovery from ratepayers, but you may;
14 you will consider that in the next rate case. I'm
15 trying to distinguish, in your understanding, the
16 firmness of this commitment.

17 A The commitment is we've analyzed the
18 budgets, we believe the budgets are adequate, we
19 believe we can make the improvements with the
20 budgets, and these are the monies that we're going
21 to spend.

22 Now, a large storm comes through, a

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1 hurricane comes through, there's other conditions
2 that happen and other monies have to be spent,
3 that's a dialogue that we would like to have the
4 opening to bring it back to -- bring it back to in
5 a potential -- again, we're dealing in
6 hypothetical, but in the potential, we would want
7 that ability to come back, and it would be at the
8 will of the Commission if they determined it was
9 warranted or not.

10 MR. GRAY: You mentioned a big storm
11 comes through, and I understand, with the
12 reliability commitment as it is, there's a caveat
13 for if D.C. PLUG does not proceed on schedule, if
14 there's a big storm like the derecho. I'm talking
15 about something different that's not covered by
16 those. It would be something that -- like in the
17 hypothetical -- is not necessarily out of PEPCO's
18 control, the circuits were just in worse shape
19 than originally thought and the budgets needed to
20 be increased.

21 Do you see those two types of issues, the
22 carve-outs that you currently have for D.C. PLUG

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1 and just the likelihood, even if it's not very
2 likely, but the potential for increasing the
3 budgets because of something that PEPCO is in
4 control of as being on the same plain?

5 A I think it's definitely on the same
6 plain. If we come back -- if I'm understanding it
7 right -- and again, I'm stressing this
8 hypothetical, but if we came back and, due to lack
9 of productivity or execution on the project -- we
10 should be held accountable for that. And so I
11 think that's in the essence of our commitment.

12 If something larger fails on the system
13 or if there's something else, we would want the
14 opportunity to discuss that in a rate case in a
15 filing to be able to get adequate coverage for the
16 increased debt or equity that we had to put into
17 the system.

18 Q In your mind, do you see that as a
19 legally binding commitment related to this
20 transaction or is that just an issue that would be
21 addressed down the road?

22 A I'm not a lawyer. So you have to talk to

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1 the lawyers to figure out if this is legally
2 binding. My simple view is that we made a
3 commitment, and we're making it to this
4 Commission, that we are going to spend at a
5 certain rate and accomplish a task. And if we
6 don't do that, this Commission can hold us
7 accountable based off of that baseline number to
8 the commitment.

9 Now, is that legally binding? I think in
10 the process of the proceeding, if we don't do a
11 clear enough job justifying that increase, this
12 Commission can hold us accountable. But I'd have
13 to talk to counsel to answer your question
14 directly.

15 Q We can move on, but I just want to make
16 sure I'm clear in asking the question that OPC's
17 concern in this case is accountability with
18 respect to the transaction. So that's why I asked
19 the question.

20 Staying with the 50 basis point penalty,
21 can you help me understand how that would work?
22 It's not that if the reliability commitment is not

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1 met, you would value that 50 basis point penalty
2 at whatever it equates to based on the rate base
3 at the time and Exelon would actually pay a
4 penalty; is that right?

5 A My understanding -- and again, I may not
6 have this clear -- my understanding is if we do
7 not make the -- if we do not make the reliability
8 number in the next filing, we would be dinged on
9 our allowed ROE by 50 basis points. That is my
10 understanding of the commitment.

11 Q So in that next filing -- let's assume
12 that ROE was 10 -- would the ROE be set 10 minus
13 50?

14 A My understanding is that's it.

15 Q Okay.

16 A Mr. Alden, I think, would be the best to
17 state that, or Khouzami, but yes.

18 Q If PEPCO is under-earning its ROE by 50
19 basis points or more, is there any impact at all
20 from the ROE penalty?

21 A I don't think so. I don't know. I
22 would -- yeah. Yes. If they're under-earning, if

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1 they can't -- not efficiently operating or they're
2 under-earning from the allowed, I think that, yes,
3 you're correct.

4 Q Just so I'm clear, I'm correct that
5 there's no impact if they're under-earning by 50
6 basis points or more?

7 A That's my understanding.

8 Q Do you know whether in the last five
9 years PEPCO has under-earned its ROE by 50 basis
10 points or more in any of those five years?

11 A I believe it has.

12 Q In all five of the last five years?

13 A From memory, looking at this a year ago
14 or so, yes, I think it has under-earned.

15 Q How far back are you comfortable going?

16 A Last couple of years.

17 Q Let's turn away from reliability and talk
18 about jobs. Please turn in your direct testimony
19 to page 19. Do you see on line 12 where you
20 testify, Exelon has committed for a period of two
21 years after consummation of the merger there will
22 be no net reductions due to involuntary attrition?

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1 A Yes.

2 Q We discussed that a few minutes ago; is
3 that right?

4 A Yes.

5 Q Do you still have in front of you the
6 presentation with the varying page numbers? The
7 color presentation.

8 A What was the --

9 Q That was OPC 4. It was premarked,
10 though, yeah, as 4 as well.

11 A Yes, I'm back to it.

12 Q If you look on page -- I believe it will
13 be 14 -- or, excuse me, 4 of 14 --

14 A Top right hand, 4 of 14?

15 Q On the one that has 12, it would be 2 of
16 12, which I believe tracks to 4 of 14.

17 A 2 of 12, okay.

18 Q Do you see the heading, Creating a
19 leading Mid-Atlantic electric and gas utility?

20 A Yes.

21 Q On the right-hand side do you see the
22 heading, Headquarters and employees?

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1 A Yes.

2 Q Four bullets down there's a statement
3 that says, No net involuntary merger-related job
4 losses for PHI utility employees for at least two
5 years following the transaction closing.

6 And I'm just curious, is that a
7 misstatement or is there a difference between what
8 was intended in this presentation and the merger
9 commitment?

10 A I think they're the same.

11 Q Well, my understanding is that the
12 commitment is capped at two years whereas this
13 statement says at least two years. That's the
14 distinction I'm trying to focus on.

15 A Yes, for at least two years. There is no
16 plans for any -- in our future view of PEPCO or
17 any of the PHI companies, there is no view that we
18 believe there will be a requirement for
19 involuntary reductions.

20 We actually believe and have committed to
21 here accelerating hiring in anticipation of
22 retirements and bringing more of the work back on

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1 system. So you don't -- you can't understand what
2 situation will take place in five or ten years out
3 if something disastrous had happened or we had to
4 reduce people, something like that. So you don't
5 make the commitment in perpetuity, but for at
6 least two years at a minimum, that's where the
7 commitment states.

8 Q Thank you.

9 If you look on your Exhibit (4A)-2 which
10 is the merger commitments, paragraph 15 states, In
11 the two years following.

12 Would you be fine revising that to say
13 for a period of at least two years following
14 consummation of the merger?

15 A So we are more than willing to sit down
16 and, in a settlement negotiation, take the
17 priorities from the people, the individual
18 parties, and if the Commission believes they've
19 seen us commit to something in other proceedings,
20 that they warrant that to be here, we would agree
21 to it.

22 If that would be a discussion in a

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1 settlement but -- I can't negotiate line by line
2 here, but we're open to the conversation.

3 Q I appreciate that position you're in. I
4 just want to see if I can get clarification. The
5 actual language of the commitment says, In two
6 years.

7 Is it your testimony that that's what's
8 binding on the merger commitment, the two years?

9 A Yes. That is what's binding.

10 Q There may be an intent to go beyond two
11 years, but the actual binding commitment would be
12 no more than two years?

13 A There is no intent from myself or Exelon
14 or any situation that's currently reviewed today
15 as requiring us in the future to do a force
16 reduction. The commitment is a two-year
17 commitment.

18 Q I asked you earlier, if you recall, that
19 one of OPC's concerns in this case was the manner
20 in which the commitments have been presented; it's
21 not clear what exactly the commitments are.

22 And that's what I'm struggling with with

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1 your response is that there's things in settlement
2 in this proceeding, there's things in settlements
3 in other proceedings, and then there's what's
4 actually filed. And what we're trying to address
5 in this proceeding is what is actually filed and
6 what the merger commitments that the joint
7 applicants are asking the Commission to approve
8 are.

9 And my question that I asked for 15, but
10 relates to all of these provisions is, if it is
11 not in -- written in Exhibit (4A)-2, you are not
12 committing to do it; is that correct?

13 A We have not revised the commitments to
14 reflect the latest settlements. The Commission
15 can see what we've stated in other locations. And
16 the more recent settlements in Maryland with
17 multiple parties are very public. But if we were
18 to revise those, we would restart the clock and
19 perturbate the Commission's schedule again. So we
20 have not revised them.

21 If, in settlement discussions, we want to
22 have that dialogue, we can do that.

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1 Q So there's the firm commitments in this
2 document and then there's the potential for others
3 mand those you're willing to discuss in
4 settlement, but not in this case; is that right?

5 A State that again. I don't want to answer
6 this wrong.

7 Q Sure. There are commitments that you
8 made in this case, firm commitments in
9 Exhibit (4A)-2, and then there are other
10 commitments out there, either in settlement in
11 this proceeding or settlements that have been
12 filed in other proceedings, and you were willing
13 to consider, not necessarily agree to, but
14 consider kind of a sweep of all those to tailor to
15 the District. But what you're asking the
16 Commission to approve is (4A)-2; is that right?

17 A Yes.

18 Q While we have this presentation
19 available, staying on the same page, if you could
20 go up to the first bullet, do you see where it
21 says, No change to utility headquarters in local
22 service area?

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1 A I remember it, yes. I'll get to it.

2 Yes.

3 Q I really am just looking for your
4 understanding of what that means. And in
5 particular, I understand there's a commitment to
6 maintain the office at Edison Place, but does the
7 commitment go beyond that? Is it to -- not just
8 to have a mailing address where senior executives
9 come a couple of days a month, or is it no
10 material change in the operation of that office,
11 being the headquarters?

12 A There's no material change in the PEPCO
13 office being at -- the Edison Place being the
14 headquarters. The way we operate our utilities is
15 with strong local presence.

16 So the utility presidents and the CEOs
17 will still be the face in the brand in the
18 community and maintain the connections within the
19 community.

20 Q Thank you.

21 Earlier, do you recall testifying that
22 you are making hires associated with the

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1 transaction?

2 A Yes.

3 Q Let's look at some of your testimony on
4 that. If you turn in your rebuttal testimony,
5 (3A), to page 4, there on page 4 you talk about
6 the commitment to have -- the transaction --
7 excuse me, not the commitment. The anticipation
8 that the transactional be net jobs positive.

9 Let me know when you're there.

10 A This is rebuttal?

11 Q Yes, your rebuttal, page 4.

12 A I'm there.

13 Q Do you see at the bottom of the page, you
14 refer to 102 new employees and then 50 that are
15 being transferred?

16 A Yes.

17 Q Is the plan to recover the costs
18 associated with those employees -- and by costs I
19 mean compensation training -- through rates from
20 ratepayers or from shareholders funds?

21 A Through rates. The 50 individuals are
22 not part of the regulated entity. It's an energy

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1 services company. They're in Virginia. We would
2 move those into the District, those jobs into the
3 District and headquarter that business here.

4 The new hires would be picked up in
5 subsequent rate cases, but the intent is to get
6 ahead of the curve on retirements that are
7 potentially about to happen so we can keep
8 adequate staffing.

9 Q With respect to those 102 -- and thank
10 you for that clarification. With respect to the
11 102 new, do you know what specific roles those
12 employees -- prospective employees -- would fill?

13 A Field positions. They would be field
14 technicians, either overhead or underground, or
15 relay technicians, that type -- in-field workers.

16 Q And the purpose in hiring those 102 new
17 employees is to get ahead of expected attrition
18 due to retirements, people who leave the company?

19 A Yes. And to bring more of the work back
20 in-house from contractors and -- or overtime.

21 Q Do you know the proportion, rough
22 breakdown, of that 102, how many are going to fill

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1 expected attrition, how much goes to cutting back
2 on contractors?

3 A I don't -- I don't have that -- you know,
4 there's a lot of moving parts here. I think
5 there's up to 400 individuals that are
6 retirement-eligible at this point, and we would
7 expect some attrition there. And so having the
8 training program starting, getting the individuals
9 ready to take those roles takes a few years to get
10 them qualified.

11 And so, at first, you would see mostly
12 training costs, but then, as they become
13 productive and working in the field, they would be
14 either filling those vacancies or taking more work
15 in-house.

16 Q Is it your position that hiring those
17 employees is something PEPCO should be doing
18 anyway absent the transaction?

19 A My understanding is they don't have the
20 resources at this point to do that. And that was
21 why we were making the commitment, and they're not
22 committing to do it if the merger doesn't go

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1 through.

2 Q You said a lot of those employees would
3 be field work. Is any of the work they would be
4 performing in relation to PEPCO's obligation to
5 meet the EQSS reliability standards?

6 A Yes. I mean, they'll be doing field
7 work. So the repair and the maintenance on the
8 system is directly correlated to reliability.

9 Q And it's your understanding that PEPCO
10 does not have the resources on its own to hire
11 those employees?

12 A It's not -- we're not talking about the
13 capital budget, the project, as much as we're
14 talking about routine maintenance and operations,
15 I think a portion -- a good portion of the
16 undergrounding, the plug work, is outsourced work.
17 That's more of a construction job versus -- so
18 it's more on the operations side, the maintenance,
19 the standard work.

20 Q Staying on page 4 and over to page 5 of
21 your rebuttal testimony, you talk about job gains
22 in the District. And on line 2 of page 5 you say,

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1 900 to 1280 new jobs are expected to be created as
2 projected by Dr. Tierney.

3 I guess, first, that number should be
4 updated as of February 17th; is that right? I
5 believe that's the old number.

6 A There was a revision. I don't know what
7 the exact revision was. Or I don't recall what it
8 was.

9 Q We can go back and check. I believe that
10 range was updated. Those numbers, just to take
11 those at face value -- 900, that's a job year,
12 right? That's presented in job years?

13 A Full-time equivalents in job years is my
14 understanding.

15 Q Can you explain what a job year is?

16 A Exactly that. It's an employee that will
17 have the position for that year or an aggregated
18 amount of full-time equivalents for that year.

19 Q So if you hire one employee and that
20 employee is employed for ten years, that would be
21 considered ten jobs under a job years analysis;
22 equivalents?

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1 A I don't understand it that way, but
2 Dr. Tierney could explain it. My understanding is
3 it is a year.

4 Q So the number 900, that would be 900 jobs
5 in year 1, 900 jobs in year 2, under your
6 understanding?

7 A That would be my understanding, but you
8 need to ask Dr. Tierney that.

9 Q At the public meetings and community
10 meetings you've been involved in, have you had any
11 questions come up about that topic, job years
12 versus jobs?

13 A No.

14 Q Would Exelon be willing to file annual
15 reports either with the council or the Commission
16 detailing its annual progress on meeting those job
17 estimates?

18 A Whatever information the Commission
19 desires, we would make that available.

20 Q Sorry to make you jump around, but let's
21 turn back to your direct testimony and look at
22 page 17. Let me know when you're there.

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1 A I'm there.

2 Q Do you see on page 8 where you talk about
3 Dr. Tierney's economic analysis?

4 A Line 8, yes?

5 Q Excuse me, line 8, page 17. Thank you.
6 And then on lines 14 to 19, you talk
7 about Dr. Tierney's analysis of the value of the
8 customer investment fund and the reliability
9 commitment. Do you see that?

10 A Yes.

11 Q You say that value is in the range of
12 168.4 million to 260.5 million; is that right?

13 A Yes.

14 Q And I believe at the bottom is the
15 updated jobs numbers, not 900 to 1280, but 1,506
16 to 2,407. Do you see that?

17 I want to call your attention to the
18 sentence beginning on line 10, and I'm
19 paraphrasing, but it basically states that
20 Dr. Tierney's economic analysis was based on a
21 current three-year average of performance levels
22 for PEPCO; is that right?

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1 A Yes.

2 Q And the use of the term "current
3 three-year average," that's 2011 to 2013?

4 A I don't recall what that period was off
5 the top of my head.

6 Q We had talked about Mr. Gausman's data
7 response which is premarked as Exhibit 7. It's in
8 the record marked for identification as OPC 2. I
9 believe this information on the 2014 figures came
10 out in early 2015. Would you accept that, subject
11 to check?

12 A Yes. That's correct.

13 Q And that was prior to the time you made
14 the statement about the current three-year
15 average, right?

16 A Yes.

17 Q So you did not have the 2014 numbers when
18 you made this statement about the current
19 three-year average?

20 A We would not have had those. That's
21 correct.

22 Q Do you remember when we first started

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1 talking about reliability, we talked about your
2 testimony about the need to acknowledge PEPCO's
3 significant improvement --

4 A Yes.

5 Q -- in reliability?

6 And an economic analysis that does not
7 consider 2014 would not acknowledge PEPCO's
8 significant improvement at least for 2014, right?

9 A When the study was done, it was in 2014,
10 so that wouldn't have had it included.

11 Q Did Dr. Tierney update her study on
12 February 17th?

13 A There was an update to the study. I
14 don't recall when. I do know I was told there was
15 an update to the study.

16 Q If you flip to your February 17th
17 testimony, look at page 5, line 11. You state,
18 Susan F. Tierney discusses her updated analysis
19 and the quantitative -- of the quantitative and
20 qualitative economic benefits of the proposed --
21 that the proposed merger brings to the District of
22 Columbia.

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1 Does that refresh your memory?

2 A Yes.

3 Q Is it your understanding that
4 Dr. Tierney's updated analysis did not consider
5 2014?

6 A You have to ask Dr. Tierney if '14 was in
7 there or not. I don't know if it was -- that was
8 the update or not.

9 Q We agree that 2014 was a significant
10 improvement, right?

11 A Yes.

12 Q All else being equal, would the
13 projections that you identify on page 17 go down
14 if we consider 2014 as opposed to the period 2011
15 to 2013?

16 A I believe it would have some effect. I'm
17 not familiar with the model that she -- I've heard
18 the name of it, but you should ask her the effect
19 of that.

20 Q Can you turn back in your direct
21 testimony to page 9, please. And I'd ask you to
22 look at the sentence -- it begins on line 5, but

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1 the phrase from 6 to 7, The common trait most
2 important for forging a strong post-merger
3 organization is the shared belief that we should
4 never be content with business as usual in any
5 aspect of our company.

6 Do you see that?

7 A Yes.

8 Q Based on that, your understanding of that
9 common trait and the corporate culture that exists
10 at PEPCO, is it reasonable to believe that PEPCO's
11 reliability performance will continue to improve
12 beyond the metrics that were achieved in 2014?

13 A 2014 was -- was a lighter year on weather
14 front. So I'm not sure if I could state that. It
15 cycles from year to year based off of conditions,
16 heat, weather, cold.

17 Q Is it your understanding that the EQSS
18 include major service outages related to major
19 storms?

20 A Yes. Say that again. I want to make
21 sure I answer right.

22 Q Is it your understanding that the EQSS

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1 include major services outages related to major
2 storms?

3 A I thought there was an exclusion on major
4 storms, but Mr. Alden would be the best to answer
5 that.

6 Q Just a couple of more topics. Let's talk
7 about ring-fencing for a minute. I'd like you to
8 turn to paragraph 72 of your Exhibit (4A)-2. And
9 that's on page 11.

10 A Yes.

11 Q Do you see the second sentence which is
12 about three lines down from the top -- it states,
13 Five years after the closing of the merger, the
14 joint applicants shall have the right to review
15 the provisions contained in paragraphs 28 through
16 70 and to make a filing with the Commission
17 requesting authority to modify or terminate those
18 provisions?

19 A Yes.

20 Q Is it your understanding that that
21 provision means that the joint applicants are
22 precluded from asking the Commission to modify or

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1 terminate any of the paragraphs between 28 and 70
2 within five years after the transaction is
3 consummated?

4 A That's my understanding.

5 Q If you look down two lines up from the
6 bottom, the sentence that begins, "In addition,"
7 it states, The joint applicants recognize that the
8 Commission at any time may initiate its own review
9 or investigation regarding ring-fencing
10 measures -- there's a parenthetical that states,
11 Or upon petition by any party, close
12 parenthetical, and order modifications that it
13 deems to be appropriate.

14 Does that parenthetical undermine the
15 preclusion that we just talked about with respect
16 to not seeking a modification within five years?

17 A I don't think we're including us as a
18 party, is my understandings. It would say if your
19 clients wanted to look at something, then they
20 could go to the Commission and something could be
21 undertaken or reviewed. It's not for us to be a
22 party to get around the five-year commitment.

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1 Q Thank you. That's a helpful
2 clarification.

3 MR. GRAY: Your Honor, I don't know if
4 you want to take a break. I probably have less
5 than 30 minutes left.

6 (Discussion held off the record.)

7 BY MR. GRAY:

8 Q Jump back to your direct testimony. Look
9 at page 4. Let me know when you're there.

10 A I'm there.

11 Q Beginning on line 22 you say, PHI will
12 become an indirect subsidiary of Exelon and PHI
13 stockholders will receive \$27.25 per share.

14 Do you see that?

15 A Yes.

16 Q That \$27.25 a share includes an
17 acquisition premium that's paid to PHI
18 shareholders, right?

19 A Yes.

20 Q That acquisition premium, as the numbers
21 are currently presented, is equivalent to about
22 \$1.6 billion?

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1 A Yes.

2 Q Would you agree that the acquisition
3 premium provides an upfront direct cash benefit to
4 PHI shareholders?

5 A Yes.

6 Q Am I correct that Exelon cut its dividend
7 in 2013?

8 A Yes.

9 Q Do you know by about how much in terms of
10 a percentage?

11 A 40 percent.

12 Q 40 percent?

13 That dividend cut came shortly after the
14 close of the Exelon/Constellation transaction,
15 right?

16 A It was after the transaction, yes.

17 Q Do you agree that Exelon's stockholders
18 were harmed by that dividend cut?

19 A Would I -- the dividend was cut because
20 of the changing conditions in the marketplace, as
21 referenced earlier, a long-term lower commodity
22 price -- as we integrated Constellation into the

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1 business and were able to efficiently integrate
2 everything together. As I looked at the forward
3 price curves, forward gas curves, I informed the
4 board that we needed to make an adjustment to
5 maintain a strong and healthy entity going
6 forward.

7 So we undertook an analysis that stressed
8 market prices, stressed liquidity requirements and
9 targeted what we wanted for a risk profile in
10 maintaining a strong balance sheet. And that was
11 the recommendation.

12 In the long run, I think it protected the
13 shareholders from further erosion of value or
14 increasing our risk profile.

15 Q You say in the long run. What time
16 period do you have in mind?

17 A As a going entity. If we had not cut the
18 dividend, we would have had to have increased debt
19 to continue to pay the dividend, and that would
20 have put stress on the balance sheet. So over a
21 couple of years, it has -- we've been able to
22 start to improve the shareholder return on value.

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1 But it's not the way I wanted to run the company
2 with a stressed balance sheet and overcommitting
3 to a dividend that, in the long run, would damage
4 the company.

5 Q The Exelon/Constellation deal was not
6 like this one in that it was a stock-for-stock
7 transaction, right?

8 A Yes.

9 Q So Constellation shareholders received
10 Exelon stock after that transaction was completed?

11 A They did.

12 Q Were Constellation shareholders harmed by
13 the dividend cut?

14 A No, I believe that both companies were
15 to -- stand alone or combined, would feel the
16 stress of the evolving market and the technologies
17 that came into making the natural gas available.

18 I believe, in the long run, the
19 combination of the two companies has provided the
20 value proposition that was -- that we believed
21 would take place, and both companies are better
22 off being combined.

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1 MR. GRAY: Your Honor, I'd like to mark
2 another exhibit. It's the document that's been
3 premarked as OPC Cross-Examination Exhibit 1. And
4 I ask that you would mark that as OPC Cross (sic)
5 Exhibit 5.

6 CHAIRMAN KANE: So marked.

7 (OPC Exhibit Number 5 was marked for
8 identification.)

9 MR. GRAY: I'd like to mark another
10 exhibit as well. It's the document that's been
11 premarked as OPC Cross-Examination Exhibit 2. Ask
12 that you mark that as OPC 6.

13 CHAIRMAN KANE: That will be so marked.

14 (OPC Exhibit Number 6 was marked for
15 identification.)

16 BY MR. GRAY:

17 Q Let me know when you have those two
18 documents, Mr. Crane.

19 A I do.

20 Q The first one that has been premarked as
21 Exhibit 1, it's a Chicago Business article. Have
22 you seen this article before?

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1 A I try not to read this periodical.

2 Q Fair enough. I'll keep it short, then.

3 About halfway down the first page,
4 there's a quote attributed to you. It states,
5 with respect to the dividend cut, This was a tough
6 decision for us all. We recognize the value of
7 the dividend to our investors. We have an
8 opportunity to invest in growth.

9 Do you see that?

10 A Yes.

11 Q Then the next paragraph down, it talks
12 about some of the potential investments that were
13 being considered. Do you see that?

14 A Yes.

15 Q In 2013, Exelon did not increase capital
16 expenditures to invest in growth; is that right?

17 A I believe we cut capital -- I'd have to
18 go back and look at the years when we started to
19 take the actions. We had investments in
20 generation expansion that were cut, but in the
21 same time, we had investments that were required
22 at ComEd and also BGE that required capital. But

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1 I'd have to go back and look at the time frames
2 when we took the action.

3 Q Sure. Let's see if we can do that with
4 the second document.

5 A That number was what? The second one.

6 Q It's Number 2 in your binder. It would
7 be OPC 6. And it's a two-page excerpt from
8 Exelon's 2013 annual report.

9 A PEPCO -- it says number 1 PEPCO on the
10 top?

11 Q No. It should be OPC Cross-Examination
12 Exhibit Number 2.

13 A Okay.

14 Q Do you have a two-page excerpt?

15 A Yes.

16 Q The top of page 1 says, 2013 financial
17 section.

18 A Yes.

19 Q If you turn to page 2 and you look down
20 about the middle of the page, do you see capital
21 expenditures?

22 A Yes.

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1 Q And if you go over to the right, it shows
2 that capital expenditures were cut from about
3 5.8 -- I'm assuming billion -- in 2012 to 5.4 in
4 2013; is that right?

5 A Yes.

6 Q Thank you. You can put those documents
7 aside.

8 Back to your direct testimony. Let's
9 look at page 9 and, in particular, lines 18 to 20.

10 A Yes.

11 Q You state, With the merger, 58 percent to
12 61 percent of Exelon's pro forma earnings
13 projected for 2015 and 2016 will be derived from
14 it's regulated distribution business.

15 Do you see that?

16 A Yes.

17 Q Can you confirm -- I read that testimony
18 to mean that the transaction provides a benefit to
19 Exelon in terms of increasing the proportion of
20 earnings that come from regulated distribution
21 business; is that right?

22 A Yes.

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1 Q Can you provide a little bit of context?
2 These are projections for 2015 and '16. What is
3 the -- what amount of Exelon's earnings came from
4 regulated distribution operations in 2013, if you
5 know?

6 A It's in the 50 percent range is best of
7 my recollection.

8 Q Okay. Thank you.

9 So as we discussed, there's a \$1.6
10 billion acquisition premium to PHI shareholders.
11 There's a benefit to Exelon in terms of increasing
12 the regulated distribution business.

13 I want to go back to something that you
14 said a few minutes ago about the integration of
15 Constellation into Exelon helped the two companies
16 improve the financial outlook going forward. Is
17 that accurate?

18 A Yes.

19 Q Did Constellation's integration into
20 Exelon, was that the driver for the improved
21 financial outlook?

22 A There were multiple drivers. On the

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1 utility side, the improvements that we've been
2 able to accomplish at BGE is one part of it. The
3 other part was combining Exelon, which was long in
4 baseload generation, into a portfolio management
5 system that was short power, but long on sales.

6 So the two made a much more efficient
7 path to market on the generation and natural gas
8 retail business. And combining the two created
9 the synergies that ultimately created value.

10 Q I don't think we have discussed this yet,
11 but the customer investment fund on a per customer
12 basis in the District of Columbia is about \$128 in
13 value; is that right? Or, excuse me. The
14 customer investment fund with the other financial
15 aspects of the merger commitments equates to about
16 \$128 per customer?

17 A That's my recollection.

18 Q And that's a one-time payment per
19 customer; it's not an ongoing commitment?

20 A The ongoing is the reduction that will be
21 made from the synergies that will continue to flow
22 through. So a premium being paid in an

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1 acquisition is standard.

2 The premium we're paying to the PHI
3 shareholders is within normal range. When you
4 acquire, there is a premium for that acquisition.
5 And we believe that the value creation over the
6 long-term period of the shareholders getting it up
7 front or the customers, the -- over a longer
8 period do end up being equivalent.

9 MR. GRAY: Your Honor, at this time, I
10 would look to mark -- this will be my last
11 exhibit. It's the exhibit that's been premarked
12 as OPC Cross-Examination Exhibit 9. Ask that you
13 would mark that as 7.

14 CHAIRMAN KANE: It is so marked.

15 (OPC Exhibit Number 7 was marked for
16 identification.)

17 BY MR. GRAY:

18 Q This is a 70-page document filed with the
19 Maryland Public Service Commission. It's joint
20 applicants' request for adoption of settlements.
21 Let me know when you've found it.

22 A I've got it.

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1 Q If you look at pages 1 to about 17,
2 that's the legal pleading of the -- legal pleading
3 portion of the document. And then on -- beginning
4 on page 18 there's attachment A. Do you see that?

5 A Yes.

6 Q Attachment A is the agreement itself; is
7 that right?

8 A Yes.

9 Q If you look from pages 18 to 39, that's
10 the provision setting forth the agreement, and
11 then there is an Exhibit A that begins on page 40
12 and an Exhibit B that runs from page 45 to 62.

13 Do you see that?

14 A Yes.

15 Q You're familiar with this document?

16 A Yes.

17 Q I have some questions for you about
18 Exelon's willingness to apply the value and
19 framework of this document to its merger
20 commitment in this proceeding. If you look at
21 page 21, under paragraph 4, there's a reliability
22 provision, right? Are you there?

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1 A Yes.

2 Q I am curious if the joint applicants
3 would be willing to accept the condition
4 comparable to this in the District where the SAIDI
5 and SAIFI values from the EQSS would replace these
6 Maryland-specific charts.

7 A The question there?

8 Q Well, my question -- and I have a
9 question about a few of these provisions, and I
10 think I know the answer, but I'll ask anyway. My
11 question is, are the joint applicants willing to
12 apply the value and framework of any provisions in
13 this settlement to the District of Columbia
14 proceeding?

15 A So we purposely did not refile to restart
16 the clock again and throw everybody off, but what
17 we are willing to do -- the Commission can see
18 these conditions, and we're willing to take those
19 on, you know, at the equivalent value, but -- at
20 the Commission's will, we would do that.

21 Q Okay. Have you -- strike that.

22 If the Commission were to take the

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1 application as filed and then pick and choose
2 maybe ten provisions from this settlement
3 agreement, you have not analyzed whether inclusion
4 of those ten provisions with the as-filed
5 commitments would get you to the tipping point
6 where Exelon loses money on the integration,
7 right?

8 A We have not. Or I have not seen any of
9 that.

10 Q When you entered into this agreement in
11 Maryland, did you do so with the understanding
12 that you may need to apply similar provisions to a
13 jurisdiction like the District of Columbia?

14 A Definitely.

15 Q And you don't have any concern that
16 applying any of these particular provisions would
17 put you over the tipping point?

18 A I have not seen the analysis or -- I
19 don't believe any of these do, but what we're
20 saying is if it's of equivalent value. I'm sure
21 you could cherry pick from one or from another and
22 another, and it will aggregate larger. But the

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1 commitment is if you think they're beneficial
2 pro rata on the size and scale, we'd be willing to
3 take those on, but it's got to be at that
4 equivalent value that was increased in Maryland.

5 Q We talked a little bit earlier, so I
6 don't want to repeat it, but I just want to make
7 sure I'm clear, as to how and when that would
8 work. Because we talked about the commitments
9 that had been filed in the case and we've talked
10 about commitments that are in other settlements,
11 and then we talked about commitments that are
12 being considered in settlement that has not been
13 consummated.

14 So do you agree -- the way I see this
15 possibly working is that the Commission could
16 issue an order that picks among kind of the
17 smorgasbord of commitments that are out there and
18 conditions approval on that, or the other likely
19 result would be a settlement that does the same?

20 A Yes.

21 Q Just to clarify, you're saying, yes, it's
22 likely to be either of those two?

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1 A That's what we believe, yes. That's what
2 I believe. Settlement would be good for us to get
3 together and reach that point, but -- and then
4 provide that to the Commission, or the Commission
5 could decide itself.

6 Q The commitments that are in this Maryland
7 proposal -- and I believe there's a commitment
8 related to a bike trail, for example -- would
9 those be paid for through shareholder funds or
10 ratepayer funds?

11 A I do not recall the specifics on the bike
12 trail. I know some of them we're paying -- some
13 of the commitments we're paying for; others are
14 proceedings that we were able to file in Maryland
15 after making investments on microgrids and things
16 like that.

17 Q And that's a good example. That's what I
18 had more in mind. The public interest factor 7
19 types of issues, microgrids or solar
20 installations, or something like that, would those
21 be paid for, in your mind, by shareholder funds or
22 recovered through rates from ratepayers?

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1 A They would be rates, is the way I
2 understand it.

3 Q Thank you, Mr. Crane.

4 A Thanks.

5 MR. GRAY: I don't have any further
6 questions.

7 Would you like to move in exhibits now or
8 wait until the end?

9 CHAIRMAN KANE: Let's wait until the end
10 because we're going to have confidential ones.
11 Well, let's go ahead and move them in.

12 I'm sorry. I'll start again. Are you
13 going to have any confidential exhibits to move
14 in?

15 MR. GRAY: No.

16 CHAIRMAN KANE: No, okay. Then we will
17 move yours in now.

18 MR. LORENZO: We would object to a number
19 of these exhibits being moved in with this
20 witness. First, we would object to moving in all
21 of Exhibit -- all of Joint Exhibit -- Cross
22 Exhibit 1. First of all, that was a chart or an

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1 index put together by an attorney in my office,
2 not an affirmative statement of fact by a fact
3 witness as testimony or -- or a chart. So it's
4 much more equivalent to the index we put together
5 for the public interest factors or the index
6 index -- the issue index in rate cases that we've
7 put together before.

8 Certainly the parties -- it's part of the
9 record in the sense that it was a pleading and the
10 parties can refer to it, but it's not a statement
11 of -- it's not testimony of a fact in this case.
12 It's something put together by -- like the
13 pleadings in this case, by lawyers. And we have
14 no problem with it being used in the case or cited
15 in the brief as a position of the joint
16 applicants, as we filed it, but it's not evidence
17 in the sense that it's not a testimony of
18 Mr. Crane or Mr. Rigby or any other witness.

19 As for --

20 CHAIRMAN KANE: Just a minute. Are you
21 saying it's not factual? I'm trying to get the
22 distinction. Are you saying it may not be

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1 accurate?

2 MR. LORENZO: No. I believe it's, to the
3 best of our ability, the lawyer who put it
4 together made it accurate. But the lawyer who put
5 it together isn't testifying here.

6 It is -- it was filed by the joint
7 applicants as -- the same way the issue index or
8 the same way as Mr. Gray's index that he filed
9 earlier and didn't mark as an exhibit was put
10 together by a lawyer in his office, I'm sure.

11 And if we have need, we could reference
12 these pages in this exhibit because it was -- as a
13 document, but not for the truth of the matter
14 asserted in the document.

15 In other words, the issue -- the index
16 initially filed says that a certain -- certain
17 pages in the testimony were changed.

18 CHAIRMAN KANE: Right.

19 MR. LORENZO: Okay. 14 became 33.7 on
20 Mr. Crane's testimony at page 12, line 20. Okay.

21 I don't believe this should come in for
22 the truth of the matter asserted therein because

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1 the person who put it together could have made a
2 mistake on it, is not testifying in this case to
3 put it in.

4 Again, as a document, as a pleading, it
5 can be referred to if that's what they want to use
6 it for. But if it's to be used for another
7 purpose -- one of the problems I have with this
8 also is I'm not sure what purpose OPC or any other
9 party plans to make use of this exhibit in
10 briefing with other witnesses. Is it to prove a
11 fact? Is it to impeach a witness?

12 In the sense to prove a fact, then we
13 should -- the attorney who put it together
14 would -- is the declarant in that sense and not a
15 witness or a person presenting evidence.

16 I'm not sure what probative value it has
17 in that sense because it's not traditional
18 evidence. As far as --

19 CHAIRMAN KANE: Mr. Gray?

20 MR. GRAY: I'm happy to respond. My
21 question was really whether we should do this now
22 or after the other counsel have had an opportunity

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1 to conduct their cross-examination. I'm fine with
2 waiting.

3 CHAIRMAN KANE: Thank you. Since
4 questions have been raised, we'll wait.

5 We will now recess. It is almost 12:40.
6 We will recess for an hour. We'll come back at
7 1:45.

8 (Whereupon, at 12:38 p.m., a lunch recess
9 was taken.)

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1 AFTERNOON SESSION

2 (1:50 p.m.)

3 CHAIRMAN KANE: We are back on the record
4 in formal case 1119 at 1:50 p.m.

5 Mr. Crane, you're still on the witness
6 stand and still under oath. And People's Counsel
7 has finished with this witness.

8 Ms. Francis.

9 CROSS-EXAMINATION

10 BY MS. FRANCIS:

11 Q Good afternoon, Mr. Crane.

12 A Ms. Francis.

13 Q I'm going to ask you to start by looking
14 at AOBA's package of cross-examination exhibits.
15 Do you have those?

16 A I do.

17 Q Let's please look at what's been
18 preliminarily identified as AOBA 3. It's joint
19 applicants' response to staff data request
20 number 4-7.

21 MS. FRANCIS: This is excluding
22 confidential material, Your Honor.

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1 BY MS. FRANCIS:

2 Q You just take a moment to look at that
3 data request, Mr. Crane, and see if you were the
4 sponsor of that data request.

5 A I am.

6 MS. FRANCIS: Your Honor, I would like to
7 have AOBA data request -- what's been
8 preliminarily identified as AOBA data request
9 number 3 marked for the record as AOBA 1.

10 CHAIRMAN KANE: It will be so marked.

11 (AOBA Exhibit Number 1 was marked for
12 identification.)

13 BY MS. FRANCIS:

14 Q Next -- Mr. Crane, please look at the
15 next exhibit, which has been preliminarily
16 identified as AOBA 4. That is the joint
17 applicants' response to OPC data request
18 number 18-3. Do you see that?

19 A Yes.

20 Q And you are the sponsor of that data
21 response?

22 A Yes.

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1 MS. FRANCIS: Your Honor, I ask that the
2 joint applicants' response to OPC data request
3 number 18-3 be marked for the record as AOBA 2.

4 CHAIRMAN KANE: It will be so marked.

5 (AOBA Exhibit Number 2 was marked for
6 identification.)

7 BY MS. FRANCIS:

8 Q Next, Mr. Crane, please skip to what's
9 been preliminarily identified as AOBA 6, which is
10 the joint applicants' response to D.C. Government
11 data request number 8-10. Excuse me. Scratch
12 that.

13 AOBA 6 has been -- it's the joint
14 applicants' response to D.C. Government DR 8-16.
15 Do you see that, Mr. Crane?

16 A Yes.

17 Q And are you the sponsor of that exhibit?

18 A Yes.

19 MS. FRANCIS: Your Honor, I ask that that
20 exhibit be marked for the record as AOBA 3.

21 CHAIRMAN KANE: So marked.

22 (AOBA Exhibit Number 3 was marked for

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1 identification.)

2 BY MS. FRANCIS:

3 Q Next, Mr. Crane, please look at what's
4 been preliminarily identified as AOBA 7, which is
5 the joint applicants' response to D.C. Government
6 number -- excuse me. I referred you to the wrong
7 exhibit. AOBA 8.

8 MS. FRANCIS: Your Honor, what's been
9 preliminarily identified as AOBA 8 is the joint
10 applicants' response to D.C. Government data
11 request number 8-17, which I'd like to have marked
12 for the record as AOBA 4.

13 CHAIRMAN KANE: So marked.

14 (AOBA Exhibit Number 4 was marked for
15 identification.)

16 BY MS. FRANCIS:

17 Q And you are the sponsor of that exhibit;
18 is that correct?

19 A Yes.

20 Q Next, Mr. Crane, please go to what's been
21 preliminarily identified as AOBA Exhibit 37.

22 MS. FRANCIS: Your Honor, what's been

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1 marked as AOBA Exhibit 37 is the joint applicants'
2 response to AOBA data request number 1-15, which
3 I'd like to have marked as AOBA 5.

4 CHAIRMAN KANE: So marked.

5 (AOBA Exhibit Number 5 was marked for
6 identification.)

7 BY MS. FRANCIS:

8 Q And you can see, Mr. Crane, that it's
9 Exelon Corporation who is listed as the sponsor?

10 A Yes.

11 Q Next, please, look at what's been
12 preliminarily identified as AOBA 38 which is the
13 joint applicants' response to AOBA data request
14 number 1-16 --

15 MS. FRANCIS: -- which, Your Honor, I'd
16 like to have marked for the record as AOBA 6.

17 CHAIRMAN KANE: So marked.

18 (AOBA Exhibit Number 6 was marked for
19 identification.)

20 BY MS. FRANCIS:

21 Q And Mr. Crane, you can see that this
22 question was addressed to the joint applicants'

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1 application, and the sponsor are the joint
2 applicants. Do you see that?

3 A Yes.

4 Q Next, please, look at what's been
5 preliminarily identified as AOBA 39, which is
6 joint applicants' response to AOBA data request
7 number 3-4. Do you see that?

8 A Yes.

9 Q And are you the sponsor of that --

10 A Yes.

11 Q -- data request?

12 MS. FRANCIS: Your Honor, I'd like to
13 have what's been preliminarily marked as AOBA 39
14 marked for the record as AOBA 7.

15 CHAIRMAN KANE: So marked.

16 (AOBA Exhibit Number 7 was marked for
17 identification.)

18 BY MS. FRANCIS:

19 Q And the last one for now, Mr. Crane,
20 what's been preliminarily identified as AOBA 40,
21 which is the joint applicants' response to AOBA
22 data request number 3-6. And you are the sponsor

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1 of that exhibit?

2 A Yes.

3 MS. FRANCIS: Your Honor, I would like to
4 have what's been preliminarily identified as
5 AOBA 40 marked for the record as AOBA 8.

6 CHAIRMAN KANE: So marked.

7 (AOBA Exhibit Number 8 was marked for
8 identification.)

9 BY MS. FRANCIS:

10 Q Mr. Crane, for all of the data responses
11 to which you are listed as the sponsor, are you
12 able to verify that they are true and accurate?

13 A Yes.

14 Q For the two data responses where either
15 it's the joint applicants or Exelon -- those would
16 be Exhibits 37 and 38 -- are you able to verify
17 the accuracy of those two data responses?

18 A Yes.

19 Q Mr. Crane, to begin with, did you review
20 the application and the supporting exhibits before
21 they were filed in the District of Columbia?

22 A Yes.

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1 Q Did you review and approve each piece of
2 testimony filed under your name in this proceeding
3 before it was submitted to this Commission?

4 A Yes.

5 Q Mr. Crane, when I cross-examined you
6 recently in the merger proceeding in Maryland,
7 case 9361, you indicated that you could not
8 explain the meaning of a phrase or a sentence in
9 your testimony in that proceeding because your
10 testimony in that proceeding was written for you
11 by counsel.

12 Is it also true in this proceeding that
13 your testimony was written for you by counsel?

14 A Yes, it was prepared by counsel.

15 Q In an effort to shorten my
16 cross-examination, are there any elements of your
17 testimony in this proceeding of which you're aware
18 at this point that you're not prepared to address
19 at this time?

20 A I'm not aware of anything that I'm not
21 prepared to address or refer you to another
22 witness.

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1 Q Would you please turn to your direct
2 testimony at page 3.

3 A I'm there.

4 Q Now, focusing on lines 16 through 21, you
5 testified that prior to this case, you have
6 testified in just two proceedings, both of which
7 were merger proceedings, one relating to a
8 proposed merger between Exelon and Public Service
9 Enterprise Group before the New Jersey Board of
10 Public Utilities, and the second related to the
11 merger of Exelon and Constellation Energy Group,
12 Inc.; is that correct?

13 A That's correct.

14 Q Am I correct that you have never
15 testified in a base rate proceeding for a utility
16 before any regulatory commission?

17 A No, I have not.

18 Q Prior to becoming CEO of Exelon in 2012,
19 you were employed at Exelon Generation. Regarding
20 your activities within the industry, you spent
21 more than a decade focused almost exclusively on
22 non-rate-regulated elements of Exelon's generation

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1 business; is that correct?

2 A Yes.

3 Q And further, prior to joining

4 Commonwealth Edison in 1998, your career focused

5 almost exclusively on nuclear generation and

6 nuclear power station activities; is that correct?

7 A Yes.

8 Q Am I correct that, at present, nearly

9 half of Exelon's overall investment is in its

10 generation business?

11 A I believe it's less than half at this
12 point.

13 Q About how much?

14 A Investment or value?

15 Q Overall investment.

16 A I don't know the book value right now
17 of -- between the utilities and the generation
18 company.

19 Q Who would know the answer to that who's a
20 witness?

21 A We could have a subsequent -- Carim
22 Khouzami could answer that, as I just point to

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1 him.

2 Q Is Exelon's generation business a
3 competitive enterprise not subject to rate
4 regulation?

5 A That's correct.

6 Q How would you differentiate the
7 characteristics of Exelon's generation business
8 from those of its rate-regulated distribution
9 utility businesses?

10 A I'm sorry. Could you clarify what you
11 mean by characteristics?

12 Q How would you differentiate Exelon's
13 generation business from those of its
14 rate-regulated distribution utility businesses?

15 A Both are very highly regulated. So as
16 far as, you know, the competitive business not
17 being under regulation or under significant
18 controls within multiple regulators, that is the
19 same.

20 The nature of the businesses and some of
21 the technology overlaps, switch yards,
22 transformers, things -- components like that, but

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1 the generation company makes the power and markets
2 the power. It also has upstream natural gas and
3 markets natural gas where the utilities operate
4 within their franchise areas under the regulations
5 and controls of the commissions within those
6 footprints.

7 Q I just want to make sure I understood one
8 of your sentences. Did you say that the
9 generation portion of your business and the
10 distribution portion of your business both are
11 regulated the same so there's no difference?

12 A No, I did not say that at all.

13 Q Could you clarify? Maybe I didn't hear
14 you correctly.

15 A I said they're both highly regulated.

16 Q Am I correct that sales for Exelon's
17 generation business are made primarily, if not
18 exclusively, in wholesale markets while
19 distribution utility services are sold primarily
20 in retail markets?

21 A We have a significant retail business on
22 the -- in the generation company. We supply your

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1 client through that organization -- I think your
2 suppliers in Maryland and -- that is, through our
3 retail business on that side. So we do wholesale
4 and retail in Exelon Generation.

5 Q When you sell to retail, that's an
6 unregulated market, correct?

7 A It is in a competitive market, yes. It's
8 the energy component. So the difference between
9 the retail energy component, where people have the
10 opportunity to select their supplier, as your
11 client has from us, that has regulations around it
12 and commitments around it, but it is more of a
13 competitive bidding and selection process.

14 The wires company when they do supply the
15 power, it's through orchestrated auctions for
16 those that have not selected to have an alternate
17 provider. But they are -- the wires companies are
18 responsible for the infrastructure and the
19 reliability of the infrastructure.

20 Q Would you agree that distribution
21 utilities such as those of PEPCO in the District
22 have comparatively stable revenues while Exelon's

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1 generation business is subject to revenue
2 fluctuations based on fluctuations in competitive
3 energy market prices for generation services?

4 A Yeah, the nature of the utility business
5 is the Exelon utilities or the PHI utilities do
6 have a more stable -- because they're not exposed
7 to the commodities. But you manage your business
8 risk based off of that and that's how we manage
9 the risk elements around the generating company.

10 Q Would you agree that the distribution
11 business is characterized by investment in
12 facilities that are dispersed over comparatively
13 large geographic areas within each utility service
14 territory?

15 A Yeah. I'll take that for large. Each
16 have different sizes, but...

17 Q Conversely, would you agree that Exelon's
18 generation business is generally characterized by
19 the concentration of relatively large amounts of
20 investment in a comparatively small number of
21 physical locations?

22 A I don't think the characterization is

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1 correct. We have power plants across 18, 19
2 states. We sell electricity in -- or natural gas
3 in 46 states. So we have assets that are spread
4 across a much larger geographic location than our
5 utility companies.

6 Q What are your prime -- what are your
7 primary financial concerns with respect to your
8 distribution utility operations?

9 A Well, we maintain strong balance sheets
10 and debt-to-equity ratios, so we have access to
11 capital through capital cycles or financial
12 cycles. We try to operate them with the highest
13 levels of reliability, safety and maintain control
14 on costs so that we're able to get adequate
15 returns to satisfy our financial commitments.

16 Q And what are your primary financial
17 concerns with respect to Exelon's non-regulated
18 generation business?

19 A So on that side, we continue to look at
20 the value of assets, how they fit in the portfolio
21 and how we're able to utilize the generating
22 characteristics of those assets so we can sell

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1 them forward in a ratable fashion that de-risks
2 the cash flows or makes more predictable cash
3 flows over a multi-year period.

4 Q And, of course, with regard to your
5 non-regulated generation business, you would be
6 concerned with competition, competition from
7 natural gas, expansion of competition from wind,
8 solar, and other forms of renewable generation,
9 possibly early retirement of nuclear units,
10 nuclear decommissioning, nuclear decommissioning
11 costs. Would those all be some concerns of yours
12 in regard to your generation business?

13 A They're things you have to be aware of.
14 You have to monitor them. You know, from the
15 standpoint of the nuclear decommission, those are
16 all funded, so we just watch the investments and
17 oversee that -- getting adequate return on the
18 investments, so when the plants are
19 decommissioned, there's adequate funding to bring
20 them to a greenfield site. So that's not a high
21 risk. It's a monitoring.

22 As far as an early shutdown of a unit, it

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1 would be because of its profitability and -- and
2 its participation within our portfolio. So it's
3 something we monitor. But it would mean if we
4 shut one down, that it improved the profitability
5 of the business unit because it was a potential
6 drag.

7 As far as competition, in new technology
8 coming in or on the system, that's part of the
9 business, and you try to participate in that
10 technology advancement and make your investment
11 theses adjust accordingly to that.

12 So it's -- the one thing that we stress
13 is if we are going to be in a competitive market,
14 we need to be able to compete competitively, and
15 that goes across all sources or participants
16 within the market.

17 Q Now, would you please turn to page 18 of
18 your direct testimony.

19 A I'm there.

20 Q Now, starting at line 15, you attempt to
21 address concerns regarding Exelon's generation
22 portfolio and particularly the risk associated

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1 with its substantial nuclear portfolio.

2 Would you agree that there are at least
3 two major types of risk that are perceived to be
4 associated with nuclear generation; those are
5 safety risk and financial risk?

6 A Those are two risks that we manage, yes.

7 Q And since the deregulation of generation
8 services, would you agree that a subset of
9 financial risks would be market risk; in other
10 words, the potential that market forces could make
11 generation from certain nuclear power stations
12 uneconomic?

13 A Yes, that's a risk we manage.

14 Q In your experience, are there other major
15 types of risk associated with nuclear generation?

16 A No.

17 Q Well, how about regulatory risk in terms
18 of the risk of disallowance of certain costs?
19 Would that be a risk you would be concerned with?

20 A No. We -- we bear the costs. They're
21 not approved from a regulatory basis. It's a
22 competitive asset that doesn't go through that --

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1 any process like that.

2 Q Would you be concerned with risk of
3 extended planned outages?

4 A We manage that risk.

5 Q Would you be concerned with risk of early
6 retirement?

7 A No. That's a potential reality for some
8 plants. You just manage that.

9 Q Would you be concerned with the risk of
10 the imposition of unexpected costs or operational
11 constraints?

12 A Don't know of any, but if that was
13 apparent, we would manage that risk.

14 Q What does "manage that risk" mean?

15 A So if you want to talk about financial
16 risk, we hedge or sell our product forward in a
17 ratable fashion. So coming into 2015, 90 percent
18 of our output has been previously sold for that
19 year. That allows us to have cash flow and
20 financial certainty.

21 2015, January 1st, 66 percent of the
22 power for 2016 has been sold forward and

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1 30 percent for 2014. So we sell and manage our
2 financial risk in a prudent, ratable hedging
3 strategy that ensures that we have cash flows to
4 maintain our assets and meet our financial
5 commitments.

6 Around nuclear safety, it's how we
7 operate the plants, how we have our engineering
8 and our maintenance and operations programs
9 standardized across the fleet of assets so we're
10 constantly monitoring equipment reliability,
11 safety, levels of margin in safety. It's the way
12 you manage your day-to-day operations with full
13 awareness. And that's why we have the best
14 operating nuclear fleet in the country.

15 Q Mr. Crane, during questioning during the
16 Maryland proceeding, case number 9361, you were
17 being questioned by Commissioner Hoskins. And in
18 that questioning you testified that Exelon has
19 identified that there are five units that are
20 significantly challenged in terms of their
21 long-term viability; is that correct?

22 A Yes.

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1 Q Did you also testify, as part of that
2 same response to Commissioner Hoskins, that Exelon
3 lost \$100 million on Clinton station last year?

4 A Yes.

5 Q Am I correct that the Clinton station is
6 a nuclear generating plant that Exelon operates in
7 Illinois?

8 A Yes.

9 Q Now, I'm going to ask you to refer to
10 the -- to Exhibit 1 of the joint applicants'
11 application in this proceeding.

12 A I'm there.

13 Q Am I correct that Exhibit 1 to the
14 application contains a copy of Exelon's SEC
15 form 10-K for calendar year 213 (sic)?

16 A Yes.

17 Q Now, I would like you to turn to page 10
18 of Exhibit 1, Exelon's 2013 SEC form 10-K.

19 A I'm there.

20 Q Now, on page 10 of Exelon's 213 (sic) SEC
21 form 10-K under the heading Constellation Energy
22 Nuclear Group, Inc., the first paragraph indicates

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1 that Constellation Energy Nuclear Group is a joint
2 venture with EDF -- I'm going to try the French --
3 Electricite de France, in which Exelon loan
4 generation owns 50.01 percent; is that correct?

5 A Yes.

6 Q Now, am I correct that the reference in
7 the discussion to Generation -- Generation with a
8 capital G -- is to Exelon's generation subsidiary,
9 which is also known as Exelon Generation?

10 A Yes.

11 Q Now, please focus on the last paragraph
12 on page 10 of Exhibit 1. And does the discussion
13 further indicate that Exelon Generation and EDFI
14 will enter into a put option agreement pursuant to
15 which EDFI will have the option exercisable
16 beginning in 2016 and thereafter until June 30th,
17 2022 to sell its 49.99 percent interest in CNG?

18 A Yes.

19 Q Has the referenced put option agreement
20 with EDFI been entered into by Exelon?

21 A No.

22 Q Why not?

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1 A Well, as it says, it doesn't come to
2 maturity till 2016. So we're a ways away. And we
3 haven't got into dialogue about that as far as I
4 know.

5 Q Can you offer a ballpark estimate or an
6 expected range for the cost to Exelon of
7 purchasing EDFI's interest in CNG, assuming EDFI
8 should elect to exercise their put option at the
9 first possible date?

10 A So that's confidential information that
11 we do not make public. We would go into
12 negotiations to buy out their side, but we
13 maintain balance sheet space on the GenCo
14 (phonetic) for the debt that would be incurred
15 while keeping strong free cash flow to debt ratios
16 with the market forwards.

17 So it's something that will be a
18 non-event when it happens, but they'll be at a
19 fair market value, and the contract or the
20 agreement spells out exactly how we would
21 negotiate that in going to dispute resolution.

22 Q I believe you said at the beginning of

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1 your response that's a confidential answer.

2 A The number is.

3 Q The number is. Is that something that
4 you can tell us during the confidential session
5 that we hold at the end of today?

6 A I'd have to talk to counsel first. I
7 don't see why not, but it's -- it's a non-event
8 because we have balance sheet space for the debt,
9 but I can tell you a ballpark, that it's going to
10 be under 2 billion.

11 MS. FRANCIS: Your Honor, I do understand
12 that we will be going into confidential session
13 from some other counsel, so I may want to revisit
14 that response.

15 THE WITNESS: I would have to get
16 somebody to give me that number because I don't
17 have it off the top of my head.

18 BY MS. FRANCIS:

19 Q If EDFI should elect to exercise its put
20 option at some time between 2016 and June 30th,
21 2022, how will Exelon finance that purchase?

22 A As I previously stated, we have

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1 maintained balance sheet margin to be able to use
2 cash on hand and debt as required. And that is
3 within our calculations that we share with the
4 rating agencies.

5 Q Are you able to tell me the percentage of
6 cash on hand versus the amount of debt?

7 A No, it all depends on what year and
8 what's on the balance sheet at that time. But we
9 make sure that there's adequate space for that
10 debt at full -- full price.

11 Q Now, please turn to page 11 of Exhibit 1.

12 A Yes.

13 Q In the first full paragraph on page 11 of
14 the Exelon SEC form 10-K, is it stated that
15 Generation -- in other words, Exelon Generation --
16 will enter into an agreement under which Exelon
17 Generation, quote, will indemnify EDF and its
18 affiliates against third-party claims that may
19 arise from any future nuclear incident in
20 connection with the CENG plants or their
21 operations, end quote?

22 A Yes.

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1 Q When I think of possible future nuclear
2 incidents, I'm reminded of events such as
3 Chernobyl, Fukushima, Three Mile Island. Are
4 those examples of the types of incidents for which
5 Exelon could be required to provide
6 indemnification for EDF?

7 A It could be something like that, low very
8 (sic) likelihood since they're totally different
9 designs. But there's three levels or two levels
10 that go before that. There's the NEIL insurance
11 that covers those catastrophic accidents which is
12 funded, I believe, at \$5 billion. And then
13 there's the Price-Anderson Act that goes on top of
14 that which has the liability of those events on
15 the other nuclear operators.

16 Q Has Exelon quantified the potential
17 dollar amounts at risk under its indemnification
18 agreement, or any other measure of its potential
19 financial risk, under this indemnification
20 agreement?

21 A We -- we did a probabilistic analysis,
22 and the likelihood is very low. This was because

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1 we took over operations of the assets under Exelon
2 nuclear and did away with the CENG operating
3 company. And so it was part of that.

4 Q Could you please tell me what is the
5 at-risk dollar amount under the referenced
6 indemnification agreement?

7 A I cannot tell you that.

8 Q Because you don't know?

9 A Because I don't know.

10 Q Who in the company would know?

11 A It was a probabilistic analysis. You
12 don't know what the event is, so there's not going
13 to be an assessment that says that. It's a
14 standard indemnification when you operate an asset
15 for a co-owner. It's -- it's, what's the
16 probability of that type of accident? Very low.

17 Q Okay. Now, please look back to AOBA's
18 cross-examination exhibits. And please reference
19 what's been preliminarily identified as AOBA
20 Exhibit 9 --

21 MS. FRANCIS: -- Your Honor, which is
22 Exelon Corp's SEC form 10-Q, period ending

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1 September 30th, 2014 which was filed October 29,
2 2014. It's the cover page, Your Honor, as well as
3 pages 61 through 64. And I'd like to have that
4 marked as --

5 CHAIRMAN KANE: I think it's 5.

6 MS. FRANCIS: No. It's 9.

7 CHAIRMAN KANE: 9. Oh, yes.

8 (AOBA Exhibit Number 9 was marked for
9 identification.)

10 BY MS. FRANCIS:

11 Q Do you have that, Mr. Crane?

12 A Yes.

13 Q Now, starting on page 61 of Exelon's
14 October 29th, 2014 SEC form 10-Q filing, there's a
15 discussion of Exelon's investment in Constellation
16 Energy Nuclear Group, LLC. I would like you to
17 focus on the third and fourth paragraph on page 62
18 of Exelon's October 29th, 2014 10-Q filing.

19 A Yes.

20 Q Would you agree that the third paragraph
21 on page 62 indicates that on April 1st, 2014,
22 Generation and EDFI entered into a put option with

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1 terms that appear to be the same as those
2 suggested in Exelon's earlier SEC form 10-K filing
3 for the calendar year 2013?

4 A Yes. They're the same words.

5 Q Similarly, does the fourth paragraph on
6 page 62 of Exelon's October 29th, 2014 10-Q filing
7 indicate that on April 1st, 2014, Generation also
8 executed an indemnity agreement with EDF and its
9 affiliates?

10 A Yes. The same wording. It was taken --
11 the K -- the Q took it from the K.

12 Q Now, I'd like you to focus on the second
13 sentence of the fourth paragraph on page 62 of
14 Exelon's October 29th, 2014 (sic) 10-Q filing.
15 Does that sentence state that Exelon guarantees
16 Generation's obligations under this indemnity?

17 A Yes, it does.

18 Q Could you please tell me, what is the
19 importance of this Exelon guarantee?

20 A We took over full responsibility of the
21 operations. We have -- the employees are now
22 Exelon employees where they were previously CENG

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1 employees. So we took the responsibility of safe,
2 reliable operations, put it within our fleet of
3 operations under our chief nuclear officer, and so
4 the GenCo provided the guarantee to the co-owner
5 that we would indemnify them in this case. So the
6 GenCo took the responsibility.

7 But as you know, that's why we have GenCo
8 as a separate SEC registrant and the utilities
9 ring-fenced. There is some risk at the GenCo, but
10 it doesn't flow to the wires companies.

11 Q Does the reference guarantee mean that
12 any portion of the indemnity that Generation
13 cannot cover Exelon Corp. will cover?

14 A I don't believe so. It says Exelon
15 guarantees GenCo's obligation under the
16 indemnification. It's the GenCo's responsibility.

17 Q Is there any limit to Exelon's cost
18 exposure under this provision?

19 A I don't see any.

20 Q Is there any specific date upon which the
21 reference indemnity expires?

22 A It would expire in 2022, is my

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1 understanding, if we do not buy the plants from
2 them.

3 Q Is there a specific point in time or an
4 identified event after which Exelon will no longer
5 guarantee this indemnity?

6 A Well, we won't have to once we own the
7 plants, which we anticipate owning.

8 Q Now, I'm going to ask you to please turn
9 to AOBA's cross-examination exhibits, and please
10 look at AOBA Exhibit 3, what's been preliminarily
11 identified as AOBA 3. For the record, this is
12 joint applicants' response to staff data
13 request 4-7. And this data request response,
14 Mr. Crane, which has been marked for the record as
15 AOBA 1 references your rebuttal testimony (3A) at
16 page 11, lines 17 through 21 where you talk about
17 the structural and legal separation of Exelon
18 Generation from Exelon. Do you see that?

19 A Yes.

20 Q Now, at page 11, lines 17 through 21 of
21 your conformed direct testimony, do you assert
22 that what happens in ExGen stays in ExGen and

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1 would only have an effect on Exelon's consolidated
2 earnings?

3 A Yes.

4 Q In your response to staff data
5 request 4-7, you cite rating agencies' reports and
6 claim that these ratings rely in part on the
7 well-established principle that the parent holding
8 company is generally not responsible for the
9 obligations of its subsidiaries; is that correct?

10 A Yes.

11 Q Just so the record is clear, am I correct
12 that the organization referenced as ExGen in your
13 rebuttal testimony at page 11 is the same
14 organization that is referenced as Generation in
15 Exelon's October 29th, 2014 10-Q?

16 A Yes.

17 Q Doesn't Exelon's guarantee of
18 Generation's obligations under its indemnity
19 agreement with EDF represent an exception to the
20 general principle to which you refer in your
21 response to staff data request 4-7; in other
22 words, that the parent holding company is

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1 generally not responsible for the obligations of
2 its subsidiaries?

3 A So if -- I think I got your question
4 right. I don't read that indemnification that the
5 holding company has. It's the holding company
6 says that GenCo has it. That is my understanding
7 of it, if I'm answering you right.

8 Q That's your understanding.

9 A Yes.

10 Q Now, please turn once again to AOBA
11 Exhibit 1 to the application and focus on page 13.
12 Are you there?

13 A I was in the wrong book. Just a second.
14 Page what again?

15 Q Page 13.

16 MS. FRANCIS: Just for the record to be
17 clear, that's Joint Applicants' Exhibit 1, Your
18 Honor.

19 THE WITNESS: Okay.

20 BY MS. FRANCIS:

21 Q At page 13 of Exelon's 2013 SEC
22 form 10-K, there's a section that has the subtitle

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1 in bold letters, Nuclear up-rate program. Please
2 take a moment, review the two paragraphs that
3 comprise the discussion of Exelon's nuclear
4 up-rate program.

5 A Yes.

6 Q Given your personal background in nuclear
7 generation and your prior positions with Exelon
8 Generation, can I assume that you're familiar with
9 the matters discussed in this section on page 13
10 of Exhibit 1?

11 A Yes, fully.

12 Q Focusing on the first paragraph of the
13 discussion of Generation's nuclear up-rate
14 program, does the second sentence of the first
15 paragraph of that discussion state that based on
16 ongoing reviews, the nuclear up-rate
17 implementation plan was adjusted during 2013 to
18 cancel certain projects?

19 A Yes.

20 Q Does the first paragraph of that
21 discussion also indicate that up-rate projects at
22 two nuclear stations, Dresden and Quad Cities,

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1 were canceled as a result of the costs of
2 additional plant modifications which, when
3 combined with the then current market conditions,
4 made the projects not economically viable?

5 A Yes.

6 Q Could you please describe for the
7 Commission the market conditions that made those
8 projects uneconomic?

9 A Well, we had a significant downturn in
10 market prices due to load going away and natural
11 gas prices setting the margins lower. The extent
12 of work that was going to have to be done on those
13 units to perform the up-rates, along with the
14 lower earnings profile of those units, didn't
15 warrant them going forward.

16 Q Just as a follow up. Were those local
17 market conditions or were the market conditions
18 referenced more reflective of regional or national
19 market conditions?

20 A Well, they're valued off of the
21 locational margin pricing, and that will fluctuate
22 across the RTO. And so it is more of a regional

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1 locale where prices are higher on the eastern side
2 of the system than they are on the western side of
3 the system.

4 Q The discussions in the same paragraph
5 goes on to say that market conditions also
6 prompted the cancellation of projects at the
7 LaSalle and Limerick nuclear stations.

8 Are the market conditions that prompted
9 the cancellation of projects at LaSalle and
10 Limerick nuclear stations the same basic market
11 conditions that prompted the project cancellation
12 at Dresden and Quad Cities?

13 A Yeah. At LaSalle, it is the same as
14 Dresden and Quad Cities. At Limerick, it was over
15 a billion dollars we were going to have to invest,
16 and we didn't have certainty on the market
17 forwards. Although a better marketplace, we felt
18 that it was too risky to continue to make that
19 investment without further knowledge on where
20 natural gas prices would go and what would happen
21 on the eastern side of the system.

22 Q Could you focus on answering that

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1 question? How did the market conditions affecting
2 these four projects, these four project
3 cancellations differ?

4 A Market prices.

5 Q Yes, market conditions and market prices.

6 A Well, that's the market condition, is the
7 revenue that you can get from the market prices.
8 They perform at a very high level of capacity, so
9 it's as simple as the price you're getting for the
10 product is not going to give you the return on
11 your invested capital.

12 Q As a result of the referenced project
13 cancellations, did Exelon Generation record
14 pre-tax charges against earnings totalling nearly
15 \$120 million for calendar year 213 (sic)?

16 A Yes.

17 Q Is this charge against earnings totalling
18 nearly \$120 million for calendar year 213 the same
19 loss that you referenced as a \$100 million loss
20 associated with the Clinton plant during
21 questioning by Commissioner Hoskins in Maryland?

22 A No.

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1 Q Now, please turn to page 14 of Exhibit 1
2 to the application. Do you see the two-paragraph
3 discussion at the bottom of page 14 that addresses
4 nuclear insurance?

5 A Yes.

6 Q Am I correct that the last sentence of
7 that discussions provided under the heading
8 "nuclear insurance" indicates that generation is
9 self-insured to the extent that any losses may
10 exceed the amount of insurance maintained?

11 A Are you on the first paragraph under
12 nuclear insurance?

13 Q Let me make sure I have my cite right.

14 A Generation has reduced its financial
15 exposure to these risks through insurance and
16 other industry risk-sharing provisions.

17 The second paragraph.

18 And -- so it goes on to say, For
19 information regarding property insurance, see
20 item 2 in properties, generation. Generation is
21 self-insured to the extent that any losses may
22 exceed the amount of insurance maintained or

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1 within the policy of the deduction for the insured
2 losses.

3 Q Does the same discussion indicate that
4 Generation is also self-insured to the extent that
5 any losses are within policy deductions?

6 A Within the policy deductions, yes.

7 Q Does that last sentence of the second
8 paragraph indicate that such losses could have a
9 material adverse impact on Exelon's and
10 Generation's financial condition?

11 A Yes, in the event of an event and it was
12 above the insurance levels that are provided now.

13 Q Mr. Crane, could you verify for me that
14 Exelon sought the passage of legislation in
15 Illinois to gain recovery through charges applied
16 to users of regulated distribution services for
17 costs associated with nuclear plants owned by its
18 non-regulated Exelon Generation subsidiary?

19 A Are you talking about in the
20 restructuring?

21 Q I'm talking about, have you sought the
22 passage of legislation in Illinois to gain

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1 recovery through charges applied to users of
2 regulated distribution services for costs
3 associated with nuclear plants owned by its
4 non-regulated Exelon Generation subsidiary?

5 A There was -- there is a bill that just
6 came out of the Senate Energy Committee that we do
7 support. The bill was created last year -- or the
8 initiative was created last year. The state asked
9 to have the -- the benefits of the nuclear plants
10 in the State of Illinois assessed.

11 There were four studies that were
12 directed to be done on state agencies for
13 reliability, for financial viability and other
14 measures.

15 The studies came out and said that the
16 value that the nuclear plants provide to the state
17 is significant, many billions of dollars, and
18 action should be taken, in light of the Clean Air
19 Act coming out, 111(d), to secure the plants and
20 see what -- what methodologies could be utilized.

21 Today in Illinois, all
22 non-carbon-emitting generating sources receive a

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1 surcharge, and nuclear did not. The path that
2 they're taking forward is to bring the nuclear
3 plants to the equivalent with rate caps, 2 percent
4 rate caps in reliefs, that they could continue to
5 compete against the other sources.

6 As the state looked at it, 60 percent of
7 the power in the State of Illinois is
8 non-carbon-emitting, and 90 percent of that is
9 nuclear. So it's the state's desire to have a
10 market adjustment to compensate the plants for not
11 only their reliability, the firm fuel nature of
12 the plants, not an intermittent source, in a zero
13 carbon-emitting source.

14 Q Are you stating here that you did not
15 seek that legislation; you merely supported it?

16 A We did not seek the legislation. What we
17 asked for was time. We had started off in the
18 beginning in conversations with the state after
19 analysts, some Wall Street analysts, were showing
20 that the units were under some level of stress.
21 We were working at PJM to make sure that the
22 issues around price formation and overgeneration

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1 and negative pricing were corrected.

2 We told our shareholders that if we don't
3 see something by the end of 2014, we would proceed
4 to provide notice for some of those plants to be
5 shut down. The state -- the governor at the time
6 and the speaker of the house and other key
7 officials asked for more time and had those
8 assessments done, and then that went down the path
9 of the bill being created.

10 We support the bill as it is now because
11 it is a market-based and it's not a subsidy. It's
12 based off of your performance and based off of the
13 carbon-emitting nature. It is not intermittent
14 market fix. It is only to the 111(d) regulation
15 comes out of the EPA and goes into the Illinois
16 state implementation.

17 And at that point, we believe all of the
18 non-carbon-emitting sources would be treated the
19 same in a different structure.

20 Q Please turn to page 13 of your direct
21 testimony.

22 A My direct testimony. Yes.

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1 Q Now, at page 13, lines 14 through 15,
2 your testimony states that, District of Columbia
3 customers will realize direct and traceable
4 financial benefits as transmission-related and
5 distribution-related merger synergies are fully
6 recognized in future rate proceedings.

7 Do you see that?

8 A Yes.

9 Q When you use the term "traceable" in that
10 context, would that be synonymous with the word
11 "verifiable"?

12 A I believe so, yes.

13 Q So if I substituted the word "verifiable"
14 for the word "traceable" at page 13 of your direct
15 testimony, it would not change the meaning of the
16 sentence?

17 A I don't believe it would.

18 Q Am I correct that the only commitment
19 Exelon offers in this proceeding with respect to
20 verifying merger-related savings is commitment 5
21 in your Exhibit (4A)-2 which pledges only to track
22 and report actually achieved synergy savings until

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1 the -- PEPCO's next rate case proceeding? Is that
2 correct?

3 A We committed to that, and I thought there
4 was a commitment to show the business services
5 cost reductions on -- in January of '17. I
6 believe there's a commitment somewhere else that
7 talks about ensuring that the cost of the business
8 services came down year over year, and that's in
9 January of '17.

10 Q What commitment number is that?

11 A I don't remember.

12 Q So with that additional commitment, those
13 would be the only commitments that you offer with
14 respect to verifying merger-related savings?

15 A That I'm aware of, yes.

16 Q Could you please tell us over what period
17 of time the joint applicants' estimates of net
18 synergy savings have been developed?

19 A It's -- I think the long run is in
20 perpetuity. It's the \$7 million a year, if I got
21 your question right.

22 Q No, I'm not sure you do. Let me ask it

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1 again.

2 A Okay.

3 Q Could you please tell us over what period
4 of time the joint applicants' estimates of net
5 synergy savings have been developed?

6 A I think I'm answering. It is a reduction
7 that will, at a minimum, be that reduction over
8 perpetuity. It's \$7 million. We're giving ten
9 years of it upfront in the CIF, but it will
10 continue in each rate case to be that much less
11 going forward.

12 Q It was the ten years I was looking for.
13 I was looking for the ten --

14 A Oh, okay. For the CIF --

15 Q -- for the period of --

16 A -- yeah. Yeah. That's -- yeah. It's
17 approximately ten years.

18 Q Is it the joint applicants' position that
19 this Commission can reasonably be expected to
20 verify net synergy savings that have been
21 estimated over either a five-year post-merger
22 period or a ten-year post-merger period if

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1 synergies and cost to achieve the merger are only
2 tracked until PEPCO's first post-merger base rate
3 case?

4 A The Commission can ask and we would
5 produce whatever they ask over whatever period of
6 time. It's at their will.

7 Q But at this time, you are only committing
8 to track it until PEPCO's first base rate case?

9 A That's the commitment.

10 Q And obviously, if that rate case happens
11 within a year of the post-merger closing, this
12 Commission would not be able to verify either the
13 five years or the ten years of savings, would
14 they, based on your commitments?

15 A No. But we would do it anyways. If they
16 asked, we would make sure we did it.

17 Q So are you committing to do it now?

18 A No. If we get into a settlement
19 conversation, as I previously said, we'd be glad
20 to do it, or the Commission can dictate it at any
21 time in the order, if we get an order.

22 Q Now, let's please turn to your conformed

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1 direct testimony, and starting now at page 11,
2 line 17 (sic) --

3 A 17?

4 Q Yes. Starting at line 11 -- excuse me.

5 Page 17, line 11 addresses the benefits that
6 Exelon believes the merger will create for PEPCO
7 and other PHI utilities, their customers and
8 communities.

9 Do you see that?

10 A Yes.

11 Q Other than the customer investment fund,
12 which of the benefits referenced in your testimony
13 at pages 11 and 12 -- which of those are traceable
14 and verifiable?

15 A Reliability is. I think they're all to
16 some extent self-disclosing.

17 Q You're saying reliability is
18 self-disclosing?

19 A We report it.

20 Q Correct me if -- I'm confused, because I
21 believe that your testimony in this case was to
22 determine your reliability based on a three-year

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1 average, and that wouldn't be done till after the
2 third year. So year by year, that wouldn't be
3 directly traceable, would it, Mr. Crane?

4 A No.

5 Q Now, please reference your conformed
6 direct testimony at page 12, lines 17 through 21.

7 A Yes.

8 Q There you reference the creation of a
9 customer investment fund in excess of \$100 million
10 of which the joint applicants propose to allocate
11 33.75 million to PEPCO operations in the District
12 of Columbia; is that correct?

13 A Yes.

14 Q What is the total dollar value of the
15 customer investment fund from which the referenced
16 \$33.75 million share for the District of Columbia
17 is allocated?

18 A It was -- in the direct, I believe it was
19 14-point-some-odd million and, in the rebuttal, it
20 has been increased to 33-7.

21 Q I think you misunderstood my question.
22 I'm asking, what is the -- you say the customer

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1 investment fund is in excess of \$100 million. So
2 I'm asking you, what is the total dollar value of
3 the customer investment fund from which the
4 referenced \$33.75 million D.C. share --

5 A I don't have that number now, with the
6 settlements that -- off the top of my head, with
7 the settlements in New Jersey, Delaware and in
8 Maryland.

9 Q Now, why does your conformed direct
10 testimony reference in excess of \$100 million
11 instead of the actual total CIF for all of the PHI
12 utilities and the jurisdictions in which they
13 provide service?

14 A I believe they just rounded it.

15 Q Now, I would like you to reference the
16 Joint Parties' Exhibit 2, page 2 of 113.

17 A I'm there.

18 Q As originally presented, your testimony
19 indicated that the total CIF was 100 million, of
20 which the District would receive 14 million; is
21 that correct?

22 A Yes.

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1 Q From Joint Exhibit 2, page 2 of 113, we
2 could readily assess that the portion of the total
3 customer investment fund allocated to the District
4 of Columbia was about 14 percent, 14 million of
5 100 million. Would you agree?

6 A Yes.

7 Q And based on the conformed version of
8 your testimony, would you agree that it is not
9 possible to determine the portion of the total CIF
10 that is now allocated to D.C. because the actual
11 total for all jurisdictions is not shown? Isn't
12 that correct?

13 A It has not been updated to show with the
14 latest settlements. That is correct.

15 Q Mr. Crane, do you have a copy of
16 Mr. Bruce Oliver's testimony at the witness stand
17 with you?

18 A I think we've got a little bit of
19 everything here.

20 I have it.

21 Q I would like you to reference, please,
22 attachment 1 to the direct testimony of AOBA

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1 Witness Oliver.

2 A Okay.

3 MS. FRANCIS: And, Your Honor, just for
4 the record, this is the joint applicants' response
5 to AOBA data request number 1-4.

6 THE WITNESS: Maybe I'm not at the right
7 spot. I got District of Columbia Rental Housing
8 Commission certification notice on attachment 1 of
9 A.

10 BY MS. FRANCIS:

11 Q I've got reference non-confidential data
12 request responses.

13 A I'm probably in the wrong place.

14 Q There's two sets of testimony.

15 A I've got it now. I was on the previous
16 testimony.

17 Q What we're talking about right now is
18 testimony filed November 3rd. And I'd like you to
19 please focus on the first three pages which
20 provide a copy of the joint applicants' response
21 to AOBA data request number 1-4 in this
22 proceeding, including attachment A. Do you see

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1 that, Mr. Crane?

2 A Yes.

3 Q Would you agree that the right-hand
4 column of data on page 1 of attachment A to AOBA
5 data request 1-4 indicates the amounts allocated
6 to each jurisdiction under the joint applicants'
7 originally presented \$100 million CIF proposal?

8 A Yes.

9 Q Would you accept that nothing in the
10 testimony, exhibits, work papers or data request
11 responses of the joint applicant -- that the joint
12 applicants have provided to date either updates
13 the calculations shown on page 1 of attachment A
14 to AOBA data request 1-4, or explicitly shows the
15 allocation of the revised total CIF among the PHI
16 utilities and the jurisdictions in which they
17 provide distribution utility services?

18 A Yeah, I've answered that a couple of
19 times. It's not updated.

20 Q Now, let's please reference AOBA
21 Exhibit 27, which contains a copy of an Exelon/PHI
22 press release dated April 30th, 2014, announcing

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1 the proposed merger.

2 A What was the number again?

3 Q AOBA 27.

4 A Yes.

5 MS. FRANCIS: Your Honor, I would like to
6 mark AOBA Exhibit 27, which is Exelon's PHI (sic)
7 merger press release, April 30th, 2014. I believe
8 I'm up to AOBA 10.

9 CHAIRMAN KANE: Yes.

10 (AOBA Exhibit Number 10 was marked for
11 identification.)

12 BY MS. FRANCIS:

13 Q Does this press release indicate that the
14 combined utility businesses will serve
15 approximately 10 million customers?

16 A Yes.

17 Q Now, based on a customer count of
18 approximately 260,000 customers in the District of
19 Columbia, am I correct that PEPCO's District of
20 Columbia customers will represent only about
21 2.6 percent of total utility customers to be
22 served by Exelon after the merger?

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1 A I'll take your word for the math.

2 Q Now, I'd like to reference back to
3 Exhibit 1 to the application in this proceeding,
4 again, for the record , which contains a copy of
5 Exelon's SEC form 10-K filing, 12 months ended
6 December 2013, and ask you to find page 191 of
7 that document which provides a consolidated
8 statement of operations for Exelon Corp. and its
9 subsidiary companies.

10 A I'm there.

11 Q Does the data on the first line of this
12 page indicate that Exelon's total operating
13 revenue for 2013 was nearly \$25 billion?

14 A Yes.

15 Q Now, Exhibit 2 to the application
16 provides a comparable SEC form 10-K for PHI for
17 the 12 months ended December 31st, 2013. Would
18 you accept that the total consolidated operating
19 revenue for PHI for calendar year 213 (sic) was
20 \$4.66 billion?

21 A Yes, that's what it says on the form.

22 Yes.

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1 Q Now, based on the information in the
2 Exelon and PHI SEC 10-K filing for 213, would you
3 accept that their combined operating revenues for
4 213 were nearly \$30 billion?

5 A Combining the two, yes.

6 Q Would you accept, Mr. Crane, subject to
7 check, that PEPCO's District of Columbia approved
8 annual distribution base rate revenue as
9 determined by this Commission in its last base
10 rate case in order number 17424 was only about
11 \$443 million?

12 A I don't know that.

13 Q Would you accept that, subject to check?

14 A I trust you.

15 Q This is verifiable. Formal case 1103,
16 17424.

17 A I know you're bringing me to school on
18 verifiable stuff.

19 Q Would you accept that, post-merger,
20 PEPCO's District of Columbia distribution revenue
21 on an annual basis would likely reflect only about
22 1.5 percent of Exelon's total annual operating

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1 revenue?

2 A I'll take your word on it.

3 Q Would you say that the impacts of the
4 merger on Exelon's earnings are a more important
5 consideration for Exelon and its shareholders than
6 the merger's impact on total operating revenue?

7 A I'm not understanding the question. Say
8 it again, please.

9 Q Do you agree that the impacts of the
10 merger on Exelon's earnings are a more important
11 consideration for Exelon and its shareholders than
12 the merger's impact on total operating revenue?

13 A In any business, the outcome of earnings
14 is a focus. It's the priority. It's what you're
15 in business for.

16 Q So the short answer to my question is
17 yes?

18 A If I am getting it right, yeah.

19 Q Yes, you're getting it right.

20 A I'm not sure how they relate to each
21 other, but yeah.

22 Q Please tell me what is a more -- which is

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1 a more important consideration to Exelon's
2 shareholders, the number of utility customers that
3 the acquisition of PHI utilities will add to
4 Exelon's overall number of utility customers or
5 the impact of the merger on investors' earnings
6 expectations?

7 A I would imagine, from an investor's
8 perspective, it's the long-term profitability and
9 earnings projection of the company. That's why
10 they give us the capital to get a return on their
11 investment.

12 Q So whether PHI adds 1.8 million customers
13 or 1.5 million customers or some other number of
14 customers as a result of the merger is really only
15 important to the extent that the number of
16 customers impacts either earnings or earnings
17 growth expectations; is that correct?

18 A No. I think that's -- there's other --
19 many other considerations for us as a corporation
20 on the acquisition of PHI: The geographic
21 location; the synergies; the resource sharing.

22 If we were just about numbers of

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1 customers, we could buy something in New Mexico,
2 but that's not where we're at. We're
3 geographically committed to try to grow within
4 this contiguous nature so we can provide better
5 service and opportunities for our customers.
6 That's key. You don't -- you can't earn unless
7 you have satisfied customers and a commission that
8 respects that.

9 Q You would agree with me that it is
10 reasonable to assess that earnings and earnings
11 growth expectations for PHI's utility operations
12 are an important consideration in Exelon's
13 evaluation of how much it would offer for PHI
14 stock?

15 A Yes. It has to be in the equation.

16 Q Am I correct --

17 A A major consideration.

18 Q Am I correct investment activities such
19 as PEPCO's undergrounding program in the District
20 of Columbia directly influence expectations of
21 growth in PEPCO's rate base?

22 A It has a point in it, yes.

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1 Q Would you agree that for rate-regulated
2 utilities, such as PEPCO, a key determinant of
3 earnings is the amount of rate base on which the
4 utility is permitted to earn a regulated return?

5 A Yes.

6 Q Would you agree that, for a regulated
7 utility, growth in rate base generally equates to
8 growth in earnings?

9 A With the right regulatory treatment.

10 Q Does the fact that D.C. PLUG
11 undergrounding initiative has legislative
12 authorization provide even greater assurance of
13 earnings growth over the next several years for
14 PEPCO's District of Columbia operations than would
15 be associated with investment activities that are
16 not mandated by legislation?

17 A Yes. Across all of our utilities, we
18 have mandated activities that get the returns
19 based off of the implementation, and then others
20 are performed at risk and only gain the return
21 when filed in a rate case.

22 Q Would you accept that although PEPCO's

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1 District of Columbia service constitutes only
2 about 14 percent of total PHI utility customers,
3 the District of Columbia represents about
4 26 percent of total distribution rate base for the
5 PHI utilities?

6 A I don't know that number.

7 Q Would you accept that, subject to check?

8 A Sure.

9 Q Mr. Crane, could you please tell me, how
10 do you justify the share of the total CIF that is
11 allocated to each utility and to each
12 jurisdiction?

13 A It was based off on the customer cone.
14 Mr. Khouzami can go into more detail when you
15 question him, but he's -- he manages that side of
16 the testimony.

17 Q I've got to remember which questions to
18 save for Mr. Khouzami.

19 Did you review and approve the joint
20 applicants' proposed allocation of the CIF among
21 the PHI utilities and the jurisdictions in which
22 they provide service before the proposed

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1 allocation was submitted as part of the joint
2 applicants' application and direct testimony filed
3 on June 18th, 214 (sic)?

4 A I did.

5 Q What criteria did you use to assess the
6 appropriateness of the allocations by utility and
7 jurisdiction?

8 A The allocation by customer count by meter
9 was the methodology. I'm sure it's not a perfect
10 science, but it's been one that's passed the test
11 in regulatory proceedings before.

12 Q So was the criteria that it pass the --
13 it passed regulation approval, regulatory
14 approval, in prior mergers.

15 A It's a proven method, yes, an accepted
16 method previously.

17 Q Has that been accepted before the
18 District of Columbia?

19 A I do not know that.

20 Q Now, I would like you to reference
21 AOBA (sic) Exhibit (4A)-1 which is part of your
22 February 17th, 2015, supplemental direct

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1 testimony.

2 A Okay. I'm there.

3 Q Now, this (4A)-1 contains a full copy of
4 the stipulation of settlement that was filed with
5 the New Jersey Board of Public Utilities in the
6 parallel merger proceeding in New Jersey, BPU
7 docket number EM14060581; is that correct?

8 A Yes.

9 Q Please turn to page 7 of 42.

10 A Page 7 of the --

11 Q Wait. Let me just --

12 A 7 of --

13 Q Paragraph 7 on page 7 of 42. The numbers
14 are on the top --

15 A Got it.

16 Q -- left-hand --

17 A I'm there.

18 (Pause.)

19 BY MS. FRANCIS:

20 Q Now I'm looking at paragraph 7 on page 7
21 of 42 of your Exhibit (4A)-1. And does that
22 paragraph indicate the dollar amount of the CIF

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1 that was agreed to in New Jersey?

2 A Yes.

3 Q Am I correct that paragraph 7 states that
4 the \$62 million amount agreed to as the CIF amount
5 for Atlantic City electric customers in New Jersey
6 is equivalent to \$114 per distribution customer
7 for 543,989 ACE distribution customers.

8 A That's what it says.

9 Q Am I correct that there is no statement
10 anywhere in paragraph 7 on page 7 of 42 of (4A)-1
11 or anywhere else in the document that indicates
12 the manner in which the \$62 million total CIF
13 amount for New Jersey was determined?

14 A Well, I think it infers you times the
15 543K by \$114, and that comes up with it, but I
16 haven't done the math. That's what it's
17 inferring.

18 Q And again, there's nothing in paragraph 7
19 on page 7 in Exhibit (4A)-1 that specifies a total
20 dollar amount for all PHI utilities from which the
21 New Jersey amount was derived?

22 A No. As I've said, that has not been

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1 updated.

2 Q Mr. Crane, were any of the parties in
3 this case provided the opportunity to have input
4 to the CIF considerations negotiated in New Jersey
5 relating to either the CIF amount established in
6 the New Jersey settlement or the methods used to
7 determine that amount?

8 A I don't believe anybody from D.C. was
9 involved in that, no.

10 Q Can you point this Commission to anything
11 in the stipulation of settlement presented in
12 Exhibit (4A)-1 that provides supporting rationale
13 or other justification for the CIF amount agreed
14 to in the New Jersey settlement except for the
15 fact that the parties who participated in the
16 settlement agreed to it?

17 A That was the settlement, yes.

18 Q Am I correct that subsequent to the
19 filing of the New Jersey settlement, the joint
20 applicants have advocated proposals in each of the
21 other PHI jurisdictions that are premised on the
22 dollar per customer amount referenced in the New

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1 Jersey settlement?

2 A Can you repeat that again? I just want
3 to make sure I get that right.

4 Q Am I correct that after the filing of the
5 New Jersey settlement, the joint applicants have
6 advocated proposals in each of the other PHI
7 jurisdictions that are premised on the dollar per
8 customer amount referenced in the New Jersey
9 settlement?

10 A Yes, they are.

11 Q Mr. Crane, the direct testimony of AOBA
12 Witness Oliver filed in this proceeding on
13 November 3rd, 2014 and also his March 3rd, 2015
14 supplemental direct testimony -- Witness Oliver
15 presents analyses which indicate that PEPCO's
16 distribution plant investment per customer for the
17 District of Columbia is significantly above
18 comparable measure also for all of the other PHI
19 utilities and jurisdictions.

20 In determining the appropriateness of the
21 CIF, did you give any consideration to the
22 differences in each company's amount of investment

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1 per customer?

2 A No.

3 Q Do you have any basis for disputing the
4 accuracy of Witness Oliver's assessment that
5 PEPCO's average distribution plant investment per
6 customer for the District of Columbia is over
7 \$5,000 per customer while the average for all the
8 other PHI jurisdictions is less than \$2,400 per
9 customer?

10 A I don't have any knowledge of that.

11 Q That a question that should be deferred
12 to either Mr. McGowan or Mr. Khouzami?

13 A Yes.

14 Q Which one?

15 A I think McGowan, since he raised his
16 hand, as I'm looking back there for both of them.

17 Q Could you accept, subject to check, while
18 PEPCO's rate base investment in the District of
19 Columbia as established in formal case 81103
20 equates to an investment of over \$5,000 per
21 customer while Atlantic City Electric customer has
22 an average investment in distribution rate base of

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1 only about \$2100 per customer?

2 A I don't have knowledge of that.

3 Q Can you accept it, subject to check?

4 A Sure.

5 Q Could you please tell me, what was your
6 role in the decision of the joint applicants to
7 allocate the customer investment fund among the
8 PHI utilities and jurisdictions on the basis of
9 customer counts?

10 A It was recommended that we follow the
11 same process that we did in the previous merger
12 and I agreed to.

13 Q Who was ultimately responsible for the
14 decision to allocate CIF funds among jurisdictions
15 based on customer count?

16 A It was my final approval of it that --
17 that set it in stone, but it was the
18 recommendation of the team that we follow that
19 process.

20 Q Would you agree that, based on the larger
21 rate base investment per customer for PEPCO's D.C.
22 operations, PEPCO's D.C. customers contribute

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1 significantly more earnings per customer to PHI
2 than customers in PHI's other jurisdictions?

3 A I don't know that to be a fact.

4 Q And does Mr. McGowan know that?

5 A He would be able to discuss it. And now
6 we'll prepare for it.

7 Q Let's, please, turn to your
8 Exhibit (4A)-2. Now, (4A)-2 provides a detailed
9 listing of the commitments that the joint
10 applicants make to the District of Columbia in
11 this proceeding; is that correct?

12 A Yes.

13 Q Does each numbered paragraph in (4A)-2
14 represent a separate commitment that the joint
15 applicants make?

16 A Yes.

17 Q Am I correct that Exhibit (4A)-2 is a
18 17-page document that includes 91 numbered
19 paragraphs or commitments?

20 A Yes.

21 Q Mr. Crane, for a number of the
22 commitments presented in (4A)-2 that -- citations

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1 are offered. Would you accept that most of those
2 citations are simply the documents which contain
3 the same or similar language and do not provide
4 any justification or supporting rationale for the
5 offered commitment?

6 A Justification --

7 Q Well, my point is that it just -- it just
8 contains similar language. It's just a reference
9 to another one rather than adding any rationale or
10 explanation.

11 A I assume that to be correct.

12 Q Now I'm going to ask you to please
13 reference Exhibit 5 to the application in this
14 proceeding which is titled, Joint applicants'
15 commitments.

16 A Okay.

17 Q And Mr. Crane, am I correct that
18 Exhibit 5 to the application reflects the joint
19 applicants' commitment as originally presented in
20 this proceeding?

21 A Yes.

22 Q Would you agree that Exhibit 5 lists 12

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1 numbered commitments that are presented in less
2 than four full pages of text?

3 A Yes.

4 Q Would you agree that there are
5 significant differences between the substance and
6 details of the commitments presented in Exhibit 5
7 to the application and the commitment set forth in
8 (4A)-2 that is presented as part of your
9 February 17th supplemental direct testimony?

10 A Yes, there's changes.

11 Q Now, please turn to Exhibit B to the
12 agreement and plan of merger, which is titled,
13 Regulatory commitments. This is attached to the
14 application.

15 A I'm there.

16 Q And you would agree that there are 13
17 commitments set forth in this roughly
18 three-and-a-half pages of text that constitute
19 Exhibit B to the merger agreement?

20 A Yes.

21 Q Now, as I look at Exhibit 5 to the
22 application and Exhibit B to the merger agreement,

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1 which is Exhibit 3 to the application, both seem
2 to address similar considerations. However,
3 Exhibit 5 to the application lists 12 numbered
4 commitments while Exhibit B to the merger
5 agreement lists 13 numbered commitments; is that
6 correct?

7 A Yes.

8 Q Could you please tell me, are there any
9 substantive differences between the content of
10 these lists of commitments?

11 A Being the regulatory, there is some more
12 detail on some of the elements in the tab 3 versus
13 tab 5 where you have more of the customer fund and
14 other reliability commitments. The reliabilities
15 are just not the customer fund -- I think that --
16 doing a quick side-by-side, it seems that this is
17 more regulatory and it does not have the customer
18 fund in it, and it's stated regulatory commitments
19 upfront, as I can see.

20 Q Which one are you talking about?

21 A 3 versus 5.

22 Q Now, Mr. Crane, in your opinion, is one

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1 of these lists of commitments more relevant to the
2 Commission's considerations in this proceeding
3 than the other?

4 A I think they're both important. There's
5 a little bit more detail in the financial
6 ring-fencing in some of the other elements in
7 attachment 3.

8 Q Is either of these lists of commitments
9 more binding on Exelon than the other?

10 A No. That's what we've committed to. Or
11 subsequently updated with other filings.

12 Q Now, please reference the Joint Parties'
13 Hearing Exhibit 2.

14 A Okay.

15 Q Am I correct that pages 11 through 18 of
16 the Joint Parties' Hearing Exhibit 2 contains a
17 copy of your (3A)-1 as it was originally filed
18 with this Commission on December 17th, 2014?

19 A Yes.

20 Q Am I correct that (3A)-1, as originally
21 filed, modified and expanded the list of
22 commitments in Exhibit 5 to the joint application

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1 in this proceeding?

2 A I believe so, yes.

3 Q Would you agree that where Exhibit 5 to
4 the application lists 12 commitments on less than
5 four full pages, Exhibit (3A)-1, as originally
6 filed, comprised only eight pages and 40 numbered
7 commitments?

8 A Yes.

9 Q Would it be fair to say, Mr. Crane, that
10 the commitments the joint applicants have proposed
11 in this proceeding have evolved considerably
12 during the course of this proceeding?

13 A They have evolved, yes.

14 Q If the 91 numbered commitments set forth
15 in Exhibit (4A)-2 are accepted by the Commission,
16 would Exelon and PHI need to revise the list of
17 commitments presented in Exhibit 3 to the merger
18 agreement to restore the correspondence between
19 those documents?

20 A I don't -- I don't know if they have to
21 be resubmitted. They're -- they're commitments
22 that we have made. They have been updated with

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1 changes from settlements in other jurisdictions to
2 bring them in par with those.

3 Q Do you believe that the commitments set
4 forth in the joint applicants' merger agreement do
5 not need to parallel the commitments that they
6 make to regulatory commissions and to ratepayers
7 of the PHI utilities?

8 A Are you saying based off of settlements
9 in other jurisdictions?

10 Q No. I'm just talking about the District
11 of Columbia.

12 A Then repeat your question because I
13 didn't understand it.

14 Q Do you believe that the commitments set
15 forth in the joint applicants' merger agreement do
16 not need to parallel the commitments that they
17 make to this Commission and to ratepayers in the
18 District of Columbia?

19 A I have no --

20 MR. GADSDEN: Your Honor, if I could
21 just -- I think we're going to object to that
22 because it seems to me she's asking for a legal

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1 conclusion.

2 MS. FRANCIS: Your Honor, I'm not asking
3 for a legal. I'm just asking for his layman's
4 opinion. He's the chief executive -- or he's the
5 guy that approved the merger and what was attached
6 to it, and I'm not expecting a legal opinion.

7 MR. GADSDEN: Your Honor, I think it's
8 clear that -- I mean, the parties -- they're
9 parties to a contract, and they have the right
10 amongst themselves to expand upon the list of
11 commitments that they're prepared to make, and
12 that's exactly what they're doing here.

13 CHAIRMAN KANE: Would you repeat the
14 question, Ms. Francis?

15 MS. FRANCIS: Sure.

16 BY MS. FRANCIS:

17 Q Are you suggesting that the commitments
18 set forth in the joint applicants' merger
19 agreement do not need to parallel the commitments
20 that they make to regulatory commissions and to
21 ratepayers of the PHI utilities?

22 CHAIRMAN KANE: I don't see that as say

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1 legal question. You may answer.

2 THE WITNESS: So what -- you're confusing
3 me. You're talking about in the District. And
4 when I asked you about the commissions -- you kind
5 of get me all bottled up here.

6 BY MS. FRANCIS:

7 Q Okay. My apologies. Because my intent
8 was I was going to ask it both ways and, if you
9 didn't understand it, let's go back to the
10 original question.

11 Are you suggesting that the commitments
12 set forth in the merger agreement that we just
13 discussed do not need to parallel the commitments
14 that they make to regulatory commissions and to
15 ratepayers of the PHI utilities?

16 A Parallel --

17 Q Be the same as.

18 A We have entered -- as I've previously
19 said, we have entered into settlement agreements
20 in other jurisdictions that have slight
21 differences from these commitments made in D.C.
22 We did not revise the commitments in D.C. based

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1 off of those settlements because it would have
2 restarted the clock and sent everybody into a
3 restart situation.

4 So as I've stated is what we'd like to do
5 is discuss these either in settlement, which is
6 the preferred way, or the Commission can
7 unilaterally say "me too" and provide that.

8 But we haven't had the complete
9 settlement discussion to draw those parallels as
10 you're stating.

11 Q To the extent that a set of merger
12 commitments is approved by the Commission in this
13 proceeding that differs from commitments approved
14 in parallel proceedings in Maryland, Delaware and
15 New Jersey, who will bear the cost of monitoring
16 and administering the different commitments made
17 in each jurisdiction?

18 A That's on us to do, the company.

19 Q Us meaning shareholders or us meaning
20 ratepayers?

21 A It's -- it's not the ratepayers. It
22 would be monitored at our corporate level, and

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1 that doesn't go to the ratepayers. So it's -- we
2 did it with Constellation merger; we would do it
3 here.

4 Q Just to be perfectly clear, those costs
5 would not get passed through to ratepayers?

6 A I do not believe they would.

7 Q Is that a commitment?

8 A I'm not here to make commitments. I'm
9 here to answer your questions.

10 Q Will you make that a commitment?

11 A You did this in Maryland, too. Whatever
12 the Commission wants us to do around that, we
13 would be willing to do. You can negotiate pretty
14 good over there.

15 MS. FRANCIS: Your Honor, I don't know if
16 you plan to take a break at some point, but if you
17 do, I'm switching areas and this would be a good
18 time. If you want me to continue, I can continue.

19 CHAIRMAN KANE: How much more do you have
20 of yours? Do you think you will go till -- how
21 much more do you have?

22 MS. FRANCIS: A while, Your Honor. A

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1 while.

2 CHAIRMAN KANE: An hour? A while, I
3 know. In terms of when we take a break -- we have
4 been going almost two hours. But if you're going
5 finish up in 15 --

6 MS. FRANCIS: I'm more than halfway.

7 CHAIRMAN KANE: You're more than halfway.
8 Do you think you will need -- assuming we finish
9 around 5:00, 5:30, that you will need all of that
10 time?

11 MS. FRANCIS: Oh, yes.

12 CHAIRMAN KANE: Yes?

13 MS. FRANCIS: Yes.

14 CHAIRMAN KANE: All right. Then we will
15 take a break for ten minutes.

16 (Whereupon, a short recess was taken.)

17 CHAIRMAN KANE: Thank you. We are back
18 on the record at 4:00 p.m.

19 Ms. Francis.

20 BY MS. FRANCIS:

21 Q Mr. Crane, before I move on to the next
22 area, I would just like to go back and do a couple

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1 of follow-up questions. I asked you earlier -- we
2 discussed the allocation of the customer
3 investment fund between jurisdictions. Do you
4 remember that?

5 A Yes, ma'am.

6 Q And I was asking you about why you did it
7 that way, and you said that you did it that way
8 because it had been passed in other jurisdictions
9 before.

10 A It was an acceptable methodology.

11 Q Acceptable. What do you mean by
12 acceptable?

13 A It received regulatory approval.

14 Q Now, where did it receive regulatory
15 approval?

16 A Maryland.

17 Q Okay. And that was in the
18 Constellation/Exelon merger proceeding a couple of
19 years ago?

20 A Right. And it's been agreed upon in New
21 Jersey with our settlement, Delaware with our
22 settlement, and the settlements we have in

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1 Maryland.

2 Q Okay. Now, I just want to get back to
3 the Maryland Exelon/Constellation merger. That
4 was not a merger between a multiple-jurisdictional
5 utility -- so there were no inter-jurisdictional
6 issues that case; in other words, allocating one
7 state or one jurisdiction more than another.
8 Isn't that correct?

9 A That's correct.

10 Q Now, I believe also earlier you discussed
11 the Maryland settlement agreement, and you said
12 that it was signed by some major parties. I would
13 like you to focus on what was preliminarily
14 identified as OPC Exhibit Number 9 which was
15 marked for the record as OPC Exhibit 7.

16 Now, looking at that exhibit, there were
17 approximately 21 parties in that case. Is that
18 your recollection, somewhere around that?

19 A I don't know that number.

20 Q Now, let's look at who signed the
21 settlement agreement: Montgomery County, Prince
22 George's County, and the Mid-Atlantic Off-Road

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1 Enthusiasts; is that correct?

2 A National Consumer Law Center and the
3 National Housing Trust --

4 Q Okay.

5 A -- the Maryland Affordable Housing
6 Coalition, the Housing Association of Nonprofit
7 Developers and the Mid-Atlantic Off-Road
8 Enthusiasts.

9 Q Okay. And that group with -- the
10 National Consumer Law Center, that was one party
11 to the case, was it not.

12 A I believe so.

13 Q All right. Now, there were a number of
14 parties who did not sign that settlement
15 discussion (sic). Would you agree that the Office
16 of People's Counsel in Maryland did not sign that
17 agreement?

18 A I agree.

19 Q Do you agree that Maryland Public Service
20 Commission staff did not sign that agreement?

21 A I agree.

22 Q Do you agree that the State of Maryland

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1 and the Attorney General did not sign that
2 agreement?

3 A I agree.

4 Q Do you agree that the Apartment and
5 Office Building Association did not sign that
6 agreement?

7 A The only ones that signed that agreement
8 are the ones listed here.

9 Q Are you aware -- you've peppered your
10 responses throughout my questioning with reference
11 to settlement discussions in the various
12 jurisdictions and among the various parties. I
13 find that very interesting. Would you agree that
14 within the past couple of weeks the Maryland
15 Public Service Commission staff, the Maryland
16 Office of People's Counsel, the Maryland
17 government, represented by the attorney general,
18 as well as the Apartment and Office Building
19 Association each filed letters stating that they
20 had not been in settlement discussions with Exelon
21 or the joint applicants? Are you aware of that?

22 A No.

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1 Q Now, just for a few moments I want to get
2 back to talking about the allocations in regard to
3 the customer investment fund, and I want to focus
4 on -- I understand that you -- you decided to
5 treat all customers equally because that's what
6 had been done in a prior proceeding.

7 But I guess what I'm looking for is more
8 of the rationale for doing that, not the method.
9 In other words, on what basis was it determined
10 that treating all customers in a uniform manner
11 despite the differences in their service
12 requirements and the revenue that they pay and/or
13 the earnings that they contribute produces a fair
14 and equitable result?

15 A As I said, it may not be a perfect
16 science, but it is the approach that we took. And
17 the rationale is it -- it's obvious. It's equal
18 to all customers across the PHI companies.

19 Q If this Commission were to issue an order
20 which allocated the total amount of the customer
21 investment fund to the District based on the
22 District of Columbia's share of total PHI

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1 investment were rate-based, not on the basis of
2 customer counts, what would happen to the CIF in
3 New Jersey based on its most favored nations
4 provision?

5 A Well, I think it would -- it would have a
6 detrimental effect overall. It would be a
7 significant increase since we've already reached
8 agreement there. The total value, I would
9 assume -- I'd need to speak with counsel -- would
10 have to go up by that amount.

11 Q Now moving on to a new subject, I'm going
12 to be focusing on Exelon's reliability performance
13 guarantee. Now, at page 14, lines 7 through 9,
14 your conformed direct testimony --

15 A Direct testimony?

16 Q -- you reference on that page Exelon's
17 performance guarantee. Am I correct that Exelon's
18 commitment is that PEPCO will achieve specified
19 levels of service reliability as measured in terms
20 of SAIFI and SAIDI results, and if it fails to
21 achieve the specified levels of performance, it
22 will be assessed a financial penalty?

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1 A Yes.

2 Q Do I understand properly that the
3 measures of SAIFI and SAIDI Exelon guarantees for
4 PEPCO's District of Columbia service reflect
5 average annual SAIFI and SAIDI measures for the
6 years 2018 through 2020?

7 A Yes.

8 Q Am I correct that Exelon does not
9 guarantee any specific level of either SAIDI or
10 SAIFI performance for PEPCO for the years 2016 and
11 2017?

12 A This question is better for Alden to go
13 into that in detail. What I'm confusing is each
14 jurisdiction in the commitment in there, if it is
15 an annual or a three-year average. And so not to
16 misspeak, I think it's -- most likely Alden would
17 be the correct person to ask.

18 There's been changes in -- not to pepper,
19 but there's been changes in other settlements that
20 go to an annual-based in some areas, and so he
21 would be able to be better versed in discussing
22 that.

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1 Q There's no settlement proposed in D.C.,
2 correct?

3 A There is none, no.

4 Q Does the Exelon performance guarantee
5 require PEPCO to achieve or maintain any specific
6 levels of SAIDI and SAIFI performance for any year
7 after 2020?

8 A I believe that the EQQS (sic) goes to
9 2020, and that is the commitment that we've made.
10 If there's a subsequent commitment to be
11 made, I'm sure that would happen in due course in
12 some proceeding.

13 Q Am I correct that the performance
14 guarantee Exelon offers for the year 2018 through
15 2020 would be subject to review only one time, and
16 that would be in the year 2021, six years from
17 now?

18 A I don't understand it or remember it that
19 way. I thought it was -- the first year would be
20 2018, because it was the three-year average, and
21 then the three-year average would roll through '19
22 and '20, is my recollection. But I am not the

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1 expert on that part of the filing. Alden would
2 be -- or McGowan would be the better to ask.

3 Q I think you just agreed with me, because
4 I asked you if it would be subject to review only
5 one time, and that would be in the year 2021. You
6 said 2018, 2019, 2020; it's a three-year average;
7 we only get a one-time look.

8 A That's not what I said.

9 Q Okay. Then I --

10 A What I said is you would -- my
11 understanding, which I prefaced this a few times,
12 that I may have this wrong. My understanding is
13 that in 2018 you would have a three-year running
14 average from '16 -- '15, '16, '17, so you would
15 look at it in '18, and then you would look at the
16 subsequent three-year average in '19, then you
17 would look at the subsequent three-year average in
18 '20. But...

19 Q So again, we should refer those for an
20 exactly correct answer to Mr. Alden?

21 A Yeah. In Maryland I had them make a
22 spreadsheet so I could keep up with the different

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1 commitments and the iterations. I don't have that
2 here, and he will have it on the top of his head.

3 Q Why didn't you have them make it up for
4 here?

5 A I didn't think to ask. I did the night
6 before in Maryland, but I didn't think to ask
7 here.

8 Q I'm going to ask you a few more
9 questions, so you just let me know if you can
10 answer them.

11 A I'll try.

12 Q According to your Exhibit (4A)-2,
13 commitment 7, what is the annual average SAIFI
14 level that Exelon pledges PEPCO will achieve?

15 A (4A)-2, which is the supplemental. And
16 what page?

17 Q Commitment 7.

18 A Commitment 7.

19 Q Page 2 of 17.

20 A Do you want me to read them?

21 Q It's only one number. According to your
22 Exhibit (4A)-2, commitment 7, what is the annual

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1 average SAIFI level that Exelon pledges PEPCO will
2 achieve?

3 A The 2020 is .66 on SAIFI, and on SAIDI,
4 90 minutes. I'm seeing your three -- where you're
5 getting your question for the three-year average
6 starting in '18 from this.

7 So you get the one answer. That's what
8 it looks like, but that wasn't my understanding.

9 Q Okay. Because that's the one number
10 that's shown.

11 A Right.

12 Q Now, please turn to Exhibit 5 of the
13 application, which is labeled, Joint applicants'
14 commitments.

15 A Okay.

16 Q Now, are the SAIFI and SAIDI commitments
17 reflected in commitment 3 of Exhibit 5 the same as
18 the commitments presented in your (4A)-2?

19 A No.

20 Q SAIFI commitment reflected in
21 commitment 3 of Exhibit 5 to the application
22 reflects an annual average SAIFI result not to

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1 exceed .54, and the SAIDI commitment in Exhibit 5
2 is to a result that does not exceed 107 minutes.

3 Do you agree with that?

4 A That's what it states.

5 Q How do you explain the differences
6 between the SAIFI and the SAIDI commitments in
7 Exhibit 5 to the application and the SAIFI and
8 SAIDI commitments set forth in your
9 Exhibit (4A)-2?

10 A So my understanding is this was not an
11 apples-to-apples comparison, that the original
12 commitment is superseded by this new commitment.
13 There was an impact of outages, I believe, or
14 storm-related outages, if I remember the
15 discussion right.

16 But there was a lot of -- there's been a
17 lot of dialogue on the reliability commitments to
18 make sure that we've got apples-to-apples for the
19 EQSS requirements. Mr. Alden can explain that.

20 Q I'm not really sure I understood your
21 answer. Could you try that again?

22 A So there's changes between these two

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1 filings. There was quite a bit of dialogue in --
2 between -- the organization on how were these
3 numbers generated in Exhibit 5 and then the
4 subsequent revisions to those numbers which would
5 be reflected in (4A)-2. And again, Mr. Alden can
6 explain that dialogue.

7 Q Do the joint applicants intend to modify
8 their application to reflect the changes to the
9 SAIFI and SAIDI levels that they now propose for
10 PEPCO to achieve?

11 A At this point, we do not have a plan to
12 revise the application. As I stated previously,
13 we did not want to restart the clock and
14 perturbate everybody's schedule. What we would
15 prefer to do is file through settlement, which --
16 reflecting what's negotiated, or the Commission
17 sees the -- the numbers and can tell us to do it,
18 and that will be fine.

19 Q Now, again, I have to focus back on your
20 remark about settlement. And I'm just using
21 Maryland as an example because you did the same
22 thing in the Maryland case. And the four major

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1 parties who did the substantial amount of cross
2 all wrote to the Commission saying, we haven't
3 been involved in these discussions.

4 So that's why I'm having trouble
5 understanding your reference to settlement.

6 A So the attorney general and the MEA did
7 not want to engage, my understanding, in
8 settlement discussions. There were settlement
9 discussions with other environmental groups, but
10 they did not come to fruition.

11 In D.C., we would like to have the major
12 parties enter into settlement conversations.
13 There's been dialogue up to this point. It's -- I
14 would say the governments of Prince George (sic)
15 and Montgomery County are significant
16 stakeholders, seeing how the majority of the
17 customers in PEPCO Maryland are in those
18 jurisdictions.

19 CHAIRMAN KANE: Ms. Francis, I'm going to
20 interrupt here. I think we need to put something
21 on the record.

22 MS. FRANCIS: Sure.

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1 CHAIRMAN KANE: There's been an awful lot
2 of mention of settlement -- and I think this is
3 more for the public's information.

4 There's been a lot of reference to
5 settlement and to if the Commission wants or what
6 the Commission wants. I do think we need to make
7 clear that it may be different in the District
8 than in other jurisdictions. But, first of all,
9 this is not a settlement hearing. This is not a
10 negotiation. This is an evidentiary hearing on
11 what has been filed by the joint applicants and
12 the other exhibits and data responses, et cetera,
13 that have been filed. It's a hearing of the
14 evidence. That's why it's called an evidentiary
15 hearing.

16 And I also want -- think we need to point
17 out that in the District, which may be different
18 from other states, our Commission staff is not a
19 party, does not have a role in any settlement
20 either discussions or in being a party to a
21 settlement or recommending a settlement on the
22 record. Our staff is prohibited by law from being

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1 a party.

2 And so -- I think that is at least to
3 partially frame this discussion so that the public
4 in particular that may be watching this or
5 watching it on Saturday night -- you know, this is
6 not a negotiation. This is a hearing on the
7 evidence.

8 And while the Commission always
9 encourages parties to any case before us to engage
10 in settlement, we need to be aware of what our
11 process is. Also references to what the
12 Commission wants or if the Commission wants --
13 Mr. Crane, I heard you say, and I want you to
14 clarify if you really meant this, that the
15 Commission should tell us to do it and that will
16 be fine. Are you implying that anything that we
17 might put in an order --

18 THE WITNESS: No, ma'am -- Chairman. It
19 was on that reliability standard. There's things
20 that we would be prohibited to do, but it wasn't
21 overall global.

22 I'm just trying to answer the questions

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1 to make sure that -- we're willing to talk; we're
2 willing to work with whoever we can. I'm not
3 trying to do it here.

4 CHAIRMAN KANE: Thank you. The
5 Commissioners will have questions for the
6 witnesses also later.

7 MS. FRANCIS: Your Honor, I would just
8 like to state, for AOBA, we very much appreciate
9 your remarks. Thank you. I'll move on.

10 COMMISSIONER FORT: Chairman, I think we
11 should also say, to the extent that we're doing
12 this for an educational purpose, that under D.C.
13 code, if there were to be a settlement, we would
14 be back for a public interest hearing on the
15 settlement. I know that one of the comments you
16 had was about restarting the clock. But a
17 settlement, if a settlement is being proposed,
18 particularly if it's a non-unanimous settlement,
19 we would still end up in a public interest hearing
20 on any kind of settlement that is proposed to us.
21 So we would be back for another set of
22 hearings, as is the case I believe in Maryland.

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1 THE WITNESS: That's our understanding.

2 CHAIRMAN KANE: Thank you, Commissioner
3 Fort, for that additional information.

4 BY MS. FRANCIS:

5 Q Mr. Crane, are you informed regarding
6 PEPCO's actual SAIFI and SAIDI results for the
7 District of Columbia for 2014?

8 A Yes, we went over those earlier.

9 Q Are you aware that PEPCO's actual SAIFI
10 for 2014 of .69 interruptions is lower than this
11 Commission's EQSS standard for SAIFI for 2020
12 despite the fact that the Commission established
13 EQSS is ratcheted downward each year through 2020?

14 A As I explained earlier, that is a
15 one-year, and it was a light weather year. It has
16 not been seen as a trend.

17 Q Would you accept that PEPCO's actual
18 SAIDI results for 2014 of 96.6 minutes is lower
19 than this Commission's EQSS standard for SAIDI
20 each year through 2018?

21 A As with SAIFI, yes.

22 Q Would you agree that PEPCO has already

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1 achieved the vast majority of the improvements in
2 SAIFI and SAIDI measures for PEPCO that the joint
3 applicants had targeted for PEPCO to achieve by
4 the year 2020?

5 A No. It's a one-year data point, and you
6 need to see the three-year trend.

7 Q Does PEPCO's actual 2014 SAIFI of .69
8 also achieve the vast majority of the SAIFI
9 improvement reflected in the joint applicants'
10 revised SAIFI commitment for PEPCO of .66?

11 A It's a one-year data point, not the
12 three-year trend that's in the filing.

13 Q Should this Commission consider the
14 proposed penalties for non-performance meaningful
15 when most of the targeted improvements and
16 reliability measures have already been achieved
17 before the closing of the proposed merger?

18 A They have not been achieved, as I've
19 answered. It is a three-year trend. This is a
20 one-year data point. If it was achieved, why
21 would you do plug? Why would you make any of the
22 other investments? I don't think any of us

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1 believe that it's achieved. It's a one-year data
2 point.

3 Q Am I correct that PEPCO's 2014
4 improvements in SAIFI and SAIDI results were
5 achieved despite the fact that PEPCO noticeably
6 underspent its 2014 reliability-related capital
7 and O&M budgets?

8 A No.

9 Q Why is that?

10 A It's going to be the same answer. It's a
11 one-year data point. It was -- these things
12 cycle. As hotter weather comes in, you have more
13 cable failures. As storms come in, you weaken the
14 system. It was a light year.

15 Q Were PEPCO's 2014 SAIFI and SAIDI results
16 for the District of Columbia achieved without
17 assistance from Exelon?

18 A They were.

19 Q Mr. Crane, in the joint applicants'
20 initial brief in Maryland case 9361, did the joint
21 applicants propose a performance penalty structure
22 that included annual penalty assessments for each

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1 year of the 2018-2020 period and fixed dollar
2 penalty amounts that varied by year?

3 A That's my belief, yes.

4 Q Have the joint applicants proposed
5 anything similar in this proceeding?

6 A No.

7 Q Now, please, let's look at your conformed
8 direct testimony and focus on page 15. At
9 page 15, lines 5 through 8, you testify that
10 Exelon will achieve the reliability improvements
11 Exelon has proposed for PEPCO and other PHI
12 utilities without increasing the
13 reliability-related capital or O&M budgets and
14 their existing long-term plans; is that correct?

15 A Yes.

16 Q Would you accept that there is no
17 commitment regarding reliability-related spending
18 and existing budgets included in Exhibit 5 to the
19 joint applicants' application?

20 A Yes.

21 Q Now I'm going to switch areas to discuss
22 ring-fencing. I would like you for a moment to

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1 reference the ring-fencing commitments that are
2 presented in Exhibit 5 to the joint applicants'
3 application and focus your attention on
4 commitment 11 on page 3 of Exhibit 5.

5 A I'm there.

6 Q Does Exhibit 5 present a statement of the
7 joint applicants' ring-fencing commitment as it
8 was first set forth in this proceeding?

9 A Yes.

10 Q The second paragraph -- excuse me. The
11 second sentence of commitment 11 states, quote,
12 Exelon and PHI commit to implement the following
13 ring-fencing arrangements for at least five years
14 following completion of the merger absent
15 permission from the District of Columbia Public
16 Service Commission to act otherwise.

17 Do you see that language?

18 A Yes.

19 Q Does anything in the language of
20 commitment 11 bar PEPCO or Exelon from petitioning
21 the D.C. Commission for removal of some or all of
22 the proposed ring-fencing arrangements in less

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1 than five years?

2 A In this commitment, it does not go into
3 that level of detail. In subsequent commitment
4 revisions, it does.

5 Q Well, actually, it -- focus on the words
6 "absent permission from the District of Columbia
7 to act otherwise." That is some level of detail.

8 So I guess my question is, again, does
9 anything in the language of commitment 11 attached
10 to your application bar PEPCO or Exelon from
11 petitioning the D.C. Commission for removal of
12 some or all of the proposed ring-fencing
13 arrangements in less than five years?

14 A No.

15 Q Once the first five years after the
16 merger closing are completed, does anything in the
17 language of commitment 11 specifically require
18 that PEPCO or Exelon seek this Commission's
19 approval of modifications to or an elimination of
20 the ring-fencing arrangements set forth by the
21 joint applicants in this proceeding?

22 A Could you say that one more time? I just

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1 want to make sure I answer it.

2 Q Sure. Once the first five years after
3 the merger closing are completed, does anything in
4 commitment 11 specifically require that PEPCO or
5 Exelon seek this Commission's approval of
6 modifications to or an elimination of the
7 ring-fencing arrangements set forth by the joint
8 applicants in this commitment?

9 A No.

10 Q Now, please reference your
11 Exhibit (4A)-2, which accompanies your
12 February 18th supplemental direct testimony.

13 A Okay.

14 Q And please focus on the
15 ring-fencing-related provisions set forth in that
16 exhibit. I think that -- referring to
17 commitment 72, page 11 of 17.

18 A Yes.

19 Q Am I correct that commitment 72 in your
20 Exhibit (4A)-2 reflects that the joint applicants
21 have characterized -- what the joint applicants
22 have characterized as a five-year commitment to

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1 ring-fencing?

2 A Yes.

3 Q Does commitment 72 provide that, after
4 five years, the joint applicants shall have the
5 right to request the Commission to modify or
6 terminate the ring-fencing provisions of the joint
7 applicants' proposed commitments in this
8 proceeding?

9 A Yes.

10 Q Could you please for a moment -- look at
11 the language, the specific language I would like
12 to focus on on Exhibit 72 -- excuse me,
13 paragraph 72. Could you please tell me, where
14 does commitment 72 state that the joint applicants
15 cannot file for a modification or termination
16 within the first five years?

17 A That's my understanding of saying, after
18 five years, we should have the right to review the
19 provision contained within, that --

20 Q But -- I didn't mean to interrupt you.
21 My apologies.

22 A Go ahead.

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1 Q But it doesn't explicitly state what
2 should happen during the first five years, does
3 it?

4 A I think it does. It says, after five
5 years. So it doesn't say before five years. It's
6 after five years. The commitment is after five
7 years.

8 Q So you're stating -- are you saying that
9 it's implicit in the way that the words are --

10 A I believe so.

11 Q Okay. Would you be indifferent if the
12 language in commitment -- would you be indifferent
13 if the language in commitment 72 was modified to
14 state explicitly that the joint applicants shall
15 not seek or otherwise request a modification or a
16 termination of the ring-fencing provisions of any
17 order?

18 A I think it implicitly states it, but I
19 would be indifferent to it.

20 Q I would like you to reference what's been
21 preliminarily identified as AOBA Exhibit 1, which
22 is a copy of the Maryland Public Service

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1 Commission order number 84698 from case
2 number 9271 before that commission, which was the
3 Exelon merger proceedings.

4 A I have it.

5 MS. FRANCIS: Your Honor, I believe I
6 would like to have this cross-examination exhibit
7 marked for the record as AOBA 11.

8 CHAIRMAN KANE: And the original number
9 was?

10 MS. FRANCIS: The original number was 1,
11 Your Honor.

12 CHAIRMAN KANE: Was 1. Yes, it will be
13 marked as 11. Thank you.

14 (AOBA Exhibit Number 11 was marked for
15 identification.)

16 MS. FRANCIS: Thank you.

17 BY MS. FRANCIS:

18 Q Mr. Crane, please turn to page 113.

19 A 115?

20 Q Actually, wait a minute. I want to make
21 sure I'm giving you the right page. There's two
22 sets of page numbers.

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1 A You might need to get close to the mic.

2 I can't hear you over here.

3 CHAIRMAN KANE: This is the 122-page
4 document, correct?

5 MS. FRANCIS: Yes, Your Honor.

6 BY MS. FRANCIS:

7 Q Mr. Crane, if you look at the top of the
8 page, it's page 105 of 122. In the Commission
9 order, it's page 103.

10 A Yes.

11 Q Would you agree that paragraph 2, as set
12 forth on page 103 of commission order number
13 84698, states that Exelon shall not for three
14 years following consummation of the merger be
15 permitted to file with the Commission a petition
16 for modification to the ring-fencing measures and
17 after three years may only do so if there is a
18 material change in circumstances?

19 A Yes. Yes.

20 Q Would Exelon accept language comparable
21 to that, that we just read in Maryland commission
22 order number 84698, if the Commission made --

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1 determined that that was necessary for approval of
2 the merger?

3 A Not negotiating again here, but that
4 would not be offensive. I mean, it's...

5 Q Would Exelon accept language comparable
6 to that Maryland order number 84698 if the
7 Commission determined -- scratch that and start
8 over.

9 Would Exelon accept language --

10 CHAIRMAN KANE: Ms. Francis, we're not
11 negotiating.

12 MS. FRANCIS: That's why I crossed it
13 out, Your Honor.

14 BY MS. FRANCIS:

15 Q Would Exelon commit to language now
16 comparable to that in condition 2 on page 103 of
17 the Maryland commission order 84698 if the time
18 period during which Exelon is not permitted to
19 file with the Commission a petition for
20 modification of the approved ring-fencing
21 measures -- if it is extended from three years to
22 five years?

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1 MR. GADSDEN: Objection, Your Honor. I
2 think you made it clear that we're not supposed to
3 be negotiating term during an evidentiary
4 proceeding, and that's actually what we continue
5 to do.

6 MS. FRANCIS: Your Honor, may I respond?

7 CHAIRMAN KANE: You may. Go ahead.

8 MS. FRANCIS: I'm not trying to negotiate
9 terms. However, we have Exhibit 3 and Exhibit 5
10 with one set of merger commitments. Now we
11 have -- then we had (3A)-1, now we have (4A)-2.
12 What I'm asking him is for his commitment -- not
13 negotiations; we're not in a settlement
14 discussion; we're in a hearing. Would he commit
15 to that now on the witness stand today?

16 MR. GADSDEN: I think that's a
17 distinction without a difference. I think we're
18 just constantly asking Mr. Crane to make
19 commitments on the record and negotiate the terms
20 Ms. Francis is interested in, and I think it's
21 inappropriate.

22 CHAIRMAN KANE: Ms. Francis, I tend to,

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1 on this particular question, agree. I thought
2 perhaps you were going to ask why, if they had
3 agreed to a particular provision in the BGE
4 merger, they had not agreed or not proposed --
5 what we have is a proposal, no agreements -- they
6 had proposed something different in this case.

7 That would be an appropriate question.
8 But what they would agree to or commit to on the
9 stand, I really -- I want to get away from this
10 negotiations and these what-ifs.

11 MS. FRANCIS: Your question is the
12 question I wished I had asked, so I would like to
13 ask it now.

14 Does the witness need it to be read back?

15 THE WITNESS: The chairman's question or
16 your question?

17 BY MS. FRANCIS:

18 Q The chairman's question. She always asks
19 better questions.

20 A I've got it. I do not know the basis for
21 the difference in the two.

22 Q You don't understand the basis between

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1 what you're proposing here and what's in the
2 Exelon merger?

3 A I don't know why we had anything
4 different from the Constellation/BGE ring-fencing
5 commitments and the commitments we are making
6 here.

7 Q Who would know the answer to that
8 question?

9 A Well, the counsel would, but he probably
10 can't -- won't get up here. The -- can we let you
11 know who would be the appropriate one to ask? It
12 may end up being Mr. O'Brien, but I need to check,
13 and we will let you know before the morning.

14 Q Thank you. Just before the necessary
15 witness testifies.

16 A Will do.

17 Q Focusing for a moment on provision 2 on
18 paragraph 103, that limits petitions after three
19 years to situations where there is a material
20 change in circumstances. Did you see that?

21 A Which testimony are you in now?

22 Q I'm sorry. I'm in the Maryland

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1 settlement agreement.

2 A Page 103, not of the exhibit --

3 Q 103.

4 A Okay.

5 Q Last line: And after three years may
6 only do so if there's a material change in
7 circumstances.

8 A Yes.

9 Q Do you see that?

10 A Yes.

11 Q Could you please explain to me why -- are
12 you able to explain to me why you did not propose
13 that in the District of Columbia?

14 A I am not, and we will make sure that same
15 witness who we identify will be able to fill in
16 the blanks here.

17 Q Now I'd like to move on and talk about
18 jobs -- Exelon's job commitments for the District
19 of Columbia. Now, I'd like to look at, please,
20 commitment 17 on page 4 of exhibit (4A)-2.

21 A I'm there.

22 Q In that commitment, Exelon commits to,

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1 quote, make a good faith effort to hire at least
2 102 union workers in the District of Columbia
3 within two years of the merger closing; is that
4 correct?

5 A Yes.

6 Q I read the phrase "good faith effort" as
7 suggesting that Exelon will do its best to hire
8 102 new union workers in the District, but at
9 least open the possibility that that goal of
10 hiring 102 new union workers of the next -- over
11 the next two years may not be achievable.

12 Is that the intent of Exelon's use of the
13 phrase "good faith effort" in this context?

14 A I believe it is achievable. There is --
15 there's work to be done for testing and screening
16 of candidates to pass the aptitude tests, and
17 that's where we have had issues in the past. But
18 I think, if we put the full forces of our
19 corporate HR supporting PEPCO, we will be able to
20 achieve the screening and the testing and get
21 the -- get them through the first part of training
22 to see if they'll make it.

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1 Q So if you believe it is achievable,
2 please explain to me why those words, good faith
3 effort, were necessary.

4 A In some cases, there have been issues
5 with getting adequate pools of individuals
6 together that can pass the -- I believe the test
7 is -- it's a standardized construction test, CAST
8 test. And that would be the reason it was put
9 down there.

10 But our intent is -- we're facing a
11 potential retirement situation that I described
12 earlier. And that's not just at PEPCO; that's
13 across many of the infrastructure utilities.
14 Retirements coming on, and getting the pipeline
15 programs, the training programs up and running,
16 the training centers improved and the capability
17 to be able to move that many people through the
18 system is -- is a task, but I think we can do it
19 and committed to do it.

20 Q When the phrase "at least" is used in the
21 joint applicants' commitment to hire union
22 workers, is the phrase "at least" intended to

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1 imply that in no circumstances would the number of
2 new union workers be less than 102, but there is
3 the potential for more than 102 union workers?

4 A Yes, definitely. Based off of the
5 attrition. If the attrition starts to escalate,
6 you need to fill in sooner versus later.

7 Q Doesn't the use of the phrase "good faith
8 effort" substantially undermine the notion that
9 Exelon will hire a minimum of 102 new union
10 workers?

11 A I don't think so. We're -- we're not
12 about making shallow commitments. We make strong
13 commitments, and we live up to our commitments.
14 We have a reputation of that. I wish the "out"
15 wasn't in there right now, just based off the way
16 it's being phrased by you. It is what we're going
17 to do. But there are troubles in -- there are
18 problems at periods in certain locales getting
19 adequate resources to be able to pass these tests.

20 Q So you wish the "out" was not in there;
21 is that a commitment --

22 A Yes, because -- I'll keep answering this.

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1 We're committed to it. We're going to get it
2 done, but there was an out given. We probably
3 shouldn't have put the out in there. We're not
4 about shallow, loose commitments.

5 Q Am I correct that many, if not most, of
6 the new union workers that Exelon commits to hire
7 reflect anticipated requirements to replace
8 existing union workers who are either currently
9 eligible for retirement or are expected to become
10 eligible for retirement within the next couple of
11 years?

12 A It will be for that and displacing
13 contractors.

14 Q Would it be reasonable to assess that
15 hiring of at least some, if not all, of the
16 identified 102 additional union workers will be
17 necessary for PEPCO to offset retirements of
18 existing employees regardless of whether the
19 merger is approved?

20 A I think you need to ask Mr. Rigby if he
21 intends to do that or not. My understanding is he
22 will not do that.

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1 Q Would some of the new union employees
2 that PEPCO would hire in the District be engaged
3 in activities related to the company's D.C. PLUG
4 initiative?

5 A I don't know that to be a fact, since
6 that is more of -- construction in nature. There
7 could be some work on that in terminations, things
8 like that, but I don't know.

9 Q Mr. Crane, during cross-examination by
10 Chairman Hughes in the Maryland proceeding, 9361,
11 did you testify that the commitment to hire
12 additional union workers reflected an effort by
13 the joint applicants to gain union support for the
14 merger?

15 A It was one of the issues that, in an
16 early meeting with the unions, that they described
17 as a problem and I agreed, and Mr. Rigby came up
18 with the commitment to hire if the merger goes
19 through.

20 Q But it was done to gain union support for
21 the merger?

22 A It was -- it was to -- a good faith

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1 effort to show that we are willing -- employees
2 are stakeholders here in the process, too, and
3 that we are willing to commit to satisfy some of
4 the concerns of the employees, and they are
5 represented employees.

6 Q Mr. Crane, I'd like to refer you to AOBA
7 Exhibit 60.

8 A I'm there.

9 MS. FRANCIS: Your Honor, Exhibit 60 is
10 from volume 4 of the Maryland transcript. It's
11 page 1 of 6. I have a cover page. But what I'd
12 like to focus on is page -- starting on page 964.
13 It's page 3 of the exhibit. Very bottom of the
14 page.

15 CHAIRMAN KANE: Have you numbered this
16 exhibit?

17 MS. FRANCIS: Your Honor -- oh, I'm
18 sorry. I believe this is AOBA 12.

19 CHAIRMAN KANE: Yes, 12.

20 (AOBA Exhibit Number 12 was marked for
21 identification.)

22 BY MS. FRANCIS:

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1 Q Mr. Crane, would you please look at the
2 very -- you can see the very bottom of page 3 of
3 6. It says, Chairman Hughes -- very last line --
4 first of all, the commitment was that -- a
5 commitment made to the unions, was that part of a
6 negotiation with the unions regarding support for
7 this merger?

8 Mr. Crane: Yes.

9 A Yes.

10 Q Now I'd like to focus on PEPCO Energy
11 Services and their employees for a moment. I'd
12 like to ask you to please focus on commitment 18
13 on page 4 of Exhibit (4A)-2.

14 A Paragraph -- what did you say?

15 Q Commitment 18. It's on page 4 of 17.

16 A Yes.

17 Q Is commitment 18 on page 4 of
18 Exhibit (4A)-2 -- am I correct that the joint
19 applicants commit to relocating 50 PES employees
20 from Arlington, Virginia to the District of
21 Columbia?

22 A Yes.

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1 Q Am I correct that this Commission does
2 not regulate the activities of PEPCO Energy
3 Services?

4 A That's correct.

5 Q Given that this Commission does not
6 regulate PEPCO Energy Services, how will this
7 Commission verify the number of actual PES
8 employees that are relocated from Virginia to
9 D.C.?

10 A How will they regulate it?

11 Q No. How will they verify the actual
12 numbers that are relocated from Virginia to D.C.?

13 A I don't know. We'll have to work out
14 that detail. We're committing to move the people
15 here, 50 people. We will move 50 people, and
16 we'll work out the details of the communications
17 back to the Commission.

18 Q Am I correct that there is nothing in
19 commitment 18 in Exhibit (4A)-2 that requires PES
20 to maintain any specific number of employees in
21 D.C. after the transfer is completed?

22 A No, it does not make that.

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1 Q Am I correct that the joint applicants
2 specifically do not commit to maintain at least 50
3 PES employees in the District?

4 A That is not in the commitment. We intend
5 to work on that business and grow that business.
6 We would anticipate there would be more
7 employment. We're keeping that business live and
8 we're making the investment to move it. So it's
9 not the intent to scale it down.

10 Q Is there anything in commitment 18 in
11 (4A)-2 that requires ongoing reporting of changes
12 in the number of employees of PES that are located
13 in the District of Columbia?

14 A No, there's nothing there.

15 Q Am I correct that PES presently leases
16 the office space it occupies in Arlington,
17 Virginia?

18 A I'm not aware of those details.

19 Q Who would that be?

20 A I'll find an answer. We'll get the
21 person -- one of the people coming. McGowan. He
22 just raised his hand.

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1 Q Am I correct that since PES withdrew from
2 the retail energy marketing business, the size of
3 its operations in Arlington, Virginia in terms of
4 numbers of employees has declined noticeably?

5 A I don't know the history of the staffing.

6 Q McGowan?

7 A McGowan.

8 Q Is it true that the space PES currently
9 leases in Arlington, Virginia is substantially
10 larger than is necessary to house its current
11 complement of employees?

12 A I have no knowledge of that. Mr. McGowan
13 will.

14 Q Last question in this line. Is it
15 possible that PHI would decide to consolidate and
16 move the operations of PES to its D.C. offices in
17 the absence of the merger?

18 A We typically do not comingle regulated
19 and non-regulated entities in the same facility,
20 just for clarity and accounting purposes. But
21 I -- McGowan can tell you if there's any plans, or
22 what the plans are for the facilities.

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1 Q I understand your answer, but you just
2 made a commitment to comingle. You just said that
3 you're going to have 50 employees move to PHI
4 downtown --

5 A I don't know if they're moving into PHI
6 downtown. If they are, they would have to be
7 walled off. I don't know the details on that.

8 Q Now, please turn to page 3 of your
9 conformed rebuttal testimony. Looking --

10 A I'm on page 3.

11 Q Looking at lines 9 through 10, you state,
12 Importantly, these are not empty promises, but
13 instead are backed by specific enforceable
14 commitments.

15 Is that correct?

16 A Yes.

17 Q Is it your position that each of the
18 commitments presented in your conformed exhibit
19 that accompanies your rebuttal testimony, (4A)-2,
20 is an enforceable commitment?

21 A Yes.

22 Q Do you believe that all of the

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1 commitments that were listed in your -- I'll give
2 you the page in a minute -- in your original
3 Exhibit (3A)-1 were enforceable commitments? And
4 that's in the Joint Applicants' Exhibit 2 -- Joint
5 Parties', excuse me -- Joint Parties' Exhibit 2.

6 A Your question again is?

7 Q I'm going to get the page numbers for you
8 first --

9 A Oh, okay.

10 Q -- to make it a little easier.

11 Take a look at Joint Parties' Exhibit 2,
12 page 11 of 113. I will ask my question again. Is
13 it your position that each of the commitments
14 presented in the Joint Parties' Exhibit 2,
15 pages 11 through -- 11 of 113 through 18 of 113 is
16 also an enforceable commitment?

17 A Yes.

18 Q Is it Exelon's position that its
19 charitable contributions and community
20 initiatives, commitment 22 in your Exhibit (4A)-2,
21 is enforceable -- excuse me, I gave you the wrong
22 cite.

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1 Is it Exelon's position that its
2 charitable contributions and community
3 initiatives, commitment 22 on page 4 of
4 Exhibit (3A)-1, conformed, is enforceable by this
5 Commission?

6 A Yes.

7 Q Are you aware that this Commission does
8 not presently regulate PEPCO's charitable
9 contributions?

10 A Yes.

11 Q Is Exelon asking this Commission to begin
12 regulating charitable contributions made by
13 Exelon, PEPCO or other Exelon subsidiaries at
14 community initiatives in the District of Columbia?

15 A No. We're just making a commitment that
16 we will continue at this point, the highest run
17 rate point that PEPCO has done.

18 Q Would you please describe for me the
19 methods and procedures that would be used to
20 enforce the minimum level of charitable
21 contributions to which the joint applicants commit
22 in this proceeding?

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1 A I guess we have to work out those
2 details. In other areas we issue annual reports
3 on the charitable contributions. We actually have
4 a report that we send to our board on all our
5 charitable contributions in all our communities.

6 Q And how would the Commission verify that
7 report, sir?

8 A We'd give it to them and show them that
9 that's where the contributions went.

10 Q So you give it to them and they accept
11 it, and there's no independent verification. Is
12 that what you're suggesting?

13 A Yes, that's what I'm suggesting. I think
14 if we submit something, it's going to be factual
15 and truthful.

16 Q Am I correct that because the charitable
17 contributions commitment is stated as an annual
18 average amount, there will be no way to assess
19 whether that commitment has been satisfied until
20 the tenth year is completed?

21 A That's not our intent.

22 Q Would you agree that the way this is

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1 written, your commitment is written, that
2 shortfalls in the annual contributions that may be
3 observed prior to the tenth year would be
4 meaningless since, in year 10, Exelon could make
5 up for any of the shortfalls in the earlier years?

6 A I would think that there could be years
7 where there's highs and there could be some that
8 are a little bit lower. But what we try to do is
9 levelize our cash flows for commitments in all
10 other uses of cash to match our sources of cash.
11 So there's no motivation for us to go high, zero,
12 low, and then write it all at the end.

13 Q If at the end of ten years, this
14 Commission determines that Exelon had failed to
15 satisfy the charitable contribution commitment,
16 what action could the Commission take to enforce
17 the provisions of Exelon's charitable
18 contributions commitment?

19 A First of all, we have every intent to do
20 this. We will do it. It's our commitment. If we
21 did not, the Commission can tell us to, but we
22 won't put them in that position.

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1 Q In the context of Exelon's commitment to
2 make a minimum level of charitable contributions
3 in this proceeding, will that minimum level of
4 charitable contributions become a necessary
5 utility business expense for Exelon's utility
6 subsidiaries in D.C. that could be recoverable
7 from PEPCO customers?

8 A No.

9 Q Shouldn't this Commission expect that
10 whoever owns PEPCO's District of Columbia
11 operations will also be a good corporate citizen
12 regardless of any commitment that may be made to a
13 level of charitable contributions?

14 A Yes.

15 Q I'd like to go back and look for a moment
16 at the merger agreement on page 39 -- page 39 of
17 the merger agreement.

18 A Okay.

19 Q Page 39 of the merger agreement, 11 lines
20 down from the top of the page, do you see a line
21 that starts, Regulatory failure shall mean? It's
22 11 lines down.

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1 A Page 39 of the merger agreement?

2 Q Correct. It's Exhibit 3.

3 A 11, status of matters related to
4 completion of the transaction?

5 Q No, you're looking at the wrong place.
6 Exhibit 3.

7 A Exhibit 3.

8 Q It says, Agreement and plan of merger.

9 A Right. Page 39.

10 Q Page 39. Start at the top of the page,
11 and I count down 11 lines. And I see, Regulatory
12 failure shall mean terms, conditions, liabilities,
13 obligations, commitments or sanctions giving
14 effect to the value of any negative effects, net
15 of their benefits, that in an aggregate amount
16 constitutes a material adverse effect on the
17 condition.

18 Do you see that?

19 A So this is at titled at the beginning,
20 Amended and restated agreement of planned merger.
21 And on -- 11 lines down on mine, or before that is
22 called paragraph C.

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1 Q Well, actually I'm looking at your
2 original agreement and plan of merger dated
3 April 29th. I could probably find it in the
4 amended one. Do you have original one so we can
5 look at it? Because I believe they're the same in
6 both.

7 A No.

8 MS. FRANCIS: Can I hand him a page?

9 CHAIRMAN KANE: Yes.

10 Ms. Francis, show it to counsel, first.

11 MR. LORENZO: If we can find the
12 provision, we could find it in the --

13 CHAIRMAN KANE: I'm sorry, Mr. Lorenzo.
14 I can't hear you.

15 MR. LORENZO: Oh, I'm sorry.

16 If we see the provision, we can find it
17 in the --

18 CHAIRMAN KANE: If you'd put your
19 microphone on, please.

20 MR. LORENZO: If we -- if we knew the
21 provision, we'll find it in the amended and
22 restated agreement.

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1 CHAIRMAN KANE: Whichever way is easier.

2 BY MS. FRANCIS:

3 Q It's on page 40 of the amended and
4 restated agreement. I misspoke. Excuse me.
5 Page 40.

6 A And it starts off with what words?

7 Q It's 13 lines down.

8 A Conditions, liabilities, obligations?

9 Q It's underlined, regulatory failure.
10 Right in the middle of the page, page 40,
11 paragraph -- I don't see a heading.

12 A Oh, it's way down, yeah. Regulatory
13 failure.

14 Q Okay. That's what I'm focused on,
15 please.

16 A Okay.

17 Q Do you know the origins of that phrase,
18 regulatory failure?

19 A The origins of the -- in any proceeding,
20 there is a potential that we do not get regulatory
21 approval. So we -- I believe that's the origin
22 is, as the lawyers were writing up the agreement,

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1 if we have a failure in the regulatory process,
2 would be my understanding.

3 Q So are you saying it's intended to
4 address where a commission either imposes
5 burdensome conditions on your merger or just not
6 approve it?

7 A Or such burdensome conditions that it was
8 no longer -- we're no longer capable in closing,
9 yes.

10 Q Do you accept, subject to check, that the
11 merger agreement between Exelon and Constellation
12 did not include any use of the phrase "regulatory
13 failure"?

14 A I'm not aware of what we had in that --
15 or remember what we had in that.

16 Q Would you accept that, subject to check?

17 A Sure. Yes.

18 Q Mr. Crane, were you involved in the
19 negotiation of the agreement and plan of merger
20 presented as Exhibit 3 to the application in this
21 proceeding?

22 A I was kept informed. I was not at the

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1 table negotiating.

2 Q Could you please tell me who from the
3 company participated in the negotiation of that
4 agreement?

5 A General counsel and his team.

6 Q Would you please tell me, what is your
7 understanding of the reason that the phrase
8 "regulatory failure" is required in this
9 proceeding but was not required in the
10 Exelon/Constellation merger agreement?

11 A I don't know why. It would seem normal
12 to have it in a merger agreement that parties
13 know, if it fails, how it breaks up. But why it
14 wasn't in the Constellation, I don't recall.

15 Q I'm going to ask you to reference
16 Exhibit 3 to the application again, which is the
17 agreement and plan of merger. Were PHI
18 shareholders required to approve the terms of this
19 agreement and plan of merger?

20 A I believe these were done -- were they
21 actually in the filing? I'm not sure down to this
22 level of detail.

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1 Q Were Exelon shareholders required to
2 approve the agreement and plan of merger?

3 A I do not know what level of detail from
4 this document was included into the filings.

5 Q If this Commission should find a
6 provision of the agreement and plan of merger to
7 be unacceptable, would the joint applicants have
8 the ability to modify the terms of the merger
9 agreement to address the Commission's concerns?

10 A I would think we would try to renegotiate
11 if it was not overly burdensome.

12 Q Are you able to tell me what modification
13 to the terms of the merger agreement require
14 approval of either PHI or Exelon shareholders or
15 both?

16 A No. Not without conversation with
17 counsel.

18 Q You don't know the answer?

19 A No.

20 Q Can the provisions of Exhibit 5 to the
21 application be altered without a requirement to
22 make parallel changes to be made to the provisions

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1 of Exhibit B to the merger agreement?

2 MR. GADSDEN: I'm going to try again,
3 Your Honor. I think that asks for a legal
4 conclusion.

5 MS. FRANCIS: Your Honor, I don't mean it
6 as a legal question. We have two different sets
7 of commitments. We have a merger agreement. I
8 would like to know the process, or what Mr. Crane
9 believes is the process, what must be altered
10 going forward.

11 THE WITNESS: I don't know what the
12 Commission would want that I could say would have
13 to be altered. And without discussion in the
14 council, I would have to understand the process
15 that we would go through, since I haven't been
16 through, altering or amending the plan.

17 BY MS. FRANCIS:

18 Q What is your understanding of how much
19 latitude the joint applicants have to modify the
20 terms of their merger commitments needing to seek
21 PHI shareholder approval of changes or additions?

22 A I don't believe, from the merger

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1 commitments, that we have any revisions that would
2 require a shareholder vote. The shareholder vote
3 was made based off of the purchase price and the
4 conditions around the merger. But the
5 commitments -- I'm not aware of anything that we
6 would have to go back to shareholders for.

7 Q What is your understanding of the extent
8 to which the joint applicants can modify the terms
9 of their merger commitments without review and
10 approval by the Exelon board of directors?

11 A Any revision we make on the merger
12 commitments would be reviewed and approved by the
13 board of directors.

14 Q And it's the board who makes the final
15 decision?

16 A Yes.

17 Q Mr. Crane, as CEO of Exelon, am I correct
18 that you must deal with significant financial
19 issues affecting Exelon and its subsidiaries?

20 A Yes.

21 Q Can I assume that you understand the
22 concept of return on investment?

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1 A Yes.

2 Q If you had a business activity or a
3 service that provided Exelon a negative return on
4 investment, please tell me, what would that mean
5 to you?

6 A Well, we would have to look at that asset
7 or that business and determine if we could right
8 the ship by getting adequate returns back to the
9 right risk levels commensurate with the
10 investment, or we'd figure out how to do something
11 else with it.

12 Q When the purchase of PHI was considered
13 by Exelon, were analyses performed to assess the
14 expected impact of that acquisition on Exelon's
15 earnings and expected returns?

16 A Yes.

17 Q Based on Exelon's initial customer
18 investment fund proposal for the PHI utilities and
19 the timing of the expected realization of synergy
20 savings, is there any time period for which the
21 acquisition of PHI by Exelon will have a negative
22 impact on Exelon's earnings?

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1 A Not on earnings that would be
2 significant. It is more on negative cash flows to
3 maintain the -- to pay for the commitments and to
4 maintain the investment plans, it will take equity
5 infusion or cash infusion into PHI. So it's free
6 cash flow dilutive and, after the second year, the
7 earnings accretion begin to come in.

8 Q Do you recall that Witness Khouzami
9 testified in Maryland case 9361 that, under the
10 joint applicants' initial CIF proposal in
11 Maryland -- excuse me -- under joint applicants'
12 initial CIF proposal, Exelon expected the merger
13 to have a negative impact on its earnings during
14 the first year after the merger closing?

15 A First year, yes.

16 Q And that's still correct?

17 A Yes.

18 Q Did you review the merger settlement that
19 was filed with the Board of Public Utilities in
20 New Jersey before the terms of that agreement were
21 finalized?

22 A Yes.

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1 Q If the dollar cost of direct
2 merger-related benefits that Exelon initially
3 offered to the customers of PHI utilities -- in
4 other words, the \$100 million original customer
5 investment fund -- if that's more than doubled,
6 would the added cost of direct customer benefits
7 associated with the merger extend the period over
8 which Exelon would expect its acquisition to have
9 a negative impact on Exelon's earnings?

10 A It will have a slightly -- my
11 understanding, it would be a slightly larger
12 impact within the first year, the cost to achieve.
13 But the more pertinent is the reduction in free
14 cash flow.

15 Q What would offset the added costs of
16 expanded customer benefits?

17 A Nothing. It's a cost to achieve. It's
18 just a bigger check to write.

19 Q Are there any elements of Exelon's
20 present business investments that are expected to
21 continue to provide negative contributions to
22 Exelon's earnings for several years into the

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1 future?

2 A There are multiple nuclear plants,
3 although improving from what they were back over a
4 year ago, that have negative cash flows and some
5 with negative earnings.

6 Q Are there any other lines of business
7 besides the nuclear?

8 A From earnings perspective, no. From cash
9 flow, yes.

10 Q Can I assume that none of those -- none
11 of the businesses involved regulated utility
12 services?

13 A The regulated utility, we've had negative
14 cash flows at BGE and ComEd because of significant
15 equity infusions to meet regulatory upgrades or
16 reliability upgrades.

17 Q Have you had negative returns on
18 investment in any of your utility businesses?

19 A Not negative, no.

20 Q If Exelon had a business activity or
21 service that provided Exelon a negative return on
22 investment, would you consider that a problem that

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1 Exelon management would need to address?

2 A Yes.

3 Q To your knowledge, is there any

4 significant segment of Exelon's current

5 distribution utility operations that provides a

6 negative return on investment?

7 A No.

8 Q If Exelon had a distribution utility that

9 provided Exelon a negative return on investment,

10 what types of actions would you expect Exelon to

11 take?

12 A If it had a negative return, it means we

13 are under-earning on the investment and not being

14 able to recover adequately our expenses. So we

15 would -- don't foresee how that would happen, but,

16 you know, if you're going to speculate, you would

17 first look at what the productivity of that unit

18 is, how are they providing the service in the most

19 cost-effective way, and then, from there, be

20 working within the jurisdiction within the

21 regulatory process to ensure we got a fair and

22 just return.

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1 Q If Exelon had a distribution utility that
2 provided Exelon a negative return on investment,
3 would you expect Exelon to seek approval of
4 changes in rates and/or regulatory policies that
5 would restore the return on investment for the
6 subject utility to a more acceptable level?

7 A Yes, along with ensuring that we're
8 operating at highest levels of productivity and
9 efficient spend.

10 Q Could you please tell me who among the
11 witnesses in this proceeding would be able to
12 address Exelon's rate-making practices and
13 policies?

14 A They're different in each jurisdiction.
15 I think Mr. O'Brien could give you the high-level,
16 being the utility expert through his career. But
17 there's -- each jurisdiction has its own nuances.

18 Q In the District of Columbia, it would be
19 Witness O'Brien?

20 A He would be able to or, for past
21 practices, Mr. Rigby.

22 Q I'm talking about Exelon's practices.

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1 Mr. Rigby?

2 A We haven't had a practice in the
3 District. So if you're talking about past -- if
4 you're talking about what our plans would be and
5 how we would approach it, it would be Mr. O'Brien.

6 Q And Mr. -- excuse me. I'm not asking
7 this question very well. It's late.

8 What I was asking is, if I wanted to know
9 Exelon's rate-making practices and policies in the
10 other jurisdictions, would I be asking Witness
11 O'Brien those questions?

12 A Yes.

13 CHAIRMAN KANE: Ms. Francis, it's 5:30.
14 Do you have an indication of how much longer you
15 might need with this witness?

16 MS. FRANCIS: It is possible that I could
17 finish within, I'm going to guess, 20 minutes.

18 CHAIRMAN KANE: 20 minutes? Thank you.

19 MS. FRANCIS: I'm talking as fast as I
20 can.

21 BY MS. FRANCIS:

22 Q In each of PEPCO's last three base rate

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1 proceedings in the District of Columbia, PEPCO's
2 entire residential class has been bound by the
3 company, PEPCO, to provide a negative rate of
4 return.

5 Is there any major class of service for
6 any of Exelon's current distribution utilities in
7 any jurisdiction, ComEd, PECO or BG&E, that
8 currently has a negative rate of return?

9 A I am unaware of any.

10 Q Would that be Mr. O'Brien?

11 A Yes, he could confirm that. He's
12 listening now, so I'm sure he'll check.

13 Q Would you agree that it is not good for
14 the financial health of a utility to have a
15 negative return on investment for any major class
16 of service?

17 A It is definitely unique, nothing I've
18 ever seen before. I don't know the basis for it.
19 It's something that I'd have to learn more about.

20 Q Unique in a negative way, correct?

21 A Well, it depends on the basis. I'm on
22 the sure quite the details or the history behind

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1 it.

2 Q Now please turn to your rebuttal
3 testimony at page 2.

4 A 2 of 17?

5 Q No, I'm just in your rebuttal testimony.
6 Are you with me?

7 A Yes.

8 Q Now, at line 15 on page 2 of your
9 rebuttal testimony, am I correct that you used the
10 phrase "wish list" in your discussion of
11 individual intervenors' positions in this case?

12 A Yes.

13 Q Could you please tell me, what are you
14 intending to convey to the Commission through your
15 use of the phrase "wish list"?

16 A It was, in some cases, nothing to do with
17 this proceeding, but wanting to have other needs
18 met through this proceeding.

19 Q Would it -- was it also the purpose of
20 your use of that phrase when generically
21 addressing intervenors' positions to suggest to
22 the Commission that their requests are not based

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1 on appropriate or substantive considerations?

2 A Yes.

3 Q As we discussed earlier in this, during
4 my cross -- it feels like last week -- Exelon's
5 direct testimony in this proceeding initially
6 offered the District of Columbia a CIF of
7 \$14 million. We now have a proposal before us for
8 2.4 times that amount. We have also seen the
9 joint applicants' list of commitments expand from
10 12 commitments to 91 commitments.

11 In the context of the offers that the
12 joint applicants now present, should this
13 Commission consider the joint applicants' initial
14 offer of \$14 million and a list of 12 commitments
15 nothing more than the joint applicants' wish list?

16 A No. I think it was -- it was prepared as
17 the offer that we felt met the test to satisfy
18 within each regulatory jurisdiction that we filed
19 in. And after engaging in conversations and
20 understanding some of the needs of some of the
21 parties, we were able to improve or increase in
22 value or in commitment structure.

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1 MS. FRANCIS: Your Honor, I just may have
2 a moment. I'm looking through my notes and can
3 wrap up.

4 BY MS. FRANCIS:

5 Q One thing I just want to go over with you
6 briefly, just to make sure that the record is
7 clear. Very early on in your cross you referred
8 to my client, and I believe what you were talking
9 about was AOBA Alliance, Inc.

10 A Yes.

11 Q Okay. My client in this proceeding is
12 the Apartment and Office Building Association.
13 It's a nonprofit trade association, as separate
14 and apart from AOBA Alliance, Inc.

15 Do you understand that distinction?

16 A I do, but I thought you represented them
17 on your -- as a client also, because I thought we
18 negotiated those purchase power deals with you.
19 But -- that's why I said your client.

20 Q That client is AOBA Alliance, Inc.

21 A Yeah. I'm aware of that.

22 Q And the client here is a non-profit trade

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1 association. I just want to make sure you
2 understand they're separate corporations.

3 A I do.

4 Q Okay. Thank you.

5 I want to go back briefly to your tipping
6 point analysis that you spoke about. You stated
7 earlier, during cross with OPC, that you haven't
8 seen this tipping point analysis. Who would be
9 the person who would be responsible for the
10 preparation of such an analysis?

11 A Yeah, and I may have misspoke. I'm not
12 aware of one being performed, and I have not seen
13 one is -- is the clear way to say it.

14 The analysis would be performed as the
15 deal team, under the guidance of the general
16 counsel, would look at the effects of requests or
17 commitments. If you -- you know, if you look at
18 some of the first filings on the requests in the
19 District, the team valued them at over a billion
20 dollars for the District alone. That would hit
21 some tipping point in my mind. But we didn't do
22 the evaluation.

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1 It's just -- you wouldn't get a return on
2 the investment if you multiplied that across the
3 system.

4 Q Do you know for a fact that the office of
5 general counsel or somebody within that
6 organization, or elsewhere in the company, did not
7 perform that analysis?

8 A I don't know it for a fact, but I'm not
9 aware of it being done and have not seen it.

10 Q I believe earlier in your
11 cross-examination from Mr. Gray you were
12 discussing hiring new employees -- and please
13 correct me if I'm wrong. I believe you stated
14 that PEPCO does not have enough resources to hire
15 new employees. Did I write that down correctly or
16 did I get that wrong?

17 A That's my summary of the situation, but
18 Mr. Rigby is the best one to discuss that with.

19 Q I just would like to explore that a
20 little bit more since you made that statement, and
21 I was just wondering, is that a budgetary
22 constraint that you're suggesting that PHI has --

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1 or PEPCO has? Excuse me.

2 A Ultimately that is my understanding.

3 Q Well, if it's a budgetary constraint,
4 what would prevent PEPCO from reallocating its O&M
5 budget or increasing its O&M budget and coming
6 back for rate relief later?

7 A Would you ask Mr. Rigby that?

8 MS. FRANCIS: Your Honor, I think that's
9 all that I have. Thank you very much.

10 Thank you Mr. Crane.

11 I'll move my exhibits at the end of
12 the -- when he leaves the stand.

13 CHAIRMAN KANE: Yes.

14 MS. FRANCIS: Thank you.

15 CHAIRMAN KANE: Okay. Thank you. That
16 will conclude our hearing for today. We will
17 resume at 10:00 a.m. tomorrow morning.

18 Are there any procedural matters anyone
19 needs to bring up? Very good. Then we will stand
20 adjourned until 10:00 a.m. tomorrow morning.

21 (Whereupon, at 5:42 p.m., the above
22 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.

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Denise M. Brunet

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