

Capital Reporting Company
Formal Case No. 1119 04-02-2015

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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 IV
-----: :

Washington, D.C.

Thursday, April 2, 2015

The evidentiary hearing in the
above-captioned matter began at 10:05 a.m., at the
Public Service Commission of the District of Columbia,
1333 H Street, Northwest, Washington, D.C., 20005.

BEFORE: BETTY ANN KANE, Chairman

JOANNE DODDY FORT, Commissioner

WILLIE L. PHILLIPS, Commissioner

Reported by: Denise M. Brunet, RPR

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

2 On behalf of the Joint Applicants:

3 RICHARD M. LORENZO, ESQUIRE
Loeb & Loeb, LLP
4 901 New York Avenue, Northwest
Suite 300 East
5 Washington, D.C. 20001
(202) 618-5000

6 THEODORE F. DUVER, ESQUIRE
Loeb & Loeb, LLP
7 345 Park Avenue
8 New York, New York 10154
(212) 407-4000

9 ANTHONY C. DeCUSATIS, ESQUIRE
10 Morgan, Lewis & Bockius
1701 Market Street
11 Philadelphia, Pennsylvania 19103
(215) 963-5234

12
13 On behalf of OPC:

14 ELI D. EILBOTT, ESQUIRE
Duncan, Weinberg, Genzer & Pembroke,
P.C.
15 1615 M Street, Northwest
Suite 800
16 Washington, D.C. 20036
(202) 467-6370

17
18 On behalf of AOBA:

19 FRANN G. FRANCIS, ESQUIRE
Senior Vice President and General
Counsel
20 1050 17th Street, Northwest
Suite 300
21 Washington, D.C. 20036
(202) 296-3390

22
(Appearances continued on the next page.)

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1 APPEARANCES (continued):

2 On behalf of D.C. Government:

3 JOHN P. COYLE, ESQUIRE
Duncan & Allen
4 1730 Rhode Island Avenue, Northwest
Washington, D.C. 20036
5 (202) 289-8400

6 On behalf of D.C. SUN:

7 RANDALL L. SPECK, ESQUIRE
Kaye Scholer, LLP
8 The McPherson Building
901 15th Street, Northwest
9 Washington, D.C. 20005
(202) 682-3510

10 On behalf of D.C. WASA:

11 NANCY A. WHITE, ESQUIRE
12 Squire, Patton & Boggs
1200 19th Street, Northwest
13 Suite 300
Washington, D.C. 20036
14 (202) 626-6260

15 On behalf of NCLC:

16 OLIVIA B. WEIN, ESQUIRE
National Consumer Law Center
17 1001 Connecticut Avenue, Northwest
Suite 510
18 Washington, D.C. 20036
(202) 452-6252

19

20

21

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1	C O N T E N T S				
2	WITNESS:	DIRECT	CROSS	REDIRECT	RECROSS
3	DENIS O'BRIEN				
4	BY MR. DeCUSATIS 889				
5	BY MR. EILBOTT		890		
6	BY MS. FRANCIS		983		
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8	BY MR. SPECK		1060		
9	BY MR. DeCUSATIS		1111		
10	MARK ALDEN				
11	BY MR. DUVER	1123			
12	BY MR. EILBOTT		1125		
13					
14	EXHIBIT NO.		MARKED	RECEIVED	
15	OPC Cross 11		897	1119	
16	OPC Cross 12		959	1119	
17	OPC Cross 13		966	1119	
18	AOBA Cross 24		984	1121	
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1	EXHIBIT NO.	MARKED	RECEIVED
2	AOBA Cross 28	985	1121
3	AOBA Cross 29	985	1121
4	AOBA Cross 30	986	1121
5	AOBA Cross 31	986	1121
6	AOBA Cross 32	986	1121
7	AOBA Cross 33	999	1121
8	Joint Applicants (C),		
9	(2C), (3C), and (3C)-1		
10	through (3C)-5		1118
11	OPC Cross 14 through 17		1120
12	Joint Applicants (D),		
13	(D1), (3D), (3D)-1 and		
14	(4D)	1125	
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1 P R O C E E D I N G S

2 CHAIRMAN KANE: Good morning. We are
3 resuming our evidentiary hearing in formal case
4 1119. It is Thursday, April 2nd, and it is
5 10:03 a.m.

6 Do the parties have any preliminary
7 matters?

8 MR. LORENZO: Yes, Your Honor.

9 CHAIRMAN KANE: Mr. Lorenzo.

10 MR. LORENZO: We've -- last night we
11 polled the parties on their cross-examination of
12 the rest of the -- of the joint applicants' case,
13 and we're going to produce a revised schedule
14 probably this afternoon after lunch and file it
15 with the Commission. Preliminary analysis
16 indicates that finishing by next Wednesday is
17 going to be a challenge. I just wanted the
18 Commission to recognize that.

19 CHAIRMAN KANE: We were becoming aware of
20 that.

21 MR. LORENZO: And that's all I have.

22 CHAIRMAN KANE: Okay. Finding additional

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1 days to fit everyone's schedule will also be a
2 challenge. So we'll take a look at that.

3 MR. LORENZO: Very good. Thank you.

4 CHAIRMAN KANE: Just, again, to
5 preliminarily remind everybody about turning off
6 your cell phones and your pagers and anything else
7 that either makes noise or emits a signal.
8 Equally important with the noise is that the
9 signal can interfere with our system, recording
10 system, and streaming system, and that we are
11 streaming this hearing as -- today's hearing, as
12 we have the others, live on our website and it
13 will recorded and posted for future viewing.

14 Mr. Lorenzo?

15 MR. DeCUSATIS: Good morning, Chairman
16 Kane. My name is Anthony DeCusatis, and I'm with
17 the law firm of Morgan, Lewis & Bockius, and I am
18 appearing today on behalf of the joint applicants.
19 And we are presenting as our witness this morning
20 Mr. Denis O'Brien. We would he like to ask him to
21 take the witness stand.
22 WHEREUPON,

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1 DENIS O'BRIEN,
2 called as a witness, and after having been first
3 sworn by the secretary, was examined and testified
4 as follows:

5 DIRECT EXAMINATION

6 BY MR. DeCUSATIS:

7 Q Mr. O'Brien, good morning.

8 A Good morning.

9 Q For the benefit of the record, would you
10 please state your full name and spell for the
11 court reporter your first and last names.

12 A Denis Patrick O'Brien. Denis, D-E-N-I-S,
13 one N in Denis. O'Brien, O, apostrophe,
14 B-R-I-E-N.

15 MR. DeCUSATIS: Pursuant to order 17790,
16 Mr. O'Brien's testimony has been stipulated for
17 authenticity and entry into the record. There are
18 three pieces of testimony and accompanying
19 exhibits. They consist of Mr. O'Brien's direct
20 testimony premarked as Exhibit (C), his -- fully
21 conformed and filed as of March 25. Similarly,
22 his supplemental direct testimony, fully conformed

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1 and submitted on March 25 premarked as
2 Exhibit (2C), Mr. O'Brien's fully conformed
3 rebuttal testimony premarked as Exhibit (3C),
4 which is accompanied by Joint Applicants'
5 Exhibits (3C)-1 through (3C)-5.

6 With that, Mr. O'Brien is available for
7 cross-examination.

8 CHAIRMAN KANE: Thank you.
9 People's Counsel?

10 MR. EILBOTT: Thank you, Your Honor.

11 CROSS-EXAMINATION

12 BY MR. EILBOTT:

13 Q Good morning, Mr. O'Brien. My name is
14 Eli Eilbott. I'm with the law firm of Duncan,
15 Weinberg, Genzer & Pembroke, and I will be asking
16 you some questions today on behalf of the Office
17 of the People's Counsel.

18 A Good morning.

19 Q I'd like to start by asking you some
20 questions about the issue of local control. Could
21 you turn to pages 3 and 4 of your direct
22 testimony, please. And particularly, if you could

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1 familiarize yourself or refresh your recollection
2 of the testimony that begins towards the bottom of
3 page 3, line 21, and carries over to the top of
4 page 4.

5 A I've read them.

6 Q Thank you. And there you're discussing
7 the measures that Exelon has in place for its
8 existing operating utilities to preserve local
9 control. And you indicate that you will explain
10 how those measures will be extended to PHI
11 assuming this merger is approved; is that correct?

12 A That is correct.

13 Q Is it fair to state that joint applicants
14 believe that their plan to preserve local control
15 is an important benefit of this proposed merger?

16 A Yes.

17 Q Now, would you agree that the very
18 purpose of this entire proceeding is to review the
19 joint applicants' request for this Commission's
20 approval for a change in control over PEPCO?

21 A Yes.

22 Q And more specifically, what the joint

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1 applicants are seeking is permission for Exelon,
2 which is headquartered in Chicago, to exercise
3 control over both PHI and PEPCO; is that correct?

4 A Can you say that again? I'm sorry.

5 Q What joint applicants are seeking from
6 this Commission is approval for Exelon, which is
7 headquartered in Chicago, to exercise control over
8 both PHI, PEPCO's parent holding company, and
9 PEPCO itself?

10 A Yes.

11 Q So pre-merger, i.e., status quo, is that
12 PHI exercises control over PEPCO, whereas, if the
13 merger is approved, then post-merger, Exelon will
14 exercise control over PHI and PEPCO; is that
15 right?

16 A PHI will exercise control over PEPCO and
17 Exelon will be the controlling entity of PHI.

18 Q And PHI will be fully subsumed within
19 Exelon Corporation; is that correct?

20 A It will be an organization that is part
21 of the Exelon family of companies.

22 Q Thank you. Do you think it would be fair

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1 to characterize the proposed transaction at issue
2 in this case as an acquisition of PHI by Exelon?

3 A You know, there's often talk whether it's
4 a merger or acquisition. I think we use both of
5 those terms interchangeably.

6 Q So is that a yes?

7 A Yes.

8 Q Okay. Thank you.

9 Would you agree or do you know that PHI
10 currently has a 13-member board of directors?

11 A I don't know the exact count. I know
12 they have a board of directors.

13 Q Okay. Would you accept, subject to
14 check, that they have a 13-member board of
15 directors?

16 A Yes.

17 Q And do you know or would you accept,
18 subject to check, that a majority of those 13
19 members are independent?

20 A Yes.

21 Q What is your understanding of an
22 independent -- the meaning of a board member being

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1 independent?

2 A I think in the testimony it references
3 the SEC -- or the New York Stock Exchange
4 standard.

5 Q Could you paraphrase in your own words
6 or -- what that means to you, to be an independent
7 member of a board as opposed to a member that is
8 not independent?

9 A I think there's a pretty clear definition
10 somewhere in the testimony. If you point me to
11 it, I can answer questions about it.

12 Q I'm just asking -- so do you know off the
13 top of your head? If you don't, that's fine. I
14 don't have a page reference.

15 A I don't know all the aspects off the top
16 of my head.

17 Q Okay. Do you know some of the aspects?

18 A To some degree.

19 Q Would you agree that a member of the
20 board of directors that is an officer of Exelon
21 would not be considered an independent member of
22 the PHI board of directors?

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1 A Yes, that's my understanding.

2 Q And would you agree that an employee of
3 Exelon that is a member of the PHI board would not
4 be considered independent?

5 A That's my understanding.

6 Q And would you agree that a director of
7 Exelon that's a member of the PHI board would not
8 be considered independent?

9 A Yes.

10 Q Thank you.

11 And if the merger is approved in this
12 case, PHI would initially have a seven-member
13 board of directors; is that correct?

14 A That is correct.

15 Q And in fact, you discussed this at page 7
16 of your direct testimony; is that right?

17 A I do. And one clarification. Seven or
18 more initially.

19 Q Thank you for that clarification.

20 MR. EILBOTT: Your indulgence for one
21 second, Your Honor, please.

22 BY MR. EILBOTT:

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1 Q So when you say seven or more, there has
2 not been a decision to limit the number of members
3 of the -- PHI's board post-merger to seven, that
4 it's seven or more?

5 A Other than what's stated in my testimony,
6 nothing additional has been decided.

7 Q Okay.

8 MR. EILBOTT: Your Honor, I would ask to
9 mark for identification the document that has been
10 premarked as OPC Cross-Examination Exhibit
11 Number 15, which is an excerpt of Mr. O'Brien's
12 deposition in November 2014 in the Delaware merger
13 proceeding which is their docket number 14-193.

14 CHAIRMAN KANE: So marked.

15 MR. EILBOTT: Thank you, Your Honor. And
16 I believe that would become -- that would be OPC
17 Cross-Examination Exhibit 11, if I'm following the
18 numbers right from yesterday.

19 CHAIRMAN KANE: The new number.

20 MR. EILBOTT: The new number, 11.

21 CHAIRMAN KANE: Again, for the record,
22 the original number was?

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1 MR. EILBOTT: The premarked number was
2 15.

3 CHAIRMAN KANE: 15, right. Now it will
4 be 11. Yes. Thank you.

5 (OPC Cross Exhibit Number 11 was marked
6 for identification.)

7 MR. EILBOTT: Now, I note that this
8 document has a confidential designation at the top
9 of each page. I did speak with Mr. Lorenzo the
10 other day, and I understand that the applicants
11 stipulate that they will de-designate this
12 document as no longer confidential.

13 MR. LORENZO: That's correct, Your Honor.

14 CHAIRMAN KANE: The record will reflect
15 that.

16 BY MR. EILBOTT:

17 Q Mr. O'Brien, do you have a copy of this
18 document which has now -- which has been premarked
19 in your file as Number 15?

20 A I do.

21 Q If you would turn to the second page of
22 that document -- this would be page 2 of 6. Now,

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1 there's multiple numbers on this document, but on
2 the top right where it says OPC Cross-Examination
3 Exhibit Number 15, page 2 of 6 -- do you see that?

4 A I do.

5 Q Now, this is a four pages to a
6 single-page document. In other words, there are
7 four miniaturized deposition transcript pages
8 squeezed on each page. Do you see that?

9 A Yes.

10 Q If I could draw your attention to the top
11 right of the page where it says page 35. Could
12 you --

13 A I have that.

14 Q Okay. Now, if you see the question that
15 begins on line 4 of page 35 asking you whether the
16 board of PHI will be reconfigured -- do you see
17 that?

18 A I do.

19 Q And could you read your two-sentence
20 answer that begins on line 7, please?

21 A PHI, as an Exelon company, will have a
22 seven-member board. That is what this is

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1 referring to, and this describes the makeup.

2 Q Thank you. If you could -- staying on
3 page -- on that sage page of Exhibit Number 15,
4 but go down to the miniaturized page 36 from the
5 transcript. Are you following me?

6 A I am.

7 Q I'm sorry for all the different page
8 numbers, but --

9 A So far, so good.

10 Q Great. If you see, beginning at line 14
11 of page 36, where -- I'm going to quote your
12 answer just so you know what I'm looking at, make
13 sure we're looking at the same.

14 A Okay.

15 Q And you state, Exelon will initially
16 appoint the board members for the PHI company
17 post-close.

18 Is that what you stated in your answer
19 here?

20 A I did.

21 Q And by post-close you mean once the
22 merger is consummated?

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1 A That is correct.

2 Q So as I understand it, post-close, PHI
3 will have a seven-member board of directors, and
4 Exelon will be appointing all seven of those
5 members; is that correct?

6 A That is correct. Other than the
7 testimony seven or more people.

8 Q And again, can you point me to a document
9 that says seven or more members of the board?

10 A In my direct testimony that we were
11 referring to earlier on line 3.

12 Q I see. This is one of the corrected
13 pages following the February 17th, 2015 revision,
14 I believe; is that correct?

15 A Without having a corrected version, I
16 can't testify to that.

17 Q That's fine. And would I be correct in
18 saying that not only will post-merger Exelon
19 appoint all members of PHI's board, but a majority
20 of that initial board will consist of some
21 combination of Exelon officers and directors?

22 A The direct testimony says seven or more

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1 people, and then it describes the makeup of that.

2 Q So is your understanding of the makeup
3 that a majority of the initial board will consist
4 of some combination of Exelon directors and
5 officers?

6 A I think the testimony reserves that
7 right.

8 Q So you would disagree that four members
9 of the initial board will consist of a combination
10 of Exelon officers and directors?

11 A No. That's directly in the testimony.

12 Q So you agree?

13 A I do.

14 Q And, in fact, if you could go back to
15 this cross-examination exhibit which has now
16 become Number 11, on that same page 36 I was just
17 asking you about a moment ago -- tell me when
18 you're there, please.

19 A I'm on page 36.

20 Q And line 8 records your answer as being,
21 quote, four members who will consist of some
22 combination of officers and directors of Exelon,

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1 closed quote.

2 Did I read that accurately?

3 A You did read that accurately.

4 Q And that is the answer you gave at that
5 deposition?

6 A That is the answer that I gave. Looking
7 at it now, I don't believe that is consistent with
8 the testimony. I think it is four members will be
9 of -- consist of Exelon and/or PHI officers or
10 directors.

11 Q Can you point to any tell you filed in
12 this proceeding that makes that -- states that
13 differently the way that you have just -- that's
14 it's not four members will be officers and
15 directors of Exelon?

16 A In my direct testimony, as we looked at
17 earlier, on page 7, lines 1 through 7-2, describe
18 to the greatest detail that we have anywhere our
19 position.

20 Q So would you agree that the Exelon
21 officers or directors who are eventually appointed
22 by Exelon itself to be on PHI's board post-merger

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1 would not be considered independents?

2 A I would.

3 Q Okay. Thank you. If the merger is
4 approved by this Commission, is it correct that
5 Exelon's CEO, Mr. Crane, would continue to hold
6 that position of chief executive of Exelon and he
7 would also become chairman of both PHI's board of
8 directors and PEPCO's board of directors?

9 A That has not been determined yet. I can
10 tell you for the other three subsidiaries in
11 Exelon, being Baltimore Gas and Electric,
12 Commonwealth Edison and PECO Energy, that
13 Mr. Crane is the chair of each of those boards.
14 It's not beyond a reasonable belief that that's
15 what we would conclude as we design the PHI board
16 and populate it in this case.

17 Q And currently Mr. Crane is, again, not
18 just chairman of Exelon Corporation -- chairman of
19 the board of Exelon Corporation, he is chairman of
20 the board of BGE and Unicom and PECO; is that
21 correct?

22 A He is not chairman of the board of Exelon

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1 Corporation. Mayo Shattuck is. Chris Crane is
2 president and CEO of Exelon Corporation.

3 Now, if you want to give me the question
4 again, I'll try to --

5 Q Is Mr. Crane -- I'm sorry to interrupt
6 you.

7 A No. I just want to -- to the first
8 point, he is not the chairman of the board of
9 Exelon. If you give me the rest of the question,
10 I'll annotate those pieces one by one.

11 Q Is Mr. Crane chairman of the board of
12 BGE?

13 A He is.

14 Q And is he chairman of the board of
15 Unicom?

16 A He is chairman of the board of
17 Commonwealth Edison.

18 Q Is there any reason to believe he would
19 not become chairman of the board of PHI should
20 this merger be approved?

21 A I imagine he will become the chairman of
22 the board of PHI.

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1 Q And my understanding is that you are
2 vice chairman of all of Exelon's utility boards
3 that we just discussed, BGE, Commonwealth Edison?

4 A That is correct.

5 Q And you will be or likely would become
6 vice chairman of the PHI board of directors should
7 this merger be approved?

8 A I would expect as much.

9 Q My understanding is that Mr. Rigby is the
10 CEO of PHI and he's chairman of the PHI board. Is
11 that your understanding?

12 A That is my understanding.

13 Q Post-merger, as I understand it,
14 Mr. Velazquez will succeed Mr. Rigby as CEO of
15 PHI, but he would not, like Mr. Rigby, become
16 chairman of the PHI board; is that correct?

17 A That is correct.

18 Q As we just discussed --

19 A It hasn't been determined, but that's how
20 I would expect it, that he would not be chairman
21 of the board of PHI.

22 Q And that would be because, as you

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1 indicated a moment ago, it's likely that Mr. Crane
2 would be chairman of the PHI board?

3 A If it was consistent with the other three
4 companies that we had, Mr. Crane would be the
5 chairman of the board, I would be vice chair, and
6 Dave Velazquez would be one of the directors.

7 Q And do you have any reason to think it
8 would not be consistent with that approach?

9 A It hasn't been decided yet, but I would
10 expect it to be consistent with that approach.

11 Q There's certainly nothing -- let me
12 rephrase that.

13 Is there any commitment by the joint
14 applicants, whether through your testimony or any
15 exhibit, that says Mr. Velazquez could be the
16 chairman of the board of PHI post-merger?

17 A There is no commitment to that effect.

18 Q Do you know why the structure -- the
19 joint applicants are proposing to change the
20 structure of the PHI board where the CEO of PHI is
21 currently the chair of the PHI board, but
22 post-merger it would be Mr. Crane? Do you know

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1 why that change was made or would be made if the
2 merger is approved?

3 A I mean, I think a little of the
4 difference between pre-approval and post-approval
5 is Exelon will be the single shareholder of PHI,
6 where now there are multiple shareholders. And
7 with having one shareholder, being Exelon, I would
8 expect, like with the other Exelon companies, that
9 the chairman of the board would be the Chris
10 Crane, the CEO and president of Exelon.

11 Q And PHI currently is a publicly traded
12 company, but post-merger would no longer be a
13 publicly traded company; is that right?

14 A That is correct.

15 Q And Exelon would be -- the sole
16 shareholder would be Exelon?

17 A That is correct.

18 Q You are aware of the fact at that OPC
19 witness Dr. Dismukes made a number of
20 recommendations regarding joint applicants'
21 commitments with respect to maintaining PHI's and
22 PEPCO's local presence here in D.C.?

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1 A I've read lots of testimony over the last
2 six months. If you refer me to any of it, I'll do
3 my best to answer questions on it.

4 Q We'll be happy to. If you could turn to
5 your rebuttal testimony from December and go to
6 page 10, please.

7 A I have it.

8 Q And there, beginning on line 6, you are
9 discussing -- I guess I would call it criticisms
10 or recommendations from OPC and other intervenors
11 regarding the composition and residents of the PHI
12 and PEPCO boards post-close; is that correct?

13 A Yes, that's correct.

14 Q Now, as I understand your testimony, I
15 would like to read quickly through a couple of
16 examples -- or a couple of Dr. Dismukes'
17 recommendations to make sure I understand what you
18 have or have not accepted.

19 Is it correct that Dr. Dismukes
20 recommended that at least one-third and no fewer
21 than two PEPCO board members be independent, and
22 joint applicants rejected that recommendation? Is

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1 that correct?

2 A Joint applicants said that these
3 restrictions are unduly burdensome and
4 unnecessary.

5 Q And Dr. Dismukes also recommended that
6 the majority of PEPCO's board members reside here
7 in the District; is that right?

8 A That is correct.

9 Q And joint applicants rejected that
10 recommendation as well?

11 A It was -- the same comment I made earlier
12 is at the end of that statement.

13 Q And Dr. Dismukes also recommended that
14 the majority of PHI's board be independent; is
15 that correct?

16 A That is correct.

17 Q And again, joint applicants rejected that
18 recommendation?

19 A That is correct.

20 Q And finally, Dr. Dismukes recommended
21 that PHI and PEPCO's CEOs reside in PEPCO's
22 service territory; is that right?

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1 A That is correct.

2 Q As I understand it, you rejected all of
3 those recommendations from Dr. Dismukes because --
4 in part because you said Exelon must have the
5 ability to exercise control over its subsidiaries,
6 including PEPCO; is that right?

7 A The statement here says restrictions are
8 unduly burdensome and unnecessary.

9 Q If you could look at page 11, line 9 of
10 your rebuttal testimony, please.

11 A I have.

12 Q Doesn't it say there in your testimony --
13 and here you're responding to Dr. Dismukes'
14 recommendations that I just asked you about; is
15 that correct?

16 A That is correct.

17 Q And don't you say that Exelon, as a
18 practical matter, must have the ability to
19 exercise control over its subsidiaries, including
20 its regulated utilities, in order to satisfy its
21 fiduciary duties to its shareholders?

22 A It does.

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1 Q Okay. Isn't it Exelon's position that
2 decisions on how to meet local utility related
3 needs here in D.C. can be more effectively made by
4 Exelon officials in Chicago and by the Exelon-
5 appointed PHI board than by PEPCO officials here
6 in the District?

7 A No.

8 Q And why do you say no?

9 A I think we have a motto in Exelon where
10 we focus very much on local control, community
11 engagement, that the folks at the local company
12 make the decisions for the local company. That's
13 how we've operated PECO and ComEd for years, and
14 BGE for the last two or three.

15 Q If that is the case, then why, as part of
16 the current proposal in this case, why post-merger
17 will the PHI board have all of its members
18 appointed by Exelon, have a majority of members
19 who are Exelon officers and directors, and have
20 Mr. Crane serve as PHI's board -- board chair?

21 A I mean, taking the question apart one by
22 one, the sole shareholder is Exelon. So as the

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1 sole shareholder, that would be the organization
2 that would decide who the board of directors are.

3 The second comment would be it says seven
4 or more, and it just describes of those seven. It
5 does not say a majority one way or the other, I
6 don't believe. If it does, please point me to
7 that.

8 Q Thank you for that answer.

9 I guess, as to your second question, I
10 would refer back to your sworn testimony in the
11 Delaware deposition. But I have a follow-up
12 question. You are discussing the fact that Exelon
13 post-merger would be the sole shareholder of PHI,
14 correct?

15 A That is correct.

16 Q Was the decision to structure this
17 proposed transaction that would result in Exelon
18 being PHI's sole shareholder forced upon Exelon in
19 any way?

20 A Can you say the question again, please?

21 Q Was the decision to have Exelon remain as
22 PHI's sole shareholder post-merger, was that a

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1 decision that was forced upon Exelon to structure
2 it in that way?

3 A No.

4 Q So it was a voluntary decision to propose
5 the structure that way; is that right?

6 A That is how the deal was structured.

7 Q And who was it -- or what entity was it
8 that decided to structure the deal in that way?

9 A Well, Chris Crane is the CEO of the
10 company, so I think he has ultimate responsibility
11 from an Exelon standpoint.

12 Q Now, when you say Mr. Crane has all the
13 responsibility, does that mean he approved the
14 structure that may have been recommended by others
15 or was it Mr. Crane's idea to set it up in that
16 manner?

17 A I think that's a question for Mr. Crane.
18 I do not know.

19 Q I'd like to shift gears a little bit, and
20 if you could pull your direct testimony and have
21 that handy, please, that would help. And these
22 questions go to how the review and approval of

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1 PEPCO's budgets would proceed post-merger.

2 A Okay.

3 Q Now, if I could turn you to page 7.1 of
4 your direct testimony, which I believe is the only
5 page of testimony that is 7-point something, or
6 point anything. That was replaced in the
7 February 17, 2015 filing; is that correct?

8 A Can you please direct me to the point in
9 the testimony.

10 Q Oh, I'm sorry. This is page 7.1 of your
11 direct testimony.

12 A Page 7, line 7.1?

13 Q No, page 7.1.

14 A Okay. Thank you. I have it.

15 Q Are you there?

16 A I do (sic).

17 Q And just to make sure we're looking at
18 the same page, the first line on that page is
19 actually line 20, which is question number 10. Is
20 that what you're looking at?

21 A That is correct.

22 Q And there's only four lines of text on

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1 that page?

2 A That is correct.

3 Q Okay. Good. Thank you.

4 Now, you testify, beginning on that page
5 and carrying over to page 8, that the senior
6 management of each Exelon utility is given
7 authority and responsibility for developing
8 respective utility business plans and operating
9 and maintenance -- I'm sorry, business plans and
10 O&M and capital budgets; is that correct?

11 A That is correct.

12 Q And my question is, the authority for
13 developing business plans and budgets, is that the
14 same as the authority to approve business plans
15 and budgets without Exelon review?

16 A I would conclude authority and approval
17 are two different things.

18 Q So, in other words, the senior management
19 of PEPCO post-merger developed and gave its own
20 approval to a business plan or an O&M budget.
21 That business plan or O&M budget could not be
22 implemented unless and until Exelon itself gave

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1 its approval; is that correct?

2 A I can describe how we do it within
3 Exelon, if that would be helpful.

4 Q Well, I really would like to know how
5 this would work for PEPCO.

6 A Let me describe how it works for PECO
7 Energy or BGE or ComEd in terms of it, and that
8 would be the approach we would look to replicate
9 with PHI and PEPCO.

10 The budgets are developed in each of the
11 operating companies. So take PECO. The budget
12 would be developed within PECO with engagement of
13 the entire organization in putting it together,
14 both in terms of operating and financial metrics.
15 That budget, through the course of things, would
16 be reviewed by the CEO of that company, the CEO of
17 PECO in the case I'm using here, illustratively.
18 And the CEO of -- the CEO and the senior team
19 would review it with me on two or three occasions.

20 Ultimately, it would be approved by the
21 PECO board of directors. The information would be
22 reviewed with the PECO board of directors in some

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1 level of detail. So the PECO board of directors
2 would approve it or, in this case, the PHI board
3 of directors would approve it.

4 The aggregated financial information is
5 rolled up to Exelon. The Exelon board of
6 directors reviews the whole budget together and
7 approves that. In my history, they've typically
8 looked at the overarching budgets and have not
9 dove in any way into any of the subsidiaries in
10 the utilities.

11 Q And in that example, the CEO of PECO
12 reports directly to you; is that correct?

13 A That is correct.

14 Q Now, are you saying that the joint
15 applicants have not yet figured out the details on
16 how this review and approval process would work
17 for PEPCO budgets post-merger?

18 A It would work exactly the same way.

19 Q And if the Exelon board were presented
20 with a PEPCO O&M budget or a PEPCO business plan
21 rolled up with other subsidiary business plans or
22 budgets, would the Exelon board have the ability

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1 to disapprove the PEPCO piece of what had been
2 rolled up?

3 A The Exelon board of directors would
4 review the Exelon budget in aggregate and could
5 approve or disapprove of that at any time. In my
6 history, I'm not aware of them disapproving
7 anything relative to the utilities.

8 Q But they certainly have that right?

9 A They have the right to approve the Exelon
10 budget or not.

11 Q And that's how the lines of authority
12 would explicitly be set up.

13 A I believe so.

14 Q And neither PEPCO senior management nor
15 PHI senior management nor the boards of those two
16 entities would be able to override a decision by
17 Exelon's board of directors to disapprove or
18 require modification to a PEPCO business plan or
19 budget; is that right?

20 A I guess hypothetically. It's not been my
21 experience in 32 years with PECO and Exelon.

22 Q Well, that wasn't my question. My

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1 question was whether the PHI and PEPCO boards, or
2 the PHI and PEPCO senior management, do they or do
3 they not have the ability or the right to override
4 essentially a veto by the Exelon board of
5 directors with respect to a budget?

6 A If the Exelon board vetoed the Exelon
7 budget, then Exelon can't move forward until it
8 has a budget that's approved.

9 Q Is that a yes to my question?

10 A If you repeat your question, I'll be
11 precise in my answer for you.

12 Q I'm trying to -- I'm probably doing a bad
13 job. I'm trying to ask a simple question, which
14 is, does PEPCO -- let me ask it in two parts.

15 Post-merger, would PEPCO senior
16 management or PEPCO's board of directors have the
17 ability to ignore or override a veto or a required
18 change in the budget for PEPCO that had been
19 presented to the Exelon board of directors?

20 A Perhaps I'm not explaining a process and
21 approach. The Exelon board of directors approves
22 the overall Exelon budget. It does not go line

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1 item by line item and approve each subsidiary.

2 So if the Exelon board of directors --
3 you know, it has to approve -- it has to approve
4 some budget for Exelon to move forward. It does
5 not do line item review of each of the
6 subsidiaries.

7 Q So when the Exelon board of directors
8 review these rolled-up numbers, they have no idea
9 what the PEPCO-specific numbers are?

10 A They would have an understanding of what
11 each of the subsidiaries would be. In this case,
12 I don't know that they would have the PEPCO. They
13 would certainly have the PHI, though.

14 Q And if, based on that understanding of
15 PHI's numbers, the Exelon board made a decision
16 that they wanted those numbers changed in some
17 way, would PHI be able to say, no, we don't think
18 we want to make that change?

19 A In all of the times I've been involved
20 with it, the Exelon numbers are rolled up and
21 approved from an Exelon level. And there is not a
22 review of each of the subsidiaries.

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1 Q Again, this will go quicker if you answer
2 my question, which is, does the Exelon board have
3 the ability to veto or mandate changes to PHI's or
4 PEPCO's budgets? If it's no, it's no. If it's
5 you don't know, then you don't know.

6 A The Exelon board can approve or
7 disapprove of the Exelon budget.

8 Q And they also -- the Exelon board can
9 approve a portion of this rolled-up Exelon budget
10 and disapprove a different portion; is that
11 correct?

12 A They could in their review. They are the
13 board of directors. They ratify and approve the
14 financial plan one way or the other.

15 Q And not only, based on your last answer,
16 would Exelon's board have that ability, if they --
17 if the Exelon board chose to exercise that
18 authority and veto or require a change in a PHI or
19 a PEPCO budget or business plan, neither PHI nor
20 PEPCO would have the authority or the right to
21 disregard that order from the Exelon board; is
22 that correct?

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1 A If the Exelon board does not approve the
2 Exelon budget, then the Exelon companies, all of
3 them -- PECO, ComEd, BGE -- could not proceed in
4 any way.

5 Q That's not my question, Mr. O'Brien.

6 A Okay. Just for clarity, the Exelon board
7 does not go over the subsidiaries' budgets. It
8 approves the overall Exelon budget. So to break
9 it apart is not a process that they go through.

10 Q And I thought I heard you say a moment
11 ago, in response to my question doesn't the Exelon
12 board know what the PEPCO or PHI numbers are --
13 didn't you say that the Exelon board would have a
14 sense of the PHI and PEPCO numbers?

15 A I can't remember what's in every deck to
16 them. I would imagine somewhere in a deck there
17 is that breakout. The actual review and the
18 discussion is all at the Exelon level every time
19 I've participated in it in the last 15 years.

20 Q Now, you're pretty familiar with
21 fiduciaries duties of members of corporate boards
22 of directors, aren't you?

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1 A Somewhat.

2 Q Would you consider it to be consistent
3 with the fiduciary duty of a member of a board of
4 directors not to know the budgets and business
5 plans of one of its subsidiary companies?

6 A The fiduciary board for PHI is PHI. PHI
7 board of directors.

8 Q So is your testimony that it would not
9 violate the fiduciary duty of the Exelon board of
10 directors to approve the overall Exelon budgets
11 without knowing what the PEPCO or PHI-specific
12 numbers are?

13 A I'm not trying to be tricky here. I'm
14 trying to talk about how it works relative to the
15 Exelon board. And the Exelon board sees rolled-up
16 numbers in terms of all of the companies
17 aggregated together. That's what they discuss.
18 That's what they review. That's what they
19 approve.

20 I'm sure somewhere in the deck that they
21 go -- that they have in their hands has further
22 breakouts of the material.

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1 Q Let me ask you a hypothetical. And I
2 know witnesses always love hypotheticals. Just
3 for the sake of simplicity, let's assume there are
4 four rolled-up -- there is a rolled-up budget
5 presented to the Exelon board at one of its
6 regularly scheduled meetings, and there are --
7 within that rolled-up -- those rolled-up numbers
8 are the individual budgets of the four operating
9 utilities, including PEPCO. Are you with me?

10 A I am.

11 Q And let's further assume that three of
12 the four rolled-up numbers from the operating
13 utilities are grossly underestimated. This is a
14 hypothetical, so I can -- an objective person,
15 looking at it, would conclude these numbers are
16 way too low. And the fourth rolled-up number is
17 way too high objectively. But if you average all
18 four together and you looked at a rolled-up number
19 and you concluded that, if you take the average of
20 these -- you know, the total of these four, that
21 seems to work out to a good number for four
22 different utilities, wouldn't the board not know

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1 that the individual numbers, pre-roll-up are
2 wildly high or wildly low?

3 A The detailed review of each of the -- in
4 the governance model, the detailed review of each
5 of the subsidiaries happens in each subsidiary,
6 not at the Exelon level.

7 Q And, again, the PHI board is appointed by
8 Exelon and will have a majority of Exelon officers
9 and directors.

10 A And it may have a majority.

11 Q Now, do I understand that, as CEO of
12 Exelon utilities, you would have the authority to
13 review PEPCO's business plans and budgets?

14 A That is correct.

15 Q Would you also have the authority to
16 review -- I'm sorry. Would you also have the
17 authority to approve --

18 A Can we go back to that question?

19 Q Of course.

20 A I would have the authority to review the
21 PHI budget. I would expect that Dave Velazquez
22 would review the PEPCO budget.

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1 Q And would you, as -- let me back up.

2 I believe you told me before that,
3 post-close, you would be the vice chairman of the
4 PHI board; is that correct?

5 A That is -- well, that is how we are
6 organized in the other places. That's what I
7 would expect.

8 Q So to the extent the PHI board
9 disapproved the PEPCO budget or business plan, you
10 presumably would be involved in that decision, as
11 would all other members of the PHI board?

12 A I would be a member of the PHI board.

13 Q And, in fact, don't you state in your
14 rebuttal testimony -- I'll let you go there --
15 page 15 of your rebuttal testimony. Tell me when
16 you're there, please.

17 A I'm there.

18 Q Thank you. I'm looking at lines 13 and
19 14 of page 15. Am I reading correctly that you
20 state, quote -- and this is referring to PEPCO's
21 business plans and budgets -- quote, those
22 business plans and budgets are reviewed by me --

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1 meaning you -- Exelon's CEO, and the executive
2 committee of Exelon.

3 Is that correct?

4 A That is correct.

5 Q And the executive committee of Exelon
6 that you're referring to here is not the same as
7 the Exelon board, is it?

8 A That is correct. The Exelon executive
9 committee is Chris Crane's senior staff.

10 Q And the executive committee of Exelon has
11 the authority to review PHI and PEPCO budgets
12 apart from the Exelon's -- the Exelon board's
13 review of those business plans and budgets?

14 A The business plans. And in this case, I
15 think we're talking about the PHI business plan
16 would be reviewed by me. All of the utilities,
17 meaning PHI, BGE, ComEd and PECO, would be rolled
18 together and reviewed with the executive committee
19 of Exelon.

20 Q Could you explain the relationship
21 between the Exelon executive committee and the
22 Exelon board of directors?

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1 A The Exelon executive committee is Chris
2 Crane's senior staff.

3 Q So that's a separate entity within Exelon
4 Corporation?

5 A It is Chris' -- it's basically Chris
6 Crane's staff meeting.

7 Q And does that executive committee have
8 approval authority for PHI business plans?

9 A It's officially approved through the PHI
10 board and the PEPCO board.

11 Q My question was, does the Exelon
12 executive committee have review --

13 A It does have review authority.

14 Q And does it have the authority to approve
15 or disapprove PHI business plans?

16 A It does not approve or disapprove. I
17 guess, you know, we review them. I review them
18 all. It's an informational review with the
19 executive committee of what -- the roll-up of the
20 three, you know, or four utilities.

21 Q Do you know of any aspect of the
22 structure of the Exelon utility -- I'm sorry, the

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1 Exelon executive committee that would prohibit it
2 from engaging in an approval or a disapproval
3 process for PHI?

4 A You know, it's an informational session.
5 As we presented to the senior staff for the
6 utilities, if there was a valid concern, question,
7 I would absolutely listen to that, think about it,
8 go back and review the budget and consider
9 adjustment if that was something that was --
10 information was provided that I hadn't thought of
11 or the PHI folks hadn't thought of, or the PECO or
12 the BGE folks. It's -- you know, it's a good
13 process to engage a lot of people in the review of
14 an operating and financial plan.

15 Q But you would have the authority, if you
16 chose to exercise it, to disapprove a PEPCO
17 business plan and budget; isn't that right?

18 A I mean, I guess I have the right to
19 disapprove it. I've got, you know, 32 years of
20 working in the business, understanding the
21 business very well, collaboratively working with
22 the folks in the business to come to solutions

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1 that produce good results.

2 Q Of those 32 years of experience, how many
3 years has Exelon been in existence?

4 A Close to 15.

5 Q Couple of questions about the delegation
6 of authority. I believe this is one of your
7 exhibits. You discuss it at page 9 of your
8 rebuttal testimony. If you could first go to the
9 rebuttal testimony, then I would like to follow up
10 with the actual delegation document itself.

11 MR. EILBOTT: And I'm looking at --
12 beginning at page -- page 9, beginning at line 11,
13 Your Honor.

14 BY MR. EILBOTT:

15 A I'm in the rebuttal testimony, page 9.

16 Q Line 11.

17 A Line 11.

18 Q Thank you.

19 A Okay.

20 Q As I understand your testimony, based on
21 this delegation of authority, there are certain
22 budget decisions that can be authorized solely by

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1 the utility CEO which, in this case, post-merger,
2 would be PEPCO, the PEPCO CEO.

3 A It would be -- at PEPCO -- I guess for
4 PEPCO and -- I just want to get our terminology
5 right. PHI Holdings, Dave Velazquez will be
6 approving it.

7 You know, we plan to operate PHI much --
8 and PEPCO much the same as it operates today, and
9 so the processes of today relative to those two
10 would remain the same.

11 Q How does it work just from a practical
12 perspective or an implementation perspective if
13 there are certain budget decisions that are
14 delegated to the PEPCO CEO to make unilaterally or
15 solely on his or her own with what we discussed
16 before, the fact that budgets and business plans
17 go up to the Exelon executive committee and the
18 Exelon board of directors, although in a rolled-up
19 fashion -- how does a unilateral decision get made
20 and implemented if it's subject to a review later
21 on?

22 A Can you give me an example?

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1 Q Well, can you give -- I don't -- I'm
2 asking you just how does that work? I don't have
3 an example because PEPCO is not in the Exelon
4 family yet, so I don't have an example. I'm
5 trying to understand how it would work.

6 It seems to me -- I'm trying to
7 understand what seems to be a conflict. And maybe
8 it isn't, but it seems like the Exelon board has
9 the authority to review and approve budgets, yet
10 there seems to be some subset of decisions that
11 are perhaps exempted from that review and approval
12 authority of the Exelon board. It's a question.
13 I don't know.

14 A The CEO of the company, Dave Velazquez
15 for PHI, will put together the operating plan and
16 the financial plan. He and his team will develop
17 that. They will review it with me for input.
18 They will review it with the EC for input. It
19 will be approved by the PHI board of directors.

20 In an aggregate fashion, it will be
21 rolled into the Exelon financial plan, and the
22 Exelon financial plan will be reviewed by the

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1 Exelon board of directors.

2 If Dave makes certain decisions, is going
3 to have a rate case or he's not going to have a
4 rate case or he's going to make investments,
5 they're Dave's decisions to make.

6 Q They're Mr. Velazquez's decisions to
7 make, but they are subject to review and approval
8 and potential disapproval by the Exelon board,
9 correct?

10 A We're going back and -- Exelon can
11 approve its total budget or not. The PHI board of
12 directors approves the PHI budget. They have two
13 different roles.

14 Q And if the -- if the -- if the PEPCO --
15 if the PEPCO CEO acts based on its delegation to
16 sign off -- to approve a specific budget and
17 begins -- the company begins to implement it and
18 puts out RFPs and acquisition orders, et cetera,
19 and at some subsequent point the budget for that
20 project is included in what is rolled up and
21 reviewed by the Exelon board, how would they
22 conduct -- how would the Exelon board conduct a

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1 meaningful review if the project has already
2 gotten underway?

3 A Well, first, we try to approve all of the
4 budgets before the start of the calendar year so
5 that, when we're into the execution period, we're
6 off and running and there's no issues at all.

7 Q So then it's not really sole authority of
8 the PEPCO CEO on that budget, is it?

9 A The PEPCO -- I was CEO of PECO for ten
10 years. I put the budget together for ten years.
11 I got it approved through the PECO board. At no
12 time in my ten years did the Exelon board of
13 directors make comment or take action in any way
14 on the PECO budget.

15 Q So is the process by which the Exelon
16 board of directors reviews the rolled-up utility
17 budgets essentially a rubber stamp?

18 A They give a significant review to the
19 total Exelon numbers and approve that. They count
20 on, in the governance model, that the PHI board of
21 directors has done significant review and has
22 approved the budget. Part of the governance

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1 counts on that that PHI board does its job.

2 Q Could you turn to exhibit -- your
3 Exhibit (3C)-5. There is one of your rebuttal
4 testimony exhibits. I think it may be the last
5 page of your exhibits. It has the title Proposed
6 delegations of authority, PHI and its utility
7 subsidiaries.

8 A I have it.

9 Q Now -- and I'm just trying to understand
10 what I'm looking at with this teeny, tiny font and
11 the arrows going left to right. So if you could
12 try to help me out here.

13 A This is always a fun document.

14 Q Yes. Impressed that you got it on one
15 8-1/2-by-11 page. Could you just very briefly
16 describe what this document is and what it does?

17 A This is proposed as the delegation of
18 authority of -- for PHI and its utility
19 subsidiaries.

20 Q What's its role?

21 A Its role is to define authorization
22 levels for different transactions for business, to

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1 get the transaction approved internally in our
2 processes.

3 Q And I believe this is the document you
4 referenced at page 9 of your rebuttal that we were
5 just discussing where you say there's some
6 carve-out -- some set of decisions that the
7 utility CEO would have sole authority to make, and
8 you referred to this document; is that right?

9 A That's correct.

10 Q So if you could look at the first line of
11 this chart, I guess, under column 1, it says,
12 Capital and related O&M. Do you see that?

13 A I do.

14 Q And all the remaining columns are under
15 the umbrella of approval threshold; is that right?

16 A That's correct.

17 Q Now, if you could look at the middle
18 column. This would be -- I guess it's the fifth
19 column. This is the one that is labeled, Chief
20 executive officer, Exelon Utilities. Do you see
21 that column?

22 A I do.

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1 Q And that's you right now, right?

2 A That is.

3 Q Now, underneath that, the figure shown,
4 is that less than or equal to \$50 million?

5 A That is less than or equal to
6 \$50 million, that is correct.

7 Q So does that mean that you have
8 professional authority for capital and related O&M
9 expenditures up to \$50 million?

10 A This is intended for capital projects.
11 So let's put the budget discussion aside, because
12 we've talked through the business process for
13 that. This would be a capital project. Take a
14 substation, for example, and if there was a
15 substation that was less than \$25 million to
16 build, Dave Velazquez would approve it. If the
17 substation authorization was between 25 and \$50
18 million, I would approve it. If it was greater
19 than \$50 million, the PHI board would approve it.

20 Q Where does it say that if it's between 25
21 and 50 million, you would approve it?

22 A You've got to look at the greater than

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1 and less signs. Basically the third column from
2 the right-hand side would be Dave Velazquez. Dave
3 could approve anything less than \$25 million.

4 Q But isn't --

5 A And this is project-specific, not overall
6 budget.

7 Q But by indicating that you, as the CEO of
8 Exelon Utility, have approval authority for
9 capital projects up to 50 million, doesn't that
10 mean you have approval authority for a project
11 that's \$5, anything up to and including
12 50 million?

13 A No, this says that Dave, up to
14 25 million, can approve anything. I never have to
15 see it. After 25 million and up to 50 million, he
16 needs my approval of it.

17 Q And if it's in that range where he needs
18 your approval, that necessarily means you have
19 disapproval authority?

20 A It does.

21 Q And to the left of that --

22 A I would note that I don't know that I

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1 disapproved any of them. I would note that I also
2 think I add great value to the process with my
3 experience.

4 Q And you've never had a PEPCO or PHI
5 capital project or O&M expenditure or budget
6 presented to you; is that right?

7 A I have not.

8 Q The column one to the left, Exelon
9 president and CEO -- do you see that?

10 A I do.

11 Q This is where Mr. Crane sits, correct?

12 A It is.

13 Q And the first number below his position
14 is less than or equal to 100 million.

15 A So if a project is greater than
16 \$100 million, it would need Mr. Crane's approval.
17 Interesting enough, in the other three utilities,
18 as we talked about, he is chair of the board of
19 the subsidiary. So at the point when the
20 subsidiary has approved it, the project is
21 approved up to \$200 million.

22 Q Now -- thankfully for the world, I'm a

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1 lawyer, not a mathematician, but isn't that sign
2 backwards? Shouldn't it say --

3 A I have someone on staff that interprets
4 this thing for me. I'm doing the best I can at
5 this point.

6 Q But you don't interpret a mathematical
7 symbol. That symbol is universally understood as
8 being less than or equal to. It's not -- if his
9 approval authority is only triggered at or above
10 100, shouldn't it be pointing the other way?

11 A I'll need my mathematician here. I can
12 tell you the intent of it here is that Mr. Crane
13 approves anything up to \$100 million.

14 Q Oh, okay. And he can disapprove anything
15 up to \$100 million?

16 A I'm sorry. He approves anything greater
17 than \$100 million. I said that incorrectly.

18 The PHI board is 50 to 100. Mr. Crane
19 would be 100 to 200.

20 Q And then if we just go all the way to the
21 first column to the left -- well, technically the
22 second column, the Exelon board, it says greater

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1 than 200 million?

2 A That is correct.

3 Q Does that mean the Exelon board -- their
4 approval authority kicks in only when it's a
5 project over 200 million?

6 A That is correct.

7 Q So they have no authority to review or
8 approve or disapprove a budget that's at
9 \$199 million?

10 A Their review and approval authority is
11 greater than \$200 million.

12 Q Is that a yes?

13 A Yeah, I think so, yes.

14 Q And do I understand that these -- I
15 believe these are called caretts (sic) -- are
16 backwards in your column and Mr. Crane's column,
17 maybe others; it should be greater than, not less
18 than?

19 A I need to go take a look at that and make
20 sure I get that right. I can explain how it is,
21 and we can double-check that, but it's -- zero to
22 25 is the PHI CEO; 25 to 50 is myself, the CEO of

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1 Exelon Utilities; 50 to 100 is the PHI board; and
2 then 100 to 200 is Mr. Crane as the CEO of Exelon;
3 and 200 million is the Exelon -- greater than
4 200 million is the Exelon board of directors.

5 Q And is there a document anywhere in the
6 record that says -- that shows what you just said,
7 with those numbers and those ranges?

8 A That's what this document is intended to
9 do, and I'm sure our lawyers can clarify that, if
10 need be, in the process here.

11 MR. EILBOTT: Your Honor, could I ask the
12 witness, in the likely event that he's still on
13 the stand after lunch, that he might take time to
14 see if he can get that answer from the
15 mathematician he referenced to clarify which way
16 the caret should point?

17 CHAIRMAN KANE: Certainly.

18 BY MR. EILBOTT:

19 Q Would you be able to do that,
20 Mr. O'Brien?

21 A Certainly.

22 Q Thank you.

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1 COMMISSIONER FORT: Do we need it after
2 lunch, if we take what he said? I don't want us
3 to go back over and take extra time doing
4 something that's already been stated. He's just
5 testified the way it ought to be.

6 I think you're correct, we need a
7 corrected document. And I think the lawyers need
8 to get a corrected document that reflects his
9 testimony in the record. And if the
10 mathematicians decide that that's not what it is,
11 then the two -- you know, and it's something other
12 than what he testified, then he needs to be asked
13 again. Otherwise, I assume that they'll get a
14 corrected document that reflects the correct
15 carets.

16 MR. EILBOTT: That certainly works for
17 me, Your Honor.

18 CHAIRMAN KANE: Then it can just be
19 submitted when it's ready.

20 BY MR. EILBOTT:

21 Q Mr. O'Brien, can you confirm -- I believe
22 this delegation appears in two places in the

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1 record. It's where we're looking at here as
2 Exhibit (3C)-5, and I believe it's also Joint
3 Applicants' Exhibit (4A)-1.

4 A I'm sorry, I was still looking at the
5 characters here. Bring me back to where we are.

6 Q That's fine. The document that we've
7 been looking at, (3C)-5, this delegation of
8 authority document --

9 A Yes.

10 Q -- is this identical to what is Joint
11 Applicants' Exhibit (4A)-1? On page 26 of 42 of
12 that -- that's a 42-page exhibit. And page 26
13 appears to be, but I really don't know -- appears
14 to be the same as (3C)-5.

15 A I believe it's intended to be the same
16 document.

17 Q Thank you. You appeared before the
18 Maryland Public Service Commission in case
19 number 9361; is that correct?

20 A Can you tell me what the case is?

21 Q That is the Exelon/PHI merger proceeding
22 before the Maryland commission.

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1 A Yes, I did.

2 Q And you testified in your position as CEO
3 of Exelon Utilities that you are involved in
4 reviewing the rate cases of BGE and Exelon's other
5 operating utilities before they are filed; is that
6 correct?

7 A That is correct.

8 Q And if the merger is approved here, would
9 you similarly be involved in reviewing PEPCO's
10 rate cases before they are filed here in D.C.?

11 A You know, I'm very engaged in the
12 companies that I oversee. I have significant
13 meetings on them on operating performance,
14 financial performance, you know, regulatory
15 strategy, rate case strategy, so that is correct.

16 Q Thank you. I'd like to shift gears to
17 the topic of best practices. I understand -- or
18 do I understand correctly that joint applicants'
19 position is that sharing of best practices is
20 critical to realizing the benefits that the
21 applicants expect to result from this merger?

22 A Yes.

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1 Q Could you turn to page 13 of your direct
2 testimony, please.

3 A Okay.

4 Q And as far as I can tell, beginning at
5 page 13 and going through page 16 you're providing
6 a list of what you characterize as best practices
7 that were deployed between and among BGE, Unicom,
8 and PECO following the Exelon/Constellation
9 merger; is that right?

10 A Yes.

11 Q Now, I think you said yes to my -- two
12 questions ago that it's joint applicants' position
13 that sharing of best practices is critical to
14 realizing the benefits of the merger; is that
15 right?

16 A Yes.

17 Q Is it also the applicants' position that
18 the sharing of best practices is itself a direct
19 benefit of the merger?

20 A I would think so.

21 Q Could you turn to page 2 of your rebuttal
22 testimony, please.

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1 A I'm there.

2 Q Thank you. And I'm looking at line 8 on
3 page 2. Do you see that? It begins, Yes, the
4 sharing of best practices is a direct benefit.

5 A I do see that.

6 Q Who gets that benefit? The benefit of
7 shared best practices, who gets that benefit? Is
8 it the ratepayers?

9 A Well, first, I think all the individuals
10 involved in the process. I think the companies
11 that learn things that allow them to improve
12 performance, and I think ultimately the customer,
13 depending on what the best practices are.

14 Q And further down on that same page at
15 line 11, you're discussing -- you make the
16 statement that sharing best practices will be
17 especially valuable to PEPCO -- and this sentence
18 keeps going, but that's the beginning of that
19 sentence; is that correct?

20 A That is correct.

21 Q And it continues that it will be
22 especially valuable because Exelon will be able to

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1 deploy many of the best practices it gleaned from
2 successful operation of its other utility; is that
3 correct? And I'm paraphrasing.

4 A That's correct.

5 Q My question is why you chose the words
6 "will be" as opposed to "may be." You don't say
7 that Exelon may be or might be able to deploy best
8 practices across PEPCO's operations post-merger,
9 but it's an unconditional "will be."

10 How -- are you certain that best
11 practices will be deployed?

12 A Yes.

13 Q And you are certain that that deployment
14 will create direct benefits?

15 A I'm as certain as I can be. None of the
16 four companies -- you know, with PHI, none of the
17 four companies -- I'm certain that none of them do
18 anything across the board better than the others.
19 So when you put them together and ask them to
20 share their experiences and define and develop
21 high standards of performance, everybody -- each
22 company will get better.

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1 Q So when you testify that the sharing of
2 best practices -- and I'm paraphrasing -- will
3 certainly happen with PEPCO and will certainly
4 produce a direct benefit, that's not an
5 aspiration; that is a guarantee?

6 A In my experience, as we've implemented
7 best practices in our companies, it has in every
8 case produced higher levels of performance. I
9 guess you could have some scenario in life where
10 that doesn't happen, but that's not my experience.

11 Q Are the joint applicants guaranteeing
12 that benefits will result from the sharing of best
13 practices across PEPCO operations post-merger?

14 MR. DeCUSATIS: I'm going to object. I
15 think we've been down this line of questioning. I
16 think it's perfectly clear that Mr. O'Brien is
17 testifying based on his experience of 30 years
18 of -- as an executive in the utility business and
19 using the kinds of language to elicit guarantees
20 when the witness is testifying about what is in
21 the zone of reasonableness and probability based
22 on 30 years of experience should be clear enough.

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1 MR. EILBOTT: Your Honor, we just
2 discussed that at page 4 of this witness' direct
3 testimony he wrote -- he testified that sharing of
4 best practices is critical to realizing the
5 benefits expected from this merger. It is
6 critical.

7 I don't see how there's anything other
8 than the foundation of their application. This
9 whole case is about commitments and guarantees or
10 other aspects that may not be commitments. So I
11 don't see how this is not extremely relevant. In
12 fact, it goes to the heart of the case.

13 CHAIRMAN KANE: I think the question has
14 been asked and answered, whether it's "may" or
15 "will." The statement is that it will.

16 BY MR. EILBOTT:

17 Q How would -- if your position is that
18 sharing of best practices will occur and will
19 provide benefits, that you're committing that now,
20 what accountability would there be to the
21 ratepayers and to this Commission to verify that
22 those things happened?

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1 A There are commitments that are made in
2 this filing, which we've gone over, including
3 reliability commitments. You know, we stand by
4 those commitments. Best practices will help us to
5 produce the results required for those commitments
6 and will help us to produce other things that have
7 not been captured in (4A)-2, I believe it is.

8 Q But it's really not possible to identify,
9 let alone implement, best practices before the
10 merger is consummated, is it?

11 A We have not identified what all the best
12 practices are. And I think best practices are
13 probably one of the most misunderstood things
14 around. It is a culture and organizational belief
15 that you get people to work together to share the
16 best ideas, to develop the highest standards of
17 performance, and you replicate that across all of
18 the Exelon companies.

19 Q And none of that can happen until well
20 after the merger closes; isn't that correct?

21 A There's probably some things that will
22 happen now, but it is a long-term proposition that

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1 proses high levels of performance, I believe.

2 Q And, again, this is the -- the results of
3 sharing best practices you believe are critical to
4 showing the benefits of this merger?

5 A For me, the best way to think about that
6 is look at the performance of BGE as we introduced
7 best practices there three years ago, and look
8 where that performance was, look where it is now.

9 There are some great people at BGE. They
10 have performed well in the past. They have
11 responded to this approach of best practices. And
12 almost every indicator has went to a new and
13 better place, and many of them are the best in
14 their history.

15 Q Could you turn to page 5 of your rebuttal
16 testimony, please.

17 A I'm there.

18 Q Could you read the question that begins
19 at line 7 -- I'm sorry, it's question number 7; it
20 begins at line 8.

21 A I've read the question.

22 Q Aren't you testifying here that it is not

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1 possible at this time to identify or analyze best
2 practices that will be deployed post-merger, that
3 that cannot be done now?

4 A I am.

5 Q Okay. And in fact, you say, don't you,
6 that there are a number of reasons why that cannot
7 be done now; is that correct?

8 A That is correct.

9 Q And in this answer, you indicate that
10 identifying best practices and determining how
11 they can be implemented to create value requires
12 delving deeply into business and operational
13 processes and conducting detailed research and
14 analysis. Do you see that?

15 A I do.

16 Q And you say that kind of analysis cannot
17 be done in any meaningful way until post-merger;
18 is that right?

19 A That's correct.

20 Q And therefore, to the extent -- any
21 analysis that may have been done so far is not
22 meaningful; is that right?

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1 A I think there's analysis being done all
2 along the way here. I mean, the best practices
3 really kick in when you get everybody on the same
4 team working together with a free exchange of
5 information. That's when they really kick in.
6 And it's pervasive in the culture of how do we
7 work together and how do we get better.

8 Q But, again, this is your testimony
9 stating that that cannot be done in a meaningful
10 way until after the merger closes, right?

11 A That's correct.

12 Q You even cite some legal restraints for
13 why the identification of best practices cannot
14 happen now, correct?

15 A Can you point me to that line, please?

16 Q The top of page 6. Beginning on line 1.

17 A That is correct.

18 Q Now, with that in mind, where you discuss
19 it's not possible to do this in a meaningful way
20 now, and it requires a deep dive, so to speak, how
21 do you reconcile that with the testimony we
22 discussed before at page 2 that you're a hundred

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1 percent certain sharing of best practices, A, will
2 happen and, B, will be especially valuable to
3 PEPCO?

4 A If PHI is part of the Exelon family, it's
5 how we operate the Exelon family. So from that
6 perspective, it will happen. My experience has
7 been, when we apply the best practices to Exelon
8 companies, the performance has gotten better each
9 and every time, as we've done it with PECO, ComEd
10 and as we've done it most recently with BGE.

11 I have looked at the benchmarks. There
12 are room for all companies that I see to improve
13 performance, and we work each and every day to do
14 that.

15 Q Would it be fair to characterize the
16 significance of best practice sharing in this
17 proceeding as something the joint applicants
18 expect and hope and intend will produce benefits,
19 but they're really not sure that's going to
20 happen?

21 A Look, its hard to be sure about anything
22 in life. I know that when we've applied this

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1 approach, we have gotten better results every
2 time.

3 Q Can I ask you --

4 CHAIRMAN KANE: Excuse me. I think the
5 witness has answered that line of questioning.

6 MR. EILBOTT: Thank you, Your Honor.

7 BY MR. EILBOTT:

8 Q Could you turn to pages 14 and 15 of your
9 direct testimony, please. And I believe here
10 you're discussing some of those best practices
11 that were adopted by ComEd and PECO following the
12 Constellation merger.

13 A I'm there on 14 and 15.

14 Q Looking at lines 18 to 22 of page 14,
15 here you're discussing the best practice of the
16 adoption of criteria by ComEd and PECO for
17 prioritizing corrective maintenance work that's
18 been identified by circuit patrols; is that right?

19 A That's correct.

20 Q Do you know whether the joint applicants
21 have examined whether PEPCO already has adopted
22 the same or similar best practice?

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1 A I don't know. This is kind of a fine
2 piece of looking at best practices. You know, at
3 some level, this is a simple business. At some
4 level, it's a complex business.

5 Having management systems to aggressively
6 manage corrective maintenance is crucial to drive
7 performance. This is one piece of how you do it.
8 You develop prioritization codes, you develop
9 boogies for performance, you measure how many come
10 in, you measure how many go out, you measure what
11 your backlog is, and you create power metrics
12 across the companies to see where they are to
13 compare and contrast performance.

14 Q Thank you. And I probably didn't ask my
15 question well. I wasn't asking so much how does
16 the process work, but as a matter of did you or
17 didn't you have the applicants yet examined
18 whether PEPCO has adopted that practice that
19 you're discussing for BGE and PECO?

20 A I do not know.

21 Q I'm sorry. I couldn't --

22 A I do not know.

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1 Q Do you know who would know?

2 A You can ask Mark Alden.

3 Q And has Exelon committed in any way to
4 implement this specific practice of prioritizing
5 corrective maintenance work at PEPCO post-merger?

6 A First, you know, I'm an old industrial
7 engineer and -- you know, the way to improvement
8 is through understanding first. So rather than
9 dictate this is how it will be done, the key is to
10 get the folks together, to understand how it is
11 done, to understand which of those practices is
12 best, and then to replicate that practice.

13 So I would not come in dictatorial
14 because that's how you miss best practices. It's
15 about creating the forum and the dialogue to
16 identify what the best practices are, getting
17 folks to work together, and then implement what
18 they come up with. This has been a best practice
19 at Exelon, as we've seen it, but I don't know,
20 sitting on the stand here, what PHI has done, and
21 I would want to understand that first.

22 Q Based on that answer, that you haven't

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1 looked at what PHI, PEPCO have done, would it be
2 fair to assume that the joint applicants haven't
3 quantified what benefits or costs, if any, would
4 result if PEPCO were to implement that same
5 practice post-merger?

6 A We have not quantified that.

7 Q Have you quantified any cost savings --
8 I'm sorry. Scratch that.

9 MR. EILBOTT: Your Honor, at this point I
10 would like to mark for identification the document
11 that was premarked as OPC Cross-Examination
12 Exhibit 11. This is Mr. O'Brien's response to
13 data request OPC 5-39. I believe this would
14 become Number 13, Cross-Examination Exhibit -- I'm
15 sorry -- 12.

16 CHAIRMAN KANE: 12, yes. It will be 12.
17 It will be so marked.

18 (OPC Cross Exhibit Number 12 was marked
19 for identification.)

20 BY MR. EILBOTT:

21 Q Mr. O'Brien, this data response goes to a
22 question that OPC posed to you regarding the

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1 testimony we just discussed about prioritizing
2 corrective maintenance work that you indicate was
3 done following the Exelon/Constellation merger; is
4 that correct?

5 A That is correct.

6 Q Now, don't you say in subpart A of your
7 answer, in the second sentence, that there may be
8 opportunities for PEPCO to enhance current
9 procedures for prioritizing corrective maintenance
10 work?

11 A That's correct.

12 Q And you don't say will be.

13 A That is correct.

14 Q Okay. And you go on in that answer to
15 say that -- don't you, that no determination has
16 been made at this time regarding which best
17 practices will be implemented at PEPCO or adopted
18 from PEPCO?

19 A That is correct.

20 Q And in subpart (d) of your answer, don't
21 you state that potential cost savings achieved
22 through sharing of best practices between PEPCO

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1 and PECO, ComEd and BGE have not been identified?

2 A That is correct.

3 Q And lastly, in subpart (e) don't you
4 indicate -- your word is "expects." You say,
5 While best practices to be shared with PEPCO
6 post-merger have not been identified yet, Exelon
7 expects PEPCO's customers will benefit from the
8 eventual sharing.

9 A That is correct.

10 Q And yet your testimony says there will be
11 a benefit --

12 CHAIRMAN KANE: I think this issue has
13 been asked and answered.

14 MR. EILBOTT: Thank you, Your Honor.
15 I'll move on.

16 BY MR. EILBOTT:

17 Q If you could turn to page 15 of your
18 testimony, lines 12 to 15. Are you there?

19 A I am.

20 Q And it looks here you're discussing BGE's
21 adoption of procedures for rejuvenating the
22 installation of insulated cable?

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1 A That is correct.

2 Q And have the joint applicants examined
3 whether PEPCO already has adopted the same or
4 similar best practice?

5 A I'm not aware.

6 Q And I take it Exelon is not committing
7 that this best practice will be implemented at
8 PEPCO?

9 A I don't know what the current practices
10 are, so I am not committing.

11 Q And you haven't analyzed or quantified
12 the benefits, if any, that would result if that
13 were to happen in PEPCO?

14 A That's correct.

15 MR. EILBOTT: Your Honor, I'd like to
16 mark for identification what has -- your
17 indulgence for a moment. I'm trying to get my
18 numbers straight here, Your Honor.

19 Your Honor, to try to speed things along,
20 I have several similar data requests that go to
21 whether certain best practices have been studied
22 yet, and I believe in one of your orders that we

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1 can stipulate to their admission and sort of
2 short-circuit the authentication process. I would
3 have asked essentially the same questions, and I
4 would be satisfied just to have these moved into
5 the record at the appropriate time.

6 CHAIRMAN KANE: Would that be --

7 MR. LORENZO: Yes, Your Honor. We will
8 work at the break to look at the -- and probably
9 will stipulate to --

10 CHAIRMAN KANE: The court reporter can't
11 hear you.

12 My response was that would be fine, if
13 it's acceptable to the company.

14 MR. LORENZO: Yes, it is acceptable to
15 the company. We'll work it out on the break.

16 CHAIRMAN KANE: Thank you.

17 BY MR. EILBOTT:

18 Q Now, apart from how or whether best
19 practices may be identified for PEPCO, I take it
20 that joint applicants have not yet done any kind
21 of comparison as to the performance of Exelon's
22 current utilities and the performance of PEPCO in

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1 areas where best practices might be applied; is
2 that right?

3 A I've seen some high-level benchmarks of
4 the companies, and that would be probably the
5 total degree of it.

6 Q If you could turn to your rebuttal
7 testimony, Exhibit (3C)-2, you made an exhibit --
8 your response to OPC data request 5-46. Do you
9 see that?

10 A I have it.

11 Q Okay. At subpart (d), (d) like David,
12 does the second sentence of your response say, No
13 comparison as between Exelon Utilities and PEPCO
14 in the areas identified where best practices have
15 been shared between Exelon's utilities in
16 attachment A has been conducted at this time?

17 Is that correct?

18 A That is correct.

19 Q Now, I think I heard you say before that
20 the implementation of best practices at Exelon's
21 current utilities is -- I think you used the words
22 best evidence of how they may work at PEPCO. Was

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1 that --

2 A I think it's very good evidence of it.

3 Q Now, if you could turn to page 4 of your
4 rebuttal -- I'm sorry. Page 4 of your rebuttal
5 testimony, lines 14 to 19.

6 A I am on page 4 of rebuttal.

7 Q Thank you. Lines 14 to 19, you're
8 discussing, again, best practices you say Exelon
9 deployed at BGE following the Exelon/Constellation
10 merger, right?

11 A Yes.

12 Q Has Exelon performed any cost benefit
13 analyses on best practices that it has implemented
14 at BG&E or any of its other operating utilities?

15 A We have not. Much of the driver of best
16 practices is about operational performance,
17 propelling customer satisfaction, reliability and
18 other things. Our driver of it is not cost.
19 Although there may be some cost benefits, we have
20 not quantified them.

21 Q If you say the drivers of savings are not
22 costs -- aren't all the synergy savings costs?

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1 A My comment was about best practices. And
2 the reason we do best practices primarily is to
3 drive operating performance, to drive reliability,
4 drive customer satisfaction. That's really the
5 key of why we're doing it, not cost savings.

6 Q Thank you.

7 MR. EILBOTT: Your Honor, I'd like to
8 have marked at this time what has been premarked
9 as OPC Cross-Exam Exhibit Number 16. I believe
10 this will be 13.

11 CHAIRMAN KANE: Yes, 13.

12 (OPC Cross Exhibit Number 13 was marked
13 for identification.)

14 MR. EILBOTT: This is an excerpt of a
15 transcript from January 30th, 2015, Mr. O'Brien's
16 hearing testimony before the Public Service
17 Commission of Maryland in case number 9361.

18 BY MR. EILBOTT:

19 Q Do you see that, Mr. O'Brien?

20 A I do.

21 Q Do you recall testifying before the
22 Maryland PSC on that day in the Exelon/PHI merger

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1 proceeding?

2 A I do.

3 Q If you could turn to page 4 of this
4 exhibit. And on page 4 of the exhibit -- it's
5 page 4 of 7 -- you see in the top left it has the
6 transcript page 1403. Do you see that?

7 A I do.

8 Q And weren't you asked at this point of
9 the hearing whether you tracked within Exelon
10 Utilities the cost savings associated with
11 implementation of best practices after the two
12 mergers?

13 A That's not the exact question, but that's
14 the essence of it.

15 Q Do you want to go ahead and read the
16 question?

17 A Are you talking about the question
18 starting on line 1?

19 Q Yeah.

20 A Did you track within the Exelon
21 Utilities -- and I refer to Exelon Utilities as
22 being EU to shorten the cost savings -- to shorten

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1 the costs savings associated with implementation
2 of the best practices after the two mergers that I
3 discussed.

4 Q And in your answer to that question at
5 the hearing, you indicate you cataloged many, many
6 of the best practices, but you don't know that you
7 assigned a cost savings to each of them?

8 A That's correct.

9 Q And the last sentence of your answer
10 says, We don't have a cost benefit analysis on it?

11 A That's correct.

12 Q Although it says "on it" "on it" twice.
13 So sometimes court reporters --

14 A I was probably stuttering at that point.

15 CHAIRMAN KANE: Could I ask counsel
16 clarification. On the top of page 4 of 4, it may
17 have just been -- excuse me, 4 of 7, where you
18 were just quoting from, it may have been just
19 because it was cut off when it was duplicated.
20 But it doesn't indicate who is asking this
21 question of Mr. O'Brien.

22 On the previous page --

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1 MR. EILBOTT: Right.

2 CHAIRMAN KANE: -- Chairman Hughes had
3 asked the last identified question.

4 MR. EILBOTT: I believe this is a line of
5 question from Commissioner Williams, but you're
6 right, I did not include page 1402. I apologize
7 for that. But I know before and after these
8 pages, the commissioners were taking turns
9 questioning Mr. O'Brien.

10 BY MR. EILBOTT:

11 Q Is that right, Mr. O'Brien? Do you
12 recall?

13 A I don't remember who asked that question.

14 Q Thank you.

15 CHAIRMAN KANE: You may proceed.

16 BY MR. EILBOTT:

17 Q Thank you. If you haven't done a cost
18 benefit analysis on the impact of deployment of
19 best practices at the existing Exelon operating
20 utilities, do you have any documentation of any
21 quantification of the benefits?

22 A I think the best quantification is the

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1 benchmark material that we have, and as we will
2 get out, BGE benchmarked prior to the merger with
3 Exelon and how it has benchmarked in the last year
4 or two. Significant improvement.

5 Q What tools or data does Exelon use to
6 verify the extent to which improved performance,
7 if there was improved performance post-merger --
8 how do you analyze to what extent some or all of
9 that improved performance was due to sharing of
10 best practices rather than something else, such as
11 a preexisting best practice or a bigger budget?

12 A I don't know that we have it to an exact
13 science. We put management systems in place,
14 which are a lot of the things that we've talked
15 about, and then we do rigorous benchmarking across
16 the industry, and we compare against the
17 benchmarks of others in the industry to see where
18 we stand up and see how we're improving relative
19 to them.

20 Q Now, do you look -- when you do that, is
21 it a multi-year review? Do you do a snapshot, for
22 example, the first year post-merger or the year

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1 pre -- the year preceding merger? How do you
2 analyze your benchmark for determining what the
3 delta is?

4 A We do extensive benchmarking every year
5 in both our electric and gas business. We go
6 through the benchmarks in great detail with me
7 personally, with my staff, and then we compare the
8 year-to-year performance of all of those benchmark
9 exercises.

10 Q I just want to see if you agree if this
11 is an accurate statement. This is not from your
12 testimony. This is just something I wrote.

13 Exelon has not determined, 1, which best
14 practices to implement at PEPCO, 2, has not
15 determined the cost PEPCO would incur in
16 implementing any Exelon best practices, and 3, has
17 not identified what cost savings or benefits, if
18 any, PEPCO would realize by implementing any
19 Exelon best practices?

20 MR. DeCUSATIS: Madam Chairman, in the
21 limited time we have and given the time
22 constraints of this proceeding, how many times are

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1 we going to go over this?

2 CHAIRMAN KANE: If you could speak up for
3 the reporter.

4 MR. DeCUSATIS: Yes. I said, given the
5 limited amount of time we have and our existing
6 time constraints, how many more times are we going
7 to go over this?

8 MR. EILBOTT: Can I respond, Your Honor,
9 just briefly?

10 CHAIRMAN KANE: I would like to respond
11 first. We are not going to constrain anyone's
12 time for any line of questioning or presentation
13 of evidence that is going to be useful to the
14 board. That said, repetition of things that have
15 been asked and answered are not necessary to make
16 the record that the Commission needs. So there's
17 a balance there.

18 Counsel?

19 MR. EILBOTT: Your Honor, I certainly
20 don't want to be here longer than anyone else. I
21 try to limit my questions on secondary issues and
22 tertiary issues. This in my view, and OPC's view,

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1 is the heart of the case, one of the most
2 important issues of the case. This witness says
3 at page 4 of his direct testimony that sharing of
4 best practices is critical to realizing the
5 benefits of the merger. So that's why I have
6 asked quite a number of questions on it, because
7 it is that important.

8 CHAIRMAN KANE: Yes. But there are --
9 comes a point where the question has been asked
10 and answered. And the point has been made.

11 And I will say, again for the court
12 reporter, because we're trying also to get, as the
13 record is made, get pieces of it up to the
14 recording company so that we can get a timely
15 transcript for tomorrow. So we are going to take
16 a break in about ten minutes. So if there's a
17 logical break in your questioning, that would --
18 I'm just letting you know that.

19 MR. EILBOTT: Okay. Thank you, Your
20 Honor.

21 BY MR. EILBOTT:

22 Q I have a general question about the

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1 management model. Now, I'm not going to ask about
2 best practices per se, but what's the
3 relationship, if there is one, between the Exelon
4 management model and the sharing of best
5 practices? They seem to be related in some way,
6 the way you present it.

7 A The management model, in my parlance, is
8 the management systems that we have in place to
9 define and drive high financial and operating
10 performance and to create focus in some key areas
11 that we want to be able to replicate high
12 performance across our companies.

13 Q So do you apply the management model to
14 identify a list of best practices that might be
15 the right ones to try to implement at a specific
16 company? Is that right?

17 A I think implicit in the management model
18 is that folks work together to define and
19 replicate the best practices to drive high
20 performance.

21 Q So just as with best practices, would it
22 be safe to assume that the implementation of the

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1 management model or the application of the
2 management model at PEPCO, if the merger closes,
3 won't happen until the merger closes? Is that
4 right?

5 A That's correct.

6 Q Okay. Thank you.

7 Question about Exelon's providing of
8 resources to its utility subsidiaries, so shifting
9 topics. And I'm looking at your direct testimony
10 at page 8. If you could turn there, please. And
11 it's the last sentence of that page. Begins at
12 line 19. Do you see that?

13 A I do.

14 Q Thank you. And here you're discussing
15 the fact -- or I guess the idea that Exelon will
16 be providing the resources that its utilities
17 need, including, presumably, PEPCO, to execute
18 their business plans and fulfill their service
19 obligations. Is that fair?

20 A That is fair.

21 Q Has Exelon identified what resources PHI
22 and PEPCO need to execute their business plans and

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1 fulfill their service obligation?

2 A No, we have not.

3 Q Has Exelon identified what resources it
4 might have available to provide PHI and PEPCO?

5 A No, it has not. We talked about business
6 planning earlier. And the business plan is
7 developed at PHI, which would have the resource
8 requirements in it. I mean, that was all kind of
9 the budget discussion.

10 So it's -- the business plan is developed
11 in PHI, approved by the PHI board, and Exelon is
12 committed to making sure the resources are there
13 to make it work.

14 Q Thank you.

15 Question about headquarters. Page 12 of
16 your direct. The last two lines at page 12.

17 A I see it.

18 Q And here you testify, don't you, that
19 Exelon intends to maintain the headquarters of PHI
20 and PEPCO in the District? Is that right?

21 A That's correct.

22 Q Is there a time period associated with

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1 that?

2 A I would need to read the commitment to be
3 sure. I can say that the PECO headquarters is in
4 Philadelphia 15 years later, after the PECO/Unicom
5 merger. The Commonwealth Edison headquarters is
6 in Chicago, and the BGE headquarters is in
7 Baltimore. We have never moved them and have
8 never contemplated moving them.

9 Q And I heard you use -- use the word
10 "commitment." I see here you say that Exelon
11 intends to maintain the headquarters of PHI and
12 PEPCO in D.C.

13 Are you saying that is a commitment?

14 A I'm saying that -- this is what it says.
15 If we need to look at the commitment document,
16 then take me to the place there and we can talk
17 through that.

18 Q Are you aware whether PEPCO or PHI
19 currently have any plans to move their
20 headquarters out of D.C.?

21 A I'm not aware of them having any plans to
22 move.

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1 Q I'd ask you to flip to your rebuttal
2 testimony.

3 MR. EILBOTT: And Your Honor, I think I
4 probably could finish up, if not 12:00, maybe --
5 certainly before ten after, maybe five after.

6 CHAIRMAN KANE: Fine.

7 BY MR. EILBOTT:

8 Q Did you get that, Mr. O'Brien? I may
9 have cut off my own page reference for you.
10 Rebuttal at page 11.

11 A I'm in rebuttal on page 11.

12 Q And it's the same topic of the
13 headquarters. At the top of the page, line 1,
14 don't you say that the applicants have proposed to
15 take several important steps to preserve an
16 appropriate degree of local control, including
17 maintaining the PHI and PEPCO District
18 headquarters -- and there's some other things that
19 follow?

20 A That is correct.

21 Q Can you explain to me how a statement of
22 intent to keep the headquarters here constitutes

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1 an important step to preserve local control?

2 A I'm not understanding the question.

3 Q Well, it seems to me that the

4 applicants -- well, in your testimony, you appear

5 to be giving the impression that, one, there is an

6 intent or a commitment -- I'm not sure what --

7 that the headquarters will stay here for PHI and

8 PEPCO. There's no time period. The word

9 "commitment" is not used.

10 So I'm trying to square that with how you

11 see that statement of intent equating to an

12 important step to preserve local control.

13 A At Exelon, we operate the companies that

14 these are the local hometown companies. We are

15 engaged in the communities that we serve, and we

16 are very dedicated to the success of those

17 communities. And here is our intent to do the

18 same thing with PHI and PEPCO in D.C.

19 Q Similarly, there is a statement regarding

20 keeping local PEPCO management in place

21 post-merger at page 12 of your direct. Sorry to

22 bounce back and forth.

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1 A Can you draw me to the --

2 Q Page 12 of your direct, line 17.

3 A I'll go back to the direct. I'm there.

4 Q Okay. And there you say that, Exelon
5 expects that managers who are on the ground in the
6 District of Columbia and whom the Commission
7 stakeholders and customers have come to know and
8 trust will still be on the job after the merger is
9 completed.

10 Is that right?

11 A That is correct.

12 Q And again, that's the statement of
13 intent -- is that statement related to what you
14 said later on in the testimony, that is an
15 important step to preserve local control?

16 A Our commitments are in (4A)-2. This
17 talks about, you know, how we run our companies,
18 how our companies are locally controlled, locally
19 engaged, and what our intent is moving forward.

20 Q Do you have an expectation or -- of a
21 time period in mind or how long the officials
22 you're referring to in that Q&A would still be

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1 here post-merger?

2 A I can tell you our track record is, in
3 all of the companies we operate, the headquarters
4 is still where it was when we put the companies
5 together.

6 Q But you haven't done that for PEPCO,
7 right?

8 A Haven't done what for PEPCO?

9 Q Looked at what you have done -- what I
10 just heard you say is that you've done that with
11 other utilities subsidiaries. I was asking
12 whether you've done that for PEPCO.

13 A And I think what I'm describing here is
14 our intent to do the same thing here.

15 Q Page 16 of your direct, you discuss
16 your -- what you call -- now what you call a
17 commitment -- doesn't seem to be a statement of
18 intent -- a commitment that for two years
19 following the transaction, it will not permit a
20 net reduction in the employment levels at PEPCO
21 due to involuntary attrition resulting from the
22 merger integration process.

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1 Do you see that?

2 A I do.

3 Q How did Exelon decide upon the time
4 period of two years?

5 A I'm not aware.

6 Q Are you aware of other commitments in
7 this case that have far longer time periods
8 involved?

9 A I'd have to look at the commitment list
10 to be sure.

11 Q Would you take -- would you accept,
12 subject to check, that the joint applicants are
13 committing to keep certain ring-fencing provisions
14 in place for at least five years post-merger?

15 A Yes.

16 Q And would you accept, subject to check,
17 that the joint applicants are committing to
18 provide specified levels of charitable
19 contributions for a periods of ten years following
20 close of the merger?

21 A Subject to check, yes.

22 Q In terms of the impact of Exelon on the

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1 local community and on the District of Columbia
2 itself, do you know whether Exelon has looked into
3 acquiring or merging with Washington Gas Light
4 Company?

5 A I am not aware.

6 Q Do you know who might know that?

7 A Maybe Mr. Crane.

8 MR. EILBOTT: I have no further
9 questions. Thank you very much, Mr. O'Brien.

10 CHAIRMAN KANE: Thank you. We will take
11 a ten-minute break.

12 (Whereupon, a short recess was taken.)

13 CHAIRMAN KANE: We're back on the record
14 at 11:20 p.m. -- 12:20 p.m. Moving right along.

15 MS. FRANCIS: Shall I start?

16 CHAIRMAN KANE: Yes, Ms. Francis.

17 CROSS-EXAMINATION

18 BY MS. FRANCIS:

19 Q Good afternoon, Mr. O'Brien.

20 A Good afternoon.

21 MS. FRANCIS: Your Honor, after the
22 discussion the Chair had with the parties

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1 yesterday, I spoke to the joint applicants, and
2 I'd like to move in some data request responses --
3 mark them first.

4 The first one is pre-identified as AOBA
5 Exhibit 7, which is joint applicants' response to
6 D.C. government data request number 8-10, which
7 I'd like to mark as AOBA 24.

8 CHAIRMAN KANE: So marked.

9 (AOBA Cross Exhibit Number 24 was marked
10 for identification.)

11 MS. FRANCIS: The next one is
12 pre-identified as AOBA 28, which is the joint
13 applicants' response to AOBA data request number
14 1-17, which I'd like to mark as AOBA 25.

15 CHAIRMAN KANE: So marked.

16 (AOBA Cross Exhibit Number 25 was marked
17 for identification.)

18 MS. FRANCIS: The next one is premarked
19 AOBA 42, which I'd like to have -- which is the
20 joint applicants' response to AOBA data
21 request 2-1 which I'd to mark as AOBA 26.

22 CHAIRMAN KANE: So marked.

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1 (AOBA Cross Exhibit Number 26 was marked
2 for identification.)

3 MS. FRANCIS: The next one is what was
4 pre-identified as AOBA 43, which is the joint
5 applicants' response to AOBA DR 6-3 which I'd like
6 to mark as AOBA 27.

7 CHAIRMAN KANE: So marked.

8 (AOBA Cross Exhibit Number 27 was marked
9 for identification.)

10 MS. FRANCIS: The next one was
11 pre-identified as AOBA 44, which is the joint
12 applicants' response to AOBA data request 6-8,
13 which I'd like to mark as AOBA 28.

14 CHAIRMAN KANE: Yes, it's so marked.

15 (AOBA Cross Exhibit Number 28 was marked
16 for identification.)

17 MS. FRANCIS: The next one is premarked
18 as AOBA 45, which is the joint applicants'
19 response to AOBA data request 6-12 which I'd like
20 to have marked as AOBA 29.

21 CHAIRMAN KANE: So marked.

22 (AOBA Cross Exhibit Number 29 was marked

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1 for identification.)

2 MS. FRANCIS: The next one pre-identified
3 as AOBA 46, which is the joint applicants'
4 response to AOBA data request 6-14, which I'd like
5 to have marked as AOBA 30.

6 CHAIRMAN KANE: So marked.

7 (AOBA Cross Exhibit Number 30 was marked
8 for identification.)

9 MS. FRANCIS: The next is AOBA premarked
10 Exhibit 47, which is the joint applicants'
11 response to AOBA data request 6-19 which I'd like
12 to have identified for the record as AOBA 31.

13 CHAIRMAN KANE: So marked.

14 (AOBA Cross Exhibit Number 31 was marked
15 for identification.)

16 MS. FRANCIS: The next one is premarked
17 as AOBA 48, which is the joint applicants'
18 response to AOBA data request 6-20, which I'd like
19 to have identified for the record as AOBA
20 Exhibit 32.

21 CHAIRMAN KANE: That is so marked.

22 (AOBA Cross Exhibit Number 32 was marked

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1 for identification.)

2 MS. FRANCIS: And I'll move those in at
3 the appropriate time.

4 BY MS. FRANCIS:

5 Q Mr. O'Brien, I do have some overlapping
6 areas of what OPC counsel covered this morning.
7 I'm going to try to move through that as rapidly
8 as I can. I don't mean to repeat a question.

9 But just starting at the very beginning
10 of your testimony, you are, just to confirm,
11 senior executive vice president of Exelon
12 Corporation and chief executive officer of Exelon
13 Utilities; is that correct?

14 A That is correct.

15 Q Okay. And can you identify for me,
16 please, the legal structure of Exelon Utilities?
17 Is it a corporation? An LLC? A partnership?

18 A Exelon Utilities is an organization and
19 not a legal structure. I reside in Exelon
20 Business Service Company in terms of the legal
21 structure that I reside in.

22 Q Does that mean that you are a direct

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1 employee of Exelon Business Service Company? Is
2 that your employer?

3 A That is correct.

4 Q How many persons does Exelon Utilities
5 have on its payroll as direct employees?

6 A The organization, Exelon Utilities, has
7 somewhere around 50 people in that organization.

8 Q In the subsequent lines, lines 6 through
9 8 on page 1 of your direct testimony, you indicate
10 that you are responsible for the activities of
11 Exelon's regulated transmission and distribution
12 businesses.

13 Do I properly surmise from that statement
14 that Exelon Utilities is an operating company?

15 A First, can you bring me to the page
16 again? I'm sorry.

17 Q Page 1, lines 6 through 8.

18 A Exelon Utilities, again, is an
19 organization, not a legal structure. Can you
20 repeat the question so I make sure I answer it
21 properly?

22 Q Sure. You indicate -- and I'm looking at

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1 lines 6 through 8. Do you want to take a moment
2 just to review them? It says, In that capacity, I
3 am responsible for the activities of Exelon's
4 regulated transmission and distribution
5 businesses.

6 Do you see that?

7 A I do.

8 Q Okay. Do I surmise from that statement
9 that EU is an operating company; it's a business
10 service company? Is that what it is?

11 A EU is an organization. It resides in the
12 legal structure of Exelon Business Services.

13 Q Assuming this merger is approved and the
14 agreement is consummated, am I correct that your
15 role as CEO of Exelon Utilities will be expanded
16 to also assume responsibility for overseeing and
17 supporting the operations of PEPCO, Delmarva and
18 ACE?

19 A It will be overseeing PHI; Dave Velazquez
20 will be the CEO, and he will have the oversight of
21 the three companies that you mentioned.

22 Q Will you have responsibility over

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1 Mr. Velazquez for overseeing and supporting the
2 operations of PEPCO, Delmarva and ACE?

3 A Yes, I will.

4 Q Now, I'd like you to please reference the
5 organization charts that have been submitted as
6 Exhibit 4 to the application of Exelon and PHI in
7 this proceeding. And focus on pages 2 and 3, if
8 you will.

9 A Can you redirect us, please?

10 Q Sure. It's Exhibit 4. It's attached to
11 the application. And I'm looking at pages 2 and
12 3.

13 Tell me when you have it.

14 A I have it.

15 Q Okay. So we're looking at the -- where
16 it says EBSC. I'm looking at the Exelon
17 pre-merger chart first. EBSC, I assume that's
18 Exelon Business Service Company?

19 A That is correct.

20 Q It's under Exelon. But I don't see
21 Exelon Utilities on this chart. Could you show
22 me, pre-merger, where does Exelon Utilities

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1 reside?

2 A This chart is a legal structure, not an
3 organizational structure. Exelon Utilities is in
4 Exelon Business Services, which is that central
5 thing there, EBSC.

6 Q So if I was drawing it in, I would draw
7 it in in that box, in that circle?

8 A That would be the legal structure that I
9 and the approximately 50 people that I mentioned
10 reside in.

11 Q Okay. And again, I'm going to ask you
12 the same question on the post-merger organization.
13 Where it says -- the round circle -- excuse me.
14 The oval circle under Exelon Corporation, it says,
15 EBSC, Exelon Business Service Company. And are
16 you telling me that Exelon Utilities will still
17 remain within that oval circle?

18 A I, as CEO of Exelon Utilities, and the
19 approximately 50 people will be in the EBSC box in
20 the post-merger organization.

21 Q Okay. Thank you.

22 Now, I just want to ask you a couple of

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1 questions on this chart just so I don't forget;
2 then I'll get back to my original line of
3 questioning. We talk a lot about -- or you all
4 talk a lot about local control, correct? I've
5 heard you mention a couple of times this morning
6 that that's -- Exelon allows the utilities their
7 local control; that's what you believe in?

8 A That is correct.

9 Q Okay. And then I take a look and I see
10 there's PECO and there's ComEd, and then there's
11 RFH. That's the SPE that was created for BGE, to
12 ring-fence BGE?

13 A That is correct. RF HoldCo.

14 Q Now, if I look to the left of the PECO, I
15 see PHI. And under PHI obviously I see PEPCO,
16 Conectiv, and it reminds me that in the Maryland
17 proceeding I think it was discussed that when you
18 talk about local control for PECO, you mean the
19 PECO utility; for ComEd, you mean ComEd, Chicago;
20 and for BG&E, you mean BGE in Baltimore. Is that
21 correct?

22 A That is correct.

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1 Q But for PEPCO, local control means PHI.
2 Is that still correct?

3 A When I talk about how it will work, Dave
4 Velazquez will be the CEO of PHI. Dave will
5 report to me, and Dave will have oversight of
6 Delmarva Power and Light, ACE and PEPCO.

7 Q Do you remember the discussion in
8 Maryland where it was discussed that what local
9 control meant to PEPCO, Delmarva and ACE was
10 really at the holding company level? It was
11 really at the PHI level? Do you remember those
12 discussions?

13 A I'm not sure. Please refresh me.

14 Q Are you not the right witness to direct
15 those questions to?

16 A Direct the question to me and I'll try,
17 and if not, I'll try to refer you to the
18 appropriate witness.

19 Q Local control for PEPCO in this area did
20 not mean PEPCO D.C.; what it meant was PHI. PHI
21 was considered the local control the same way that
22 PECO, ComEd and BG&E -- they were all on the same

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1 level, so to speak.

2 A When I talk about the local control,
3 that's what I talk about. Dave Velazquez and I
4 talked often, and Dave is looking to use the same
5 model that he has today for his management of the
6 three SEC registrants under him.

7 Q Could you please tell me, how is Exelon
8 Utilities distinguished from Exelon Business
9 Service Company?

10 A Exelon Utilities is an organization in
11 Exelon. I report directly to Chris Crane, who is
12 the CEO and president of Exelon. I have reporting
13 to me the CEOs of each of the companies -- Anne
14 Pramaggiore at ComEd, Craig Adams at PECO, Calvin
15 Butler at BG&E -- as well as some other staff.
16 And the filing here plans to have PHI, Dave
17 Velazquez, as another direct report to me.

18 Q I appreciate your answer, but I'm still
19 trying to distinguish Exelon Utilities from Exelon
20 Business Service Company. Can you distinguish
21 those in some way for me? How are they different?
22 One resides in the other; it's not a legal

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1 structure. Help me understand that.

2 A I work for Exelon Corporation. In Exelon
3 Corporation, if you are a service or a function
4 that spreads over or is allocated to other
5 businesses, you reside in the Exelon Business
6 Service Company organizationally. You have to be
7 in a legal structure; that is the legal structure
8 within Exelon that I reside in, and the Exelon
9 Utility (sic) folks that work for me reside in.

10 Q Kind of like a division?

11 A Division, department, yes. Perfect.

12 Q Okay. Thank you.

13 Now, please reference your direct
14 testimony at page 4, lines 2 through 4. Not to go
15 over the same area so I don't get reminded from
16 the chairman, but we already established that
17 this -- this morning that your direct testimony at
18 page 4, lines 2 through 4, that the sharing of
19 best practices is critical to realizing the
20 benefits expected from the merger. So you agree
21 with that, correct?

22 A That's correct.

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1 Q Okay. So -- but my question is, when you
2 reference the sharing of best practices, am I
3 correct that you're focusing on the sharing of
4 best practices between the Exelon operating
5 utilities and the PHI utilities, and not more
6 general sharing of best practices within the
7 electric industry?

8 A We're doing both. What I've found early
9 in my tenure is if we could just get the three
10 companies to perform at the highest level of the
11 three in each area, we could make significant
12 improvements in performance. As we grow, we have
13 been reaching outside of ourselves, meaning the
14 three, to the industry, and in some areas outside
15 of the industry relative to folks that perform
16 higher in other industries.

17 Q Have the joint applicants presented any
18 information regarding the cost savings and/or
19 reliability improvements that PHI utilities could
20 be expected to achieve by sharing best practices
21 either among themselves or with other non-PHI
22 utilities in the absence of the merger?

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1 A The joint applicants have, in its
2 commitments, committed to reliability levels in
3 both SAIFI and SAIDI and the best practice, and
4 the management model approach that we use will be
5 some of the critical methods to getting there.

6 Q So you're saying you have by your
7 commitment in regard to reliability, but have you
8 presented any information regarding the cost
9 savings that could be expected to be achieved by
10 PHI as a result of your sharing of best practices?

11 A No, we have not.

12 Q Mr. O'Brien, on page 2 of your direct
13 testimony, line 15, you testify that you are
14 chairman of the board of directors of the Electric
15 Power Research Institute, EPRI. How long have you
16 been involved in EPRI's activities?

17 A I've been involved with EPRI for quite a
18 few years now. I'm probably one of the longest
19 serving directors, because I picked up at the
20 beginning of someone else's term and then did my
21 own term. I'd have to go back and check. It's
22 probably somewhere in the '07 or '8 time frame

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1 that I went on the EPRI board. But we could get
2 that actual date.

3 Q Close enough. Does your experience with
4 respect to sharing of best practices include your
5 experience at EPRI?

6 A Yes. I mean, I think you can learn from
7 everybody, whether it's, you know, my EPRI
8 involvement, my EEI involvement, my chamber
9 involvement in Philadelphia. I and we try to
10 learn from anybody that we can and improve.

11 Q Can I assume that you're generally
12 familiar with the purpose, vision and guiding
13 principles of EPRI?

14 A I know I've seen them, but if you ask me
15 to recite them right now, I'm not sure I could
16 recite them.

17 Q Well, I'm going to show you an exhibit in
18 a minute. But am I correct that at least a
19 portion of the work of EPRI has involved the
20 identification and sharing of best practices for
21 various elements of electric utility operations?

22 A Yes, that would be accurate.

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1 Q Now, could you please turn to what's been
2 preliminarily identified as AOBA 65.

3 MS. FRANCIS: Your Honor, while the
4 witness is looking for it, this is a page from the
5 EPRI website titled, Our business. I'd like to
6 have it marked for the record as AOBA 33.

7 CHAIRMAN KANE: So marked.

8 (AOBA Cross Exhibit Number 33 was marked
9 for identification.)

10 BY MS. FRANCIS:

11 Q Do you want to just take a moment to look
12 at this document, Mr. O'Brien, and tell me if it
13 looks familiar to you? And I can give you a hint.
14 You and I discussed it in the Maryland merger
15 proceeding.

16 A It's looks very similar to a document I
17 saw in Maryland.

18 Q Okay. Would you accept that this is a
19 page from the EPRI website?

20 A Yes, I would.

21 Q In the first sentence of this page, would
22 you agree that it indicated that EPRI conducts,

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1 quote, research, development and demonstration
2 relating to the generation, delivery and use of
3 electricity for the benefit of the public? Is
4 that correct?

5 A That's correct.

6 Q When this statement says that EPRI's work
7 is for the benefit of the public, does that mean
8 that the result of EPRI's work are generally
9 available to the public or that the benefits of
10 its work are made available to the public only
11 through the activities of member utilities?

12 A The members have certain rights to the
13 research, and some of the research is available
14 publicly. I don't know how to draw the line of,
15 you know, what goes where, but there are members'
16 rights. The members that fund research have
17 certain rights to the material.

18 Q And a little further down on this
19 one-page exhibit, under the subheading Strategic
20 direction -- do you see that?

21 A I do.

22 Q And under that is a mission statement.

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1 Does that -- does the mission of EPRI address
2 global collaboration?

3 A It does.

4 Q Can I conclude from the content of this
5 page and from your experience with EPRI that
6 collaboration and sharing of best practices is a
7 key element of EPRI's activities in the industry
8 in general?

9 A Yes, it is.

10 Q Is Exelon's sharing of best practices
11 limited to sharing with other Exelon utilities or
12 does Exelon often share best practices with other
13 non-Exelon utilities?

14 A I'm often called by others in the
15 industry, and they would say, we want to see what
16 you're doing in safety, given your significant
17 performance. I would always entertain, you know,
18 visits from anybody, provided it's not so onerous
19 that it takes folks off their mission of
20 performing their job. But we often have folks
21 come to visit us. We often go to visit other
22 folks. If we hear they're doing something good,

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1 we go there.

2 Q At page 9 and 10 of your direct
3 testimony, you present a discussion of the Exelon
4 management model that you believe will provide
5 considerable benefits to the PHI utilities; is
6 that correct?

7 A That is correct.

8 Q Am I correct that the Exelon management
9 model in and of itself is considered a best
10 practice?

11 A I don't know if it's a best practice. I
12 think it's a pretty good practice.

13 Q It's a serious --

14 CHAIRMAN KANE: We're not picking you up
15 on the mic, Ms. Francis.

16 MS. FRANCIS: That figures.

17 How is this? Good?

18 CHAIRMAN KANE: Very good.

19 BY MS. FRANCIS:

20 Q It's a serious question. When you're
21 talking about best practices, is the fact that
22 you've developed this Exelon management model --

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1 do you consider that a best practice?

2 A Yes. My only hesitance is -- I hesitate
3 to ever say you're the best, because the folks
4 that say they're the best are probably heading for
5 something else.

6 We're working every day to figure out the
7 best way to do it. Is it the best in the industry
8 or the best in the world? I don't know. But
9 we're trying to figure out how to get there.

10 Q Is the Exelon management model considered
11 a proprietary management tool?

12 A I would guess so. I'd have to ask my
13 lawyers, but I would guess so.

14 Q Does that mean that Exelon does not share
15 the Exelon management model with other non-Exelon
16 utilities or does not share that model with
17 non-Exelon utilities without direct compensation?

18 A It really depends to the degree. If
19 someone called me and said, well, what are you
20 doing, how are you running your company, and it
21 was another utility, I would say, come on in,
22 let's talk about it. I'll talk about what we do

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1 and how we do it.

2 Would I give him or her every procedure
3 and every metric and everything? No. Certainly
4 we'll talk about the concepts. I would hope they
5 would learn from me. I hope that I would learn
6 from them.

7 Q Do other utility holding companies that
8 have multiple utility operating companies also
9 maintain management models?

10 A I don't know.

11 Q Am I correct that there are a number of
12 other utility holding companies that have multiple
13 operating utilities in their corporate families?

14 A That is correct.

15 Q Am I correct that the southern companies,
16 American Electric Power, National Grid,
17 FirstEnergy, Xcel Energy, are but a few examples
18 of utility holding companies that have multiple
19 operating utilities under their corporate
20 umbrellas?

21 A That would be correct.

22 Q Could you tell me, what efforts has

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1 Exelon made to compare its management model with
2 the management models used by other utility
3 holding companies?

4 A We benchmark against, I think, almost
5 every company that you named there. I'd have to
6 recite through to make sure. So we do benchmark
7 against all of them. We look for where folks are
8 good performers and we go visit them, as
9 appropriate.

10 But I don't know that we've ever had a
11 benchmarking process or visit to say, what's your
12 model look like?

13 Q Are there other organizations within the
14 industry, such as consulting firms, that also
15 offer either their own utility management models
16 or guidance in the development of utility
17 management models?

18 A I found that you can buy almost anything
19 from a consultant.

20 Q So the answer to my question is yes?

21 A Yes.

22 Q I like that answer. Am I correct that

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1 there is nothing in the information other than
2 your representations and those of other Exelon
3 witness -- and those other Exelon witnesses have
4 presented in this proceeding from which this
5 Commission can identify the best practices that
6 Exelon brings to PHI that the PHI utilities could
7 not be expected to realize in the absence of the
8 merger?

9 A PHI could benchmark and figure out
10 practices for themselves. That is correct.

11 Q Could have its own management model,
12 correct?

13 A It could have its own management model.
14 It's not the management model that makes the
15 difference. It's the execution.

16 Q Now, please turn to your rebuttal
17 testimony at page 14. I'm sorry. Let's start on
18 page 13. On those pages you discuss the alignment
19 of PHI's current management role relating to the
20 PHI utilities and the management of BGE, ComEd and
21 PEPCO.

22 Other than the fact that both PHI and

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1 Exelon presently oversee the operations of three
2 regulated utilities, and Exelon's management of
3 BGE, ComEd and PECO, that (sic) leads you and
4 Mr. Rigby to assert that there is an alignment of
5 the management of those entities?

6 A That's what this says.

7 Q Why don't you read for yourself,
8 Mr. O'Brien, from the bottom of page 13, the last
9 two lines, through the next paragraph on page 14
10 to help refresh your recollection. I'm mostly
11 focused on the lines on page 14, lines 1 through
12 4.

13 A Sorry. You said 1 through 4?

14 Q I said lines 1 through 4. Do you see
15 where it says, PHI currently plays an important
16 role in the overall management of PEPCO and, in
17 that role, generally aligns with the management of
18 BGE, ComEd and PECO in the current Exelon
19 management structure?

20 A I do see that, yes.

21 Q Okay. Now, other than the fact that you
22 both have three utilities within your companies,

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1 what my question is going to -- what leads you to
2 assert that there's an alignment of management of
3 those entities?

4 A Great question. Thank you. What is
5 meant by this comment here is when I look at PECO,
6 BGE, ComEd, and then PHI, and how they're
7 organized and how they drive performance, PHI is
8 really going to be the fourth utility and the
9 fourth operation, and that's the alignment that
10 I'm alluding to here.

11 Q In that testimony, are you also saying
12 that PHI, like Exelon, endeavors to identify and
13 deploy best practices wherever possible?

14 A I imagine they do, yes.

15 Q You've discussed the Exelon management
16 model. Can you tell me, how does that differ from
17 the current PHI management model?

18 A I have not seen or reviewed a PHI
19 management model.

20 Q Our experience has been that a growing
21 portion of the operations and management of the
22 PHI companies has been taken over by the PHI

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1 service company. If Exelon takes over ownership
2 of the PHI utilities, should we expect that trend
3 to continue?

4 In other words, will either the PHI
5 service company or the Exelon Business Service
6 Company, or both, be expected to assume an
7 increased role in the performance of operating and
8 administrative functions of the PHI utilities?

9 A Dave Velazquez will be the CEO of PHI.
10 Dave will decide what the management systems and
11 structures look like within PHI.

12 Q Are you saying that you don't know the
13 answer to my question because Dave Velazquez
14 hasn't made that determination yet?

15 A My comment was I don't know whether he's
16 made it or not. It is Dave's decision.

17 Q Could you please turn to what -- the
18 packet of data requests that I marked previously.
19 And just for ease of reference, if you would turn
20 first to what has been pre -- what was premarked
21 as AOBA Exhibit 28.

22 MS. FRANCIS: Your Honor, now that is

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1 marked for the record as AOBA 25.

2 CHAIRMAN KANE: Yes.

3 THE WITNESS: I am on Exhibit 28.

4 BY MS. FRANCIS:

5 Q Premarked Exhibit 28. It's a one-page
6 exhibit, AOBA's data request 1-17 where you're the
7 sponsor. Are we on the same one?

8 A Question number 17?

9 Q Correct.

10 A I'm there.

11 Q Okay. Do you want to just take a moment
12 to read it?

13 A I have.

14 Q Will you make decisions regarding the
15 placement of senior management personnel for PHI?

16 A Dave Velazquez will make those decisions.

17 Q I'm trying to recall -- yesterday there
18 were some questions regarding the golden parachute
19 compensation. I believe I saw you yesterday.
20 Were you in the hearing room during that period of
21 time?

22 A I was in the hearing room after lunch.

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1 Q Tell me if you -- if you heard this
2 conversation. We asked about the executives who
3 were listed in the SEC form under the golden
4 parachute compensation. And we asked, and I
5 asked, were all those executives going to be
6 terminated and, if so, who were their replacements
7 going to be, or were they going to be kept on?

8 And I believe those questions were
9 deferred to you in terms of the senior management
10 of PHI. And they said you would be making those
11 decisions. Is that correct? Did you hear that
12 conversation?

13 A I did hear that conversation. Dave
14 Velazquez will be making the decision for all of
15 the PHI and the subsidiaries' management. So that
16 will be Dave's decision. Dave and I will
17 certainly caucus on it, but it's Dave's decision.

18 Q So that answer was incorrect yesterday?

19 A It was incorrect.

20 Q Okay. Thank you for correcting it.

21 A Just one clarification. In talking with
22 Dave, no decisions have been made on anything

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1 other than the four people mentioned in question
2 number 17. They are the only decisions that have
3 been made thus far.

4 Q Is there any certainty in how long the
5 people mentioned in this response will remain in
6 the positions indicated?

7 A They were selected for the positions.
8 You know, I hope they're there for a long time.

9 Q But there aren't any certainties, are
10 there?

11 A They've been offered no certainties.

12 Q Mr. O'Brien, Mr. Velazquez has been
13 designated by PHI as the replacement for Mr. Rigby
14 as CEO of PHI. Do you believe that Mr. Velazquez
15 is an appropriate replacement for Mr. Rigby, given
16 that Mr. Velazquez has never appeared before this
17 Commission and this Commission has limited or no
18 familiarity with Mr. Velazquez and his
19 capabilities?

20 A I think Dave is a wonderful selection,
21 and I think this Commission will be very happy
22 with him.

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1 Q In your position in Exelon, if this
2 acquisition is approved, do you have the authority
3 to replace Mr. Velazquez or other members of
4 senior management?

5 A The technical action would happen at the
6 PHI board for removal or naming a CEO. So that's
7 where it would happen. I'm sure, if we ever got
8 to that point, my input would be an important part
9 of that discussion.

10 Q It is up to the PHI board, in its sole
11 discretion, to either keep Mr. Velazquez or
12 replace Mr. Velazquez with no other approvals
13 necessary?

14 A I believe the PHI board, one, would have
15 a discussion with myself, two, would have a
16 discussion with Chris Crane, and would also
17 probably have a discussion with the governance
18 committee of Exelon.

19 Q Do you see --

20 A The action is taken at the PHI board,
21 though.

22 Q You do see a difference between having

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1 discussions with and having final authority to
2 make decisions?

3 A I do. That's why I clarified at the end
4 the action is taken with the PHI board.

5 Q Do you believe, Mr. O'Brien, that it's
6 important for this Commission to know and be
7 comfortable with whoever will be the new CEO of
8 PHI?

9 A Oh, absolutely.

10 Q As I was reviewing my cross last night, I
11 was thinking back to a recent event that I heard
12 in North Carolina where the person who was touted
13 to be the new CEO of the merged company was
14 replaced within a week or a few days of the final
15 approval of the Commission. Could that happen
16 here at PHI?

17 A Look, we've selected Dave. Dave has been
18 around the industry for a long time. He has a
19 great reputation. And I fully expect that Dave
20 will be very, very successful here.

21 Q I just want to follow up with a few last
22 questions on OPC this morning, and I think it

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1 would be helpful if you focused on your
2 commitments in (4A)-2. I'm looking at page 6,
3 commitment 38.

4 A I'm on (4A)-2. Can you please direct me
5 to the page or commitment.

6 Q It's page 6 of 17, and it's paragraph 38,
7 if you want to just take a moment to review it.
8 I'm sure you've seen it many times.

9 A Okay. I have it.

10 Q As OPC is, I am equally concerned that
11 this says now that the PHI board will have a board
12 of seven or more people, three of which must be
13 independent.

14 Could you tell me, why does it say seven
15 or more?

16 A We think seven is a good minimal size.
17 It could be more depending on, you know, who's
18 available, what the issues are, you know, what
19 needs to be done. I think that's the logic to it.

20 Q Well, I guess what --

21 A We found that that works -- having at
22 least seven works very well in our other three

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1 subsidiaries also.

2 Q I was focused more on the "or more"
3 portion. What I'm getting to is, if the board was
4 expanded to, let's just say, nine and there are
5 only three independent directors required,
6 obviously that dilutes the independents -- the
7 independent directors' say on the board. Would
8 you agree with that? It dilutes their influence.

9 A I do, and if the additional ones were
10 independent, it would make it greater.

11 Q But there's no commitment to make the
12 additional board members independent, is there?

13 A There's no -- either way, it doesn't say
14 what additional members would be.

15 Q Doesn't it really defeat the purpose of
16 specifying three independent directors to have the
17 commitment written in a way that allows the size
18 of the board to be increased from seven?

19 A It does say seven or more, and it says at
20 least three independent.

21 Q But you're not answering my question. I
22 know what it says.

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1 Doesn't that defeat the purpose of having
2 independent directors if the size of the board can
3 be increased without also a requirement that the
4 number of independent directors increase?

5 A I don't think so, because the additional
6 directors could be independent or not.

7 Q But there's no requirement that they be
8 independent. So my question is very specific:
9 Doesn't it dilute the influence of the independent
10 directors by having a commitment written that can
11 allow the increase in the size of the board
12 without a commensurate commitment saying that some
13 of those additional board members must be
14 independent?

15 A I mean, I think the commitment is what it
16 is. It says the board will be seven or more. If
17 for some reason it needs to -- would be a number
18 more than seven, even if it's seven, at least
19 three of them will be independent.

20 Q Could you please tell me, how are the
21 independent directors selected?

22 A The independent directors initially would

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1 be appointed by the Exelon board of directors, as
2 Exelon is the shareholder. I think there would be
3 a process of gathering names of qualified and
4 competent folks from the different service
5 territories, as this talks about, and the Exelon
6 directors from there deciding and making the
7 initial appointments.

8 Q So the independent directors will be
9 appointed by the Exelon board, correct?

10 A That is correct. They're being appointed
11 by the shareholder. In that case, the shareholder
12 is Exelon.

13 Q Is there any assurance of diversity on
14 the PHI board?

15 A I don't believe there's anything written
16 here. If you look at the track record of our
17 other companies, you would see a great commitment
18 to diversity.

19 Q Now, I'd like to focus on the part where
20 it says, fourth line down, PHI's seven-member
21 board of directors will include --

22 A I'm sorry. Can you tell me where you

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1 are?

2 Q I'm still on paragraph 38.

3 A Paragraph 38?

4 Q Yeah, that's where I was before. Same
5 place.

6 A Okay.

7 Q I'm just going four lines down. It says,
8 PHI's seven-member board of directors will include
9 three outside directors from the service
10 territories of PHI's three utility subsidiaries.

11 Focused on the three utility service
12 territories. Does that mean that either PEPCO
13 District of Columbia or PEPCO Maryland may not be
14 represented on the PHI board?

15 A It means that there will be one director
16 from PEPCO. That could be either Maryland or D.C.

17 Q Right. So both will not have
18 representation on the PHI board?

19 A It was intended to have representation
20 from each of the registrants.

21 Q I'm just checking. And I think I'm done.

22 MS. FRANCIS: Your Honor, that's all I

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1 have. Thank you very much.

2 CHAIRMAN KANE: Thank you.

3 I think we will take this opportunity to
4 take a lunch break. We will come back at about
5 2:15.

6 (Whereupon, at 1:08 p.m., a lunch recess
7 was taken.)

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1 AFTERNOON SESSION

2 (2:21 p.m.)

3 CHAIRMAN KANE: Back on the record. It
4 is 2:21 p.m.

5 D.C. government.

6 MR. COYLE: Thank you, Chair Kane.

7 CROSS-EXAMINATION

8 BY MR. COYLE:

9 Q Good afternoon, Mr. O'Brien.

10 A Afternoon.

11 Q My name is John Coyle. I represent the
12 government of the District of Columbia in this
13 proceeding. I have a few questions for you this
14 afternoon. Would you turn first, please, to your
15 direct testimony at page 7, lines 2 through 7.2.

16 A Direct testimony, page 7, lines --

17 Q Lines 2 through 7.2.

18 A Okay.

19 Q All right. And then if I could prevail
20 on Ms. Travers perhaps to hand you also Joint
21 Parties' Exhibit 1, the joint applicants' index of
22 revisions, and ask you to go to page 29 of that

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1 document, and the first row. The index revisions,
2 page 29, first row.

3 A Okay.

4 Q With me, Mr. O'Brien?

5 A I am.

6 Q All right. I think we can do this all
7 from the second document, but I wanted to make
8 sure that you had both of them in front of you.
9 The original text of your testimony on this
10 subject said, Currently, Exelon anticipates a
11 seven-member board, et cetera.

12 Do you see where I am? The column
13 headed, Original text in --

14 A I do, yes.

15 Q -- the first row.

16 And that was the original text to your
17 direct testimony, was it not?

18 A That is correct.

19 Q Okay. And then if you look one column to
20 the right, the column headed, Revised text, you'll
21 see the current text that's reflected in lines 2
22 through 7.2 of your testimony.

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1 A Okay.

2 Q And I wanted to go through some of the
3 changes and ask you how they came about, if I
4 could. All right?

5 A Okay.

6 Q First of all, how did the change from a
7 seven-member board to a board of directors
8 consisting of seven or more people -- where did
9 that come from?

10 A I think that was just a clarification.

11 Q Did you draft both rounds of -- of this
12 direct testimony, Mr. O'Brien, or did you have
13 some help?

14 A I had help.

15 Q And who helped you, if I could ask?

16 A Counsel.

17 Q Okay. Do you recall which counsel?

18 A Tony Gay, primarily.

19 Q Did you have an understanding, when you
20 were modifying this aspect of your testimony, why
21 it was being modified?

22 A Just that it was a clarification.

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1 Q Okay. Now, let me ask you about the
2 addition of the requirement that at least three
3 members of the PHI board must be independent as
4 defined by the New York Stock Exchange.

5 That wasn't part of your direct testimony
6 at this point as originally filed, correct?

7 A No, it was not.

8 Q And where did that come from, again, that
9 change?

10 A I believe there was interest from the
11 parties as to what was the definition of
12 independent. So this was added to clarify that.

13 Q All right. Did you yourself research the
14 New York Stock Exchange rules to find the
15 definition of independent or did somebody do that
16 for you?

17 A Counsel did that.

18 Q And then could you explain to me also the
19 change in the composition of the board?

20 Originally, we were going to have a seven-member
21 board with three outside members from the PEPCO,
22 ACE and Delmarva Power service areas, and four

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1 members who would be some combination of officers
2 or directors of Exelon and officers or directors
3 of one or more of PHI or the PHI companies in your
4 original testimony, correct?

5 A That is correct.

6 Q And then that gets changed to three
7 independent directors, and of the four remaining
8 directors, at least one shall be selected from
9 officers or employees of PHI, and then, a new
10 sentence, PHI's seven-member board of directors
11 will include three outside directors. And that
12 the board of directors of PHI -- sorry, the PHI
13 board will -- let me stop there.

14 PHI's seven-member board will include
15 three outside directors of the service territory.
16 What is that change intended to convey?

17 A I think the change was meant for
18 clarification to be responsive to feedback that
19 our attorneys referenced from other parties in the
20 case.

21 Q And finally, there was no reference in
22 your original -- in your testimony as originally

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1 formulated to the PHI board selecting the board of
2 directors of PEPCO and the PEPCO board choosing
3 PEPCO's officers, correct?

4 A That is correct.

5 Q And why did that change come about?

6 A Again, I think that was clarification to
7 be responsive to the other intervenors.

8 Q All right. Now, again, just for purposes
9 of clarity, Mr. O'Brien, was it you initiating
10 those changes based on your review of testimony by
11 intervenors or other parties in the case?

12 A It was counsel and my joint discussion,
13 review and decision.

14 Q Okay. All right. Thank you. Let me ask
15 you now, Mr. O'Brien, to go to page 13, line 3 of
16 your direct testimony, and read quietly to
17 yourself from 13-3 over to page 16, line 14, and
18 let me know when you're done.

19 A I have read up to line 14 on page 16.

20 Q Okay. Great. Now I'd like to ask you to
21 take a look at what's been marked for
22 identification as Exhibit DCG 34, which is joint

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1 applicants' response to Office of People's Counsel
2 data request number 18-17.

3 A I have it.

4 Q Would you read that response quietly to
5 yourself?

6 A I read it.

7 Q You were one of the sponsors of that
8 response, correct, you and Dr. Tierney?

9 A Yes.

10 Q Is that response still accurate?

11 A I believe so.

12 Q Thank you. Let me ask you now to turn to
13 page 14, lines 4 through 17 of your direct.

14 A Okay.

15 Q I wanted to talk to you a little bit
16 about lock-out/tag-out practices. All right. Is
17 it correct that the basic requirement for
18 lock-out/tag-out is a regulation of the Federal
19 Occupational Safety and Health Administration?

20 A There are requirements from OSHA for sure
21 that this comply with.

22 Q Okay. And if I gave you a citation to

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1 the regulation, are you familiar with that?

2 A Probably not.

3 Q Okay. Are you familiar with what the
4 OSHA standard requires generally?

5 A Not in any great detail.

6 Q Okay. Would you agree with me, to the
7 best of your understanding, the OSHA
8 lock-out/tag-out standard is fairly prescriptive
9 about lock-out/tag-out procedures?

10 A I've never reviewed it.

11 Q Okay. Do I correctly understand Exelon's
12 claim in this case to be that, in addition to
13 compliance with OSHA's regulatory requirements,
14 Exelon's lock-out/tag-out procedures have some
15 features that make them especially effective?

16 A Yes.

17 Q My question to you is this: Do you know
18 whether, absent the merger, the Occupational
19 Safety and Health Administration's
20 lock-out/tag-out regulations would permit a
21 stand-alone PEPCO or stand-alone other PHI
22 operating utilities to enter into agreement with

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1 PECO and BG&E for the use of a common set of
2 lock-out/tag-out practices?

3 A I believe so.

4 Q So you wouldn't need a merger to do that?

5 A The one big advantage here, with all of
6 the folks on the same lock-out/tag-out on the same
7 computer system with the same qualifications, that
8 prequalifies them for working on each other's
9 systems in an emergency. So it gives us an
10 unbelievable ability, in a storm, to move crews
11 from any of our registrants to any of our other
12 registrants, have that crew hold a permit with no
13 additional supervision or help there.

14 So we could dispatch crews from any one
15 service center in a big storm to any other service
16 center and put them right to work and really
17 streamline the process significantly.

18 Q Sure. But you could also implement that
19 process by agreement across a fairly wide swath of
20 utilities without a merger, correct?

21 A I mean, I guess we could start
22 approaching other utilities and negotiate, and

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1 there may be some legal hurdles; there may not.

2 But as one company on one lock-out/tag-out in a
3 storm, the ability to scale is significant.

4 Q Okay. Thank you.

5 Let me ask you now to turn to page 17,
6 lines 3 to 13.

7 A Okay.

8 Q We were talking yesterday with Mr. Rigby
9 about the commitment Mr. Rigby made to IBEW
10 Local 1900 in negotiating their last collective
11 bargaining agreement extension. Were you in the
12 hearing room for that?

13 A I may not have been in the hearing room.
14 I did see or hear the discussions, yes.

15 Q I had two questions for you on the
16 subject. First, could you explain to the
17 Commissioners the usual timeline for the
18 progression from helper to apprentice linemen and
19 from apprentice lineman to journeyman line worker,
20 how that process works?

21 A That progression is a little different in
22 every company. There's a little bit of legacy

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1 that goes along with it. The long and short of it
2 is it really takes probably anywhere from, you
3 know -- anywhere around five years to be really
4 fully competent at doing first-class line work.

5 Every progression is a little different
6 in every company. Five years would be a good
7 proxy as to what it takes.

8 Q So that would be, like, five years from
9 helper to journeyman line worker, yeah?

10 A That would be five years from -- you
11 know, it's not an exact science. There's -- a
12 progression is one thing. And there is, when
13 could you really do first-class work? You know,
14 in my book, I would say that's about five years.

15 Q Okay. I just want to make sure that you
16 and I are on the same page. I don't mean to
17 belabor it. That's the last time I'll go through
18 it.

19 There is a progression in positions,
20 correct, from helper to apprentice to journeyman;
21 is that usually followed in the industry?

22 A I'm not familiar with what PHI is. In

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1 the industry, there is normally an apprenticeship
2 that moves from helper through different classes
3 of lineman, ultimately to A or first-class.

4 Q Okay. And where does a journeyman line
5 worker fit in that progression?

6 A You know, different people call it -- you
7 know, we call it line mechanic, so it would be
8 line mechanic A in Exelon vernacular.

9 Q Okay. All right. And is that the
10 highest skill level for a line worker, line
11 mechanic A?

12 A Yeah, generally. Some companies have
13 different terminology for trouble mechanics and
14 others, but yes.

15 Q Okay. All right. So it takes about five
16 years of progression through the ranks to get to
17 line mechanic A in Exelon in your experience?

18 A I actually think the progression is
19 probably closer to 48 months. I thought the
20 question was, when are you really fully
21 competent --

22 Q Got you.

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1 A -- and folks by their fifth year are very
2 able to do --

3 Q All right.

4 A -- any level of line work.

5 Q Does that progression apply with respect
6 to other comparable skilled positions in the
7 utility workforce? I'm thinking, for example,
8 substation technicians, positions like that?

9 A Yes.

10 Q Second question is, is it true that,
11 generally speaking -- and this goes back to
12 something Mr. Rigby was talking about yesterday --
13 generally speaking, expenditures on contractors
14 for construction work are treated as operations
15 and maintenance expenses and are immediately
16 recoverable in rates?

17 A Say the question one more time, please.

18 Q Sure. Expenditures on contractors for
19 construction work are generally treated as O&M,
20 operations and maintenance expenditures and are
21 generally immediately recoverable in rates?

22 A That is not correct. It really depends

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1 on the work that they are doing. And they would
2 be capitalized or expensed based on the work that
3 they're doing.

4 Q All right. So if I'm understanding you
5 correctly, there isn't a difference in terms of
6 which account the cost goes into based on whether
7 the work is done by a contractor or whether it's
8 done by in-house construction personnel; am I
9 right about that?

10 A In Exelon accounting, it would be a
11 different resource, but it would be the same
12 project number and ultimate account.

13 Q I mean, ultimately, it all goes into
14 account 107 and then gets parceled out to the
15 appropriate --

16 A I'm not sure what account 107 is, but
17 yes.

18 Q Fair enough. Thank you.

19 Now, if the hiring -- withdrawn.

20 Do you know how long -- do you have an
21 idea how long it would take for a post-merger PHI
22 to recruit, train and fully absorb 102 bargaining

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1 unit positions into the Local 1900 bargaining
2 unit?

3 A I do not.

4 Q Do you know whether 102 positions is the
5 current -- I'll use the expression need or deficit
6 in terms of the workforce associated with that
7 bargaining unit?

8 A I did not see the analysis for the
9 justification of 102.

10 Q Do you know approximately how many
11 skilled positions are currently within the
12 Local 1900 bargaining unit?

13 A Not off the top of my head.

14 Q Okay. Do you have a ballpark?

15 A No.

16 Q Okay. Let me ask you now to turn to your
17 supplemental direct, Joint Applicants' (2C), and
18 I'd like you to begin at page 3, line 4, and read
19 through page 6, line 21 to yourself and let me
20 know when you're ready.

21 A I have read to line 21 on page 6.

22 Q Okay. Great. Now, for each of the

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1 Exelon programs that you discuss in that segment
2 of your testimony, do you know whether or not
3 PEPCO today has an analogous program?

4 A I do not know.

5 Q Looking at page 6, line 22, over to
6 page 9, line 13 -- and, again, I'll ask you to
7 read that quietly to yourself before I ask a
8 question.

9 A I have completed reading page 9.

10 Q Okay. Mr. O'Brien, as you -- as you sit
11 there today, can you tell me, do you know whether
12 PEPCO does not have any one of the outreach
13 programs that you identify in the portion of your
14 testimony that you just read?

15 A I do not know what all of the outreach
16 programs -- I do know that, as we pulled the
17 companies together and shared the different
18 approaches to outreach, the companies have each
19 learned and refined their program to make them
20 even better.

21 Q But as you sit there today, you don't
22 know that PEPCO is not already doing all of this.

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1 Buy "all of this," I mean the programs you discuss
2 at pages 6, line --

3 A I do not know -- I do not know what the
4 PEPCO program is.

5 Q Moving on to page 11, lines 7 through 12,
6 and the customer investment fund, are you familiar
7 with what's been called the reverse breakup fee
8 feature of the merger agreement in this case?

9 A Not in any great depth.

10 Q Are you aware that, under a provision of
11 the merger agreement, if the merger does not
12 proceed due to a failure to obtain regulatory
13 approvals or because of the imposition of
14 regulatory conditions that Exelon considers
15 burdensome, PEPCO Holdings will keep the
16 \$180 million that Exelon paid for 18,000 shares of
17 PHI preferred stock?

18 A That sounds correct.

19 Q Okay. Are you aware that the merger
20 agreement also provides that in the event of a
21 failure to obtain regulatory approval or the
22 imposition of burdensome conditions to approval,

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1 that Exelon will reimburse PHI for up to
2 \$40 million in costs associated with the merger?

3 A I'm assuming you're reading the
4 agreement. So if that's in the agreement, yes.

5 Q Okay. Mr. Rigby wasn't sure about this
6 yesterday, and I was wondering whether your
7 investigations into the merger had given you any
8 insight into this question. Do you know what
9 proportion -- what is the proportion of investment
10 in PEPCO's Washington, D.C. rate base which is
11 approximately a net rate base of \$1.366 billion --
12 what the proportion of that rate base is to the
13 total net rate base for all of the PHI operating
14 companies?

15 A I do not know off the top of my head.

16 Q Okay. Would you -- well, let's see.
17 Looking at your supplemental direct, if you could
18 read from page 11, line 19, through page 12,
19 line 8 quietly to yourself.

20 A Say that again, please.

21 Q Sorry. Sure. Page 11, line 19, through
22 page 12, line 8.

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1 A I've read that.

2 Q Okay. It is correct, is it not,
3 Mr. O'Brien, that you have not performed and are
4 not sponsoring any analysis of claimed merger
5 benefits?

6 A That is correct.

7 Q You're relying on Dr. Tierney's analysis?

8 A That is correct.

9 Q Okay. Would you just take a look,
10 please, for a second at what's been marked for
11 identification as Exhibit DCG 39, which is the
12 joint applicants' response to data request
13 OPC 5-39.

14 A I've reviewed it.

15 Q Okay. And you are the sponsor of that
16 data request response, correct?

17 A That is correct.

18 Q That response was correct when written?

19 A I believe so.

20 Q Is it still correct today?

21 A I believe so.

22 Q Thank you. Let me ask you now to go to

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1 your rebuttal testimony, if I could.

2 A Okay.

3 Q I particularly wanted to talk about
4 Exhibit (3C)-5.

5 A I have it.

6 Q Okay. Let me ask, as long as Ms. Travers
7 is up, if she could also provide you with a copy
8 of Joint Applicants' Exhibit (4A)-2, which is
9 the -- the sort of the master list of the joint
10 applicants' merger commitments. In fact, ask you
11 to turn to page 13 of Exhibit (4A)-2 and just hold
12 it up next to Exhibit (3C)-5 to your rebuttal
13 testimony.

14 A Okay.

15 Q Okay. Is Exhibit (3C)-5 to your rebuttal
16 testimony the same table that appears as table 2
17 at page 13 of Exhibit (4A)-2?

18 A To the best of my knowledge, it is.

19 Q Okay. I thought so too. I just wanted
20 to confirm that through you, if I could.

21 Now, is your Exhibit (3C)-5 intended to
22 convey that a post-merger PHI board will have

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1 unlimited authority to issue debt on behalf of PHI
2 and its operating facilities?

3 A Can you point me to where you are on
4 the --

5 Q I certainly will. Let's -- first of all,
6 if you go down the line -- or the column, rather,
7 on the left-hand side -- let's see. You've got
8 transaction type, and then, one, two, three, four,
9 five, six, seven, eight, nine -- the tenth item in
10 that column says, Issue/redeem debt. Are you with
11 me?

12 A Yes, I am.

13 Q Okay. And then if you move across the
14 top where it says, Approval threshold -- if you
15 move one, two, three, four, five, six columns to
16 the right, you should see PHI or utility board of
17 directors. Right?

18 A I see it.

19 Q Okay. So if you look at the box which
20 represents the intersection of those two, you see
21 the word "all" written in all capital letters,
22 correct?

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1 A That is correct.

2 Q Okay. So is that intended to convey that
3 the PHI board or -- post-merger, or the board of
4 directors of an individual PHI utility, will have
5 unlimited authority to issue or redeem debt on its
6 own account?

7 A How this works, my understanding is,
8 start from the right side to the left side, put
9 the amount of whatever we're talking about on the
10 left side of the symbol, and that's what the
11 approval is. So doing that, working from right to
12 left, PHI would approve all -- the PHI board would
13 approve all issuance of debt --

14 Q Okay.

15 A -- and any debt from zero to \$200 million
16 would be approved by the Exelon president and CEO.

17 Q Oh, so there would have to be an
18 additional approval in addition to the board?

19 A That is correct.

20 Q I got you. Okay.

21 I'm making an inference here,
22 Mr. O'Brien, but I don't think I'm too far off.

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1 You came to the Exelon organization out of PECO,
2 correct?

3 A The Exelon organization was basically the
4 merger of PECO Energy and Unicom at the time.

5 Q Right. Prior to the merger of PECO and
6 Unicom, you worked for PECO, correct?

7 A That is correct.

8 Q Okay. All right. Does PECO today issue
9 debt on its own?

10 A PECO's delegation of authority would be
11 the same as this is here.

12 Q In other words, if PECO wants to have
13 debt issued, the PECO board makes a recommendation
14 up the chain to Exelon's CEO or, if it's more than
15 \$300 million, to the Exelon board, correct?

16 A That is not correct as I read this.
17 Both -- the PHI board must approve it and, in that
18 case, Mr. Crane, for debt less than 200 million,
19 and it goes as follows.

20 Q Okay. And for debt greater (sic) than or
21 equal to \$300 million, the Exelon board committees
22 have to approve it? Am I reading that correctly?

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1 A Yes.

2 Q And then if it's greater than
3 \$300 million, the Exelon board has to approve it.
4 You have to get all those approvals?

5 A Yes, you do.

6 Q Okay. All right. I was just trying to
7 figure out how to read the chart. Thank you,
8 Mr. O'Brien.

9 Now, let me ask you next to go to
10 page 13, line 21 of your rebuttal, and read from
11 there to yourself over to page 16, line 9.

12 A Can you repeat the numbers?

13 Q Yes. 13, line 21, through 16, line 9.

14 A I read it.

15 Q Okay. Do those structural elements for
16 local control, as you call them, extend to the
17 formulation of positions with respect to proposed
18 legislation?

19 A I think what this is trying to say is
20 that, you know, PHI will operate the same as it
21 does today relative to its subs --

22 Q Right.

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1 A -- and that PHI will be, you know,
2 basically a direct report to me and will, you
3 know, plug into the Exelon families at an
4 equivalent level to ComEd, PECO and BGE.

5 Q Okay. I'm not sure you understood my
6 question, so let me try it again, and then I have
7 a concrete example I'll get into in a minute.

8 But I think it was the Chair yesterday
9 was asking Mr. Rigby about post-merger autonomy of
10 PHI with respect to legislation at the District of
11 Columbia level, for example, whether PHI would be
12 permitted, hypothetically, post-merger, to
13 formulate a position with respect to District of
14 Columbia legislation or whether that position
15 would be formulated by Exelon.

16 A All of those positions are formulated at
17 each of the companies in each of the
18 jurisdictions. For things that may be
19 controversial, we vet that discussion across all,
20 to have the fullest discussion and make sure we
21 have the most robust view of the issue of (sic)
22 possible. But they are all developed locally.

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1 Q Okay. And the same would be true of the
2 company's response to regulatory initiatives?

3 A Can you be more specific?

4 Q Yeah. If the Commission, for example,
5 decided that the electric quality of service
6 standards needed to be tightened down.

7 A My experience is that would all be just a
8 local discussion, and that's it.

9 Q Okay. How about interconnection
10 processes for rooftop solar?

11 A Probably a local discussion.

12 Q How about net metering?

13 A Net metering, as you have talked about
14 with -- or we've talked about with the prior -- we
15 have vetted that across the Exelon companies, as
16 it is a shared thing that they're all looking at.

17 Q So in general, what level of autonomy
18 does Exelon allow its operating utilities with
19 respect to either initiating or responding to
20 legislative or regulatory changes?

21 A I think there's a tremendous amount of
22 autonomy. I think if you asked Anne Pramaggiore

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1 in Chicago, she would say she has great autonomy.
2 If you asked Craig Adams in Pennsylvania or if you
3 asked Calvin Butler in Maryland -- Calvin is
4 hopefully on the stand tomorrow or Monday, and I
5 would encourage you to ask him questions about his
6 autonomy as CEO of BGE.

7 Q All right. Let me ask you to take a look
8 at what's been marked for identification as
9 Exhibit DCG 38. For the record, that is the
10 response to data request OPC 13-28.

11 A Okay.

12 Q Did you participate in the drafting of
13 that response, Mr. O'Brien? It's attributed to
14 the joint applicants, but it covered a lot of the
15 same territory as your testimony did.

16 A I don't recall direct involvement in the
17 drafting of this.

18 Q All right. Would you say that that data
19 request response is an accurate reflection of
20 Exelon's intentions as explained in your
21 testimony?

22 A With a quick read, yes, I would.

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1 Q Now, let me ask you to take a look at
2 what's been marked for identification as Exhibit
3 DCG -- confidential Exhibit DCG 37.

4 MR. COYLE: And I will note prefatory to
5 my examination on this exhibit, that I have
6 discussed it with counsel for the joint
7 applicants, and the same understanding prevails
8 with respect to this as with respect to other
9 confidential exhibits; that is, the exhibit itself
10 will remain confidential, but I'm permitted to
11 examine the witness in public session as to its
12 content.

13 CHAIRMAN KANE: Mr. Lorenzo?

14 MR. LORENZO: That is correct, Your
15 Honor.

16 CHAIRMAN KANE: Thank you.

17 THE WITNESS: Okay.

18 BY MR. COYLE:

19 Q Would you take a look at confidential
20 Exhibit DCG 37, Mr. O'Brien, and tell me, first,
21 are you one of the addressees on that exhibit?

22 A I am.

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1 Q Who is Ken DeFontes?

2 A Ken was the CEO of BGE at the time of
3 this memo.

4 Q All right. And what was Mr. Butler's
5 position at the time of the memo?

6 A Mr. Butler was the senior vice president
7 of external affairs.

8 Q And who is Alexander Nunez?

9 A He is the vice president -- I believe his
10 title is -- governmental affairs.

11 Q Okay. Now, would you take a look briefly
12 through this memo. I want to ask you some
13 questions about it, but I don't want you playing
14 catch-up while I ask them, so just take a moment
15 to familiarize yourself with the document and let
16 me know when you're comfortable proceeding.

17 A Okay.

18 Q Okay. First of all, why were you an
19 addressee of this memo?

20 A I assume Alex wanted to fill me in on the
21 issues.

22 Q Is it or is it not standard operating

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1 procedure, Mr. O'Brien, that with respect to
2 governmental relations activity like that outlined
3 in the memo, that you, as the president, I guess
4 it is, of Exelon Utilities -- what is your title
5 with regard to Exelon Utilities?

6 A Relative to Exelon Utilities, I am the
7 CEO.

8 Q The CEO of Exelon Utilities.

9 Is it standard operating procedure for
10 you to be copied on all sort of big picture
11 governmental affairs communications?

12 A I guess so. I get copied on an awful lot
13 of things. If they're big picture, I'm generally
14 copied on them.

15 Q Okay. And in general, without reference
16 to this specific document, what do you do with
17 that information? Do you approve or disapprove
18 approaches taken to particular legislation?

19 A In this case, I don't even have a lot of
20 recall of the memo. I certainly did not approve
21 it or opine on it. I probably read it at the
22 time.

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1 Q Okay. It is standard operating procedure
2 for you to be made aware of what's happening with
3 governmental relations, initiatives within the
4 Exelon operating companies; is that not correct?

5 A Folks like to make me aware of
6 significant things that they're working on.

7 Q All right. And does it ever happen,
8 Mr. O'Brien, that you will raise matters that come
9 to your attention through this channel of
10 communication -- I mean, governmental affairs
11 communications coming up to you -- do you raise
12 those matters with other members of Exelon
13 executive management?

14 A If there's something in a memo and I
15 realize that, you know, one, two, three of the
16 companies are all wrestling with the same thing,
17 then I might pull folks together to say, well,
18 let's talk through this and understand what would
19 be a prudent approach.

20 Q Okay. Now, the subject of this
21 particular memo is the Maryland legislature's
22 anticipated agenda for its upcoming agenda with

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1 respect to net metering law and what Mr. Nunez
2 categorizes as the subsidization of community
3 energy generation; is that right?

4 A The subject is net energy metering and
5 community energy generation.

6 Q Okay. I was actually reading from the
7 end of the first paragraph. He refers to
8 subsidization there, does he not?

9 A That is the first full sentence. That is
10 correct.

11 Q Okay. And in the second full paragraph,
12 Mr. Nunez outlines BG&E's approach to resisting
13 the passage of such legislation, correct?

14 A Yes, he does.

15 Q What does the expression "minimizing what
16 will be a significant expenditure of political
17 capital" mean?

18 A I think he's alluding to that you have so
19 much goodwill as an organization and, you know,
20 depending on what you're doing, you may whittle
21 that down trying to preserve goodwill.

22 Q So to your understanding, does the

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1 expression "minimizing the expenditure of
2 political capital" mean getting other people to do
3 your work for you in this context?

4 A I read this context as not using up a lot
5 of political capital on this issue.

6 Q I see. Turning to page 2 of the
7 exhibit -- let me just ask you to read page 2
8 quietly to yourself and then I have a few
9 questions about that.

10 A Okay.

11 Q Okay. In the first paragraph, the second
12 sentence, Mr. Nunez says, Once a program very
13 limited in scope, net metering has grown in
14 Maryland to include several types of customers and
15 several generation technologies; the per facility
16 and state-wide capacity parameters of the net
17 energy metering law have also expanded greatly.

18 Was that a subject of concern to Exelon?

19 A I think what is concerning to Exelon in
20 the long run are the tariffs structured in a way
21 so that the value of the grid is properly assigned
22 to the customers, and I think that's the long-term

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1 concern.

2 Q Okay. Going down to the last sentence
3 above the bold-faced key statistics on net energy
4 metering in Maryland, Mr. Nunez says, In recent
5 years, BGE (and former Constellation Energy)
6 played a key role in defining legislative outcomes
7 related to net energy metering and community
8 energy generation.

9 Do you know what he's talking about
10 there?

11 A I imagine that it's saying that BGE, and
12 formerly Constellation, were active members in the
13 legislative process.

14 Q Have you had occasion to observe, in your
15 capacity as CEO of Exelon Utilities, BGE's
16 interaction with the Maryland legislature up in
17 Annapolis?

18 A I have not had direct observation other
19 than I do a visit every so often.

20 Q Okay. Do you have a general sense of the
21 efficacy of that interaction in furthering
22 Exelon's corporate objectives?

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1 A I do not.

2 Q Okay. Let me ask you to turn to page 3.

3 Did you review Mr. Nunez's description of
4 BGE's objective: BGE will actively lobby for the
5 defeat of 2014 legislation in Maryland that seeks
6 to expand net metering or to allow community
7 energy generating facilities to use the utility
8 distribution bill to convey subsidies?

9 A I saw this letter when it was written on
10 February -- I'm assuming February 18th. On or
11 about that I did read this letter.

12 Q All right. Mr. O'Brien, it's fair to say
13 you've been in this business a long time, haven't
14 you?

15 A I have.

16 Q Do you have an understanding that the
17 expression "subsidy" tends to be used as a rather
18 value-laden term in this industry, perhaps more so
19 than in other industries?

20 A Absolutely.

21 Q And one man's subsidy is another man's
22 economic justice; isn't that right?

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1 A That's probably correct.

2 Q Okay. Fair enough.

3 Mr. Nunez goes on to recite a strategy
4 for defeating the legislation in committee's
5 original jurisdiction, and digging in at
6 subsequent phases. Do you know if this strategy
7 was implemented?

8 A I do not know if all these pieces were
9 implemented or not.

10 Q Does Mr. Nunez report to you?

11 A No, he does not. Well, he reports to
12 Calvin Butler who reported to Ken DeFontes who
13 reports to me.

14 Q Okay. So when Mr. DeFontes was the
15 president of BGE, did Mr. DeFontes regularly keep
16 you up to date on what BGE was doing with respect
17 to various legislative initiatives in Maryland?

18 A Yes.

19 Q So you would receive correspondence like
20 this all the time?

21 A I wouldn't say all the time. At
22 different times I do receive it.

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1 Q How often?

2 A It would probably depend on what's going
3 on in each jurisdiction.

4 Q In Maryland, at the outset of every
5 legislative session?

6 A That's probably about right.

7 Q Okay. Let me ask you to turn to page 6.

8 A Page 6 of?

9 Q I'm sorry. It's page 6 of Exhibit DCG 37
10 that we were just looking at.

11 A Okay. I'm there.

12 Q The page heading begins, Related pending
13 legislation. And then, if you go down, do you see
14 net energy metering for industrial combined heat
15 and power? See where I am?

16 A I do.

17 Q Okay. Mr. O'Brien, do you have any sense
18 of whether or not the District of Columbia has a
19 public policy with respect to the promotion of
20 combined heat and power?

21 A I'm not aware.

22 Q Okay. Let me ask you to sort of read to

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1 the bottom of the page -- actually, just the
2 bottom of the italicized segment in the middle of
3 the page about net energy metering for industrial
4 combined heat and power.

5 A Okay. I've read that.

6 Q Okay. Now, is it a fair summary that
7 there was legislation introduced to promote
8 combined heat and power that would have redounded
9 to the particular benefit of Domino Sugar?

10 A I'm not familiar with the piece of
11 legislation.

12 Q Okay. You do have an office in
13 Baltimore, don't you?

14 A I do.

15 Q You're familiar with Domino Sugar and the
16 role it plays in the Baltimore economy?

17 A I see the building. Sure.

18 Q All right. Mr. O'Brien, let me ask you
19 to flip over to page 7, please. Actually, let me
20 ask you to read quietly to yourself -- no, I
21 think -- I'm sorry. Just read page 7 to yourself.

22 A I've reviewed it.

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1 Q Okay. Going to page 7, in the -- sort of
2 the last paragraph begins, Unfortunately, PEPCO
3 Holdings, Inc. has been negotiating confidentially
4 with Senator Pinsky and the MEA for some time on
5 amendments that would make them neutral on the
6 bill.

7 Do you see that?

8 A I do.

9 Q Is that likely to happen once Exelon
10 acquires PEPCO Holdings?

11 A Is what likely to happen?

12 Q That PEPCO Holdings would be negotiating
13 to sort of ease the passage of a bill for
14 producing energy out of poultry litter, I think
15 was the context.

16 A Without knowing the detail of the bill, I
17 really can't opine on, you know, what anyone's
18 position would be on it.

19 Q Okay. Let me ask you to turn to page 8
20 and read the segment on House Bill 1192,
21 electricity community renewable energy generating
22 system pilot program. That goes over to page 9.

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1 A I've read it.

2 Q Is it a fair summary that Exelon's
3 position was that it opposed this legislation,
4 Mr. O'Brien?

5 A That's what this note says.

6 Q Do you know whether the District of
7 Columbia has a law on the books promoting
8 community renewable energy?

9 A I know a little bit about it.

10 Q Do you know what PEPCO Holdings' position
11 was with respect to that legislation when it was
12 before the D.C. council?

13 A I believe PEPCO was very supportive of
14 it, and they say it's very well designed.

15 MR. COYLE: I have no further questions
16 of this witness.

17 Thank you, Mr. O'Brien.

18 CHAIRMAN KANE: Thank you.

19 Mr. Speck.

20 MR. SPECK: Thank you, Madam Chair.

21 CROSS-EXAMINATION

22 BY MR. SPECK:

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1 Q Good afternoon, Mr. O'Brien.

2 A Good afternoon.

3 Q I'm Randy Speck, and I'm representing
4 DC SUN in this proceeding, and I've just got a few
5 questions to clarify some things I think Mr. Crane
6 raised and suggested you might be able to help
7 answer.

8 Last Tuesday I asked Mr. Crane a number
9 of questions about best practices with respect to
10 the facilitation of distributed generation.

11 Have you been made aware of those
12 questions, or were you in the hearing room when
13 those were asked?

14 A I have generally either been in the room
15 or watched almost all of the proceedings.

16 Q Okay. And I believe you testified this
17 morning that sharing best practices creates a
18 customer benefit; is that right?

19 A That's correct.

20 Q And is it true, then, as well, that
21 sharing best practices with respect to the
22 facilitation of distributed generation creates a

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1 customer benefit?

2 A I think so, yes.

3 Q Another thing -- in your testimony
4 earlier today you said that one of the drivers for
5 best practices is customer satisfaction. Do you
6 recall that testimony?

7 A I do.

8 Q And is it true as well, then, that
9 customer satisfaction should be a driver for
10 sharing best practices with respect to the
11 facilitation of distributed generation?

12 A Absolutely.

13 Q Could you look, please, at your
14 Exhibit (3C)-2 which is to your rebuttal
15 testimony.

16 A I think I'm there.

17 Q Okay. This is the response to OPC's data
18 request 5-46. And if you look at your response on
19 (d), in the second sentence you refer to
20 attachment A, and I just want to make sure that
21 the last page of this exhibit is indeed what you
22 were referring to as attachment A. Is that

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1 correct?

2 A I believe so, yes.

3 Q And does that identify, then, the areas
4 where best practices have been shared among
5 Exelon's utilities at this time?

6 A That's just some examples. There's
7 probably hundreds more.

8 Q Well, could you just identify for me
9 anything on here that relates to distributed
10 generation? Is there anything?

11 A At a quick look, I do not see anything.

12 Q Are you aware of any current best
13 practices with respect to the facilitation of
14 distributed generation that have been deployed in
15 all three of the Exelon utilities?

16 A We are trying a lot of different
17 technologies to figure out how the utility of the
18 future works, how best to be involved and engaged
19 in it. We are doing things from deploying fuel
20 cells in each of the companies to try that out, to
21 having a DOE grant to look at microgrid
22 controllers. We are looking at super-conductor

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1 cables. And we are very involved and engaged with
2 EPRI to figure out how to enable distributed
3 generation in the utility of the future.

4 Q And has any of that been distributed as a
5 best practice, as you use that term in your
6 testimony?

7 A Well, I think it's in its early stages.
8 One of the reasons we're doing it. We're going to
9 deploy fuel cells in each of the three companies
10 to get some experience so that we can share best
11 practices. I don't think we're far enough along
12 yet to know what the best practice is because
13 we're still deploying it.

14 Q I think I know the answer to this next
15 question, but -- based on your testimony earlier
16 today and your written testimony. But I asked
17 Mr. Crane whether Exelon has made any assessment
18 to determine whether PEPCO has best practices with
19 regard to facilitating distributed generation.
20 And he said I should ask you. But I would judge,
21 from your testimony, that you can't answer that
22 either.

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1 A The only thing -- and I don't know it in
2 detail, but my folks have come back and said that
3 the processes in Maryland for deploying solar are
4 probably a best practice that we would want to
5 replicate. I can't tell you any more than that,
6 though.

7 Q So you would say that perhaps PEPCO has
8 better practices than your current utilities with
9 regard to the facilitation of distributed
10 generation?

11 A I would say for the one example that I
12 just described. We haven't done the detailed
13 analysis of everything. ComEd and Anne
14 Pramaggiore are looking at distributed generation
15 in the utility of the future, and I'd say she and
16 the company are probably one of the companies
17 leading the way.

18 Q You referred this morning as well to the
19 various metrics that you would use to then judge
20 whether best practices have indeed been adopted
21 and been successful.

22 Is the penetration rate for distributed

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1 generation at a utility one of the possible
2 metrics that you might consider in assessing the
3 success of a utility's practice with respect to
4 facilitation of distributed generation?

5 A That's a great question. I don't know
6 that I would have given it any thought, but it
7 would be a great measure.

8 Q Do you know how the penetration rates for
9 distributed generation compare between the current
10 Exelon utilities and PEPCO?

11 A I do not know.

12 Q Could you see if you could find what's
13 been marked previously as DC SUN confidential
14 Cross Exhibit 1.

15 A I have it.

16 Q Great. Could I just take a look through
17 that document. This is a confidential exhibit,
18 and I'm not going to ask you specific questions
19 about it, but I'd just like to ask a couple of
20 general questions.

21 If you could just familiarize yourself
22 with it.

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1 A I read this last night and I just looked
2 it over quickly again today.

3 Q And I noted that this is the day after
4 the memo that you received that is DCG 37. Was
5 there any connection between the two?

6 A Not that I'm aware of.

7 Q Have you seen this document --

8 A I have.

9 Q -- previously to this hearing?

10 A I have. I saw it on February 19, 2014,
11 if the date is correct here.

12 Q Were you a participant in the preparation
13 of this document?

14 A There was a team across Exelon that did
15 it. I was in the discussion on February 19th when
16 it was presented.

17 Q Okay. Do the guiding principles that are
18 on page 2 of Exhibit -- DC SUN Cross Exhibit 1, do
19 those represent what you consider to be best
20 practices --

21 A No.

22 Q -- with regard to distributed generation?

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1 A No.

2 Q What are they, then? They're guiding
3 principles, right?

4 A They are guiding principles for a
5 discussion that we had at the senior level about
6 net metering. The concern that we have is in the
7 long run with net metering, making sure that the
8 value of the grid and the tariff support and
9 assign costs in the right way -- it's probably not
10 a short or intermediate-term issue as much as it's
11 a long-term issue.

12 Q And is this what you were talking with
13 Mr. Coyle about as subsidization?

14 A That would be what I was talking about.

15 Q Which is in the eye of the beholder?

16 A It is, and I recognize that.

17 Q Based on your testimony this afternoon,
18 is it possible that, when this merger is
19 completed, or if it's completed, and if the best
20 practices with respect to the facilitation of
21 distributed generation are deployed throughout
22 Exelon, that the flow of those best practices

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1 could actually be from PEPCO to ComEd rather than
2 the other way around?

3 A I would hope so, in certain areas.

4 Q And this might be one of them?

5 A That may be. Too early to determine.

6 MR. SPECK: Thank you. That's all I
7 have.

8 CHAIRMAN KANE: Ms. White?

9 MS. WHITE: I have no questions, Madam
10 chair.

11 CHAIRMAN KANE: Ms. Wein?

12 MS. WEIN: No questions.

13 CHAIRMAN KANE: Commissioner Phillips?

14 COMMISSIONER PHILLIPS: Good afternoon
15 Mr. O'Brien.

16 THE WITNESS: Good afternoon,
17 Commissioner.

18 COMMISSIONER PHILLIPS: I just want to
19 talk really quickly about mutual assistance
20 programs. I'm going to read a question, then I'm
21 going to read a list of groups, and I can go one
22 by one. I'd rather just read the list and then

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1 you respond to the question.

2 THE WITNESS: Yes, sir.

3 COMMISSIONER PHILLIPS: If we could try
4 that.

5 Does Exelon have contractual agreements
6 with any of the following mutual assistance groups
7 to assist restoration efforts during severe
8 weather events: Southeastern Electric Exchange;
9 Mid-Atlantic Mutual Assistance Group; Great Lakes
10 Mutual Assistance Group; New York Mutual
11 Assistance Group; Midwest Mutual Assistance Group;
12 Northwest Mutual Assistance Group?

13 THE WITNESS: I'd probably have to take
14 them one by one. I apologize that I have to do
15 that. But I can tell you what I know and what I
16 don't know.

17 COMMISSIONER PHILLIPS: Not a problem.

18 THE WITNESS: The first one was
19 Southeast --

20 COMMISSIONER PHILLIPS: Southeastern
21 Electric Exchange.

22 THE WITNESS: Yes, Exelon does have -- is

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1 members of Southeast.

2 The second one is the Mid-Atlantic. I
3 believe the Mid-Atlantic no longer exists, and
4 that is now called the Northeast RMAG, which has
5 subsumed both the Mid-Atlantic and the Northeast.
6 And Exelon is a member of that.

7 Next one, if I remember right, is Great
8 Lakes. And ComEd, one of the Exelon families, is
9 a member of that. ComEd is also a member of one
10 other one, and I'm not sure which one it is on the
11 list that you --

12 COMMISSIONER PHILLIPS: I have two, I
13 think, that remain. New York Mutual Assistance
14 Group?

15 THE WITNESS: I'm not aware of us being a
16 member of that.

17 COMMISSIONER PHILLIPS: And Midwest
18 Mutual Assistance Group.

19 THE WITNESS: I don't know for comment on
20 that one.

21 COMMISSIONER PHILLIPS: That's fine.

22 For the ones that you mentioned that

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1 Exelon is a member of, if the merger is approved,
2 do you anticipate that those relationships will
3 continue?

4 THE WITNESS: Oh, absolutely.

5 COMMISSIONER PHILLIPS: That's all that I
6 have.

7 CHAIRMAN KANE: Commissioner Fort?

8 COMMISSIONER FORT: Good afternoon.

9 THE WITNESS: Good afternoon.

10 COMMISSIONER FORT: So yesterday you may
11 have been in the room or listening when I asked
12 Mr. Rigby a series of questions so that we would
13 have on the record how certain decisions on a
14 couple of key issues are handled within PHI
15 currently.

16 And I indicated I was going to ask the
17 same questions, or similar questions, of you so we
18 could get an understanding on the record of how
19 those same items are handled currently within
20 Exelon for the three distribution utilities and
21 then how they would be handled post-merger.

22 THE WITNESS: Okay.

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1 COMMISSIONER FORT: So in -- my questions
2 are now a bit shorter, because OPC counsel and
3 AOBA asked some of the questions. And you had a
4 discussion earlier about how budget issues are
5 handled. There was some information in your
6 prefiled testimony about budget issues. And so I
7 think, you know, I have just about everything I
8 need to know on that.

9 You mentioned briefly that you had some
10 role in the preparation of rate case filings. You
11 either oversee it -- I'm not sure what you do, so
12 I'm going to ask you again to tell me, you know,
13 what it is that you do in the case of base rate
14 cases being filed by the three distribution
15 companies that Exelon currently owns.

16 THE WITNESS: Okay. Great question. I
17 am probably one of the few people that's a student
18 of rate cases a little bit. Every two to three
19 months I meet with each of the companies to talk
20 about all of the regulatory dockets that they're
21 involved in. They generally present, you know,
22 what the docket is or what the issue is, what

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1 they're doing, and how it's evolving.

2 I'm more a listener than anything else.

3 I ask a lot of questions because I get the chance

4 to see it in so many jurisdictions, and there's

5 some value to the questions that come with that.

6 And that's the extent of it.

7 It's each company's strategy and issue to

8 decide on at the end of the day.

9 COMMISSIONER FORT: Do you -- is there
10 anybody else in Exelon Utilities that participates
11 in rate case filings in any way?

12 THE WITNESS: When I have the quarterly
13 meeting, Darryl Bradford, the general counsel,
14 also joins me. He's very capable from a
15 regulatory standpoint.

16 COMMISSIONER FORT: And he listens as
17 well?

18 THE WITNESS: And he listens as well. He
19 occasionally asks a pretty good question too.

20 COMMISSIONER FORT: Does anyone in Exelon
21 Utilities file testimony or help in the
22 preparation of testimony that's filed within any

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1 of the distribution utilities?

2 THE WITNESS: No.

3 COMMISSIONER FORT: The cost of -- you
4 had a discussion with Ms. Francis about who you
5 work for. And you told her that you worked for
6 the Exelon Business Services Company, and I think
7 we agreed it was a division -- you know, the --
8 Exelon Utilities is within that company. Does
9 that mean your paycheck comes from the services
10 company?

11 THE WITNESS: I'm in the legal entity.
12 My paycheck says Exelon. So it doesn't
13 differentiate, I think, business services --

14 COMMISSIONER FORT: Well, that's kind of
15 a problem for us, you know, when it doesn't
16 differentiate because, you know, we need to know
17 actually who's paying it. Let me ask it, I
18 guess -- this a different way.

19 Exhibit 7 to the application is the
20 general services agreement. Are you familiar with
21 the general services agreement?

22 THE WITNESS: I've seen it in the past.

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1 COMMISSIONER FORT: And I don't know --
2 you may be able to answer this question without
3 getting a copy of it in front of you, but as I'm
4 looking at it, on the first page, it says it's the
5 general services agreement between Exelon Business
6 Services Company and -- and then it lists a whole
7 series of companies for which the EBSC provides
8 services.

9 THE WITNESS: That's correct.

10 COMMISSIONER FORT: Correct? Right?

11 THE WITNESS: Yes.

12 COMMISSIONER FORT: And that includes
13 Exelon Corporation, the energy delivery company,
14 and just about every entity that was on that
15 organizational chart --

16 THE WITNESS: That is correct.

17 COMMISSIONER FORT: -- is that correct?

18 And as I read this general services
19 agreement, the cost of the services that are being
20 provided by the business service companies to each
21 of those companies are allocated costs -- or are
22 charged to those companies either directly or

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1 through an allocation --

2 THE WITNESS: That's correct.

3 COMMISSIONER FORT: -- is that correct?

4 THE WITNESS: Yeah, that is correct.

5 COMMISSIONER FORT: So when you are
6 meeting on a quarterly basis with the distribution
7 utility companies to talk about their rate
8 proceeding, are those costs that get charged
9 through the GSA down to the particular utilities
10 that you're meeting with?

11 THE WITNESS: I would have to check. I
12 think my time is allocated to the companies that I
13 oversee.

14 COMMISSIONER FORT: Okay. And who knows
15 that? Are you the best person to ask a question
16 about allocations?

17 THE WITNESS: I think Carim Khouzami is
18 probably the best person to ask about that.

19 COMMISSIONER FORT: Nobody had said his
20 name or given him another question today.

21 THE WITNESS: I can tell you he's
22 watching and he'll be ready when he gets here.

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1 COMMISSIONER FORT: I thought he was
2 being overwhelmed.

3 Are rate case filing decisions covered by
4 the delegation of authority that's included on
5 Exhibit (4A)-2? There's a line on there that
6 says, Legal, regulatory and income tax settlement.
7 But I don't know if that means that the size of a
8 rate case filing is covered under that delegation
9 of authority. Can you help me out?

10 THE WITNESS: They are not covered under
11 that. I can tell you, from a practical standpoint
12 how we handle it. The local CEO and his or her
13 team decide on the rate case, what, when and how,
14 and that is reviewed with the local boards. So
15 that would be reviewed with -- you know, if PECO
16 made the decision, that would be reviewed with the
17 PECO board.

18 The PECO board does not approve it, but
19 they are made aware of the rate case filing as
20 part of a board meeting agenda.

21 COMMISSIONER FORT: So when the term
22 "legal, regulatory and income tax settlement" is

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1 used on that delegation of authority with dollar
2 amounts attached to it, what is that intended to
3 convey?

4 THE WITNESS: I think the regulatory
5 piece there is meant to be something out of the
6 normal course of doing business that would be a
7 settlement, and I can't think of what one might
8 be, that that would need to follow the delegation
9 of authority. There's nothing that I can think
10 about in my time that we did that fell into that
11 one from a regulatory, jurisdictional issue that
12 went up for approval.

13 COMMISSIONER FORT: So if you don't know
14 that, how would you get the answer?

15 THE WITNESS: Whenever I'm unsure, I go
16 to the corporate secretary and I tell him the
17 situation, and the corporate secretary advises me
18 as to what would be the proper way to follow the
19 delegation of authority.

20 COMMISSIONER FORT: And that means the
21 corporation secretary has something that expands
22 that definition of regulatory? On does he go then

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1 to general counsel?

2 THE WITNESS: Well, he is counsel. He
3 works for the general counsel. He's a little more
4 knowledgeable than me. He was very involved in
5 the development. He probably has some other
6 things that help him along the way, including lots
7 of knowledge and experience.

8 COMMISSIONER FORT: So when Mr. Rigby
9 described how PHI currently puts together a rate
10 case yesterday and how they deal with the timing
11 and amount and size of the rate relief being
12 sought and any new proposal in the rate case,
13 would that continue in the same fashion as he
14 described it in a post-merger world, should that
15 occur?

16 THE WITNESS: I think so, yes.

17 COMMISSIONER FORT: The only additional
18 piece would be the periodic meetings that you
19 described with yourself and possibly Mr. Bradford
20 on a quarterly basis?

21 THE WITNESS: I think so, yes.

22 COMMISSIONER FORT: You didn't indicate

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1 whether or not you had a role in response to major
2 events, or how major events are handled, the
3 preparation for a major event, anything that
4 occurs during a major event, or restoration
5 following a major event.

6 Is there anything that you do now with
7 the distribution companies with regard to major
8 events?

9 THE WITNESS: Other than worry a lot?

10 COMMISSIONER FORT: Other than worry.
11 You can take the worry.

12 THE WITNESS: I and we take very
13 seriously keeping the lights on and getting the
14 lights back on when they go off. We think about
15 it all the time. One of the first things we did
16 after the Constellation merger and having BGE come
17 into the Exelon family of companies, one of the
18 first things we did was look at putting in best
19 practices for emergency response, replicating them
20 across the companies in terms of how we do -- I
21 mentioned lock-out/tag-out, having everybody on
22 the same system so we could move them from one

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1 place to another without any additional
2 infrastructure or oversight and get them right to
3 work.

4 So I think what I do is initiate things
5 in advance to make us good at what we do. And
6 then when the event happens, it is managed
7 locally.

8 I think the other thing that I would do
9 is, if it's a significant event, after the fact,
10 what we have a post-event review where we review
11 what caused the event, what happened, generic
12 indications, specific implications and assessing
13 the response. If it's a big enough event, I will
14 sit in and have folks review with me the
15 post-event analysis.

16 COMMISSIONER FORT: So if PHI, or in
17 particular PEPCO we're interested in -- PEPCO D.C.
18 had something different in its manuals that it
19 uses for their incident command structure or for
20 their major event restoration plans that are
21 different from something that appears among the --
22 currently appears among the three distribution

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1 utilities -- for example, a different lock-out
2 procedure because you used that as an example --
3 would that mean that the PHI documents, the PEPCO
4 documents, would need to be modified in a
5 post-merger world?

6 THE WITNESS: Well, first, you know, we
7 serve the commission in the jurisdiction that
8 we're in, and we'll honor every commitment and
9 every response relative to that.

10 Second we have to work with the emergency
11 response commitment in every district that we're
12 in. All of those things have nuances. It's more
13 important that it work in the jurisdiction that
14 we're in than it get standardized.

15 But we do want to figure out what are the
16 best practices and how can we replicate of them.
17 Some of the terminology of who we say is in charge
18 is different from jurisdiction to jurisdiction
19 because that's the way the jurisdiction wants it.

20 COMMISSIONER FORT: Does anybody from EU
21 testify in rate cases --

22 THE WITNESS: No.

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1 COMMISSIONER FORT: -- on any topics?

2 THE WITNESS: No.

3 COMMISSIONER FORT: Or provide data like
4 load forecasting or cost of service study data
5 through a manager of rate economics, for example,
6 to use the title that a PHI --

7 THE WITNESS: It's all --

8 COMMISSIONER FORT: -- individual as?

9 THE WITNESS: -- done under local
10 companies.

11 COMMISSIONER FORT: All done locally,
12 okay.

13 We didn't talk about the role that you
14 have in either -- the procurement of process for
15 wholesale energy. Do you have any role in that
16 through any of the hats that you wear in Exelon
17 Utilities or in the business service company?

18 THE WITNESS: I do not. That is all
19 handled locally.

20 COMMISSIONER FORT: Well, locally, it
21 wouldn't be handled at all, because PHI doesn't do
22 wholesale. PHI is the SOS default provider, so it

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1 is procuring the energy. That was kind of a trick
2 question.

3 THE WITNESS: It was a trick -- can I
4 expand on the trick question? It's done a little
5 different in each place. But each company handles
6 it locally relative to the rules of the road for
7 doing it.

8 So in ComEd or in Illinois there is a
9 power authority that does the procurement. ComEd
10 does whatever it needs to do as its obligations to
11 work with that power authority, and the power
12 authority does acquire it.

13 Pennsylvania, the local company does it.
14 They have a third party that administers for them,
15 but each local company does it.

16 And then in Maryland it's done even a
17 different way.

18 COMMISSIONER FORT: My question also had
19 another trick in it, and it is that, by your
20 organizational structure, Exelon Generation
21 attaches to some of those lines that the business
22 service company attaches to under both versions of

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1 the organization structure. So I was going to
2 ask, you know, how does that work through the
3 business service company?

4 THE WITNESS: Well, the business service
5 company, with the exception of my group, are not
6 in any of the businesses. They provide support to
7 the businesses directly or as an allocation. So
8 they're not in it.

9 I mean, I can talk about the PECO one,
10 because I was there and, you know, the local
11 company manages the default -- the procurement of
12 the default product. The folks that are involved
13 in that have a confidentiality agreement and they
14 cannot share the information past the
15 confidentiality agreement. So, for example, if
16 even one of the officers is not part of that
17 confidentiality agreement, they cannot get any of
18 the information.

19 COMMISSIONER FORT: Okay. But it's the
20 confluence of -- it's the fact that the business
21 services company touches all of it that, you know,
22 raises the question, you know, for us -- or for

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1 me, since I'm speaking for myself at the moment.

2 Are there -- anything that the services
3 company has put in place that deals with walls
4 that -- we keep hearing that there are walls
5 between the two kind of divisions or affiliate
6 transactions or -- I don't want to use
7 ring-fencing because, within the context of what
8 we've been talking about, that's brought in a
9 different connotation.

10 THE WITNESS: The folks that are really
11 involved in it are in each of the companies, BG&E,
12 ComEd and PECO. The only folks that I can think
13 of are the lawyers that are basically embedded in
14 each company, but report up through BSC.

15 COMMISSIONER FORT: I'm not worried about
16 the PEPCO side, because we know how that side
17 operates. What I'm worried about is that PEPCO
18 procures energy, and it procures some energy from
19 Exelon subsidiaries.

20 THE WITNESS: Again, I can talk about the
21 Exelon side of it --

22 COMMISSIONER FORT: That's what I'm

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1 interested in, the Exelon side.

2 THE WITNESS: It's all arm's length, and
3 the folks never intermingle.

4 COMMISSIONER FORT: And you, in
5 particular, don't have any role in that process?

6 THE WITNESS: I don't see the numbers one
7 way or the other on either side in that case.

8 COMMISSIONER FORT: Okay. Well, you
9 mentioned earlier the executive committee. You
10 said that you meet with Mr. Crane as part of the
11 executive committee, his executive team. How big
12 is that executive committee?

13 THE WITNESS: I would say it's probably
14 somewhere in the range of about 15 people. It is
15 made up of Mr. Crane, myself, the CEOs of each of
16 our utilities now, as well as Mr. von Hoene who is
17 head of strategy, our general counsel, Ken Cornew,
18 who is the senior vice president of generation,
19 Joe Nigro, who is the senior vice president of
20 Constellation, our CFO, and a couple of other
21 folks.

22 COMMISSIONER FORT: And so somebody from

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1 PHI would be meeting with that group?

2 THE WITNESS: Dave Velazquez, as CEO,
3 would be a member of that group.

4 COMMISSIONER FORT: There was some
5 discussion earlier about your management model.
6 And you looked at, at one point, page 8 of your
7 rebuttal testimony. And in there, that section,
8 you talk about that there is a comprehensive set
9 of business and operational processes and
10 procedures. And I think you mentioned that it had
11 been provided to the other parties on a
12 confidential basis. Do you recall that part of
13 your testimony?

14 THE WITNESS: I do not.

15 COMMISSIONER FORT: Maybe I can get you
16 to look at page 8 in your rebuttal testimony.

17 THE WITNESS: I have it now. Excuse me.

18 COMMISSIONER FORT: So the language that
19 I was talking about is at the bottom, lines 20 to
20 22, and it continues over to the next page, the
21 top two lines.

22 THE WITNESS: I see it. I do see it.

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1 COMMISSIONER FORT: Is that a specific
2 document that you're talking about?

3 THE WITNESS: There is a whole document,
4 a hierarchy with the management model that has
5 policies, programs, procedures. I'm assuming that
6 that's what this alludes to, that that has been
7 provided to the parties.

8 COMMISSIONER FORT: To my knowledge, it
9 hasn't been provided as part of the testimony or
10 exhibits. I don't see it as part of your
11 testimony or exhibit. Do you know if it's part of
12 the exhibits of some other party -- I mean, some
13 other member of the joint applicants?

14 THE WITNESS: It's listed here as DCG
15 data request 1-69, and that's what it was provided
16 as.

17 COMMISSIONER FORT: Does that document
18 set out information about how Exelon or Exelon
19 Utilities currently works with the other
20 distribution companies?

21 THE WITNESS: I believe if it's the
22 comprehensive document, that would be in there,

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1 yes.

2 COMMISSIONER FORT: Do you know if
3 there's some reason why it's not attached to your
4 testimony? Or is that a question that I should
5 ask of counsel or whoever helped you with your
6 testimony?

7 THE WITNESS: I need some help from
8 counsel on that.

9 MR. LORENZO: Your Honor, we could
10 consider that a bench data request, if you would
11 like us to produce it and produce it in regard
12 to -- you know, before the close of the
13 evidentiary record and the hearing.

14 COMMISSIONER FORT: Just -- there's been
15 discussion that, you know, talks about the
16 procedures. And if so that's, you know, in there,
17 it would be helpful to see. I think the testimony
18 says, while the summary I've provided gives an
19 overall view, the management model is a
20 comprehensive detailed document.

21 MR. LORENZO: We'll get that for you.

22 COMMISSIONER FORT: That would be helpful

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1 to have.

2 And I believe that's all the questions I
3 have. Thank you.

4 THE WITNESS: Thank you.

5 CHAIRMAN KANE: Thank you. Mr. O'Brien,
6 I want to get back to this organizational chart
7 that Commissioner Fort and others have referred
8 to, so I have one clarifying question. That's
9 Exhibit 4 of the application, the joint
10 applicants' application, and it's the page 3
11 there. It's the last of the charts that is
12 labeled, Post-merger organization.

13 THE WITNESS: Getting a little help here.

14 Madam Chair, I have Exhibit 4.

15 CHAIRMAN KANE: Okay. And you will look
16 at this -- and as I recall, you said this circle
17 or oval labeled EBSC, that Exelon Utilities was a
18 division or a department within that oval; is that
19 correct?

20 THE WITNESS: The employees of Exelon
21 Utilities are in the legal structure of EBSC,
22 that's correct.

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1 CHAIRMAN KANE: Within the legal
2 structure of EBSC. Okay. But when I look at the
3 chart, to the right of EBSC, there's something
4 called EEDC. And if you go down, there's a direct
5 line coming out of that. Go to the left, go down
6 through SPE and then to PHI, and then, below PHI,
7 PEPCO. And there's no line from those -- and
8 those are all the operating companies. There's no
9 line from them to EBSC.

10 I thought, however, that you said that
11 the utilities were within Exelon Utilities and
12 that, for example, Mr. Velazquez essentially would
13 be reporting to you.

14 THE WITNESS: I did.

15 CHAIRMAN KANE: How does he report to you
16 if PHI, et cetera, are all directly going to this
17 other entity, EEDC? How do you get to be his boss
18 if it's not on the chart?

19 THE WITNESS: I always find this very
20 confusing myself.

21 CHAIRMAN KANE: Well, thank you.

22 THE WITNESS: I do. I do.

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1 CHAIRMAN KANE: Help us understand this.

2 Okay.

3 THE WITNESS: This is the proposed legal
4 structure of the corporation. The organization
5 and the legal structure are not always exactly
6 aligned. EEDC is the holding company that holds
7 each of these organizations. EEDC has no
8 employees in it at all. And all of the employees
9 that provide shared service to these companies sit
10 in EBSC.

11 So it's the difference between the legal
12 structure and the organizational structure.

13 CHAIRMAN KANE: So this -- where it says
14 post-merger organization is really not an
15 organizational chart?

16 THE WITNESS: It is a legal
17 organizational structure.

18 CHAIRMAN KANE: Legal organization. Is
19 there available -- have you provided an
20 organizational chart showing -- because we have a
21 lot -- the questioning has been, you know, who
22 makes a decision, who can override a decision, who

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1 does somebody report to, who does somebody not
2 report to, what independent authority do they
3 have, et cetera -- and we've gotten a chart, but
4 not a diagram like this. Is there such an
5 organizational chart? Has it -- I confess I have
6 not read every single page of every single
7 exhibit.

8 THE WITNESS: Right. If there's not one,
9 I'm sure we can provide one.

10 MR. LORENZO: We will consider that a
11 bench data request and either find one or create
12 the organization chart on that basis.

13 CHAIRMAN KANE: Also, go back to the page
14 before that of Exhibit 4 -- if you'll just turn
15 back to page 2, which has a different chart,
16 but -- and I was going to ask my question about
17 what is the difference between the ovals that you
18 call circles and the squares.

19 And if you'll see the note -- would you
20 look at the note down there at the far left of
21 this chart which is Exelon pre-merger. And it
22 says, Note 1: Additional subsidiaries are not

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1 shown; 2, circles are disregarded entities and
2 squares are corporations for income tax purposes;
3 and 3, EBC is scheduled to be dissolved in 2014.

4 So I wanted to ask you -- it really leads
5 to my next question. I don't know if you're the
6 one to answer this, but the squares are
7 corporations for income tax purposes. So if you
8 go back to chart 3 again, the squares, in terms of
9 what we're concerned -- PEPCO is shown as a
10 square, correct?

11 THE WITNESS: That is correct.

12 CHAIRMAN KANE: PHI is not shown as a
13 square; is that correct?

14 THE WITNESS: That is correct.

15 CHAIRMAN KANE: So one would conclude --
16 and PECO and ComEd and BGE, DPL and ACE are all
17 shown as -- they're actually rectangles, not
18 squares, but we won't be picky. They -- these
19 will be the taxpaying entities? And PHI -- could
20 one conclude from this PHI will not pay taxes?

21 THE WITNESS: I think Carim Khouzami is
22 going to be the best one --

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1 CHAIRMAN KANE: Okay.

2 THE WITNESS: -- to walk us through this.

3 CHAIRMAN KANE: I'm going to ask --

4 THE WITNESS: I would start down the
5 road, but I'm afraid I'm going to get to a place
6 that I can't get back from.

7 CHAIRMAN KANE: Very good. And,
8 heads-up, we're going to have some tax questions,
9 particularly the impact of any of this proposed
10 merger and the structure on District of Columbia
11 revenues, tax revenues.

12 Second question also on this. You,
13 again, may not be the right person to answer this,
14 and you can direct me to who that is. In the
15 application itself on page 7, if you would turn to
16 that, the application, as originally filed, on
17 page 7 and at paragraph 16 -- do you see
18 paragraph 16? It says, On or about the effective
19 dates of the merger, PHI will be converted from a
20 corporation to a limited liability company, or
21 LLC. And then it goes on to talk about how the
22 board of directors -- et cetera.

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1 What is the difference in terms of
2 governance -- and you are talking about
3 governance, and you're the witness to talk about
4 governance and corporate structure, correct?

5 THE WITNESS: Yes.

6 CHAIRMAN KANE: Okay. What is the
7 implications for governance of PHI converting from
8 a corporation to an LLC?

9 THE WITNESS: I don't think there are any
10 governance implications to that. I think it is
11 just for tax planning, and I think, relative to
12 any of the jurisdictions, it should be immaterial.

13 CHAIRMAN KANE: Explore that a little
14 more. I'm not an attorney, but I've worked on LLC
15 legislation. What -- the laws of what state is
16 PHI incorporated under now?

17 THE WITNESS: I do not know that.

18 CHAIRMAN KANE: And would you know under
19 the laws of what state PHI will be converted into
20 an LLC?

21 THE WITNESS: I do not. Kevin McGowan
22 would probably be --

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1 CHAIRMAN KANE: Kevin McGowan.

2 THE WITNESS: -- able to answer that.

3 CHAIRMAN KANE: These may be questions --
4 so will -- PHI will have a board under the new
5 structure.

6 THE WITNESS: PHI will have a board.

7 CHAIRMAN KANE: Will have a board.

8 THE WITNESS: That is correct.

9 CHAIRMAN KANE: LLC normally have a
10 board?

11 THE WITNESS: I do not know. PHI will
12 have a board, and that's the governance that we've
13 been talking about for most of today.

14 CHAIRMAN KANE: But according to this
15 chart, it will not be a taxpaying entity. Because
16 an LLC I think is a structure where there are
17 members of the LLC and the tax benefits or
18 liabilities and other benefits or liabilities are
19 passed straight through to the members, not to a
20 corporate entity. As your chart shows, it's not a
21 corporate entity.

22 Is Mr. McGowan the better one to ask

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1 those questions?

2 THE WITNESS: Yes, he is.

3 CHAIRMAN KANE: Then I'll skip all those.

4 Earlier in answer to -- I do not recall
5 whether it was People's Counsel or Ms. Francis,
6 AOBA's question. You were being asked about the
7 management model, and if I recall correctly, you
8 said it's not the model; it's the execution. Do
9 you recall saying that?

10 THE WITNESS: I do. I do recall saying
11 that.

12 CHAIRMAN KANE: Could you expand on what
13 you mean by that or meant by that?

14 THE WITNESS: Yeah. I think a lot of
15 folks could get the documents and the management
16 model from Exelon, you know, should Exelon give
17 them up, but not know how to make it work and how
18 to execute it, how to create the right culture,
19 organizational focus, drive for high standards.

20 So there is a piece of, you know, having
21 the management systems and there's a piece of
22 driving the performance, creating the right

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1 culture and organization to get the performance to
2 a high level.

3 CHAIRMAN KANE: So you were, if I can
4 paraphrase, not to put words in your mouth, but
5 you're talking about the people who then would
6 have to carry it out, who would have to execute
7 it; that's what's really important.

8 THE WITNESS: A better way to say it is
9 it's all about people.

10 CHAIRMAN KANE: It's all about people.

11 Now, your submissions and your testimony
12 indicated that you're keeping the same people,
13 basically, that the presidents of the four
14 jurisdictions will remain in place; Ms. Cooper and
15 her colleagues will remain at their level in
16 place. Mr. Velazquez is now with PHI and will
17 become the CEO.

18 So help me understand, if it's the people
19 that's the benefit, the ability to execute the
20 management model which Exelon has and which it's
21 holding up as a benefit, as an improvement, and
22 you are keeping the same people, what's being

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1 gained?

2 And I don't mean to criticize and I don't
3 mean that question -- let me be very clear -- any
4 implication that I have any doubt at all about the
5 abilities and the leadership that the current
6 management of either PHI or PEPCO has
7 demonstrated. I'm just trying to understand, if
8 you've got to -- you know, what the benefit is.

9 THE WITNESS: Let me use the simplest of
10 examples. Each of the utilities has a call each
11 morning with its leadership to talk about
12 everything that happened the prior day and all of
13 the actions, remediation, follow-up that need to
14 happen.

15 CHAIRMAN KANE: And -- excuse me. You're
16 describing something that occurs now at Exelon; is
17 that correct?

18 THE WITNESS: Something that occurs at
19 Exelon. And that's about leadership. That's
20 about leadership engagement. You could tell an
21 organization to have a call, but having them see
22 the other calls, having them see how they work,

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1 having folks from the other calls -- other
2 companies participate and provide feedback is a
3 big difference.

4 You know, say, have a morning call,
5 that's one thing. Say, this is what a morning
6 call looks like, what it feels like, what the
7 follow-up looks like, what the follow-up feels
8 like is something very different.

9 We're talking about putting management
10 systems in place like that for many, many things
11 that we do -- you know, it's a little bit
12 different from, you know, reading the book versus
13 having a chance to engage with the actual
14 characters.

15 CHAIRMAN KANE: So do you know -- since
16 you use that as an example, does PHI now,
17 Mr. Rigby, have calls like with his companies?

18 THE WITNESS: I don't know. That's why I
19 say any example I'm going to give, I don't know.
20 I think there's probably a thousand different
21 things we do, and some of them will not be done
22 today. And my experience with BGE, there's some

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1 great people there doing great work. This is
2 around putting some systems, some management
3 systems in place, keeping that engagement,
4 engaging the same folks to strive to a different
5 level of performance.

6 CHAIRMAN KANE: And that would be under
7 your direction that that kind of training, if you
8 will, for the management would take place?

9 THE WITNESS: You know, direction is
10 little strong. I like engagement but, you know,
11 maybe some would call it direction, you know.
12 It's about engaging the organization to strive to
13 high levels of performance, to work
14 collaboratively with their peers across the other
15 companies. And it has a piece of -- a little
16 piece of moderate competition, but you've got to
17 get that right.

18 If it's too strong, it's not good. And,
19 you know, we have performance measures and
20 everything. I get a performance book that's got a
21 hundred performance measures it in every month.
22 None of the companies want to have their line be

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1 the bottom line.

2 And so you create this moderate
3 competition where folks say, well, how did you get
4 to there; can you help me out, and trying to
5 create that whole culture and system about
6 striving to high performance.

7 CHAIRMAN KANE: Okay. Final question. I
8 don't want to beat this issue of sharing best
9 practices, but I do have some concern about this.
10 Are you aware of a report that's required by this
11 Commission that's called the annual consolidated
12 report, a report that's required of PEPCO every
13 year?

14 THE WITNESS: I am not.

15 CHAIRMAN KANE: And therefore, you're not
16 aware it's a comprehensive reporting on their
17 practices, on their implementation of orders,
18 particularly in the area of operations, on such
19 things as vegetation management, PILC, which is
20 one of those things -- paper-covered conduit --
21 outage management, restoration of plants, low
22 performing -- identifying low performing feeders,

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1 the statistics on that, and that -- you're not
2 aware of that report?

3 THE WITNESS: I am not.

4 CHAIRMAN KANE: And that it's publicly
5 available and that there's public comment on it,
6 orders, et cetera. Or the manhole problem and
7 inspection that has been going on.

8 I'm asking this question because it
9 concerned me. We keep getting answers saying --
10 or explain to me why you keep saying, we didn't
11 look at this; you know, we weren't aware of what
12 PEPCO is doing; we don't know what they're doing,
13 and yet you're spending billions of dollars to buy
14 a company and saying you didn't look at what
15 they're doing, and offering that there will be all
16 these improvements without at least being able to
17 tell us that you've looked at sort of where it is
18 now.

19 THE WITNESS: In the process, we've
20 looked at the benchmarks, we've looked at where
21 the performance is, we looked at where we've been
22 able to get the performance in the companies that

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1 we own. And we've, you know, made the conclusion
2 that, knowing that, we can get PHI's performance
3 to a better place relative to customer
4 satisfaction, reliability and other things.

5 CHAIRMAN KANE: But you just said you
6 hadn't looked at their performance.

7 THE WITNESS: We've looked at the
8 benchmark performance.

9 CHAIRMAN KANE: Benchmark being what?

10 THE WITNESS: Reliability, customer
11 satisfaction, service level, abandon rate, key
12 indicators in our business.

13 CHAIRMAN KANE: And what has been the
14 source of that information that you used if it's
15 not the kind of reporting that we have required
16 and made publicly available on the performance of
17 the company?

18 THE WITNESS: We did initially with our
19 own internal benchmarking, and since then we've
20 exchanged information. And when I say we've
21 compared the information, I've done it at the PHI
22 level. I have not seen every level of detail in

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1 each of the companies.

2 CHAIRMAN KANE: Thank you. That does
3 clarify.

4 THE WITNESS: I've seen the reliability
5 numbers in each place, but other than that, I
6 don't think I've seen the other numbers broken
7 down.

8 CHAIRMAN KANE: And reliability, you mean
9 the SAIDI and SAIFI numbers; is that --

10 THE WITNESS: Yes, that's correct.

11 CHAIRMAN KANE: That's what you're
12 referring to, those two measures?

13 THE WITNESS: Yes.

14 CHAIRMAN KANE: Okay. And, finally, you
15 mentioned, in answer to one of the previous
16 questions, that you were doing a project with
17 EPRI, I believe, on microgrids; is that --

18 THE WITNESS: I don't know that we're
19 doing a project with EPRI on microgrids. There's
20 a DOE grant that ComEd has that they're working on
21 microgrid controllers -- not BGE. ComEd. And
22 ComEd is also looking to deploy a microgrid and is

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1 working with the key stakeholders in Illinois.

2 PECO has also filed with their commission
3 just within the last week to look at getting
4 approval to examine and test out the technology of
5 microgrids also.

6 CHAIRMAN KANE: It may not have been
7 microgrids, but you mentioned a project that you
8 were doing with EPRI.

9 THE WITNESS: We're doing a lot of -- we
10 do a lot of work with EPRI. Off the top of my
11 head, I'm not sure of all of them. We're probably
12 signed up for anywhere from 10 to 15 projects at
13 EPRI.

14 CHAIRMAN KANE: And when a company does a
15 project with EPRI, does EPRI then make the results
16 available to all of its members?

17 THE WITNESS: You know, as the Chair of
18 EPRI, I should know more than I'm knowing here,
19 but the members are entitled to certain
20 information --

21 CHAIRMAN KANE: Right, that's not public.

22 THE WITNESS: -- which only the members

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1 get.

2 CHAIRMAN KANE: Right.

3 THE WITNESS: And then there's some
4 public information. I don't know where that line
5 gets drawn on all the different projects.

6 CHAIRMAN KANE: Is PHI a member of EPRI?

7 THE WITNESS: They just joined.

8 CHAIRMAN KANE: So they would, as a
9 member, have access to the results of those
10 studies in whatever way any other member would
11 be --

12 THE WITNESS: Yes. And, for example, as
13 we look at -- this is coordinated -- where we look
14 at where the Exelon companies are involved,
15 different companies of Exelon may be involved in
16 different projects, so we don't have to replicate
17 it four times over, but we have the ability -- or
18 three times over. We have the ability to share
19 the findings of that across all of the Exelon.

20 So there's some real scale advantage of
21 the way that we work with Exelon and the way that
22 we get to share the information.

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1 CHAIRMAN KANE: And just for the record,
2 when projects are funded by the federal Department
3 of Energy, the results of those studies are
4 public?

5 THE WITNESS: I believe so.

6 CHAIRMAN KANE: That's a requirement,
7 because it's --

8 THE WITNESS: I would assume so.

9 CHAIRMAN KANE: Okay. Thank you. No
10 further questions. Redirect?

11 MR. DeCUSATIS: Yes, Your Honor, we do.
12 We have two areas, one of them being with respect
13 to Mr. O'Brien's Exhibit (3C)-5, the delegation of
14 authority. Mr. O'Brien is going to offer some
15 further clarification with regard to that exhibit.

16 And I have a second matter which is
17 follow-on to cross-examination by counsel for the
18 District government.

19 REDIRECT EXAMINATION

20 BY MR. DeCUSATIS:

21 Q Mr. O'Brien, would he you please turn to
22 Joint Applicants' Exhibit (3C)-5, delegation --

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1 proposed delegations of authority.

2 A I'm there.

3 Q Do you recall a dialogue earlier in your
4 cross-examination which I believe was initiated by
5 questions from the Office of People's Counsel with
6 regard to the levels of authority by dollar amount
7 as set forth in that exhibit?

8 A I do.

9 Q And initially, Mr. O'Brien, there was
10 some question following your explanation of your
11 understanding of the different tiers of authority
12 as to whether what is shown numerically and
13 symbolically in each one of the boxes in this
14 exhibit is correct. Do you recall those questions
15 and your answers?

16 A I do.

17 Q Can you tell us, based upon your further
18 review during the lunch break, have you confirmed
19 the accuracy and correctness of what is shown on
20 this exhibit?

21 A I have.

22 Q Now, turning now to your earlier

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1 responses in which you explained those various
2 tiers of authority, and more specifically with
3 regard to how each of the symbols that precedes
4 the number shown in each box, and with specific
5 reference to the first line which was what we
6 discussed, can you explain to us the way in which
7 those symbols and numbers can be interpreted to
8 ascertain the levels at which authority is
9 required?

10 A I can.

11 Q Would you please do so?

12 A This morning when I described the
13 delegation -- let me describe the delegation, for
14 an example, of capital with everyone to clarify
15 that, and then talk a little bit about how this
16 delegation works.

17 And I'll just start with the capital line
18 there. If you go over to the third column in the
19 right, this says that the CEO of PHI, Dave
20 Velazquez, can approve up to \$25 million. Between
21 25 and 50 -- let me describe it first and then
22 I'll bring us to the chart. Between 25 million

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1 and 50 million, I am the delegation of authority
2 for that, as the CEO of Exelon Utilities.

3 Greater than 50 needs the PHI board of
4 directors first. And from 50 to 100, it also
5 needs the Exelon president and CEO. Between 100
6 and 200, it needs an Exelon board committee. And
7 over 200, it needs the Exelon board of directors.

8 Now, having said that, let me just walk
9 through how to look at it. My mistake earlier,
10 being a left-hander, starting on the left --
11 really, the best way to think about utilizing this
12 would be, if you take capital, and whatever number
13 you were thinking of, you put it on the left-hand
14 side of the symbol -- so think of a number,
15 62 million, for example, the left-hand side of the
16 symbol there. You would start on the right-hand
17 side and walk across until you got to the point of
18 having the approval, and that is the level of
19 approval that folks would need. And it would also
20 be, you know, comprehensive, meaning all of the
21 steps prior to that.

22 So if it was \$62 million, basically it

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1 would need approval and would get approved at the
2 last step there, going across the page, as the
3 Exelon president and CEO. So as soon as you get
4 to the point where you have approval, that's the
5 last step that is needed.

6 Q Okay.

7 A Somewhat complex.

8 Q And just for purposes of clarification,
9 Mr. O'Brien, I believe you had -- during your
10 dialogue this morning had indicated the span of
11 authority for Mr. Crane. Would you like to, with
12 specific reference to that, get that absolutely
13 clear on the record?

14 A That was what I thought I cleared up a
15 second ago, but let me do it again to make sure
16 we're absolutely clear. I believe in testimony
17 this morning I said that Mr. Crane, who is the
18 Exelon president and CEO, was greater than 100
19 million. Mr. Crane is an approval between 50 and
20 \$100 million.

21 The other thing that I said this morning
22 that -- let me go back and correct -- for greater

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1 than 100 and less than 200, it needs the Exelon
2 board committee to approve it.

3 Q Thank you.

4 Mr. O'Brien, I'd like to stay with the
5 delegation of authority for a moment and I would
6 also ask you to look at another document which
7 counsel for District government also had you look
8 at during his cross-examination, and that is
9 specifically Joint Applicants' Exhibit (4A)-2.
10 And I would direct your attention to page 7 of
11 that document, and perhaps Ms. Travers --

12 A I'm going to need some help finding --

13 Q -- can identify --

14 A -- that other document.

15 Q -- or can pull that for you.

16 A Can you repeat that document?

17 Q Certainly. It is Joint Applicants'
18 Exhibit (4A)-2, page 7.

19 A Can you tell me what the top of the page
20 says just so we're on the same page?

21 Q Yes. On the upper right-hand quadrant it
22 says, Joint Applicants' Exhibit (4A)-2, page 7 of

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1 17.

2 A I'm there.

3 Q And my specific focus is going to be on
4 numbered paragraph 47. And, Mr. O'Brien, we agree
5 that this is a page from the joint applicants'
6 commitments in this case. Do you agree?

7 A I've read it.

8 Q Now, you were asked various -- several
9 questions with respect to the delegation of
10 authority, and specifically with regard to the
11 line item issue forward/redeem debt. Do you
12 recall those questions and your answers?

13 A I do.

14 Q Now, I believe -- well, with respect to
15 those questions, can you explain for us whether
16 your -- your understanding of whether they were
17 directed to the issuance of debt by PHI or
18 issuance of debt by each of the operating
19 companies under PHI?

20 A I do not recall exactly how the question
21 was worded.

22 Q May I direct your attention to

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1 paragraph 47 of the commitments.

2 A Okay.

3 Q Would you agree that there has been a
4 commitment that has been made that each PHI
5 utility will maintain separate debt and preferred
6 stock?

7 A Yes.

8 Q And that PHI and its subsidiaries --
9 excuse me -- that PHI will not issue additional
10 long-term debt securities?

11 A That is correct.

12 MR. DeCUSATIS: That's all we have.

13 CHAIRMAN KANE: Exhibits.

14 MR. DeCUSATIS: We would like to move the
15 admission of Joint Applicants' Exhibit (C),
16 Exhibit (2C), Exhibit (3C) and Exhibits (3C)-1
17 through (3C)-5.

18 CHAIRMAN KANE: They are so moved.

19 (Joint Applicants Exhibit Numbers (C),
20 (2C), (3C), and (3C)-1 through (3C)-5 were
21 received into evidence.)

22 MR. EILBOTT: Your Honor, OPC -- it's two

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1 parts or two tranches, one based on the stip and
2 one based on what I actually had authenticated
3 during my cross. So for OPC Cross-Examination
4 Exhibits 11, 12 and 13, I would move their
5 admission. There are four additional ones that
6 were premarked, OPC 10, 12, 13 and 14. I believe
7 counsel for joint applicants has stipulated that
8 they do not object to their admission, so I would
9 so move those additional four at this time.

10 MR. LORENZO: No objection, Your Honor.

11 CHAIRMAN KANE: They are so moved.

12 (OPC Cross Exhibit Numbers 11 through 13
13 were received into evidence.)

14 MR. EILBOTT: Thank you.

15 CHAIRMAN KANE: Ms. Francis?

16 MS. FRANCIS: Your Honor, I believe --

17 MR. EILBOTT: I'm sorry, Your Honor. I
18 was reminded that I need to give you the premarked
19 numbers so you know which ones I am talking about.

20 CHAIRMAN KANE: Yes. That would be
21 helpful.

22 MR. EILBOTT: What I gave you for the

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1 four subject to the stipulation, those are the
2 premarked numbers. So at least my
3 understanding -- so if I could tell you what I
4 believe are the marked numbers, and make sure
5 we're all on the same page. Should I go ahead
6 and -- what we had --

7 CHAIRMAN KANE: Yes.

8 MR. EILBOTT: Thank you, Your Honor.

9 What we had premarked as OPC
10 Cross-Examination Exhibit 10 would be 14.
11 Premarked 12 would be 15. Premarked 13 would be
12 16 and premarked 14 would be 17.

13 CHAIRMAN KANE: Okay.

14 (OPC Cross Exhibit Numbers 14 through 17
15 were received into evidence.)

16 MR. EILBOTT: Thank you very much.

17 MS. FRANCIS: Your Honor, I believe I
18 identified specifically the exhibits already, and
19 I would like to move in AOBA's Exhibits 24 through
20 33, inclusive.

21 CHAIRMAN KANE: Thank you. They are
22 moved in.

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1 (AOBA Cross Exhibit Numbers 24 through 33
2 were received into evidence.)

3 CHAIRMAN KANE: D.C. government.

4 MR. COYLE: Thank you, Chair. At this
5 time, I'd like to move the admission of Exhibits
6 DCG 34, confidential Exhibit DCG 37,
7 Exhibit DCG 38 and DCG 39.

8 CHAIRMAN KANE: They are moved in.

9 (DCG Cross Exhibit Numbers 34 and 37
10 through 39 were received into evidence.)

11 MR. COYLE: Could the Chair also give me
12 a little guidance. I'm a little weak on my
13 recollection of where Parties' Joint Exhibit -- or
14 Joint Parties' Exhibit Number 1 is and whether I
15 need to move separately for the admission of the
16 portion of Joint Parties' Exhibit 1, the table of
17 revisions.

18 It's an exhibit already? Thank you.
19 That being the case --

20 CHAIRMAN KANE: Secretary confirm that?

21 It is -- yes.

22 MR. COYLE: Thank you.

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1 CHAIRMAN KANE: Mr. Speck?

2 MR. SPECK: No exhibits.

3 CHAIRMAN KANE: No exhibits?

4 Ms. White, no exhibits?

5 All right. It is 4:25. Thank you,

6 Mr. O'Brien, you are excused.

7 THE WITNESS: Thank you very much.

8 (Witness excused.)

9 CHAIRMAN KANE: We will -- next up would
10 be Mr. Alden. Are you prepared to move ahead
11 after a short break?

12 MR. LORENZO: Yes, we're prepared to --

13 CHAIRMAN KANE: Yes.

14 MR. LORENZO: -- move ahead with
15 Mr. Alden.

16 CHAIRMAN KANE: Okay. Thank you. Now, I
17 do note the estimate is that Mr. Alden -- we're
18 going to need three-and-a-quarter to
19 three-and-a-half hours, so we are not going to
20 finish with Mr. Alden this afternoon. We will
21 continue with him in the morning.

22 But we will go for about an hour when we

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1 come back.

2 MR. LORENZO: Very good, Your Honor.

3 CHAIRMAN KANE: Thank you.

4 (Whereupon, a short recess was taken.)

5 CHAIRMAN KANE: All right. We're back on
6 the record at 4:45 p.m. Next witness. Call your
7 next witness.

8 MR. DUVER: Your Honor, Ted Duver on
9 behalf of the joint applicants. And the joint
10 applicants at this time call Mr. Mark F. Alden to
11 the stand.

12 WHEREUPON,

13 MARK ALDEN,

14 called as a witness, and after having been first
15 sworn by the secretary, was examined and testified
16 as follows:

17 MR. DUVER: Your Honor, pursuant to the
18 Commission's order, we're prepared to offer up as
19 a -- by stipulation into evidence and ask Mark --

20 DIRECT EXAMINATION

21 BY MR. DUVER:

22 Q Well, actually, Mr. Alden, could you

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1 please state your name, occupation and by whom
2 you're employed for the record.

3 A My name is Mark Alden. I'm the vice
4 president of utility oversight integration for
5 Exelon Utilities.

6 Q And do you have before you three pieces
7 of testimony? It's Joint Applicants' (D), which
8 is your direct testimony, with one exhibit marked
9 Joint Applicant (D1), which was filed with the
10 Commission as a fully conformed copy on March 25th
11 of this year?

12 A I do.

13 Q Do you also have before you Joint
14 Applicants' (3D), your prefilled rebuttal
15 testimony, which also has one additional exhibit,
16 (3D)-1, which similarly was filed fully conformed
17 on March 25th?

18 A I do.

19 Q Finally, do you have before you Joint
20 Applicants' (4D), which is your February 17th,
21 2015, supplemental direct testimony that has no
22 additional exhibits but was filed with the

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1 Commission on March 25th as a fully conformed
2 copy?

3 A Yes, I do.

4 MR. DUVER: And, Your Honor, pursuant to
5 the Commission's order, we ask that the -- we will
6 move them in at the appropriate time. We ask that
7 they be marked and would be stipulated to go in.

8 (Joint Applicants Exhibit Numbers (D),
9 (D1), (3D), (3D)-1 and (4D) were marked for
10 identification.)

11 MR. DUVER: And at this point in time
12 Mr. Alden is the available for cross-examination.

13 CHAIRMAN KANE: Thank you. People's
14 Counsel.

15 MR. EILBOTT: Thank you, Your Honor.

16 CROSS-EXAMINATION

17 BY MR. EILBOTT:

18 Q Good afternoon, Mr. Alden. My name is
19 Eli Eilbott. I'm with the law firm of Duncan,
20 Weinberg, Genzer & Pembroke and I'll be asking you
21 questions on behalf of the Office of People's
22 Counsel today.

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1 A Good afternoon.

2 Q Good afternoon. Do you have your direct
3 testimony with you?

4 A I do.

5 Q Could you turn to page 6 that, please.

6 A Okay.

7 Q That would be the page that has a
8 customer satisfaction index and graph at the top.
9 Are we on the same page?

10 A That's correct.

11 Q Now, BG&E is currently one of Exelon's
12 regulated utility companies; is that right?

13 A That's correct.

14 Q And in what year did BG&E become part of
15 Exelon?

16 A 2012, I believe is the year the deal
17 closed.

18 Q And do you know when in 2012 BG&E became
19 fully integrated with Exelon?

20 A The merger was consummated, I believe, in
21 March of 2012. I don't remember the exact date.

22 Q Now, as I understand it, you're

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1 presenting this chart at the top of page 6 to show
2 how customer satisfaction improved at BG&E; is
3 that correct?

4 A Yes, sir.

5 Q And it does show consistently improving
6 satisfaction from 2009 through the end of 2012; is
7 that right?

8 A That's correct.

9 Q Is it your position that Exelon had any
10 role at all in the improvement in customer
11 satisfaction from 2009 through the beginning of
12 2012?

13 A I would say no, we were not part of --
14 BG&E was not part of the Exelon family of
15 utilities at that point in time.

16 Q And by the same token, would it be fair
17 to say any improvement in customer satisfaction
18 prior to the March integration, March 2012
19 integration, would not have been attributed to
20 Exelon; is that right?

21 A I think that's fair to say, yes.

22 Q Do you have any explanation as to why the

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1 rate of improvement in customer satisfaction among
2 BG&E's customers from 2012 to 2013, which was the
3 7.15 to 7.70, would be lower than the rate of
4 improvement in the preceding years?

5 A I don't have intimate knowledge of 2009
6 and what was going on in the company at that time,
7 but I believe that was a very severe storm year
8 for BGE and the reliability suffered as a result
9 of that, and so you see a large jump from 2009 to
10 2010 as a result of weather improving and having
11 less of an impact on the business.

12 I don't have a sense for what their rate
13 of improvement was from 2010 to 2012.

14 Q Thank you for that.

15 And subject to check -- you don't have to
16 agree with me, but if you know, is it correct that
17 the rate of improvement from 2012 to 2013, that
18 last segment of the line in that graph, is about
19 7.7 percent and the average annual rate of
20 improvement in the previous years was about
21 11 percent? That's why -- that prompted my
22 question about the drop. Did that sound about

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1 right, if you know?

2 A I don't have my calculator in front of
3 me, and I'm not that good with math in my head,
4 but if you've done the math, that's probably
5 correct.

6 Q Okay. Do you have any sense of how the
7 customer satisfaction ratings were for 2014?

8 A Not off the top of my head, I don't
9 remember. I believe they were favorable, though.

10 Q Okay.

11 A I believe all the Exelon utilities
12 performed favorably in customer satisfaction in
13 2014.

14 Q And do you think the satisfaction, the
15 high satisfaction of BG&E's customer may have been
16 attributable to mild weather in 2014 as opposed to
17 previous years?

18 A I think weather is a factor. I think
19 there are a lot of other things that contribute to
20 that as well.

21 Q Are you familiar with the electricity
22 quality of service standards in the District, or

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1 the EQSS?

2 A I am.

3 Q And is it your understanding that this
4 Commission established the current EQSS in
5 February 2012?

6 A Yes, sir.

7 Q And you do discuss the EQSS in your
8 direct testimony; is that right?

9 A I do.

10 Q And is it your understanding that the
11 EQSS standards specify maximum permissible SAIDI
12 and SAIFI levels each year?

13 A Yes.

14 Q And the years covered by the current EQSS
15 begin in 2013 and run through 2020; is that right?

16 A That's correct.

17 Q And is it your understanding that PEPCO
18 must meet all reliability-related requirements of
19 the Commission that apply to PEPCO?

20 A That's my understanding, yes.

21 Q And is it your understanding that the
22 annual SAIDI and SAIFI levels of the EQSS are not

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1 goals or aspirations that PEPCO should strive to
2 meet, but are legally-binding requirements that
3 they must meet?

4 A That's my understanding, yes.

5 Q And is it part of the package of
6 commitments that joint applicants are making in
7 this proceeding that, if the merger is approved,
8 then PEPCO would continue to have to meet SAIDI
9 and SAIFI each and every year from 2013 to 2020?

10 A Yes, I understand that is the
11 expectation.

12 Q And you certainly have extensive
13 testimony about a three-year averaging commitment
14 that would cover the years 2018 to 2020, a
15 reliability commitment; is that right?

16 A That's correct. That's separate from the
17 EQSS standards.

18 Q Exactly. So you have anticipated my next
19 question. I do want to ask you some questions
20 about that three-year averaging, but that is
21 independent, is it not? Whatever commitment the
22 applicants are making with respect to that

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1 three-year averaging is in addition to PEPCO's
2 continuing obligation to meet the SAIDI and SAIFI
3 requirements of the EQSS each and every year?

4 A That's correct.

5 Q And just to be completely clear, if, for
6 example -- it's now -- if we can fast-forward to
7 2020 and we have the numbers that are shown in
8 your three-year reliability commitment as
9 presented in the February 2015 testimony -- and I
10 can go to specific pages, but I just want to speak
11 generally. And if we could assume that, over 2018
12 and 2019 and 2020, if you were to average PEPCO's
13 performance during those three years and assume
14 that PEPCO met the three-year average commitment
15 for SAIFI but exceeded the SAIFI for 2019, for
16 example -- are you with me still?

17 A I am.

18 Q -- but met the SAIFI for 2018 and 2020,
19 would PEPCO be deemed to have violated the
20 Commission's EQSS or would there be no violation
21 because PEPCO met the three-year average?

22 A We would have -- it would be considered

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1 that we violated the EQSS standards for one year,
2 but still met the three-year average.

3 Q And as I understand it -- let me ask it a
4 different way. Do you have a statement in your
5 testimony, any of your prefiled testimony, that
6 makes that point, that entirely apart from the
7 three-year averaging mechanism that the company
8 has proposed in this case, PEPCO will be required
9 to meet the SAIDI and SAIFI standards each and
10 every year? Because I couldn't find it, and I was
11 hoping you could help me find that in your
12 testimony.

13 A I think there's been some confusion about
14 that. We probably could have been clearer with
15 respect to that. But we do clearly understand
16 that we have a requirement to meet the EQSS
17 standards each and every year. That's an
18 obligation the company would have regardless of
19 additional commitments that we've made.

20 We've made additional commitments, just
21 as you described, for the final three years that
22 involve financial penalties. Those standards as

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1 well as budgetary requirements.

2 Q I appreciate that response. Were you in
3 the hearing room this past Monday when Mr. Crane
4 was on the witness stand?

5 A I either watched most of that testimony
6 on the screen or was in the room.

7 Q And as I recall -- I mean, you can read
8 the transcript for yourself when you can, but what
9 I heard him say, and I would like to get your
10 confirmation, seems consistent with what I just
11 heard you say. I heard him clearly say that,
12 post-merger, PEPCO would have to meet the EQSS
13 each and every year, which was the first time I
14 had heard that. I hadn't read it in testimony. I
15 was happy to hear that.

16 So -- it sounds like your testimony is
17 consistent with that of your CEO's.

18 A I would hope so.

19 Q Yes. Thank you.

20 A I think Mr. Crane also said he wasn't as
21 clear on that as he would like to be, and any
22 additional specifics around that could be referred

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1 to myself.

2 Q Now, if I could ask another couple of
3 questions about the testimony -- the live
4 testimony that Mr. Crane gave on Monday. I was
5 curious -- he was asked during cross-examination
6 whether joint applicants had revised their
7 reliability-related commitment as part of their
8 February 17th, 2015 testimony as compared to what
9 had been the commitment prior to that date. And
10 his answer was, I don't believe we did. I can
11 give you the transcript cite if you would like.

12 MR. DUVER: That would be helpful.

13 MR. EILBOTT: Page 94, lines 18 to 20.

14 BY MR. EILBOTT:

15 Q Now, to be fair, he said, I don't believe
16 we revised our commitments. And I wanted to get
17 your understanding if I could.

18 A I'm sorry. I had a little bit of an
19 accident up here. I apologize.

20 What lines were you referring to, please?

21 Q 18 to 20 of page 94.

22 A Okay. And your question is? I'm sorry.

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1 Q Whether you would agree or disagree with
2 his point -- with the response he gave at that
3 point on page 94, lines 18 to 20 that the
4 applicants did not revise their reliability
5 commitment on February 17th.

6 A We did revise our reliability commitment.

7 Q Okay. Thank you for that clarification.
8 Now -- well, you may want to hold onto that,
9 Mr. Alden.

10 Around the same time that Mr. Crane was
11 being examined on Monday -- and this is in the
12 area of pages 94 to 96 of the transcript -- he
13 was -- a hypothetical situation was posed to him
14 so at least People's Counsel could get a better
15 idea of the contours of the reliability
16 commitment. And if I could, I would like to
17 present the same hypothetical to you just to --
18 for belts and suspenders, so we do have a clear
19 understanding of what the commitment is. Okay?

20 MR. DUVER: I would just ask for
21 clarification if he should be reviewing those
22 three pages that you've identified, 94 to 96?

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1 MR. EILBOTT: I mean, my recommendation,
2 Your Honor, is that he have that as a reference,
3 but I can shorten it. So I have the benefit of
4 compressing the questions in a couple of
5 sentences. It took a little longer to get it out
6 just because that's the nature of live back and
7 forth.

8 But I think I could just give you the
9 hypothetical and we'll take it from there.

10 CHAIRMAN KANE: You may proceed.

11 MR. EILBOTT: Thank you, Your Honor.

12 BY MR. EILBOTT:

13 Q So Mr. Alden, I'd like you to assume
14 three things as part of this hypo. First, the
15 Commission approves the transaction as filed.
16 Second, after the merger is consummated, Exelon
17 performs a circuit-by-circuit review of PEPCO's
18 system and determines that more work is needed to
19 be done than initially anticipated in order to
20 meet reliability standards. And finally, that
21 extra, unanticipated work would require Exelon to
22 exceed the capital and O&M budgets that it had

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1 committed not to exceed.

2 Do you have those three pieces of --

3 A I believe I understand, yes.

4 Q Okay. Thank you. Now, if that's the

5 situation to arise, would Exelon make the

6 expenditures that exceed the budgeted levels?

7 A We would do what it took to meet the EQSS

8 standards as required, and we would manage those

9 costs as best we could not to exceed the limits.

10 Q In other words, is it correct to say that

11 joint applicants' reliability commitment is to

12 make whatever expenditures are required to drive

13 the level of reliability needed to meet the EQSS?

14 A We have an obligation to meet the EQSS

15 standards and we'll do what it takes to do that.

16 Q Could I ask you to turn to your

17 supplemental direct testimony, the February 2015

18 supplemental.

19 A You're saying the February 17th?

20 Q Correct.

21 A Thank you.

22 Q And page 2, lines 1 through 9.

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1 A Okay.

2 Q As I understand it, these lines
3 articulate the revised reliability commitment; is
4 that correct?

5 A That's correct.

6 Q Now, I'm curious. As part of this
7 commitment, you state that the joint applicants
8 commit to meet the SAIDI and SAIFI averages
9 calculated for the three-year average of years
10 2018 through '20 without exceeding the aggregate
11 capital and O&M spending levels listed in table 1
12 of Mr. Gausman's February 17th, 2015 supplemental
13 direct testimony, absent some -- and then there
14 are some escape clauses after that. But we can
15 just focus on the first half.

16 So given that your understanding is that,
17 in my hypothetical situation, Exelon would, in
18 fact, exceed the spending and the levels shown in
19 Mr. Gausman's supplemental direct testimony, what
20 does that leave of the reliability commitment, or
21 what is the reliability commitment in terms of
22 holding the budget at the levels in Mr. Gausman's

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1 testimony?

2 A We haven't explicitly laid out a
3 financial commitment or penalty associated with
4 not meeting either the reliability -- I'm sorry --
5 with not meeting the budget requirements, the
6 budget commitments. That would be handled
7 through -- in our judgment, through the normal
8 rate case process.

9 Q Well, let me follow up on that. You say
10 that you've not made a financial-related
11 commitment as part of this --

12 A Let me clarify that. We've made a
13 commitment to meet the standards that we've
14 described here in SAIFI and SAIDI -- actually
15 exceed the SAIFI requirements with regard to EQSS
16 and meet the requirements with regard to SAIDI for
17 the budget dollars that have been presented in my
18 testimony.

19 Your question was, hypothetically, if we
20 overran those dollars, is there a penalty
21 associated with that? I believe that's your
22 question.

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1 Q Not exactly. My question is, what is the
2 significance of the condition of this reliability
3 commitment that you will meet the three-year
4 average without exceeding the spending limits,
5 when I thought I heard you say you might exceed
6 the spending limits if you determine you need to
7 exceed the spending limited to meet reliability
8 standards?

9 A We have an obligation to meet the
10 reliability standard each year, as I said, and
11 we're obligated to do that.

12 Q Well, I guess I'm having trouble
13 understanding. Are joint applicants guaranteeing
14 they are not going to exceed the aggregate capital
15 and O&M spending limits listed in Mr. Gausman's
16 February 17th, 2015 testimony or are they not
17 guaranteeing that they are going to exceed those?

18 A Could you repeat that question, please?

19 Q My question is whether the joint
20 applicants are or are not, as part of this revised
21 reliability commitment, guaranteeing that they
22 will not exceed the aggregate capital and

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1 operation and maintenance spending levels?

2 A What we're committing to is to meet the
3 three-year average with a 50 basis points penalty
4 associated with it for the capital dollars and O&M
5 dollars as committed to in our reliability
6 spending.

7 Q And if I heard you correctly in
8 responding to my hypothetical, you are committing
9 not to exceed the levels -- now I'm obviously
10 putting words in your mouth -- unless you decide
11 you have to exceed the levels. Isn't that --

12 A Well, one is an obligation and one is a
13 commitment the way I see it. They're two separate
14 issues.

15 Q How are they different?

16 A We have an obligation to meet the EQSS
17 standards as established by the Commission, and
18 the Commission has the ability to decide whether
19 we've done that prudently or not. We have a
20 commitment on top of that that says, absent your
21 hypothetical, we'll execute the plan as designed
22 within the current budget as submitted and meet

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1 the reliability standards for the three-year
2 period as submitted.

3 Q But don't you have directly
4 conflicting -- aren't you making directly
5 conflicting commitments? On the one hand, as part
6 of the merger application, you're committing not
7 to exceed the budgets as part of meeting
8 reliability standards. On the other hand, you're
9 saying you're committing to meet the Commission's
10 standards and you are going to spend what it takes
11 to meet those standards. How can you say both?

12 A You've given me a hypothetical to work
13 with, and I don't know how to answer that
14 question.

15 Q Well, let's try this. Can you turn to
16 page 6 of your rebuttal testimony and specifically
17 lines 8 to 10.

18 A You said page 6 of rebuttal, lines 8 to
19 10?

20 Q Correct.

21 A Okay.

22 Q I'm trying to understand the meaning of

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1 the phrase in that sentence. You are responding
2 to an assertion by D.C. government Witness Chang,
3 and you state that, Just throwing people at the
4 problem, as Mr. Chang seems to suggest, is not a
5 way to effectively ensure the reliability
6 improvements we are guaranteeing while managing
7 costs.

8 What is the guarantee you're referring to
9 there?

10 A It's the commitment that we've made to
11 meet a three-year reliability standard, average
12 standard, for the costs that we've submitted with
13 respect to capital spending around O&M capital.

14 Q And that is not referring to the
15 guarantee of the revised reliability commitment
16 itself? So there's no guarantee in the
17 reliability commitment?

18 A Guarantee versus commitment. I'm not
19 following with respect to --

20 Q Well -- yeah. Well, I'm not following.
21 I see -- sometimes I see where it's guarantee.
22 Sometimes I see commitment. And I'm trying to

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1 understand, if I see that -- if I -- if a
2 guarantee is made not to exceed budgets, I expect
3 that there will be no increase in the budgets.
4 Full stop. But I don't -- but then I think I hear
5 you saying we guarantee not to exceed budgets
6 unless we do.

7 A I wouldn't say -- it's not a guarantee to
8 exceed budgets. We have an obligation to meet the
9 EQSS standards and we'll do what it takes to do
10 that. If that requires additional spend, then
11 we're subject to the Commission's rules with
12 respect to whether we're allowed to recover those
13 dollars or not.

14 Q Do you by any chance have Mr. Gausman's
15 rebuttal testimony with you?

16 A I do.

17 Q Could you turn to page 4 of his
18 testimony, please?

19 A Okay.

20 Q And would you agree that here Mr. Gausman
21 is responding to the question, Do you agree that
22 the reliability commitment does not provide any

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1 benefit to customers?

2 A I see that.

3 Q Could you read -- he answers, No. And
4 can you read out loud that second sentence of his
5 answer?

6 A No, the merger commitment is guaranteeing
7 reliability improvement while also guaranteeing
8 that the reliability-related capital and O&M
9 budgets would not increase.

10 Q So can you square that statement -- or
11 let me back up.

12 What does that statement mean to you,
13 that portion of Mr. Gausman's testimony, the
14 second sentence?

15 A In my mind, that's describing our
16 commitment.

17 Q Which is what with respect to budgets?

18 A Which is that we will execute to the
19 submitted budgets, both capital and O&M, and meet
20 the reliability standards that we've committed to
21 for the three-year average period.

22 Q Now, the next line of Mr. Gausman's

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1 testimony says that the level of improvement
2 guaranteed, with no corresponding increase in
3 spending, is not something that would be available
4 to District of Columbia residents absent the
5 merger and constitutes a direct and traceable
6 benefit to customers. Is that correct?

7 A I see that.

8 Q And isn't this testimony -- I understand
9 it's not your testimony, but doesn't this
10 testimony state that the benefit to D.C. customers
11 of the revised reliability commitment is to meet
12 reliability -- the existing reliability standards
13 without raising spending -- without exceeding the
14 spending that is in Mr. Gausman's testimony?

15 A It's to exceed the SAIFI standard and
16 meet the SAIDI standard with no additional
17 spending.

18 Q Did you see my confusion or do you --

19 A Well, I think the confusion is around the
20 term "guarantee" and our commitment. And it gets
21 confusing when you mix that in with the obligation
22 we have to meet the minimum standards.

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1 Q Help me, if you can. I heard the chief
2 executive of Exelon say on Monday that if a
3 situation arose where additional spending beyond
4 what was originally anticipated was determined to
5 be necessary to meet reliability standards, that
6 PEPCO would make -- would make the expenditures
7 that exceed the budgeted levels.

8 MR. DUVER: Your Honor, I would just ask
9 for clarification whether the term "reliability
10 standard" referred to in the question is the EQSS
11 standards that the Commission has set or whether
12 the reliability standards are the commitment --
13 the reliability commitment that was made as part
14 of the proposal in this proceeding. Because I
15 think that is where some of the confusion lies.

16 CHAIRMAN KANE: Clarify that.

17 MR. EILBOTT: I'm not sure I understand
18 the question from counsel.

19 MR. DUVER: It appears that the question
20 that was directed to Mr. Alden was about
21 reliability standard --

22 CHAIRMAN KANE: And you're asking what?

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1 MR. DUVER: What standard is he referring
2 to when he --

3 CHAIRMAN KANE: -- when he says
4 reliability standards?

5 MR. DUVER: Correct, because Mr. --

6 CHAIRMAN KANE: You understand.

7 MR. EILBOTT: That helps. Thank you.

8 CHAIRMAN KANE: Thank you.

9 BY MR. EILBOTT:

10 Q So I think we discussed before -- at
11 least you indicated a couple of minutes ago that,
12 post-merger, PEPCO would be subject to two
13 separate independent reliability standards if the
14 merger is approved as -- in its current form.

15 A We're subject to one standard that the
16 Commission has established. We've offered a
17 commitment that's more aggressive than the
18 standards the Commission has offered -- or has
19 established.

20 Q Okay. Let me --

21 A There's one standard. It's the EQSS
22 standards.

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1 Q So the guarantee that you and Mr. Gausman
2 are referring to with respect to not exceeding
3 budgets relates to which reliability standard? In
4 terms of guaranteeing not to exceed the spending
5 levels in Mr. Gausman's testimony, what
6 reliability standards does that guarantee go to?

7 A We're committing to a -- we're committing
8 to a standard that's -- I hate to use the word
9 "standard" because I think that what gets us
10 bollixed up here -- but we're committing to a
11 level of performance with penalty that's more
12 aggressive than the EQSS standards. And that's
13 what we're referring to here.

14 Q As part of -- post-merger, in a
15 post-merger world, if it was determined that
16 additional spending beyond what is in the
17 testimony was needed to meet the EQSS but was not
18 needed to meet the slightly different numbers in
19 your three-year average, would Exelon exceed the
20 spending levels?

21 A If we -- if we exceed the spending levels
22 that we've committed to here to meet the

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1 commitment standards, then those additional
2 expenditures would be subject to approval through
3 normal ratemaking process.

4 Q And were you referring to the
5 Commission's EQSS or are you referring to the .54
6 SAIFI and the 90 SAIDI in the revised commitment?

7 A Well, I think we're getting those two
8 mixed up. Very --

9 Q .66, not .54.

10 A -- confused right now.

11 But what we've committed to is to meet
12 the .66 and the 90-and-change, whatever that
13 number is, in SAIDI at the expenditure levels that
14 we've described. If we don't meet those
15 reliability standards, we receive a penalty. If
16 we exceed those dollars, then those exceeded
17 dollars to meet those standards are at risk.

18 They're also at risk if we don't meet the
19 EQSS standards based on the same level of
20 spending.

21 Q Okay. Let me try this and I --

22 CHAIRMAN KANE: I think we -- I think we

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1 got the answer.

2 MR. EILBOTT: Okay.

3 BY MR. EILBOTT:

4 Q At page 96 of Monday's transcript -- and
5 again, I'm going back to Mr. Crane's live
6 testimony. If you can tell me when you're there.

7 A I'm there.

8 Q Lines 14 to 17.

9 A Yes, sir.

10 Q Do you see Mr. Crane stated, The number
11 one priority is reliability and safety of the
12 system, and our responsibility is to invest
13 whatever money it needs to accomplish those.

14 Do you agree with his statement?

15 A I do, and I think that's what I've been
16 saying, yes, sir.

17 Q And if you -- further down on page 96,
18 and it begins on, I guess, the bottom of
19 page (sic) 22 and carries over to page 97,
20 Mr. Crane is responding to the question, If Exelon
21 is not committing that it won't seek recovery in
22 rates of increased expenditures necessary to

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1 improve reliability -- and didn't he answer, We're
2 not saying we would or we wouldn't?

3 Do you agree with that answer?

4 A I think it's just as I described. I
5 think it's up to the will of the Commission to
6 decide whether or not those funds are recoverable
7 or not.

8 Q And would the company rule out attempting
9 to seek recovery in rates, through it is PEPCO
10 D.C. rates, for additional expenditures above and
11 beyond the levels that are a part of the revised
12 reliability commitment?

13 MR. DUVER: Your Honor, I'd object at
14 this point, that this has been asked and answered
15 many times.

16 MR. EILBOTT: Your Honor, I have not
17 asked a single question about rate recovery. I've
18 been asking about whether or not they would exceed
19 spending levels. Now I would like to know what
20 happens, in terms of rate recovery, if they exceed
21 the spending levels. I think that's a very
22 different question.

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1 CHAIRMAN KANE: I believe the witness
2 said that they would seek it and it would be up to
3 the Commission.

4 Is that what you said?

5 THE WITNESS: Yes, ma'am.

6 BY MR. EILBOTT:

7 Q Could you turn back to your February 2015
8 supplemental direct testimony, please.

9 Okay -- I'm sorry. I didn't give you the
10 page number. If you could go back to page 2,
11 lines 1 through 9. Are you there?

12 A Yes.

13 Q Okay. Thank you. Now, would you agree
14 that the -- you have presented what you call this
15 reliability commitment as having three -- my
16 words -- escape clauses: That you would meet your
17 three-year average SAIDI and SAIFI for the years
18 2018 and '20 without exceeding those spending
19 levels absent -- and then there are three
20 conditions you list. And are those conditions
21 sort of exceptions to meeting the three-year
22 averages?

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1 A Yes, I wouldn't call them escape clauses,
2 but yes, they are potential exceptions.

3 Q Okay. And the first potential exception
4 would be a change in law or regulation; is that
5 right?

6 A That's correct.

7 Q Do you know whether, as part of this
8 merger -- the merger commitments, the joint
9 applicant have committed not to seek re-evaluation
10 of the Commission's EQSS?

11 A It's my understanding that we have not
12 made that -- PEPCO has not made that commitment.

13 Q So doesn't the possibility exist that,
14 post-merger, the company seeks reconsideration,
15 re-evaluation of the EQSS and they change, and
16 that would nullify this reliability commitment?

17 A I think Mr. Gausman is probably in a
18 better position to answer that question than I am.
19 That's not our intent.

20 Q Well, what is the intent when you refer
21 to absent changes in law or regulations?

22 A These are essentially things that would

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1 take place that are outside of our control.

2 Q So the last -- the words that carry over
3 from line 8 to 9, "outside of PEPCO's control," do
4 not just apply to the D.C. PLUG exception; it
5 applies to all three?

6 A Well, I think the intent is that changes
7 in law, regulations or extreme weather events, as
8 well as delays in the PLUG undergrounding project,
9 would all be considered to be outside of PEPCO's
10 control.

11 Q Now, another transcript cite for you, if
12 I could, from Mr. Crane's testimony. He was asked
13 about out-of-control versus not outside PEPCO's
14 control on pages 101 to 102, and I'd like to have
15 you react to what he said. It sounded different.

16 MR. DUVER: Could you please identify
17 particular line numbers to the extent that you're
18 going to question him.

19 MR. EILBOTT: Well, I guess it's -- the
20 question begins on line 10.

21 THE WITNESS: On page 101.

22 BY MR. EILBOTT:

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1 Q On page 101. Do you want to read that to
2 yourself and then I can --

3 A How much would you like me to read?

4 Q I think you should read the whole
5 question --

6 MR. DUVER: To 102, line 17?

7 MR. EILBOTT: Right.

8 BY MR. EILBOTT:

9 Q To the top of 102, to his answer that
10 begins at, I think it's definitely on the same
11 plain.

12 So if you could read that question.

13 A I've read it.

14 Q Now, tell me if you have the same
15 understanding, but I -- my understanding of that
16 testimony is that Mr. Crane was testifying that
17 Exelon is reserving the right to come back to the
18 Commission for rate relief if they have to exceed
19 spending for reliability-related improvements due
20 to events that are outside PEPCO's controls or --
21 PEPCO's control or are not outside PEPCO's
22 control.

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1 Do you have the same understanding of
2 that testimony?

3 A I think we have the ability to do that.
4 That's not the intent of the clause that you
5 referenced on page 2 of my rebuttal testimony. I
6 believe that's what Mr. Crane is saying, yeah.

7 Q But doesn't the clause at page 2 of your
8 February 2015 supplemental testimony, lines 8 to
9 9, the outside of PEPCO's control, limit or narrow
10 the situations in which you're not allowed to
11 exceed the spending levels? It has to be a
12 variation in the D.C. PLUG schedule; it has to be
13 a change in law or extreme weather event. For
14 those to allow you to exceed spending without
15 getting the ROE penalty, the event has to be
16 outside PEPCO's control. Is that the intent?

17 A Yes.

18 Q So what am I to make of Mr. Crane saying
19 that they can seek to exceed spending limits and
20 get rate relief even if the event is not outside
21 PEPCO's control?

22 MR. DUVER: Your Honor, I would object as

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1 asked and answered.

2 CHAIRMAN KANE: Repeat the question.

3 MR. EILBOTT: I don't think I got the
4 answer.

5 MR. DUVER: I believe counsel previously
6 had asked him to look at the question that appears
7 on pages 101 and 102 and then opine as to whether
8 he was in agreement. And Mr. Alden did answer
9 that question. And I interpret the same question
10 being asked right now.

11 BY MR. EILBOTT:

12 Q So you agree that PEPCO could seek rate
13 relief for having to exceed expenditures due to
14 events outside their control or not outside their
15 control?

16 MR. DUVER: Objection. Asked --

17 BY MR. EILBOTT:

18 Q I just want to be clear.

19 MR. DUVER: Asked and answered.

20 CHAIRMAN KANE: Yes or no answer.

21 THE WITNESS: Could you please repeat the
22 question? I'm sorry.

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1 BY MR. EILBOTT:

2 Q Do you agree that PEPCO, as you've
3 presented this application, would be entitled to
4 exceed the spending limits in Mr. Gausman's
5 February 2015 supplemental testimony due to events
6 outside its control or events not outside its
7 control and to seek rate recovery in that
8 situation?

9 A Outside our control, I would expect that
10 there would be a very specific reason for that,
11 and that would be discussed with the Commission so
12 there was an understanding of why we were
13 exceeding the limits.

14 Within our control, I'd say we have the
15 ability to request rate recovery if we think it's
16 justifiable subject to the Commissions will.

17 Q Slightly different question. Do you
18 believe the EQSS permit PEPCO to demonstrate
19 compliance with SAIDI or SAIFI through use of any
20 kind of multi-year averaging?

21 CHAIRMAN KANE: I think that question has
22 been answered also, that it's a year-by-year

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1 requirement.

2 BY MR. EILBOTT:

3 Q So I guess to go back to -- I was
4 attempting to parse the three, I guess,
5 exceptions -- I know you're not agreeing with that
6 characterization -- on the revised reliability
7 commitment at page 2 of your supplemental -- your
8 supplemental direct, are there any other "outside
9 of PEPCO's control" situations that you believe
10 would similarly qualify for allowing spending to
11 be exceeded without penalty?

12 A No.

13 Q Now, staying on that same page 2 of your
14 supplemental direct, your chart at lines 12 and 13
15 shows SAIFI and SAIDI commitments as part of this
16 three-year average test. Are you with me?

17 A Yes, I am.

18 Q Do you see, under the right-most column,
19 merger commitment?

20 A I do.

21 Q And what number is shown for joint
22 applicants' commitment in terms of SAIFI?

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1 A .66 interruptions for a three-year
2 average from 2018 to 2020.

3 Q And as part of your earlier testimony in
4 this case, specifically your June 2014 direct
5 testimony, do you know what that number was?

6 A I believe it was .54.

7 Q So the number got worse, more lenient.
8 Would you agree?

9 A We adjusted that number based on the
10 one-year delay in D.C. PLUG execution.

11 Q And why would that lead to a higher SAIFI
12 commitment?

13 A D.C. PLUG has a contribution to SAIFI
14 every year, and so by not being able to apply that
15 contribution in the first year, based on a
16 one-year delay of that project, we moved the
17 schedule -- associated schedule out and the
18 associated benefits out by one year.

19 So the benefits we expected to get in
20 that period all got shifted one year.

21 Q But doesn't your revised reliability
22 commitment already have baked into it an out for

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1 variations in the D.C. PLUG schedule at lines 7
2 and 8 on page 2?

3 A We made the adjustment because of what
4 happened between the time we made our original
5 filing and February 17th to appropriately reflect
6 the reality of the business.

7 Q And what would be -- what was the
8 rationale for coming up with a three-year
9 averaging mechanism as part of this commitment as
10 opposed to something else?

11 A Just the variability year over year of
12 hitting your reliability numbers.

13 Q And what would cause that variability?

14 A Could be any number of things. Could be
15 weather-driven. Predominantly in this case, it's
16 weather-driven.

17 Q Are you aware of the fact that the EQSS
18 already exclude major service outages in
19 calculating SAIDI and SAIFI performance each year?

20 A Yes, sir.

21 Q So why the need for a second out for
22 weather-related variability?

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1 A Major events aren't always the primary
2 driver for weather variability year over year.
3 Events that don't count or are not excluded as
4 major weather events can have an impact on your
5 reliability year over year.

6 Q And isn't it possible that poor
7 reliability performance in a particular year --
8 and let's look at the three years that are part of
9 this 2018, '19, '20 period that you've identified.
10 Couldn't that poor reliability in one of those
11 years be caused by a variety of non-weather
12 issues?

13 A Could be, yes.

14 Q Such as failure of neglected equipment?
15 Could that cause poor reliability?

16 A I would hope that equipment wouldn't be
17 neglected, but failure of equipment is definitely
18 a cause.

19 Q Could inadequate tree trimming cause poor
20 reliability?

21 A It could.

22 Q And could insufficient inspections of

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1 electrical equipment cause poor reliability?

2 A Yes, sir.

3 Q And so doesn't use of the three-year

4 average to some extent excuse poor reliability

5 caused by events that are within PEPCO's control?

6 A I don't agree with that. That's not the
7 way we run our business.

8 Q But would you agree the three-year
9 averaging by its nature allows the averaging away
10 of poor reliability performance in one year?

11 A It could, but if you allow that poor
12 performance in any one year, you've got to recover
13 that in the post years, which makes it more
14 difficult to execute your plan. So the objective
15 is to hit those numbers every year such that you
16 make the three-year average. Nobody wants to be
17 in a position where they're behind the curve
18 because they've neglected one year's worth of
19 performance.

20 Q If you could go back a page, page 1 of
21 the same testimony, the February 2015 testimony,
22 lines 17 to 19.

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1 A Okay.

2 Q And there you're describing the
3 commitment as achieving reliability performance
4 for the 2018 to 2020 period at a level equal to or
5 better than the corresponding levels set forth in
6 the Commission's EQSS over the same period; is
7 that right?

8 A That's correct.

9 Q Would you agree that your June 2014
10 testimony used different words to describe that
11 commitment? It was not equal to or better; it was
12 just better?

13 MR. DUVER: If counsel could please refer
14 the witness to the portion of the June 2014 --

15 MR. EILBOTT: Page 8, line 11.

16 BY MR. EILBOTT:

17 Q Now, you have to go to Joint Parties'
18 Exhibit --

19 CHAIRMAN KANE: Wait a second. Did the
20 witness --

21 MR. EILBOTT: I'm sorry.

22 CHAIRMAN KANE: Give the witness a

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1 changes to get the --

2 MR. DUVER: Thank you, Your Honor.

3 CHAIRMAN KANE: -- proper document in
4 front of him.

5 BY MR. EILBOTT:

6 Q Mr. Alden, I believe you -- to follow
7 this question, you cannot look at -- well, you
8 have to look at two things: Your -- the conformed
9 version of the June 2014 testimony and then the
10 index which shows the specific language that
11 changed.

12 And the specific language that changed is
13 in Joint Parties' Hearing Exhibit Number 1, which
14 is that 70-some-odd-page-long table of changes.
15 And I would ask for you to turn to page 30 of 85
16 of that index.

17 A I have page 30 of 85 and page 8. Those
18 are the two comparisons?

19 Q Yeah. And, in fact, I think we probably
20 can just accomplish this looking at page 30 of 85,
21 since it shows both versions, if you will.

22 So at the top of page 30, it references

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1 page 8, line 11 of your direct testimony. The
2 third column says, Original text; the fourth
3 column says, Revised text?

4 A Yes, sir, I have it.

5 Q Okay. Original text says, PEPCO -- I
6 believe that's a typo, but it says, PEPCO we will
7 be able to exceed the EQSS requirements.

8 Do you see that?

9 A Yes, I do.

10 Q That's the testimony as filed last June,
11 correct?

12 A Yes, sir.

13 Q In February of this year, your testimony
14 was changed. That line was changed to, PEPCO will
15 be able to meet or exceed the EQSS requirements.

16 Do you see that?

17 A I do.

18 Q So would you agree it changed from will
19 be able to exceed to be able to meet or exceed?

20 A I agree that the wording changed, yes.

21 Q Can you explain the derivation and the
22 reason for the change?

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1 A I believe in June the language there
2 wasn't as clear as it should have been. At the
3 time, the expected to exceed the SAIFI
4 requirements. We did not meet the EQSS SAIDI
5 requirements. And we probably should have been
6 more specific about how we worded that and pointed
7 that out. In a revised text, the intent is to
8 correct that -- that confusion.

9 Q So you are -- are you stating that a
10 change from "exceed" to "meet or exceed" is a
11 clarification?

12 A That's the intent here, yes.

13 If you took the SAIDI and SAIFI in total
14 as a commitment in the original text, those two
15 combined, one could interpret that as because we
16 exceeded in one, that we were exceeding the
17 requirements. And that was not as clearly worded
18 as it should have been.

19 Q Well, is this a fair statement that joint
20 applicants have changed their position from a
21 commitment that PEPCO's reliability will be better
22 than that required by the EQSS to a commitment

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1 that PEPCO's reliability will either be better or
2 maybe just the same as that required by the EQSS?

3 MR. DUVER: Your Honor, I would object
4 asked and answered. He explained exactly what the
5 reason for the change was and the need for the
6 clarification for the change.

7 CHAIRMAN KANE: The question wasn't the
8 need. The question was, what is the difference
9 between the two sentences? Is that your question?

10 MR. EILBOTT: Yes, Your Honor.

11 CHAIRMAN KANE: The question is, does
12 meet or meet or exceed -- I mean, does "exceed" or
13 "meet or exceed" mean different things? And that
14 has been answered.

15 MR. EILBOTT: Well, I'm asking if I have
16 a proper understanding of the significance or the
17 meaning of the change that was made in February.

18 MR. DUVER: And I believe that that's
19 exactly what Mr. Alden had testified to when he
20 talked about the need to make it more clear.

21 MR. EILBOTT: I'll move on, Your Honor.

22 BY MR. EILBOTT:

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1 Q Could you tell me approximately when the
2 decision was made to change the testimony that
3 we're discussing from "exceed" to "meet or
4 exceed"?

5 A In the first few months of this year.

6 Q And do you have an understanding of what
7 PEPCO's reliability -- and by that I mean SAIDI
8 and SAIFI performance -- was for 2014?

9 A I do.

10 Q And what's your understanding?

11 A Their reliability was very good. SAIDI
12 and SAIFI were both very good for 2014.

13 Q And would you agree, subject to check,
14 that performance for 2014 for SAIFI would already
15 meet the EQSS requirement for 2020, and for SAIDI
16 would already meet the 2016 requirement for
17 SAIDI -- I'm sorry, 2018 requirement for SAIDI?

18 A I believe that's correct, yes.

19 Q So based on that excellent performance in
20 2014, why would the applicants, in my view,
21 backtrack and revise the standard to make them
22 more lenient than what is already apparently being

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1 achieved?

2 A In my experience and Mr. Gausman's
3 experience as operators, one year is not
4 necessarily indicative of sustained performance.

5 For example, it's my understanding that
6 through February of this year, PHI or PEPCO's
7 SAIDI is almost double what it was in February of
8 last year, and their SAIFI performance is roughly
9 25 percent worse than it was last year.

10 So we use -- for planning purposes, we
11 make a balanced choice based on historical
12 performance, current performance, and what we
13 think we can accomplish moving forward.

14 Q Now, typically, the SAIDI or SAIFI
15 performance in the first part of the year really
16 is not a solid indicator of what end-of-year
17 numbers will look like; isn't that right?

18 A I don't think I can answer that question.
19 Could be; may not be.

20 Q Wasn't PEPCO's reliability in the early
21 part of 2014 on the poor side due to the polar
22 vortex and other issues, and by the end of the

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1 year, they had excellent numbers?

2 A I don't know.

3 Q Okay. Can you turn to -- back to your
4 direct testimony at page 9. And you can put that
5 index away. Thank you.

6 A Thank you. You said direct testimony?

7 Q Yes, sir. Page 9. And if you could look
8 at lines 16 to 18 of that direct testimony.

9 A 16 to 18, you said?

10 Q That's right.

11 A Thank you.

12 Q It's the sentence that starts, The
13 improved SAIFI.

14 A I have it.

15 Q You say here, don't you, that, The
16 improvement SAIFI and SAIDI commitments above are
17 in addition to those to be achieved by the D.C.
18 undergrounding project?

19 Is that right?

20 A That's what it says here, yes.

21 Q And by the D.C. undergrounding project,
22 are you referring to D.C. PLUG?

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1 A Yes, sir.

2 Q Now, if you could keep that page open and
3 flip over to your February 2015 supplemental
4 testimony, I want to ask you --

5 A You said February 15th. Did you mean
6 February 17th?

7 Q I said February 2015 because --

8 A Oh, I'm sorry.

9 Q -- I'm skipping the day?

10 A I'm sorry.

11 Q You're correct, February 17th, 2015. At
12 page 3, at the top, line 1.

13 A I have it.

14 Q And doesn't it say there, This commitment
15 is contingent on the D.C. PLUG initiative moving
16 ahead on a schedule such that the currently
17 forecasted year 1 feeder work is completed,
18 et cetera, et cetera?

19 A That's what it says, yes, sir.

20 Q Okay. Isn't that inconsistent with what
21 we just read from your direct testimony? How can
22 the contingent be both -- the commitment be both

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1 in addition to and contingent on D.C. PLUG?

2 A Just give me a minute to read this,
3 please.

4 Q Of course.

5 A I believe one -- I'm just trying to go
6 back and forth between the two here. The
7 commitment is contingent on the D.C. PLUG
8 initiative moving forward on schedule is correct.
9 The reliability improvements and commitments
10 associated with those include the D.C. PLUG work.

11 Q So you don't see those statements as
12 being inconsistent?

13 A I don't think I do.

14 Q Okay.

15 MR. EILBOTT: Your Honor, at this time, I
16 would like to have marked for identification a
17 document that has been premarked as OPC
18 Cross-Examination Exhibit 21. This is Mr. Alden's
19 one-page response to a District of Columbia
20 government data request 5-13. I believe this
21 would be -- actually, I don't know what number
22 this would be. 16?

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1 CHAIRMAN KANE: 18.

2 (OPC Cross Exhibit Number 18 was marked
3 for identification.)

4 MR. EILBOTT: Thank you.

5 BY MR. EILBOTT:

6 Q Would you take a moment and just refresh
7 your memory. This is your response; is that
8 correct?

9 A Yes, it is.

10 Q Would you take a moment and just read to
11 yourself the question and answer. And I want to
12 ask you just a couple of questions about it. And
13 I'm really focused on subpart (b).

14 A Okay. Thank you. Okay.

15 Q So the question -- the first part of the
16 question in (b) asked, To what extent will PEPCO,
17 post-merger, meet the proposed reliability
18 commitments it has already made to the Commission?

19 Do you see that?

20 A Yes, I do.

21 Q Now, I'm trying to understand the -- the
22 response. And you say that following the merger,

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1 PEPCO has committed to meeting the reliability
2 commitments in the joint application and in your
3 testimony. Do you see that?

4 A Yes, I do.

5 Q And you then say that -- you note the
6 Commission has -- and I'm paraphrasing, of
7 course -- the Commission has also set certain
8 reliability performance measures through the EQSS,
9 and PEPCO is committed to work towards meeting
10 those -- these standards.

11 Do you see that?

12 A Yes.

13 Q Now, maybe I'm overly lawyering this, but
14 why in the first sentence do you indicate PEPCO is
15 committed to meeting the commitments in the
16 application, but as to the EQSS, you're committed
17 to work towards meeting those standards? Is there
18 a difference?

19 A I believe this is -- this is based on
20 PEPCO being a stand-alone company and needing
21 to -- and needing to meet the EQSS commitments,
22 recognizing they have that obligation to do that,

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1 but not having the confidence to be able to do
2 that within the established budgets.

3 Q And so in your mind, those are or are not
4 different? I'm sorry. I didn't quite follow.

5 A As I said, I believe this is designed or
6 answered with respect to PEPCO as a stand-alone
7 company.

8 Q Doesn't it say "following the merger" at
9 the beginning of subpart (b)?

10 A It does say that, but I'm not sure that
11 that's the intent of the paragraph.

12 Q Well, I guess I'm trying to understand
13 how can we -- I can only go by the words of the
14 response. I don't know what the intent is.

15 A I understand that. Just let me read it
16 one more time, please.

17 This only addresses -- also only
18 addresses through 2015. So I believe this was
19 intended to be PEPCO as a stand-alone company.
20 The last sentence says, PEPCO expects to meet all
21 standards through 2015 with its existing
22 reliability-related budget and work towards --

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1 essentially work towards the commitments
2 post-2015.

3 Q Okay.

4 A That's not the Exelon commitment. I
5 believe that's designed to describe where PEPCO
6 would be absent the merger.

7 Q Now, the first sentence of your response
8 indicates that, post-merger, PEPCO is
9 committing -- committed to meeting the reliability
10 commitments in the joint application, and your
11 testimony, right?

12 A That's what it says here, yes.

13 Q Do you realize that the SAIFI number in
14 the joint application is more stringent than that
15 in your testimony? I don't know if you have a
16 copy of the joint application up there. This
17 would probably go more quickly. The joint
18 application sets forth a .54 SAIFI, whereas your
19 revised testimony sets forth a .66.

20 A That's correct.

21 Q So my question is, which SAIFI standard
22 are you committing to meet?

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1 A As I've stated previously, we're
2 committing to meet the .66 standard. Not
3 standard; it's a commitment.

4 Q So your data response was not accurate?

5 A I believe this data response at the time
6 was intended to describe the condition of PEPCO as
7 a stand-alone company.

8 MR. DUVER: And, Your Honor, I would note
9 also that this data response was responded to
10 prior to the filing of the February 17th testimony
11 as well.

12 BY MR. EILBOTT:

13 Q Are you aware of the requirement imposed
14 by the Commission's rules that data requests are
15 considered continuing in nature? And this would
16 be rule 122.4 of the Commission's rules of
17 procedure.

18 MR. DUVER: Your Honor, on this point,
19 the Commission had set a data conference where any
20 issues concerning any issues regarding updates or
21 the need to address certain data request
22 responses, that those were raised earlier. And at

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1 this point in time, I believe that we're beyond
2 that.

3 MR. EILBOTT: Your Honor, at the data
4 conference we explicitly reserved our right to
5 raise issues regarding discovery responses to the
6 extent we became aware of them, and we just
7 recently became aware of this one.

8 CHAIRMAN KANE: You may continue. But
9 let me just ask, it's almost 6:00. This line of
10 questioning you have -- obviously we're not
11 anywhere near finished with Mr. Alden, but this
12 particular line of questioning about the two
13 different filings and the two different numbers,
14 do you have more on this line.

15 MR. EILBOTT: I have even better news.
16 I'm almost done.

17 But can I -- I'm not sure I got an answer
18 to my question about the continuing nature of --

19 CHAIRMAN KANE: You asked a question
20 whether the witness was aware of the continuing
21 nature of data requests or the responsibility to
22 regard them as continuing in nature?

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1 THE WITNESS: I would have to refer to my
2 counsel on that. I don't know.

3 MR. EILBOTT: Your Honor, I have no
4 further questions, and I would note that I have a
5 number of cross-examination exhibits. And I
6 previously spoke with counsel for joint applicants
7 that I would provide that list and ask that they
8 review them, and when we're back tomorrow,
9 hopefully get a stipulation. But I would ask to
10 move into the record the one I did mark which
11 would be OPC 18.

12 CHAIRMAN KANE: We'll be moving --

13 MR. EILBOTT: Oh, I'm sorry. That's
14 right.

15 CHAIRMAN KANE: We'll be moving all the
16 exhibits into the record when everyone is finished
17 with this witness.

18 MR. EILBOTT: Thank you, Your Honor.

19 CHAIRMAN KANE: All right. Are there any
20 other procedural matters?

21 All right. Then we will adjourn at 6:00.
22 We will start tomorrow with Ms. Francis with this

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1 witness. Correct? Very good. Good evening,
2 everyone.

3 (Whereupon, at 6:00 p.m., the above
4 proceedings were adjourned.)

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1 CERTIFICATE OF COURT REPORTER

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18



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