

Capital Reporting Company
Formal Case No. 1119 04-21-2015

2832

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 X
-----: :

Washington, D.C.

Tuesday, April 21, 2015

The evidentiary hearing in the
above-captioned matter began at 10:03 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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22 (Appearances continued on the next page.)

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22 (Appearances continued on the next page.)

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1	C O N T E N T S				
2	WITNESS:	DIRECT	CROSS	REDIRECT	RECROSS
3	KEVIN McGOWAN				
4	BY MR. LORENZO	2840			
5	BY MR. GRAY		2845		
6	BY MS. FRANCIS		2934		
7	RALPH SMITH				
8	BY MR. COYLE	3006			
9	BY MR. DeCUSATIS		3008		
10	BY MR. COYLE			3070	
11	BRENDAN SHANE				
12	BY MR. COYLE	3072			
13	BY MR. KULAK		3075		
14	MARK CHAMBERS				
15	BY MR. COYLE	3136			
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17	BY MR. COYLE			3194	
18	KEVIN MARA				
19	BY MR. GRAY	3196			
20	BY MR. DUVER		3197		
21	BY MR. GRAY			3231	
22					

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1	EXHIBIT NO.	MARKED	RECEIVED
2	AOBA Cross 100	2934	
3	AOBA Cross 101	2935	
4	AOBA Cross 102	2935	
5	AOBA Cross 103	2935	
6	AOBA Cross 104	2936	
7	AOBA Cross 105	2936	
8	AOBA Cross 106	2937	
9	AOBA Cross 107	2937	
10	DCG (A) and (A)-1 through		
11	(A)-19		3072
12	DCG (E) and (E)-1 through		
13	(E)-3		3132
14	DCG (G)		3195
15	OPC Cross 101	2931	
16	OPC Cross 102	2931	
17	OPC Cross 103	2932	
18	OPC Cross 104	2932	
19	OPC Cross 105	2932	
20	OPC Cross 106	2933	
21	OPC Cross 107	2933	
22	(Exhibits continued on the next page.)		

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1	EXHIBIT NO.	MARKED	RECEIVED
2	OPC Cross 108	2933	
3	OPC (B), (B)-1 through		
4	(B)-17, (2B) and (2B)-1		
5	through OPC (2B)-11	3197	3234
6	Joint Applicants Cross 26	2845	3132
7	Joint Applicants Cross 27	3084	3132
8	Joint Applicants Cross 28	3092	3132
9	Joint Applicants Cross 29		
10	through 31	3099	3132
11	Joint Applicants Cross 32	3103	3132
12	Joint Applicants Cross 33		
13	and 34	3141	3195
14	Joint Applicants Cross 35	3147	
15	Joint Applicants Cross 35	3206	3235
16	Joint Applicants Cross 36	3214	3235
17	Joint Applicants Cross 37	3221	3235
18	Joint Applicants Cross 38		
19	through 40	3229	3235
20	Joint Applicants Cross 41	3230	3235
21			
22	(Exhibits continued on the next page.)		

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1	EXHIBIT NO.	MARKED	RECEIVED
2	Joint Applicants Cross 42		
3	through 45	3230	3235
4	WASA (A), (A)-1 through		
5	(A) 6, (B) and (B)-1		3234
6	Joint Applicants Cross 46		
7	and 47	3236	3236
8			
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1 P R O C E E D I N G S

2 CHAIRMAN KANE: Good morning. Resuming
3 evidentiary hearings in formal case 1119. This is
4 Tuesday, April 21st.

5 First of all, before we start with the
6 company's witness, are there any preliminary
7 matters from any of the parties?

8 You may call your witness.

9 MR. LORENZO: Thank you, Your Honor. The
10 joint applicants call Kevin McGowan to the stand.
11 WHEREUPON,

12 KEVIN MCGOWAN,
13 called as a witness, and after having been first
14 sworn by the secretary, was examined and testified
15 as follows:

16 DIRECT EXAMINATION

17 BY MR. LORENZO:

18 Q Good morning, Mr. McGowan.

19 A Good morning.

20 Q Could you please -- for the record, could
21 you please state your name, by whom you are
22 employed and in what position.

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1 A My name is Kevin McGowan. I'm vice
2 president of regulatory affairs for PEPCO
3 Holdings, Inc., and its operating companies.

4 MR. LORENZO: Your Honors, Mr. McGowan
5 has submitted one piece of rebuttal testimony
6 designated as Joint Applicants' Exhibit (3L),
7 together with Exhibits (3L)-1 through (3L)-3. And
8 pursuant to the procedures in this proceeding, we
9 will submit them as exhibits at the appropriate
10 time.

11 In addition, we have two bits of
12 rejoinder testimony for Mr. McGowan, and I will
13 proceed with that. Thank you.

14 BY MR. LORENZO:

15 Q Mr. McGowan, in his direct testimony,
16 District of Columbia witness Dr. Wilson
17 recommended an annual \$50 million rate credit
18 adjustment as a double-leverage penalty. In his
19 supplemental --

20 MR. COYLE: Objection to
21 characterization, double-leverage penalty.

22 CHAIRMAN KANE: Mr. Lorenzo?

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1 MR. LORENZO: I'll rephrase the question,
2 Your Honor.

3 BY MR. LORENZO:

4 Q In his direct testimony, District of
5 Columbia Wilson (sic) recommended an annual
6 \$50 million rate credit as a result of his
7 double-leverage calculation. In his supplemental
8 direct testimony, he significantly changes the way
9 he calculates his proposed rate adjustment.

10 Will you comment on Dr. Wilson's new
11 calculation?

12 A Yes, I would. I guess putting aside the
13 fact that I don't agree with the double leverage
14 concept as being appropriate in the first
15 instance, I would note that Dr. Wilson's proposed
16 proposal imposes a significant financial penalty
17 and burden on PEPCO, the utility, if approved,
18 based on his theory that there is a
19 double-leverage.

20 Just to be clear on what his proposal is,
21 his proposal is essentially a \$50 million rate
22 base reduction to the rate base of PEPCO at

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1 closing, and that adjustment increases by
2 \$50 million each year for five years. So it
3 will -- the reduction will be a \$250 million
4 amount by the end of year 5. And then his
5 proposal, at a minimum, is to continue that for an
6 additional 15 years. So a total of 20-year
7 penalty.

8 At a minimum, his proposal reduces the
9 revenues and cash flows of PEPCO -- again, the
10 utility -- by over \$500 million over that time
11 period; in a present value, it's about
12 300 million. That's equivalent, at least over the
13 next five or six years, to about 25 percent of the
14 earnings and cash flow of PEPCO, which will
15 obviously significantly impact the cash flow. It
16 will impact the credit metrics, and most likely
17 lead to a credit downgrade of our ratings. And
18 his proposal weakens the financial condition of
19 PEPCO.

20 And I would note that the joint
21 applicants have taken several measures to ensure
22 that the merger does not have any impact on PEPCO,

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1 that, in fact, it strengthens PEPCO. Some of
2 these include robust ring-fencing requirements,
3 commitments on minimum equity levels. We've done
4 commitments on not pushing down the goodwill
5 accounting. We have tax indemnification
6 commitments. All these ensure that PEPCO is not
7 harmed.

8 Dr. Wilson's proposal will be a financial
9 burden and will have a major financial impact on
10 PEPCO.

11 Q Thank you. Mr. McGowan. Now, were you
12 in the hearing room a week and a half ago, I
13 guess, or almost two weeks ago when Commissioner
14 Fort asked several bench data requests regarding
15 the company's tax position and company's -- the
16 joint applicants' tax position and net operating
17 loss carry-forward?

18 A Yes, I was.

19 Q And did you and Mr. Khouzami prepare a
20 response to those bench data requests?

21 A Yes, we did.

22 Q I would like you to turn to what has been

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1 preliminarily marked as Joint Applicants' Exhibit
2 Number 88.

3 A Okay.

4 MR. LORENZO: And, Your Honor, I'd like
5 to mark this document as Joint Applicants' Exhibit
6 Number 26.

7 CHAIRMAN KANE: So marked.

8 (Joint Applicants Cross Exhibit Number 26
9 was marked for identification.)

10 BY MR. LORENZO:

11 Q And is this document the joint
12 applicants' responses to the bench data request
13 number 5?

14 A Yes, it is.

15 MR. KULAK: And, Your Honor, I would like
16 to have that admitted at the appropriate time.

17 CHAIRMAN KANE: Okay. It will be.

18 MR. LORENZO: The witness is available
19 for cross-examination.

20 CHAIRMAN KANE: People's Counsel?

21 CROSS-EXAMINATION

22 BY MR. GRAY:

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1 Q Jason Gray, Duncan, Weinberg, Genzer &
2 Pembroke, on behalf of OPC. Good morning,
3 Mr. McGowan.

4 A Good morning, Mr. Gray.

5 Q I don't know about you, but I've been
6 preparing for this for a couple of weeks now. I'm
7 sure you feel the same.

8 I would like to start with a few
9 background questions before we jump into some more
10 substantive topics. Could you please turn to the
11 first page of your rebuttal testimony. There's no
12 page number, but I believe it's actually page 2.

13 A Okay.

14 Q There you state that you are the vice
15 president of regulatory affairs for PHI. I'm
16 curious. Who do you report to in that capacity?

17 A I report to Fred Boyle, senior vice
18 president and chief financial officer of PHI.

19 Q When Mr. Rigby testified on April 1st, he
20 made reference to his ELT, or executive leadership
21 team. Are you a member of the ELT?

22 A I am not.

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1 Q Can you confirm with me that the
2 executive leadership team consists of the
3 following individuals: Mr. Rigby himself,
4 Mr. Velazquez, Mr. Fitzgerald, Mr. Boyle, who you
5 just mentioned, Mr. Parker, Mr. Graham,
6 Ms. Monica, Ms. Reese and Mr. Huffman?

7 A I believe that's correct.

8 Q Thank you. If this transaction is
9 approved, is it your understanding that
10 Mr. O'Brien will lead an executive leadership team
11 that's comparable to Mr. Rigby's executive
12 leadership team?

13 A It's my understanding that Mr. O'Brien
14 will lead an executive leadership team relative to
15 the operations of the regulated utility
16 operations. As you know, Mr. Rigby is the CEO of
17 a public company that encompasses more than just
18 the regulated operation. So I think the roles and
19 responsibilities are different because the nature
20 of the business is a little bit different.
21 Mr. O'Brien and Mr. Rigby have different roles,
22 but Mr. O'Brien will lead an executive leadership

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1 team for the regulated operations.

2 Q Okay. Are you saying a component of
3 Mr. Rigby's executive leadership team has to do
4 with issues related to not only PEPCO, but PHI's
5 operations in total, whereas Mr. O'Brien's
6 executive leadership team will be focused on the
7 distribution utilities?

8 A That's correct. So a good example is PHI
9 is required to issue quarterly 10-Q -- 10-K
10 reports. We have investor meetings. Mr. Rigby --
11 that's a big part of Mr. Rigby's role. I don't
12 believe Mr. O'Brien has that role with Exelon.

13 Q Okay. Thank you.

14 Staying on page 2, if you look at
15 lines 11 to 15, there you testify that you are
16 responsible for regulatory affairs for PHI's
17 utility business before the Maryland commission,
18 Delaware commission, the New Jersey Board of
19 Public Utilities, this Commission, and then FERC.
20 Do you see that.

21 A Yes, I do.

22 Q With regard to your responsibilities, do

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1 things like reliability performance come into
2 play?

3 A Mr. Gausman's group is responsible -- and
4 Mr. Maxwell's group has responsibility for
5 reliability performance, and those teams generally
6 take the lead on reporting out to the commissions.
7 Our group supports them in the filings and the
8 process.

9 Q When you say that you support them, is
10 your role more of an oversight role; you manage
11 that process as it pertains to the regulatory
12 commissions?

13 A It's more -- in that particular instance,
14 it's more from an administrative standpoint in
15 terms of making the filings -- working with the
16 calendars to make sure that the reports get
17 prepared, and making the filings.

18 Q Do rate case applications fall within the
19 purview of regulatory affairs?

20 A Yes, they do.

21 Q As vice president of regulatory affairs,
22 do you have a say in the development of the return

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1 on equity component of a rate case application?

2 A Yes, I do.

3 Q Similarly, do you have a say in how the
4 company's progress towards meeting the EQSS is
5 communicated to the Commission?

6 A Again, on the reliability portion, the --
7 we have a say-so; we're part of the team that
8 develops the communication, but the actual
9 presentation and that falls under the operations
10 group.

11 Q Do you understand that PEPCO's commitment
12 to meet the annual EQSS requirements is something
13 that's critically important to the Commission and
14 other stakeholders?

15 A Yes, I do.

16 Q In your role as vice president of
17 regulatory affairs, are you responsible for
18 implementing regulatory policies?

19 A I would say my role is to work and
20 develop regulatory policies, make recommendations
21 so, as a company, we can find the best path
22 forward to implement those policies.

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1 Q Do you have responsibility for explaining
2 regulatory policies to the press or the public or
3 other stakeholders?

4 A It depends on the audience. You know,
5 our corporate communications group may speak with
6 the press. Donna Cooper, who is president of
7 PEPCO, may communicate to her audience. So a lot
8 of it depends on the audience as to who will
9 actually make the communication.

10 Q I've seen in the past when PEPCO has
11 filed a rate case that you are often interviewed
12 either the day of the filing or the day after. Do
13 you recall those types of communications with the
14 press?

15 A I've had -- I've been on conference calls
16 to answer specific questions. I do not recall
17 recently being interviewed by the press on a rate
18 case filing.

19 Q Okay. Do you agree that it is important
20 for a utility to communicate clearly with
21 ratepayers, commissions and other interested
22 parties?

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1 A I do, yes.

2 Q You mentioned previously that your role
3 with respect to some of the operations teams is
4 more of administrative support. Does that include
5 reviewing testimony in regulatory proceedings
6 before it is filed?

7 A Yes.

8 Q Did you review any draft testimony in
9 this proceeding before it was filed?

10 A I did review testimony in this case, yes.

11 Q Do you recall reviewing Dr. Tierney's
12 rebuttal testimony which refers to some of the
13 statements in your rebuttal testimony?

14 A I reviewed a lot of testimony. I know I
15 reviewed her testimony at least once. It's been
16 quite some time. If there's a specific question
17 you want to point me to, I'll be glad to look it.

18 Q No. I'm curious in general if --

19 A In general, I did, yes.

20 Q As an example, that was one you reviewed.
21 Okay. Thank you.

22 I would like to see if you have an

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1 opinion on something based on your experience
2 managing regulatory affairs. If a utility submits
3 an application that's accompanied with supporting
4 testimony and exhibits, do you have an opinion on
5 what is subject to approval? Would it be the
6 application? Would it be the testimony? Would it
7 be a combination of both?

8 A If I understand your question, I think
9 the application, the testimony, the discovery, the
10 hearing process is all information that's relative
11 for a commission to make a decision on all
12 evidence in front of them. I don't think there's
13 one over the other. I think it's a collective
14 group of information that is used to make a
15 decision.

16 Q Okay. Are you saying -- I understand --
17 I believe you're saying that the Commission has to
18 consider all the evidence, but what, in your view,
19 is the Commission making a decision on after it
20 reviews that evidence, the application or a
21 request that's stated in testimony?

22 A In my opinion, the information on the

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1 record is what the Commission needs to look at in
2 rendering its opinion or a decision on the
3 application that the joint applicants have made.

4 Q Okay. So I believe in the last part of
5 your answer, you said rendering a decision on the
6 application that's been made. Did I hear that
7 right?

8 A Well, when I say application, the joint
9 applicants have made application for merger
10 approval in this case. We have filed rebuttal, we
11 have filed different forms of testimony throughout
12 this case. We've had hearings. There's been
13 information that's been put in the record.

14 I'm not sure I understand the distinction
15 of what you're trying to point out, but in my
16 view, what's on the record is what the Commission
17 uses to make a decision on the overall application
18 to approve the merger.

19 Q Okay. The distinction I'm trying to draw
20 out is that the testimony has evolved as this case
21 has proceeded and the application has not changed.
22 And the application, as I understand it, contains

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1 proposals that are no longer the company's
2 proposals. So my question is, in your experience
3 dealing with matters involving regulatory affairs,
4 is it your understanding, using that as an
5 example, that the Commission would be making a
6 decision on the application itself or the
7 explanation and changes to the application that
8 have occurred over time?

9 A Well, I think what we tried to do in
10 Exhibit (4A)-2, which you've all referred to, is
11 to recap what the commitments are in this -- in
12 our application. I agree that documents have
13 evolved over time. But the purpose of
14 Exhibit (4A)-2 was to resummarize and to put in
15 one place what -- the current commitments that the
16 joint applicants are proposing to -- in its
17 request for approval of the merger.

18 Q Okay. Am I correct that you are on the
19 integration team with Mr. Khouzami and other
20 representatives from both companies?

21 A I am on a business area team that
22 represents the stakeholder group which oversees

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1 regulatory, government affairs and some other
2 areas.

3 Q Does that role require you to make
4 presentations to the public or be involved in
5 public outreach regarding the joint applicants'
6 proposals?

7 A No, it does not.

8 Q You testified in the -- the merger
9 proceeding in Maryland, is that right, case
10 number 9361?

11 A I did, yes.

12 Q Was the scope of your testimony in the
13 Maryland proceeding different than the scope of
14 your testimony in this proceeding?

15 A Some of the areas are different in each
16 of the two jurisdictions. I would say that my --
17 the scope of my testimony has generally been
18 around regulatory and finance support.

19 Q All right. Just a couple of more
20 background areas to discuss. Could you please
21 turn in your rebuttal testimony to page 13? Do
22 you see the question and answer beginning on

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1 line 4 where you discuss the decision to defer the
2 planned 2014 distribution rate case?

3 A Yes.

4 Q You did not file direct testimony in June
5 or supplemental direct testimony in September of
6 2014; is that correct?

7 A Can you say the question again?

8 Q Yes. You did not file direct testimony
9 in June or supplemental direct testimony in
10 September of 2014; is that correct?

11 A That is correct.

12 Q Am I correct that the first time the
13 joint applicants said anything about the value of
14 deferring the planned 2014 distribution rate case
15 was in rebuttal in December 2014?

16 A As far as I know, I believe that's
17 correct.

18 Q On page 14 of her rebuttal testimony,
19 Dr. Tierney characterizes the decision to defer
20 the rate case as essentially providing ratepayers
21 the benefit of a rate moratorium.

22 Would you agree with Dr. Tierney's

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1 characterization?

2 A I would, yes.

3 Q Do you know, was the decision to defer
4 the planned 2014 rate case made by PHI's board?

5 A I don't think the board -- I don't think
6 PHI's external board of directors is involved with
7 decisions on timing of rate case filings. We
8 generally update them on our plans, but the
9 decision to file rate cases is generally discussed
10 with -- the decision is made at the ELT level, as
11 we mentioned, Joe Rigby oversight.

12 But obviously we have input into that
13 decision. It's done internally, not through our
14 board of directors.

15 Q Okay. Thank you. Just one last
16 background area. You mentioned Exhibit (4A)-2.
17 It's your understanding that that is the list of
18 the 91 merger commitments in this proceeding?

19 A That is correct.

20 Q Did you play any part in developing any
21 particular merger commitment that's listed on
22 Exhibit (4A)-2?

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1 A My role was to provide support throughout
2 the process. So I did not come up with any of
3 these commitments, but I provided support and
4 input.

5 Q And then -- I've seen you in the hearing
6 room off and on for most of the nine days of the
7 hearing. Can you tell me which joint applicant
8 witnesses you have seen testify, either in whole
9 or in part?

10 A I would say I've seen most witnesses
11 testify, either here in person or on the video
12 feed.

13 Q Have you reviewed any of the transcripts
14 of any witnesses in this proceeding?

15 A No. The only transcripts I've reviewed
16 are the ones where there's been questions that
17 have been punted to me.

18 Q Okay. There's been one or two of those,
19 I believe.

20 A A few pages.

21 Q Okay. Thank you for bearing with me as
22 we went through that. Let's turn now to some more

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1 substantive topics.

2 If you could turn to page 3 of your
3 rebuttal testimony, do you see the reference on
4 line 15 to the economic impact of DCG
5 recommendation?

6 A Yes, I do.

7 Q Am I correct that in this section you're
8 basically explaining the impact of the combined
9 recommendations of the District government's
10 witnesses?

11 A That's correct, yes.

12 Q If you would turn to page 4, on line 10
13 you testify, quote, the annual net income from the
14 PEPCO D.C. distribution operations for the 12
15 months ended June 30, 2014, was only 49.5 million.

16 Do you see that?

17 A I do, yes.

18 Q You're comparing annual net income of
19 PEPCO D.C.'s operations to the D.C. government's
20 recommendations; is that right?

21 A In this section, that's correct. That's
22 one of the things I'm comparing it to.

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1 Q Okay. With respect to your use of the
2 word "only," could we apply that reference to
3 "only 49.5 million" in relation to
4 D.C. government's recommendations to the customer
5 investment fund and say it's only 33.75 million in
6 comparison to the \$1.6 billion benefit to
7 shareholders?

8 A Well, I think -- if we're going to talk
9 about the benefit to shareholders, I think we
10 should talk about the benefit to customers and not
11 just pick one of the many benefits that the merger
12 will bring to customers.

13 As you know, the CIF is 33.75 million.
14 We also have synergies that will accrue to
15 customers over the first ten years, and obviously
16 thereafter. I believe it's \$14 million net
17 synergies over the first five years and it's
18 \$7 million per year as a run rate going forward.
19 And there's a host of other benefits that this
20 merger brings.

21 I think, if we're going to look at those,
22 we should compare total benefits customers receive

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1 to total benefits.

2 I would also note that the 33.75 is only
3 D.C. and you're looking at a 1.6 on the premium is
4 for entire PHI shareholders. So if we want to do
5 a true apples-to-apples comparison, you look at
6 the \$238 million total CIF fund that's being paid
7 to all of -- that's been -- taking the New Jersey,
8 Delaware and Maryland equivalent; it's
9 \$238 million on a PHI basis, looking at the
10 synergies that would accrue to the PHI customers
11 over the -- in the future. I think you'll find
12 it's about 1.5 billion of value in just those
13 items that will accrue to customers relative to
14 the \$1.6 billion premium to shareholders.

15 Q Okay. Thank --

16 A So I think that's probably the right
17 apples-to-apples comparison.

18 Q Okay. Thank you. And we'll talk about
19 all of those synergies. I have just a couple of
20 more questions on this page first and then we'll
21 get into some of those things that you mentioned.

22 When you refer to only 49.5 million in

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1 net income, are you stating that net income is a
2 cap on the value of benefits that should be
3 provided to customers as a result of this proposed
4 transaction?

5 A Not at all. My only point here is that
6 the -- when we tallied up the various asks of the
7 District government, it was almost a billion
8 dollars. And in looking at that ask, relative to
9 the size of PEPCO, which only generates
10 \$50 million of net income, just the magnitude of
11 the ask was really out of proportion with the
12 earnings of a company.

13 And the whole point is when you look at
14 buying a company and what value, a billion dollar
15 ask for a company that has \$50 million of income
16 was pretty extreme in our opinion.

17 Q Okay. Thank you. I have two follow-ups
18 based on our response. First, do you believe that
19 an acquiring entity, such as Exelon here, owes a
20 fiduciary duty to its shareholders to know what
21 the tipping point would be that would make certain
22 merger conditions render the transaction

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1 uneconomic?

2 MR. LORENZO: Your Honor, I'm going to
3 object to the extent that that calls for a legal
4 conclusion.

5 MR. GRAY: I'm just asking to the extent
6 he knows, Your Honor.

7 CHAIRMAN KANE: The witness can answer if
8 he knows.

9 THE WITNESS: I don't know. I mean, I
10 think it's important for an acquiring company to
11 know what it's capable of doing to acquire a
12 company, but I don't know if there's a fiduciary
13 obligation to have that number.

14 BY MR. GRAY:

15 Q Okay. The second follow-up: Are the net
16 synergy savings a cap on the value of benefits
17 that should be provided to ratepayers as a result
18 of this transaction?

19 A Absolutely not. The net synergies that
20 will flow to the customers, they will get
21 100 percent of those benefits. So if those
22 synergies are higher, and I think it's more likely

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1 that they will be higher than lower based on our
2 estimates -- 100 percent of those will flow
3 through to customers. This was our estimate of
4 what they will be over the near term.

5 Q Okay. Thank you. Could you please turn
6 to page 5? Do you see the reference on line 15 to
7 commitment to jobs in the District of Columbia?

8 A Yes. Line 15, you said?

9 Q Yes.

10 A Yes.

11 Q In this section, am I correct that you're
12 referring to paragraphs 17 and 18 of Mr. Crane's
13 Exhibit (4A)-2?

14 A Subject to check.

15 Q It may help -- I've got a couple of
16 questions about those exhibits or -- excuse me --
17 about those paragraphs. It may help if
18 Ms. Travers could help you locate a copy of
19 Exhibit (4A)-2.

20 This is on page 4. Paragraph 17 is the
21 commitment to make a good-faith effort to hire at
22 least 102 new union workers. And paragraph 18 is

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1 the commitment to transfer PEPCO Energy Services
2 employees from Arlington to the District.

3 A Yes.

4 Q Let me know when you're there.

5 A I'm there.

6 Q Okay. Let's focus first on paragraph 17.

7 A Okay.

8 Q I asked both Mr. Crane and Mr. Rigby
9 about this commitment, and I'm still a little
10 confused, so I would like to get your
11 understanding. First, can you help me understand
12 what the new -- the 102 new union employees would
13 be doing, what work they would be performing?

14 A Sure. So these are union employees that
15 will be working in the utility operation. So
16 these would be cable splicers, field workers,
17 overhead line workers, testers, substation
18 workers, those types of jobs.

19 Q Do you understand that those 102 new
20 employees would not be undertaking construction
21 activities relating to D.C. PLUG?

22 A It's my understanding that these are not

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1 related to D.C. PLUG.

2 Q If the transaction is not approved, is it
3 your understanding that the work that these 102
4 new employees would be performing would still be
5 performed, but perhaps by contractors or existing
6 employees working overtime?

7 A If the merger is not approved, we would
8 put a hold on the process of moving forward on
9 this hire. We would have to take a look at the
10 work that the companies would be doing in the next
11 several years, and we would have to re-evaluate
12 the workforce, both our current employees, access
13 to contractors, possible use of overtime, you
14 know, what work we may want to change, whether
15 it's deferring it, accelerating. So we have to
16 come up with the work plan. So there's a lot of
17 variables at play there. So the answer is yes or
18 no.

19 Q Okay. I think the answer of yes or no
20 relates to -- maybe this is because I asked a
21 two-part question. I think the answer of yes or
22 no relates to who would be performing the work,

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1 either contractors or employees working overtime;
2 is that right?

3 A You're right. There was two parts to
4 your question. I think in terms of the work, what
5 I was trying to say is that if the merger is not
6 approved, we would have to re-evaluate the work
7 that we need to do as a stand-alone company in
8 meeting the EQSS standards. That work may be
9 different. I don't know. It may be different
10 than if we merge and we have to move forward and
11 try to meet the commitments that we've laid out in
12 (4A)-2.

13 So the work could be different, is one
14 answer. And the second answer is that, depending
15 on how that work is defined, we would have to
16 re-evaluate what resources we need to be able to
17 accomplish that work.

18 Q Okay. Do you understand that PEPCO has
19 committed to meet the annual EQSS requirements
20 through 2020 even if the merger is not approved?

21 A I believe we -- we will do every effort
22 to meet the EQSS standards as approved by the

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1 Commission. I do -- I would note that there has
2 been a concern from PEPCO for many years of its
3 ability to meet some of those out-year EQSS
4 standards. And there was a re-evaluation period
5 that I believe begins this year that we can go in
6 and re-look at the EQSS standards based on prior
7 discussions.

8 Q Okay. So the EQSS standards may stay the
9 same, they may change, but it is your
10 understanding that PEPCO is committed to meet
11 whatever the standard is?

12 A As a stand-alone company?

13 Q Yes.

14 A As a stand-alone company, we will make
15 every attempt to meet the standards that are
16 approved by the commission.

17 Q Okay.

18 A I just would note that there's a
19 difference between that and what the joint
20 applicants are proposing as part of the
21 application, which includes meeting the standards
22 in the current budget, which is not a commitment

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1 that PEPCO has today, and will also commit to a
2 penalty in the first rate case filed after 2001
3 (sic) if it don't meet the three-year average
4 which PEPCO has not committed to today.

5 Q All right. We'll get to those as well.

6 A Okay.

7 Q If the transaction is not approved --
8 going back a couple of steps, if the transaction
9 is not approved, is it your understanding that
10 PEPCO may hire some of these 102 employees?

11 A It's possible.

12 Q Assume for me that the transaction is
13 approved and that PEPCO actually hires 102 new
14 union employees. That act would not guarantee
15 that the size of the workforce would be increased
16 by 102; is that right?

17 A That is correct.

18 Q On March 30th, Mr. Crane testified that
19 he believes there are about 400 individuals that
20 are retirement-eligible. And this is on page 115
21 of the transcript. And I believe he deferred to
22 you to confirm that number.

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1 And I'm curious, can you just shed a
2 little bit more light on that figure? Is it
3 PHI -- well, first, is it accurate? Second, is it
4 PHI or PEPCO?

5 A Sure. So the Local 1900 union contract,
6 there's about 450 -- this was in the summer of
7 last year -- about 450 union employees that were
8 eligible for retirement in the upcoming year. So
9 that time has passed. So those 450 employees
10 should be eligible for retirement. Not that they
11 will actually take it, but they are eligible for
12 retirement.

13 And that contract, the Local 1900, covers
14 PEPCO D.C. and PEPCO Maryland, which is Prince
15 George's County and Montgomery County.

16 Q Okay. Thank you. Do you know what the
17 attrition rate for PEPCO was in 2013?

18 A I know the attrition rate for power
19 delivery, which includes all employees, not just
20 the union contract. It's probably about
21 8 percent. So a couple hundred per year.

22 Q Do you think the union contract will be a

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1 comparable figure if you could isolate it?

2 A I don't know that.

3 Q Do you have that figure for 2014?

4 A I think in general it stays pretty
5 consistent in terms of the turnover rate for power
6 delivery. And the power delivery, as I define it,
7 that's all three utilities.

8 Q So there are a couple of hundred a year
9 for all three distribution utilities; is that
10 right?

11 A I'm sorry. The power delivery group
12 is -- the turnover rate in the power delivery
13 group is the 8 to 9 percent. Within the PEPCO
14 company itself, it's a couple hundred per year.

15 Q Okay. Thank you.

16 To the extent that 102 new union
17 employees are incremental hires that increase the
18 size of the workforce, am I correct that those
19 new -- those 102 new employees would not be in
20 PEPCO's current budget?

21 A So to the extent that these 102 employees
22 are incremental hires, they would not be covered

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1 in the current budget. I agree with that.

2 However, I would note that there are
3 opportunities to manage that cost within the
4 current budget. To the extent that we can reduce
5 contractors, to the extent that we reduce
6 overtime, we can manage that incremental cost.

7 And I would also note that the vast
8 majority of employees are working on
9 reliability-related projects, and the joint
10 applicants have made a commitment to deliver EQSS
11 performance within the current capital and
12 reliability -- the current reliability, capital
13 and O&M budgets.

14 Q Okay. Thank you.

15 Just to confirm, when you say manage that
16 cost, you're saying there's a cost associated with
17 incremental hires that's not currently reflected
18 in the budget; is that right?

19 A So what I'm saying is that to the extent
20 that we hire more employees and we have higher
21 labor costs because we have more employees than we
22 budget, we have other opportunities to lower O&M

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1 in other areas, such as overtime of existing
2 employees or contractors, that the total spend
3 does not go up.

4 Q Sure. I understand. I just want to
5 focus on the first part. The second part, I
6 believe, is -- there's ways you can manage that
7 cost, but I just want to understand, there is a
8 cost associated with incremental hires, right?

9 A There is, yes.

10 Q Okay. Thank you.

11 So to the extent the new -- 102 new union
12 employees are simply replacing employees that
13 retire, there would not be an incremental cost --
14 is that right -- those employees would be covered
15 by the existing budget?

16 A That's correct. There also might be a
17 cost savings because, if you have an employee
18 that's been here for quite some time at a higher
19 salary, he may be replaced by someone with a lower
20 salary. So it's possible that there actually is a
21 cost savings associated with that as well.

22 Q Okay. Are there any Exelon distribution

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1 utilities that do not employ union workers?

2 A I know BG&E is not a union utility. I
3 believe PECO employs union workers. And I believe
4 ComEd also employs union workers.

5 Q Are you aware of any work done by the
6 integration team to investigate what types of
7 issues may arise given the combination of union
8 utility operations and non-union utility
9 operations?

10 A I don't know specifically, but I would
11 note that Exelon today has both union and
12 non-union employees, and they seem to have worked
13 out pretty well.

14 Q Let's turn now to the next paragraph that
15 we were talking about, paragraph 18, which is the
16 commitment to transfer 50 PEPCO Energy Service
17 employees from Virginia to the District.

18 A Okay.

19 Q Am I correct that paragraph 18 does not
20 state when Exelon would be required to make that
21 transfer?

22 A That is correct. However, in my rebuttal

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1 testimony, I mention that we would make that
2 transfer within one year, and I believe in some
3 data request we said that, from a practical
4 standpoint, that will probably happen the first
5 two or three months post-closing.

6 Q Okay.

7 A So we would expect that to happen fairly
8 quickly.

9 Q Okay. Thank you.

10 If you see -- at the end of this
11 paragraph, there's a reference to Mr. Crane's
12 rebuttal and then your rebuttal at page 6. So
13 let's turn to page 6 of your rebuttal testimony.

14 A Okay.

15 Q And beginning on line 3 you state, As
16 Mr. Crane and Khouzami testified, Exelon proposes
17 to move at least 50 employees currently in PHI's
18 competitive business unit, PEPCO Energy Services
19 (PES) from Virginia into the PHI PEPCO Edison
20 Place building within one year following
21 completion of the merger.

22 I was a little confused because I could

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1 not find in Mr. Crane's or in Mr. Khouzami's
2 testimony a reference to the one-year time frame,
3 and I believe the only reference is in your
4 testimony. Do you know if that's correct?

5 A Subject to check.

6 Q Okay. But nonetheless, the commitment is
7 to do it within one year, and you think it will be
8 done within the first two to three months?

9 A That's my understanding, yes.

10 Q Okay. Going back to paragraph 18, am I
11 correct there's also no time commitment with
12 regard to how long those transferred employees
13 will remain in the District?

14 A That is correct. There's nothing in that
15 commitment. However, I would note that the -- PES
16 is spending about -- probably about a million and
17 a half dollars, plus or minus, to break its
18 current lease and to -- also to do improvements at
19 the Edison Place building to move in. And I would
20 say that that commitment or that investment would
21 not be made if there was any intent to have these
22 employees here for only a short time.

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1 Q If Constellation Energy Services and
2 PEPCO Energy Services were to integrate
3 operations, could the investment in that new space
4 accommodate Constellation Energy Service
5 employees?

6 A I don't know. It's possible. I haven't
7 looked at the -- I know about where in Edison
8 Place the employees will be. I don't know how --
9 how far we can expand that space.

10 Q Can you tell me how many PEPCO Energy
11 Service Company employees are in Virginia
12 currently, in the Virginia office?

13 A I believe there's 52 current employees.

14 Q How many employees were there in 2010?

15 A There was -- I don't have the exact
16 number in Arlington. I know that there was more
17 in 2010. As you may know, we were -- PES was in
18 the energy supply business where they would buy
19 load and resell it to the commercial industrial
20 customers. We made the decision to exit that
21 business and wind it down, which we did. And so
22 those employees obviously have left PES.

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1 And so at this point, it's about -- it's
2 at 52, as I mentioned. So excluding the supply
3 business that we wound down, it's probably a
4 little bit -- probably a little bit less than it
5 was in 2010. But that was the biggest driver.

6 Q Can you give me just an order of
7 magnitude? Was it there were 60 employees? Was
8 it double? To the best of your knowledge.

9 A With the supply business?

10 Q Back in 2010, yes, the number of
11 employees.

12 A I may have supplied a data request on
13 this, but I just can't remember what it was back
14 in 2010.

15 Q Okay. Fair enough. There are a number
16 of open positions at PEPCO Energy Services; is
17 that right?

18 A I believe they're currently looking --
19 it's still a small organization. There's 300
20 total PES employees, 52 in Arlington, and they
21 have other operations, some in the District and
22 some in New Jersey. They have about five current

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1 openings that they are posting for at this point.

2 Q With regard to those five openings, are
3 those positions that were phased out after 2010 or
4 are those positions related to current operations
5 and there's an expectation that they will be
6 filled?

7 A Those are related to current operations,
8 and there's expectations that they will be filled
9 because they are being actively marketed.

10 Q Okay.

11 A I think that -- just to be clear, I
12 believe one of those positions is going to be in
13 Arlington. So that the five I noted is PES total;
14 one of those is located in Arlington, Virginia.

15 Q Okay. In addition to the commitment to
16 hire 102 new union employees and transfer the 50
17 PEPCO Energy Services employees, are you aware
18 that Dr. Tierney has projected that the
19 transaction will result in 1500 to 2400 new jobs
20 in the District?

21 A Yes, I am.

22 Q Do you have OPC Cross-Examination Exhibit

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1 Number 4 available? This document was admitted
2 into evidence on March 31st, and it was also OPC
3 Cross-Examination Exhibit Number 4.

4 A Okay. I have it here.

5 Q Do you see this is an excerpt from a
6 document that was produced in discovery to
7 D.C. government data request number 4-11. And do
8 you see your name as a sponsor at the bottom of
9 page 2?

10 A I do, yes.

11 Q Staying on page 2, if you look up at the
12 first column, do you see where it says D.C. 1119,
13 DCG DR 4-11, attachment S, D.C. enhanced benefits
14 presentation? It should be on the --

15 A What page are you on?

16 Q It should be on the narrative data
17 response, which I believe should be 2 of 14.

18 A Are we actually on the exhibit or
19 actually on the narrative data response?

20 Q The narrative data response.

21 A Okay. Which attachment?

22 Q I just want you to look at the first

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1 column, attachment S, D.C. enhanced benefits
2 presentation.

3 A Okay.

4 Q Would you agree or accept, subject to
5 check, that the attached presentation is that D.C.
6 enhanced benefits presentation?

7 A Yes, it is.

8 Q Did you give this presentation?

9 A I did not. I helped review the
10 presentation, but this was -- I did not make this
11 presentation.

12 Q Do you know who did give that
13 presentation?

14 A I don't recall specifically who made this
15 presentation. I believe this was a presentation
16 that was put together to help explain the benefits
17 that the merger would bring to D.C. The audience
18 could have been public hearings. It could have
19 been stakeholders. But it was used for external
20 purposes.

21 Q Okay. Thank you.

22 Do you see on page 1 of the presentation,

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1 page 1 of 12, which is page 3 of the document, it
2 says, Updated February 18th, 2015 at the bottom?

3 A Yes.

4 Q Do you agree that's the day after the
5 joint applicants submitted their supplemental
6 direct testimony in this proceeding?

7 A I believe that's correct.

8 Q Would you please turn to page 7 of 12,
9 which is page 9 of the exhibit.

10 A Okay.

11 Q Do you see the second main paragraph
12 about halfway down the page references the jobs
13 projections that we were just discussing?

14 A On page 6, that's right, yes.

15 Q It says, The merger commitments will
16 produce approximately 1500 to 2400 new jobs. Is
17 that right?

18 A I'm sorry. What page are you on?

19 Q I'm on 7 of 12.

20 A 7 of 12.

21 Q Which I believe there nine of 14.

22 A Yes, I see that.

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1 Q Okay. We talked a little bit earlier
2 about the importance for a utility to communicate
3 clearly with ratepayers and interested
4 stakeholders. Is it your opinion that an average
5 residential customer would read that statement and
6 know that it is referring to full-time job year
7 equivalents?

8 A I'm not sure how someone would read this.
9 I mean, when I read this, it shows me that the
10 merger is bringing in a lot of jobs to the
11 District. How they actually read those words, I
12 don't know.

13 I would say that -- I mean, the way that
14 we calculated the job years is a very consistent
15 way that we've done it with D.C. PLUG in the
16 District. I don't know that the Maryland Energy
17 Administration uses the same approach.
18 Calculating jobs in terms of job years is a very
19 commonly used approach in many, many areas.

20 Q Sure. I agree. And I think what I want
21 to explore a little bit with you is not
22 necessarily the approach that was used or the

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1 appropriateness of the approach, but how it was
2 communicated. And so I am just curious, in your
3 view, do you think this statement, The merger
4 commitments will provides approximately 1500 to
5 2400 new jobs, do you think that communicates to
6 the public that this is a reference to full-time
7 equivalent job years?

8 A Well, I know this is a presentation that
9 was made. I don't know what commentary was made
10 around these talking points and how that was
11 communicated, if they explained that, if they
12 didn't. So I don't know the audience or who made
13 the presentation.

14 Like I say, when I read this, I see that
15 the merger will bring a lot of jobs to the
16 District.

17 Q Okay. Similarly, do you have an opinion
18 as to whether this statement communicates clearly
19 that these jobs projections are based in part on
20 reliability levels that assume no improvement from
21 PEPCO's 2011 to 2013 performance and is not a
22 comparison to what jobs would occur if PEPCO met

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1 the annual EQSS requirements?

2 A Can you repeat that question again?

3 Q Sure. There's a lot in there.

4 Does this jobs analysis consider -- or do
5 you know, does the jobs analysis consider the
6 costs to achieve the reliability commitments that
7 in part drive these projections?

8 A These jobs are incremental to -- it's my
9 understanding that what these job calculations are
10 would be the incremental benefits that the merger
11 brings to the District, and not necessarily the
12 status quo stand-alone plan of PHI. It's a
13 measurement of the incremental benefit to the
14 District.

15 Q Okay. So when we're measuring the
16 incremental difference, we have a baseline upon
17 which to make that measurement; is that right?

18 A That's correct.

19 Q Is it your understanding that that
20 baseline is PEPCO's 2011 to 2013 reliability
21 performance?

22 A I think Mr. Tierney walked everyone

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1 through that. I'd have to go back and review
2 that. I don't want to misstate how she calculated
3 her numbers.

4 Q But it's your position that, however
5 Ms. Tierney performed her analysis, this statement
6 clearly communicates all of that analysis in
7 stating that the merger will produce 1500 to 2400
8 jobs?

9 A Well, I think what this statement is
10 trying to say is that -- again, it's a public
11 communication document, and we're trying to
12 communicate the benefits in a way that -- without
13 going through so much detail and analysis. And
14 what this says is that -- what this is intended to
15 discuss is that this merger will bring incremental
16 benefits to the District, and it's based on the
17 PHI status quo plan, and -- what incremental
18 benefits will come to the District, and based on
19 that, what the new jobs would be created as part
20 of that.

21 Q Okay. I think I have one last
22 clarification on this point. When you say that --

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1 PHI status quo plan, what do you mean by status
2 quo plan? And in particular, my understanding is
3 that Dr. Tierney's analysis considers the direct
4 benefit and then the indirect and induced impacts
5 of two things: The CIF and the reliability
6 commitment. Are those two things -- the absence
7 of those two things what you're referring to when
8 you say the status quo plan?

9 A That's correct. Those were the two main
10 drivers of her analysis to determine the
11 incremental benefit.

12 Q Okay. So -- just so I understand, the
13 merger will produce 1500 to 2400 new jobs that
14 would not otherwise occur if there were no CIF and
15 if PEPCO's reliability performance did not improve
16 beyond the 2011 to 2013 annual average; is that
17 right?

18 A I guess I don't see it that way. I think
19 what we're saying is we look at what PEPCO had
20 forecasted its reliability performance to be as a
21 baseline. And what the joint applicants are
22 proposing that they will deliver in terms of its

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1 reliability performance is that incremental
2 difference plus the CIF. That's what we're
3 measuring.

4 Q Okay. And when you say what PEPCO had
5 forecasted its reliability performance to be, what
6 is your understanding of that forecast? I'm
7 really just trying to get an understanding of what
8 the baseline is that you've referred to.

9 A I would have to go back -- I mean, I know
10 this is in Mr. Gausman's testimony. I can -- we
11 can go back and look at it. I think we've gone
12 through all that and viewed it. I would just
13 defer to Mr. Gausman's testimony. I think it's
14 fairly clear.

15 Q Okay. Thank you.

16 Do you see on this page that the word
17 "will" is used four times. At the top, in large
18 font, The merger will add jobs. And then in the
19 blue bar, The transaction will deliver direct
20 benefits. In the first paragraph, The merger
21 commitments will result in significant economic
22 benefits. And then the discussion we were just

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1 having, The merger commitments will produce 1500
2 to 24 (sic) new jobs and between 168 to
3 268 million in benefits.

4 A Yes, I do.

5 Q And in fact, if we go back through this
6 document, the word "will" is used several times to
7 refer to several of the commitments that are found
8 in Exhibit (4A)-2. And I'll point you to -- if
9 you look at page 5, which is page 3 of 12 --

10 A Okay.

11 Q -- under the first bullet point, PEPCO
12 will meet or exceed the PSC's current reliability
13 performance standards.

14 Do you see that?

15 A I do, yes.

16 Q And it talks about the three-year average
17 period and the forecast -- the commitment to
18 maintain forecasted spending that we've talked
19 about?

20 A Yes.

21 Q Do you understand that that discussion is
22 referring to paragraph 7 of Exhibit (4A)-2? Or

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1 would you accept, subject to check?

2 A That's correct.

3 Q Okay. And then if you turn the page, at
4 the bottom of page 4 of 12, page 6 of the exhibit,
5 Exelon will maintain and promote PHI's low-income
6 energy efficiency and demand response programs.

7 Do you see that?

8 A I do, yes.

9 Q Do you understand that that statement is
10 referring to paragraphs 21 and 23 of
11 Exhibit (4A)-2?

12 A You're saying it refers to 21 and 22?

13 Q 21 and 23, I'm sorry.

14 A 23. That's correct, yes.

15 Q Okay. Then at the bottom of that same
16 page of the presentation, Exelon will establish
17 ring-fencing measures -- and there's quite a few
18 ring-fencing measures. But do you agree or
19 accept, subject to check, that the ring-fencing
20 provisions are generally paragraphs 24 to 72?

21 A Yes.

22 Q Okay. If we turn to page 7 of 14, 5 of

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1 12, at the bottom it states, PHI and PEPCO will
2 continue to maintain their headquarters in the
3 District of Columbia.

4 Do you see that?

5 A Yes.

6 Q That's a reference to paragraph 10, I
7 believe, of Exhibit (4A)-2.

8 A Yes.

9 Q Then on the next page, page 8, the last
10 two paragraphs, it states that, PEPCO employees
11 will receive benefits at least as favorable to
12 those provided before the merger for at least two
13 years and that Exelon shares PHI's commitment to
14 workforce and supplier diversity and will maintain
15 its strong track record in these areas.

16 Do you see those references?

17 A I do, yes.

18 Q Would you agree that those references
19 refer to paragraphs 15, 19 and 20 of
20 Exhibit (4A)-2?

21 A Yes.

22 Q All right. Thank you. Would you please

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1 turn now to the last page of this presentation,
2 page 12 of 12 and 14 of 14.

3 A Okay.

4 Q Are you there? Do you see -- it's fairly
5 small print, but the first two sentences
6 essentially state that the word "will" is -- the
7 word "will" is used to identify forward-looking
8 statements. Do you see that?

9 A Say it one more time.

10 Q That the word "will" is used to identify
11 forward-looking statements? I'm asking,
12 essentially, is that the effect of the first two
13 sentences?

14 A I believe that's correct.

15 Q Okay. If you count about seven lines
16 down from the top of this paragraph, there's a
17 sentence that states, quote, there are a number of
18 risks and uncertainties that could cause actual
19 results to differ materially from the
20 forward-looking statements included in this
21 communication, as well as other unpredictable
22 factors which could have material adverse effects

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1 on future results, performance or achievement of
2 PHI, its subsidiaries or the combined company.

3 Do you see that?

4 A I do, yes.

5 Q And I'm going to point your attention to
6 about six lines up from the bottom. In the
7 middle, there's a sentence that reads, In light of
8 these risks, uncertainties, assumptions and
9 factors, the forward-looking events discussed in
10 this communication may not occur.

11 Do you see that sentence?

12 A I do.

13 Q Okay. And then the following sentence
14 reads, Readers are cautioned not to place undue
15 reliance on these forward-looking statements.

16 Do you see that?

17 A I do. And I hope I have a chance to
18 comment on this forward-looking statement. But I
19 read those words that you pointed out on this
20 page.

21 Q Okay. You will have to take that up with
22 Mr. Lorenzo.

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1 Do you have a copy of the June 2014
2 application available? In particular, I'd like --
3 I'm turning to a new topic now. I'd like you to
4 look at Exhibit 4.

5 A Okay.

6 Q Please turn to page 1.

7 A Okay. I'm there.

8 Q Do you see on the left-hand side there's
9 a legend, and there are a few company names, one
10 of which at the bottom is PSC, which is PHI
11 Service Company?

12 A Yes, I see that.

13 Q If you turn to page 3, you'll see that
14 PSC is directly under Exelon in this
15 organizational chart. Is it your understanding
16 that if the transaction is approved, PHI Service
17 Company will be directly under Exelon in terms of
18 corporate organization?

19 A So this was an exhibit that was attached
20 to the original application that was filed in
21 June?

22 Q Yes, that's right.

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1 A I believe at the time the thought was
2 that the PHI Service Company would be under
3 Exelon, but that has changed, and I believe we've
4 provided updated charts that shows that PHI
5 Service Company will be owned directly by PHI.

6 Q When did you first understand that change
7 to have occurred?

8 A I don't remember the specific date. I
9 think the initial thought was that it would make
10 sense to combine the service companies into one
11 Exelon Service Company, but as we went through the
12 logistics and the practicality of doing that, if
13 it made the most sense, we decided that it made
14 more business sense to keep the service company
15 within PHI.

16 Q Okay. Thank you. You can --

17 A Especially if the employees of that PHI
18 Service Company only perform services for the PHI
19 utilities.

20 Q Okay. You can put the application away.
21 With regard to the service companies, if
22 the transaction is the approved, is it your

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1 understanding that PEPCO D.C. will be allocated
2 costs using two different cost allocation manuals?

3 A If the merger is approved, PEPCO will
4 receive services from two different service
5 companies and each one has their own cost
6 allocation manual.

7 Q Okay. I believe that is a yes. If you
8 can, can you confirm that's a yes?

9 A There are two cost allocation manuals;
10 each service company has one.

11 Q Okay. Thank you.

12 Do you agree that PHI Service Company has
13 about 110 cost allocation ratios and about 80
14 unique allocation factors?

15 A That sounds about correct.

16 Q Do you agree that the Exelon Business
17 Service Company has about 60 unique allocation
18 factors?

19 A Subject to check, that sounds correct.

20 Q Am I correct that there has been no final
21 determination made as to what services Exelon
22 Business Service Company will provide to PEPCO

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1 D.C.?

2 A That is correct. That's still in
3 process.

4 Q Thank you. Could you please turn back in
5 your rebuttal testimony now to page 10 and look at
6 the heading on line 3, adequacy of the customer
7 investment fund. I believe if you were to compare
8 this to the table of contents, there should be a
9 Roman numeral V on that main heading. Let me know
10 when you're there.

11 A Okay.

12 Q Beginning on line 7, you testify that the
13 customer investment fund is based on the net
14 synergy savings that will be realized as a result
15 of the merger.

16 Do you see that?

17 A Yes, I do.

18 Q We can go to your -- the prior version of
19 your testimony, if you would like, or if you could
20 accept, subject to check, but I'm curious, would
21 you agree the original version of your testimony
22 said "tied to" instead of "based on" on line 8?

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1 A I believe that's correct.

2 Q Can you tell me --

3 A And the -- I'm sorry.

4 Q Go ahead. I was going to ask, what's the
5 difference?

6 A Okay. The reason why is the original
7 application, the hundred million dollar CIF fund
8 was -- represents a hundred percent of the net
9 five-year synergy savings of the companies. And
10 specific to PEPCO D.C., the amount of net synergy
11 savings over the first five years was \$14 million.
12 And so the CIF was set up to pay a hundred percent
13 of those savings to PEPCO D.C.

14 And so the original CIF of \$14 million
15 was tied to the net five-year synergy savings.
16 We've increased by that a factor of 2.4, and so
17 it's still based on the net synergies, but now
18 it's no longer tied to that number.

19 Q Okay. So let's focus on the current
20 version or your conformed testimony, "based on."
21 My understanding was that the customer investment
22 fund level was simply based on the level that

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1 resulted from increasing the other three
2 jurisdiction customer investment funds in
3 proportion to the increase in New Jersey; is that
4 accurate?

5 A I think, first, let's talk about the
6 initial customer investment fund. The customer
7 investment fund in total is based on the net
8 five-year synergies that would flow -- our
9 expectation, that would flow through PHI
10 companies. And so the hundred million dollar CIF
11 fund was based on that.

12 And the way that we allocated that to the
13 jurisdictions -- the goal was to allocate a
14 hundred percent of the net five-year synergies to
15 each of the jurisdictions based on how we thought
16 the cost savings would -- would flow. And so it
17 was based on a customer count, which was a good
18 metric for doing that.

19 So as we look at other jurisdictions, we
20 try to keep that ratio the same. So we increased
21 the per customer amount in New Jersey from the \$50
22 up to \$128, and in order to keep all the

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1 jurisdictions equal and to keep the -- and to
2 continue to base the CIF on the net synergies, we
3 increased the CIF in the jurisdictions by the same
4 proportion.

5 Q Okay. You used "based on" several times
6 in your response.

7 A Right.

8 Q And we just talked about -- "based on" is
9 the new language. Prior to the increase in the
10 customer investment fund, would this testimony
11 have been accurate if it reads as it does today,
12 the CIF is based on the net synergy savings that
13 will be realized as a result of the merger?

14 A Would my original testimony?

15 Q Uh-huh.

16 A Well, possibly. I think at the time the
17 \$14 million of net synergies that we expected to
18 benefit D.C. customers -- we wanted to pay a
19 hundred percent of that upfront. And so that
20 hundred percent CIF payment was tied to the amount
21 that we forecasted to be in the net five-year
22 synergies. I think that's the right appropriate

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1 term.

2 I think we've gotten away from tying it
3 to the net five-year synergies and now we're
4 paying out almost ten years of synergies in the
5 CIF, but still based on the initial net five-year
6 synergy savings.

7 Q Okay. Has a decision been made about the
8 timing of PEPCO's next distribution rate case if
9 the transaction is approved?

10 A There has been no decision made yet.

11 Q If the transaction is approved, do you
12 believe it's reasonable that a distribution rate
13 case filing will be made within the first 12
14 months?

15 A I believe it will. I think it was pretty
16 well-known that we were considering filing a rate
17 case in the summer of 2014. I would say that by
18 the end of this year, we would have spent probably
19 about \$500 million of capital since the last rate
20 case, which equates to about \$160 million of rate
21 base increase that we're currently not earning on.

22 We're expecting to have an ROE probably

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1 close to 5 percent by the end of this year. And
2 so I think that it is reasonable -- given the
3 amount of investments that we've continued to make
4 in the District, I think it's reasonable that we
5 would be within the first 12 months.

6 Q Based on those same considerations that
7 you just identified in your response, do you think
8 it's reasonable that there will be two
9 distribution rate case filings before 2020?

10 A I would say there would be two
11 distribution rate cases before 2020, yes.

12 Q Do you think it's reasonable to assume
13 there may be at least two; there could be three?

14 A It's possible.

15 Q Okay. On line 10 -- excuse me. Staying
16 on page 10 of your testimony, on line 9, you say,
17 Joint applicant witness Khouzami discusses the
18 savings in greater detail in his direct and
19 rebuttal testimonies.

20 Do you see that?

21 A I do, yes.

22 Q Do you have a copy of Mr. Khouzami's

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1 rebuttal testimony available? I just want to
2 discuss --

3 A Yes, I do.

4 Q -- one page with you. Page 8 of his
5 rebuttal testimony.

6 A Okay.

7 Q And in particular figure CVK 2. Do you
8 see that?

9 A I do, yes.

10 Q Do you have an understanding of what
11 figure CVK 2 shows?

12 A Yes.

13 Q What is that understanding?

14 A This is the projected costs savings that
15 will flow through to PEPCO D.C. over the five-year
16 period. It shows the synergy savings of a total
17 of \$24 million in the far right-hand column by
18 year, and then the cost to achieve of 10, for a
19 net synergies savings of \$14 million over the
20 first five years.

21 Q Okay. Thank you. I have two background
22 questions on this, if I can. First -- the first

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1 two rows, those don't sum up because of rounding;
2 is that right? Is that your understanding?

3 A The first two rows don't sum -- I'm
4 looking at the total. Are you looking at --

5 Q PEPCO D.C. synergies and cost to achieve.

6 A I think that's correct, yes.

7 Q Okay. Thank you.

8 And then also, if I'm reading this right,
9 the net synergies do not turn positive until
10 year two; is that right?

11 A So based on an as-incurred amount, that
12 is correct.

13 Q Okay. Is it your understanding that the
14 joint applicants intend to seek adjustments to all
15 costs to achieve that were incurred in the
16 pre-closing period?

17 A That is correct, yes.

18 Q All else being equal, if PEPCO were to
19 make a business distribution rate filing that uses
20 year one as a historical test period as adjusted
21 to reflect the pre-closing cost to achieve, am I
22 correct that PEPCO's cost of service would be

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1 \$6 million higher than it otherwise would have
2 been absent the merger?

3 A No, I think if we filed a base rate case
4 using year one -- year one, as you can see, shows
5 a \$3 million cost reduction as a benefit. And
6 then cumulatively there's \$9 million of cost to
7 achieve at that point. There are many ways to
8 address that cost to achieve.

9 It could go into rates. It could be
10 amortized. But there are many options to have
11 year one be positive and beneficial for D.C.
12 customers.

13 So I would not conclude that it would be
14 a negative impact to D.C. customers.

15 Q Have the joint applicants committed in
16 this proceeding that the cost to achieve will not
17 exceed net synergy savings or -- excuse me -- will
18 not exceed synergies in any subsequent rate case?

19 A Can you repeat that question?

20 Q Sure. Have the joint applicants
21 committed that costs to achieve will not exceed
22 synergies in subsequent rate case filings?

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1 A We have not made that specific
2 commitment. However, I would note that we have
3 provided what we believe is a very reasonable
4 forecast over the five-year period as to what
5 synergies there will be in PEPCO D.C., and I don't
6 believe any of the intervenors have challenged
7 these numbers.

8 Q You can put Mr. Khouzami's testimony
9 down.

10 Could you turn to page 13 of your
11 rebuttal testimony?

12 A Okay.

13 Q Do you see on line 21 you begin
14 discussing \$51 million in net synergy savings over
15 the next ten years?

16 A Yes, that's correct.

17 Q Similar to the discussion we just had, is
18 there a commitment in this case by the joint
19 applicants that future rate requests will be
20 \$51 million lower than they would have been
21 otherwise, in the absence of the transaction?

22 A Based on our forecast of the cost savings

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1 to PEPCO D.C., we anticipate over the first ten
2 years that there will be 51 million lower net cost
3 with the merger than without.

4 Q Okay. I understand that. But my
5 question is, is there a commitment, an
6 accountability measure to ensure that the -- that
7 future rate requests are actually \$51 million
8 lower than they otherwise would have been?

9 A Well, our commitment is that a hundred
10 percent of the cost savings that flow through to
11 PEPCO D.C. will be in rate cases and will benefit
12 customers. That will flow through.

13 Are we committing to a \$51 million
14 number? There's nothing in the application that
15 says that. However, I would say that it's more
16 likely -- given the track record of Exelon, given
17 our commitment to this transaction, I would say
18 it's more likely that number could be higher than
19 it would be lower.

20 But I would say that the company -- the
21 joint applicants feel very comfortable, given the
22 integration work that they've done, that these are

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1 very achievable numbers and they that are numbers
2 that will be delivered.

3 Q Okay. If the net synergy savings turn
4 out to be zero and the cost to achieve exceeds
5 synergy savings, therefore, can you tell me what
6 merger commitment the joint applicants would have
7 violated?

8 A Well, first of all, I think that scenario
9 is highly unlikely. We spent a lot of time
10 looking at the merger. Mr. Khouzami, who heads up
11 the integration team, has spent a lot of time
12 looking at the synergies. There are plans that
13 are put in place. There are initiatives and
14 commitments to ensure that these synergy savings
15 are achieved and accomplished.

16 So I would say that there's been a
17 tremendous amount of work to ensure that we meet
18 these commitments. So the possibility of having
19 zero synergies, I would say, is highly unlikely,
20 if not remote.

21 Q Okay. I understand, but back to my
22 question: If that situation arose, what merger

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1 commitment would the joint applicants have
2 violated?

3 A I do not believe they would have violated
4 any commitment.

5 Q Okay. Can you please turn now to page 18
6 of your rebuttal testimony -- excuse me, page 17.

7 A Okay. I'm there.

8 Q Beginning on line 12, do you see where
9 you testified, quote, a rate moratorium of any
10 duration would put pressure on investments and
11 spending in PEPCO and would make any incremental
12 increases in investment levels unlikely; this has
13 potential implications not only for customer
14 service, but also for the economy of the District
15 of Columbia since infrastructure investment is a
16 regional economic development engine?

17 A I see that, yes.

18 Q On line 15, when you say, "potential
19 implications," do you mean potential negative
20 implications?

21 A That's a possibility, yes. It would not
22 produce a positive impact.

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1 Q Earlier, we were discussing the decision
2 to defer PEPCO's rate case, and you agreed that --
3 with Dr. Tierney's characterization that that was
4 a rate moratorium.

5 So with regard to the testimony I just
6 read, is it your position that the decision to
7 defer PEPCO's planned 2014 rate case put pressure
8 on investments and spending in PEPCO and
9 negatively impacted investment levels?

10 A No, not at all. And I see these as two
11 complete different scenarios. In 2014, we were
12 presented with a very unique opportunity to merge
13 with Exelon. We saw tremendous customer value in
14 this merger, and we made the decision to defer the
15 rate case filing to focus on the merger
16 application because we knew the benefits, the
17 increased benefits, that would go to our
18 customers.

19 This is a situation where, post-merger,
20 we're not allowed to file for three years. And I
21 think when you look at the magnitude of a
22 three-year -- a continued three-year rate

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1 moratorium for customers, coupled with what is
2 already almost a three-year rate moratorium based
3 on our decision not to file a rate case back in
4 2014, given the fact that we're spending about
5 \$400 million a year in capital investment in the
6 District, going six years without a rate case is
7 significant for the company.

8 Q Okay. And just so I'm clear, I believe
9 you said the decision to defer the rate case would
10 result in about a three-year rate moratorium; is
11 that right?

12 A So if you look at the last rate increase
13 that we were approved was back in March of 2014.
14 If, hypothetically, we file a rate case November
15 of this year -- the merger is approved the next
16 quarter or two, we file a rate case in November of
17 2015, rates probably wouldn't be in effect till
18 around November of 2016, approximately. So that
19 would have been about -- almost a three-year time
20 frame from the last rate increase occurring in the
21 District.

22 Q Okay. Can you please turn now to page 20

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1 of your rebuttal testimony? And on lines --
2 beginning on line 12, you say, The administration
3 of energy efficiency programs is handled by the
4 D.C. Sustainable Energy Utility (SEU), and then
5 you go on to say that Mr. Gould has discussed
6 Exelon's experience with energy efficiency and
7 Exelon's willingness to engage with the SEU to,
8 quote, promote energy efficiency measures that
9 benefit District of Columbia customers, including
10 low-income customers, close quote.

11 Do you see that?

12 A I do, yes.

13 Q Do you still have a copy of Mr. Crane's
14 Exhibit (4A)-2 available?

15 A I do, yes.

16 Q All right. On April 1st, when Mr. Rigby
17 was on the stand, I asked him about some of the
18 commitments that are discussed here. And in
19 particular this discussion occurs on page 615 and
20 620 of the transcript. But you may recall I was
21 asking him, what was the effect of a commitment to
22 either maintain something that is currently a

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1 practice or to continue something that's a current
2 practice. Do you recall that?

3 A Vaguely, I do.

4 Q I believe Mr. Rigby testified that the
5 intent was to articulate certainty that Exelon was
6 not going to come in and change things. Is that
7 your understanding?

8 A My understanding of his comments, I think
9 he talked -- it was around energy efficiency, it
10 was around supplier diversity and diversity in the
11 workforce. It was to make a statement that Exelon
12 continues to maintain the programs that PEPCO has
13 today.

14 I think Mr. Rigby did a good job talking
15 around diversity. You know, our objective is to
16 increase the diversity in our company. Our
17 objective is to increase the diversity spending
18 goals. And so maintaining that, in effect, is
19 maintaining and promoting those areas. I think
20 that's what his comment was focused on.

21 Q Thank you, and that's what I recall as
22 well. So my question is, earlier you testified

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1 that it's critically important for -- that PEPCO
2 understand it's critically important for the
3 Commission and interested stakeholders to meet the
4 EQSS requirements. I'm just curious what the
5 distinction is that would make it important to
6 include commitments to maintain supplier diversity
7 programs and workforce diversity explicitly in the
8 91 merger commitments, but not explicitly commit
9 to meet the EQSS on an annual basis in that same
10 document. Do you know?

11 A If I understand your question, if I go to
12 commitment 7 in (4A)-2, it says that the joint
13 applicants commit that PEPCO will achieve
14 reliability performance at a level in 2018 through
15 '20, at a level equal to or better than the
16 corresponding level set forth in the Commission's
17 current EQSS.

18 THE REPORTER: I'm sorry?

19 THE WITNESS: I'm sorry. In
20 commitment 7, it says, The joint applicants commit
21 that PEPCO will achieve reliability performance
22 for 2018 through 2020 at a level equal to or

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1 better than the corresponding level set forth in
2 the Commission's current EQSS standards.

3 So I guess I'm not understanding your
4 question. We are committing to meet or exceed the
5 current EQSS standards. We know reliability is
6 important in the District.

7 Q Sure. My question -- maybe this will
8 help. I understand paragraph 7 to not refer to
9 any reliability performance level in 2015, '16, or
10 '17, and to contain a commitment to meet a
11 three-year average for the period from 2018, '19
12 and '20 that would be measured after that
13 three-year period as opposed to the EQSS which I
14 understand are annual requirements.

15 Does that help clarify?

16 A Well, I guess the way the commitment was
17 drafted is in order to meet the 2018 through 2020
18 SAIFI and SAIDI numbers, you need to be able to
19 make progress between where you are today and to
20 meet those numbers. So to me I guess it's implied
21 that continued progress will be made to be able to
22 meet those standards --

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1 Q Okay.

2 A -- and those results.

3 Q But do you know why, for something as
4 critically important as meeting the EQSS, why that
5 would be implicit, whereas other things that are
6 important would be explicitly memorialized in this
7 document?

8 A Well, I would say we've had extensive --
9 because of the importance of reliability -- I
10 would not just focus on this one application. I
11 think we've had reliability witnesses up here. We
12 had Mr. Alden talking about reliability. We had
13 Mr. Gausman talking about reliability. I think we
14 have sufficient evidence in the record that we
15 have provided to emphasize the importance, and the
16 fact that it isn't in this one application, I
17 think we've covered that point fairly well.

18 Q Okay. Just a couple of more topics I'd
19 like to go over with you. You had testified
20 earlier, I believe, when we were talking about OPC
21 Cross-Examination Exhibit 4, that the reliability
22 commitment has two components to it. One was the

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1 commitment not to exceed budgeted forecasts and
2 the second was an ROE penalty. Do you recall
3 that?

4 A I do, yes.

5 Q If you would please turn to page 6 of
6 your rebuttal testimony. Beginning on line 24 --
7 actually, let me back up. On line 12, you're
8 responding to OPC witness Dismukes.

9 A I'm sorry. You're on page?

10 Q Page 6, beginning on line 12.

11 A Okay.

12 Q Do you see capital investment tracker
13 mechanism, the heading?

14 A I do, yes.

15 Q You're responding to OPC witness
16 Dismukes' recommendation there that if the
17 transaction is approved, that one condition should
18 be that the joint applicants could not propose a
19 tracker mechanism in subsequent rate filings. Is
20 that accurate?

21 A That is correct, yes.

22 Q At the bottom of page 6 on line 24, you

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1 state, This merger application is not a
2 distribution rate filing. The appropriateness of
3 some potential capital tracker mechanism should
4 not be an issue in determining whether the merger
5 is in the public interest, but rather should be
6 taken up in a future rate proceeding.

7 Do you see that?

8 A I do, yes.

9 Q If we were to replace the term on page 7,
10 lines 1 and 2 "capital tracker" with "ROE
11 penalty," so it would read, This merger
12 application is not a distribution rate filing; the
13 appropriateness of some potential ROE penalty
14 mechanism should not be an issue in determining
15 whether the merger is in the public interest, but
16 rather should be taken up in a future rate
17 proceeding -- if your testimony was stated that
18 way, would you agree with it?

19 A No, I would not. As part of the joint
20 applicants' proposal, we are committing to meet
21 the reliability standards as laid out in
22 commitment 7, and to demonstrate our commitment to

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1 meet those numbers, we are also offering an ROE
2 penalty in the event that we don't meet that
3 commitment. So I think the ROE that we're
4 proposing ties into a specific commitment the
5 company is making.

6 What Witness Dismukes is proposing here
7 is a capital -- is to prohibit the company from
8 recovering investments it's making in the system
9 in a timely manner by eliminating a capital
10 tracker mechanism. So to me, they're completely
11 unrelated, and I would not change the testimony
12 and insert the word "ROE" where it says "capital
13 tracker."

14 Q Is the distinction not so much that it's
15 a matter to be taken up in a future rate
16 proceeding, but it's a matter that, on the one
17 hand, the companies have proposed the ROE penalty,
18 and on the other hand, the capital tracker
19 proposal comes from OPC?

20 A Not at all. I think -- when you look at
21 the reasons for doing capital trackers, if you go
22 back ten years, as utility companies have made

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1 large amounts of investment, they've been able to
2 cover regulatory lag and not come in every year
3 for a rate case because there's been either
4 customer growth, there's been energy usage
5 growth -- those have helped fund a lot of the
6 timing between when the company comes in for rate
7 cases, and that's why companies came in every
8 three or four years.

9 As you see customer growth stagnant, as
10 you see usage declining, you see -- but you see
11 investments increasing, it has increased the need
12 to come in every year for a rate case. And that's
13 where the company is right now. And so we're
14 looking for and we're open for suggestions on --
15 and would love to have a dialogue around
16 alternative ways to recover our costs in a more
17 timely fashion.

18 And, you know, whether it's through a
19 capital tracker mechanism, like we have with the
20 D.C. PLUG or the GRC in Maryland, whether it's
21 more forecasted rate cases -- I mean, those are
22 all great things which will help the company

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1 recover its costs more timely after it's borrowed
2 the money, spent the money, and put it in service.

3 So to me, the whole notion of raising the
4 capital tracker mechanism in -- in the merger is
5 just not appropriate. And it's not because of
6 OPC. If it was another intervenor, I would have
7 made the same comments.

8 Q Thank you. I didn't mean to single out
9 OPC. My intention was to single out OPC as not a
10 joint applicant. Is the distinction that the ROE
11 penalty was proposed by the joint applicants and
12 the capital tracker mechanism was proposed by a
13 party other than the joint applicants?

14 MR. LORENZO: I think that's asked and
15 answered, Your Honor, so I'll object. It was the
16 same question.

17 MR. GRAY: I agree it was the same
18 question, so it was asked, but the distinction I'm
19 drawing is it was not necessarily answered. It's
20 just meant to be a clarifying question.

21 CHAIRMAN KANE: Are you saying you didn't
22 understand the answer or you weren't satisfied

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1 with the answer?

2 MR. GRAY: Well, I understood the answer
3 to some extent, but I didn't understand how it
4 related to the question. The question was not
5 necessarily -- had anything to do with cost
6 recovery in general. It was what -- the nature of
7 the proposal.

8 BY MR. GRAY:

9 Q Is the distinction that the joint
10 applicants made the ROE proposal and that a third
11 party made the capital tracker proposal or not?

12 CHAIRMAN KANE: I believe the witness did
13 answer that question.

14 MR. GRAY: Okay. I will have to go back
15 to the transcript.

16 BY MR. GRAY:

17 Q Did you hear Mr. Khouzami testify that
18 the 50 basis point penalty would be, quote,
19 pretty -- excuse me -- a, quote, pretty
20 substantial penalty?

21 A I did, yes.

22 Q Okay. I'm going to make a series of

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1 statements and then I want to see if you agree
2 with each one. The first one is this: It is
3 important for PEPCO to be able to demonstrate to
4 its investors that there is a realistic
5 opportunity to earn a rate of return that is
6 commensurate with the rate of return earned by
7 other companies of similar risk.

8 Do you agree with that statement?

9 A I would, yes.

10 Q The second one is this: If PEPCO is
11 unable to receive a reasonable opportunity to earn
12 its authorized rate of return, PEPCO is concerned
13 that it will not be able to satisfy the needs of
14 its customers.

15 Do you agree with that?

16 A I think that's a possibility.

17 Q Okay. And the last one is, the company's
18 credit ratings indicate the rating agencies'
19 assessment of PEPCO's ability to meet its
20 obligations to its long-term debt holders. A
21 lower authorized return on equity could result in
22 the perception that the company has increased

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1 risk, which can contribute to credit downgrades
2 and other operating constraints, which will
3 ultimately result in increased costs to customers.

4 Do you agree with that statements?

5 A Can you read that one more time?

6 Q Sure. The company's credit ratings
7 indicate the rating agencies' assessment of
8 PEPCO's ability to meet its obligations to its
9 long-term debt holders. A lower authorized return
10 on equity could result in the perception that the
11 company has increased risk, which can contribute
12 to credit downgrades and other operating
13 constraints, which will ultimately result in
14 increased costs to customers.

15 A I think that's a possibility.

16 Q If the joint applicants fail to meet the
17 three-year average reliability target, do you
18 understand that there is no commitment to forgo
19 arguing in a future rate proceeding that
20 imposition of the 50 basis point ROE penalty could
21 threaten PEPCO's credit rating?

22 A It's my understanding that the 50 basis

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1 points would be automatic, that when we filed the
2 first rate case post-December 31st, 2020, if we
3 did not meet the reliability standards that we
4 laid out in commitment 7, is that would be an
5 automatic 50 basis point reduction.

6 It wouldn't be the starting point for a
7 debate. It's a commitment we're making.

8 Q Okay. Thank you. I believe that may
9 answer a couple of questions, if I understood your
10 answer right.

11 Are you saying that the joint applicants
12 would note be able to argue that that automatic
13 penalty should not be triggered because of the
14 effect of the penalty?

15 A Can you say that again?

16 Q Sure. Are the joint applicants
17 committing not to argue that the automatic penalty
18 should not be triggered because of the effect of
19 that penalty?

20 A I'm not sure I understand the last part
21 of -- I was good until the last part of your
22 question.

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1 Q Sure. By effect of the penalty, I mean
2 the effect on the company. So is it your
3 understanding that if the joint applicants
4 determined a 50 basis point penalty could threaten
5 their credit rating, are the joint applicants
6 committing not to argue that the automatic penalty
7 should not be triggered based on that concern?

8 A It's my understanding that it's a
9 50 basis point reduction.

10 Q Okay. Thank you.

11 Just one last area I want to cover with
12 you. Earlier, when we were discussing the
13 decision to defer PEPCO's planned 2014 rate case,
14 you said that that was not a decision that was
15 made by the board but by the executive leadership
16 team with discussions with management; is that
17 right?

18 A That is correct.

19 Q Is it your understanding that at least in
20 part the decision to defer that rate filing was
21 based on concerns about the companies being spread
22 too thin with multiple major filings going on at

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1 the same time?

2 A Well, the decision to not file the rate
3 case was made because we knew this transaction was
4 important for our company and we knew it was
5 important for our customers in the District, and
6 we felt it was important to focus all parties'
7 attention on this application and not to
8 side-track all the parties with another filing.

9 And so this is obviously a very important
10 filing and we think it was important. It was also
11 prudent to not file a rate case so we can all
12 focus on this proceeding.

13 Q Okay. So that broader group that you're
14 discussing or that you have in mind, is that the
15 Commission, OPC, intervenors, the public in
16 general?

17 A That's correct, yes.

18 Q Thank you. I want to walk through an
19 example with you and see exactly how that type of
20 decision-making would work with Mr. O'Brien's
21 executive leadership team. Let's assume that the
22 transaction is approved as filed, and then let's

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1 assume that PEPCO has plans to make a distribution
2 rate filing here in the District within 24 months
3 of closing of the transaction. Okay?

4 A Okay.

5 Q And then let's assume that 18 months
6 after the transaction is approved, Exelon reaches
7 an agreement to purchase Washington Gas and
8 decides that it would be prudent to defer that
9 planned rate filing so that all parties could
10 focus their attention on the merger. Are you with
11 me?

12 A Washington Gas to defer or PEPCO to
13 defer?

14 Q The decision would be made by
15 Mr. O'Brien's executive leadership team to defer
16 PEPCO's planned rate case.

17 A Okay. I'm with you.

18 Q If PEPCO D.C. believed that that rate
19 case was needed in order to recover the
20 investments required to meet the reliability
21 commitments, would Mr. O'Brien's decision be one
22 that PEPCO D.C. management could override?

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1 A I mean, you've created a hypothetical
2 scenario. I think what the witnesses have
3 discussed is that there would be a discussion and
4 a dialogue around what would be most important.

5 I would note that BG&E filed a rate
6 increase as well during our merger application.
7 So to your example, PEPCO would file a rate case,
8 and it wasn't overridden.

9 But I would say that the company as a
10 whole would discuss what is the most important
11 objective. We all have financial goals to meet,
12 and I think that there would be a discussion as to
13 what is the most appropriate course of action.

14 Would Mr. O'Brien -- I don't know if
15 Mr. O'Brien would overrule Mr. Velazquez in that
16 situation. I think there would be a dialogue and
17 an agreement on what the right approach would be.

18 Q Okay. Thank you.

19 MR. GRAY: Your Honor, I don't have any
20 further questions. I do have, I believe, eight
21 responses to data requests that I would like to
22 mark, and I have a stipulation with counsel from

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1 joint applicants on these eight.

2 CHAIRMAN KANE: Go ahead.

3 MR. GRAY: Okay. This first has been
4 pre-marked as OPC 23. It is Mr. McGowan's
5 one-page response to OPC data request 18-85. And
6 I would ask that this be marked as OPC
7 Cross-Examination Exhibit 101.

8 CHAIRMAN KANE: So marked.

9 (OPC Cross Exhibit Number 101 was marked
10 for identification.)

11 MR. GRAY: The second has been pre-marked
12 as OPC 124. It's Mr. McGowan's one-page response
13 to OPC data request 18-80. I would ask that this
14 be marked as OPC 102.

15 CHAIRMAN KANE: So marked.

16 (OPC Cross Exhibit Number 102 was marked
17 for identification.)

18 MR. GRAY: Next is the document that's
19 been pre-marked as OPC 125. It's Mr. McGowan's
20 one-page response to OPC data request 18-8. I ask
21 that this be marked as OPC 103.

22 CHAIRMAN KANE: So marked.

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1 (OPC Cross Exhibit Number 103 was marked
2 for identification.)

3 MR. GRAY: Next is the document that's
4 been pre-marked OPC 126. It is a two-page
5 response by Mr. McGowan to OPC data
6 request 18-111. I ask that this be marked as
7 OPC 104.

8 CHAIRMAN KANE: So marked.

9 (OPC Cross Exhibit Number 104 was marked
10 for identification.)

11 MR. GRAY: OPC 127 is Mr. McGowan's
12 one-page response to Commission staff data
13 request 5-6. I ask that this be marked as
14 OPC 105.

15 CHAIRMAN KANE: So marked.

16 (OPC Cross Exhibit Number 105 was marked
17 for identification.)

18 MR. GRAY: Document that's been
19 pre-marked as OPC 128 is Mr. McGowan's response to
20 OPC data request 18-83. I ask that this be marked
21 as OPC 106.

22 CHAIRMAN KANE: So marked.

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1 (OPC Cross Exhibit Number 106 was marked
2 for identification.)

3 MR. GRAY: The document that's been
4 pre-marked as OPC 129 is Mr. McGowan's two-page
5 response with one-page attachment to OPC data
6 request 18-96. And I ask that this be marked as
7 OPC 107.

8 CHAIRMAN KANE: So marked.

9 (OPC Cross Exhibit Number 107 was marked
10 for identification.)

11 MR. GRAY: And the last one is a two-page
12 response -- it's been pre-marked as OPC 131. It
13 is a two-page response by Mr. McGowan to OPC data
14 request 107. And I request that this document be
15 marked as OPC 108.

16 CHAIRMAN KANE: So marked.

17 (OPC Cross Exhibit Number 108 was marked
18 for identification.)

19 MR. GRAY: With that, I have nothing
20 further.

21 Thank you, Mr. McGowan.

22 THE WITNESS: Thank you.

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1 CHAIRMAN KANE: Ms. Francis.

2 CROSS-EXAMINATION

3 BY MS. FRANCIS:

4 Q Good morning, Mr. McGowan.

5 A Good morning.

6 MS. FRANCIS: Good morning,

7 Commissioners.

8 I'd like to start by marking some
9 exhibits which I have gone over with Mr. Lorenzo,
10 and we've agreed to stipulate them.

11 The first one is what's been
12 preliminarily identified as AOBA 93, which is the
13 joint applicants' response to AOBA data
14 request 1-9, which I'd like to have marked for the
15 record as AOBA 100.

16 CHAIRMAN KANE: So marked.

17 (AOBA Cross Exhibit Number 100 was marked
18 for identification.)

19 MS. FRANCIS: The next one has been
20 preliminarily identified as AOBA 95, which is the
21 joint applicants' response to AOBA data
22 request 3-3, which I'd like to have marked for the

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1 record as AOBA 101.

2 CHAIRMAN KANE: So marked.

3 (AOBA Cross Exhibit Number 101 was marked
4 for identification.)

5 MS. FRANCIS: The next was preliminarily
6 identified as AOBA 96, which is the joint
7 applicants' response to AOBA -- the next exhibit
8 was preliminarily identified as AOBA 96, which is
9 the joint applicants' response to AOBA data
10 request number 3-11, which I'd like to have marked
11 for the record as AOBA 102.

12 CHAIRMAN KANE: So marked.

13 (AOBA Cross Exhibit Number 102 was marked
14 for identification.)

15 MS. FRANCIS: The next one has been
16 preliminarily identified as AOBA 100, which is the
17 joint applicants' response to AOBA data
18 request 6-6 which I'd like to mark for the record
19 as AOBA 103.

20 CHAIRMAN KANE: So marked.

21 (AOBA Cross Exhibit Number 103 was marked
22 for identification.)

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1 MS. FRANCIS: The next has been
2 preliminarily identified as AOBA Exhibit 101,
3 which is the joint applicants' response to AOBA
4 data request 6-7, which I'd like to have marked
5 for the record as AOBA 106.

6 CHAIRMAN KANE: So marked.

7 (AOBA Cross Exhibit Number 104 was marked
8 for identification.)

9 MS. FRANCIS: The next has been
10 preliminarily identified as AOBA 105, which is the
11 joint applicants' response to OPC data request
12 number 18-78, which I'd like to have marked for
13 the record at AOBA 105.

14 CHAIRMAN KANE: So marked.

15 (AOBA Cross Exhibit Number 105 was marked
16 for identification.)

17 MS. FRANCIS: The next has been
18 preliminarily identified as AOBA 117, which is the
19 joint applicants' response to OPC data request
20 number 18-108, which I'd like to have marked for
21 the record at 106.

22 CHAIRMAN KANE: So marked.

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1 (AOBA Cross Exhibit Number 106 was marked
2 for identification.)

3 MS. FRANCIS: The next has been
4 preliminarily identified as AOBA Exhibit 108,
5 which is the joint applicants' response to staff
6 data request number 7-2, which I'd like to have
7 marked as AOBA 107.

8 CHAIRMAN KANE: So marked.

9 (AOBA Cross Exhibit Number 107 was marked
10 for identification.)

11 BY MS. FRANCIS:

12 Q Next, Mr. McGowan, I'd like you to take a
13 quick look at what has been preliminarily
14 identified as AOBA Exhibit 87.

15 A Okay.

16 Q Mr. McGowan, that has already been
17 previously admitted into the record as AOBA 87,
18 and you can see that you, along with Ms. Tierney,
19 are the sponsors. Can you confirm that that
20 response is true and correct?

21 A So I believe for my portion of this I'm
22 sponsoring the numbers that come from the 2013

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1 10-K. So for the portion that I sponsored, it is
2 true and correct.

3 Q Okay. And next please look for me at
4 what was preliminarily identified as AOBA 98,
5 which is the joint applicants' response to AOBA
6 data request 4-6. That has been already admitted
7 into the record as AOBA 82. That was sponsored by
8 Mr. Khouzami as well as Mr. McGowan, and I would
9 just like you to confirm the veracity of that
10 response.

11 A Yes, still true and correct.

12 Q Thank you.

13 Mr. McGowan, am I correct that you've not
14 filed direct or supplemental direct testimony in
15 this proceeding and that you present no
16 affirmative recommendations or rate proposals in
17 this proceeding?

18 A That is correct.

19 Q So the only testimony that you present is
20 the rebuttal testimony that you submitted on
21 December 17th, 2014; is that correct?

22 A That is correct.

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1 Q And Mr. McGowan, I believe that we
2 established in formal case number 1116 before this
3 Commission, and confirmed in Maryland commission
4 case number 9361 that you have never testified as
5 an expert on cost of service and rate structure
6 issues before any utility regulatory commission;
7 is that correct?

8 A That is correct. And as I mentioned to
9 you before, that group reports no me. But I've
10 never testified as an expert witness.

11 Q Now, am I also correct that you've never
12 personally prepared a jurisdictional cost of
13 service study?

14 A I reviewed at a high level, but I've
15 never actually prepared one.

16 Q And am I also correct that you have never
17 personally prepared a class cost of service study?

18 A Reviewed, but not prepared, yes.

19 Q And do you present yourself in this
20 proceeding as an expert on jurisdictional cost of
21 service allocations?

22 A Not an expert.

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1 Q Do you present yourself in this
2 proceeding as an expert on class cost of service
3 allocations?

4 A Not an expert, but I do know a general
5 knowledge of both those areas.

6 Q And do you present yourself in this
7 proceeding as an expert on rate structure and rate
8 design issues?

9 A Not an expert.

10 Q Is it the joint applicants' position that
11 the proposed allocation of the customer investment
12 fund on the basis of customer counts by utility
13 and jurisdiction yields a fair and equitable
14 allocation of those funds to the District of
15 Columbia?

16 A Absolutely. The goal of the customer
17 investment fund and the goal of allocating it
18 based on customers was to provide a hundred
19 percent of the net five (sic) synergies to each
20 jurisdiction. And as I mentioned before, looking
21 at the synergy study in Mr. Khouzami's testimony,
22 we project what we believe is our best estimate of

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1 how synergies will flow through each of the
2 jurisdictions.

3 Using a customer count as a metric for
4 allocating the total amount is a good proxy for
5 ensuring that each jurisdiction gets a hundred
6 percent of the net synergies over the first five
7 years upfront.

8 Q I think you may have stumbled on an
9 answer to my question, but I'm not sure, because
10 my question focused more on the fair and equitable
11 allocation to the District of Columbia rather than
12 the total amount.

13 A Okay. The benefits of this merger --
14 there are many benefits, but if we want to focus
15 just on the financial benefits --

16 Q No, no, no, that's not my question.

17 A Well, I think I'm trying to answer your
18 question, Ms. Francis. You're asking about a fair
19 and equitable allocation. I'm trying to walk you
20 through how the numbers were allocated.

21 The answer is yes, it's a fair and
22 equitable allocation. And this Commission and

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1 other commissions in our jurisdictions have always
2 focused on synergies when looking at the direct
3 and traceable benefits to customers. So we use a
4 synergy study to evaluate how much synergies, how
5 much cost reductions would flow through each
6 jurisdiction. And we did that analysis, A fair
7 and equitable way as to how we think cost savings
8 will flow through each of those jurisdictions.

9 The CIF was designed -- the goal was to
10 pay a hundred percent of those net synergy savings
11 that would benefit each of the jurisdictions --
12 was to pay them upfront. So the CIF was based on
13 how synergies would flow through each
14 jurisdiction, and it's fair and equitable.

15 Q It's fair and equitable. When you said
16 it's fair and equitable, are you talking about the
17 amount of synergies or the division of the
18 synergies between each of the jurisdictions?

19 A I am referring to both because, again,
20 the goal of the CIF is to pay a hundred percent of
21 the net five-year synergies to customers upfront.
22 And when you look at the net five-year synergies

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1 that we believe will flow through to the D.C.
2 customers, it's \$14 million. Their CIF is
3 \$14 million originally. Obviously, that's been
4 increased to 33.75, but I was talking about the
5 original allocation and how the CIF was developed.

6 But the original \$14 million was fair and
7 equitable. We've increased that by a factor of
8 2.4 times in all jurisdictions. So it is a
9 fair -- we've kept it fair and equitable across
10 all jurisdictions.

11 Q Did you make the determination regarding
12 the manner in which the proposed CIF would be
13 allocated among the PHI utilities and their
14 jurisdictional service areas?

15 A I was not involved with that discussion.

16 Q Do you know who made the determination
17 regarding the manner in which the CIF would be
18 allocated?

19 A I don't know specifically. I suspect it
20 was the joint merger team or the merger team
21 council of Exelon.

22 Q Do you know that that's the answer, the

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1 merger team counsel of Exelon? Is that the
2 answer?

3 A I assume it is, but I do not know.

4 Q And who is the merger team counsel?

5 A There was a group that was put together
6 to bid on the acquisition. There was a team that
7 was put together that walked through the due
8 diligence in arriving at their final value and
9 determining how to structure the transaction that
10 they felt would meet the requirements of the
11 jurisdictions.

12 It was a team that was put together by
13 Exelon that I was not a part of.

14 Q You just made it sound like there was
15 more than one team. I'm interested in the team
16 that made the decision regarding the manner in
17 which the CIF was allocated to the jurisdictions.

18 A Right. And as I mentioned -- I refer to
19 them as the Exelon merger team. I don't know what
20 the specific name of that team was. But it's the
21 group that Exelon put together to evaluate and
22 propose on the transaction.

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1 Q And you don't know who the counsel was
2 who made that determination. Is that your answer?

3 A Do you want his name?

4 Q Yes.

5 A I believe it was probably Darryl
6 Bradford.

7 Q Thank you.

8 Were you informed as to the rationale
9 relied upon to justify the joint applicants' use
10 of numbers of customers to allocate CIF dollars
11 among the PHI utilities in the jurisdictions in
12 which they provide service?

13 A I've looked at those numbers
14 significantly. So I'm very aware of the basis for
15 using the CIF and a customer count to allocate the
16 net synergies to the jurisdictions.

17 Q Okay. Could you please explain to me,
18 what was that rationale?

19 A Well, as I mentioned, going back to the
20 original hundred million dollar CIF fund, the
21 study that the joint applicants put together to
22 show the cost savings that the merger would create

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1 for customers, it was \$92 million, and those
2 schedules are in Mr. Khouzami's testimony.

3 The intent was and the goal was to pay
4 those net synergies to customers upfront day one
5 and to develop a metric or a way to do that that
6 would be simple and that would be a good proxy for
7 allocating those net synergies to the
8 jurisdictions.

9 Using the customer count, using a metered
10 customer, was a good metric to use to allocate the
11 92, which was increased to a hundred million
12 dollars, but to allocate that hundred million
13 dollars to the jurisdictions, because when you use
14 that metric, the allocation to the jurisdictions
15 is very close to how the net synergies will
16 benefit those.

17 And so that's why it's appropriate to use
18 the customer count, billed meters, as a proxy for
19 allocating the CIF because it matches how
20 synergies will flow through the jurisdictions.

21 Q I think we just established that it was
22 Mr. Darryl Bradford who made the determination

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1 regarding the manner in which the CIF would be
2 allocated.

3 A No, we did not. You asked me who did
4 that. I said the Exelon merger team developed
5 that. You asked me who counsel was. I mentioned
6 he was a part of that team. It was the Exelon
7 merger team that developed this.

8 Q I think your response was exactly, the
9 merger team counsel. And I asked you who the
10 merger team counsel was, and you said
11 Mr. Bradford.

12 A Well, I --

13 MR. LORENZO: Objection. Argumentative.

14 MS. FRANCIS: No, I'm asking.

15 BY MS. FRANCIS:

16 Q Is that --

17 A Well, I misunderstood your question,
18 then. Let me just correct the record. What I
19 thought you were asking is -- the Exelon merger
20 team was a group of people, several individuals,
21 that evaluated the transaction, structured the
22 transaction and went through the due diligence

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1 with us before making their final bid and making
2 the final offer.

3 Mr. Bradford -- I thought you were asking
4 who lead that team, and I believe Mr. Bradford was
5 one of the leads on that team. But he did not
6 come up with this. It was the merger team that
7 did.

8 BY MS. FRANCIS:

9 Q So it was a group decision?

10 A I believe it was.

11 Q And who communicated the decision to you
12 to base the allocation between jurisdictions on
13 customer count?

14 A Once the merger -- once I became involved
15 with the merger, I was involved with a lot of
16 support analysis and financial analysis. At that
17 point, it was probably sometime in the summertime
18 that I learned and understood how the transaction
19 was structured and how the synergies would be paid
20 to customers upfront.

21 Q I'm asking you who specifically
22 communicated to you that the customer investment

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1 fund would be based on numbers of customers to
2 allocate the amounts between jurisdictions?

3 A I don't know the specific individual.
4 There was a group that was put together that
5 consisted of employees from PHI and Exelon once
6 the merger was announced and moved forward. It
7 was part of that group that we learned about the
8 transaction in more detail, how it was structured.

9 I don't know the specific individual who
10 told me that.

11 Q So is that a different group than you
12 just mentioned when you called it the merger team?
13 Is this a new group?

14 A There is -- yes. It's a new group.
15 The -- when the merger -- when Exelon looked at
16 the acquisition, they put together a team to
17 evaluate the transaction, just as PHI put together
18 a team to help with the due diligence. Two
19 separate groups.

20 Once the merger was announced and we
21 moved forward, we created a joint merger
22 application team to work together on these

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1 proceedings and to work on the transaction.

2 Q Please tell me, who was on the Exelon
3 merger team?

4 A There was -- Exelon counsel was on the
5 team. Mr. Khouzami was on the team. There were
6 folks from various aspects of corporate
7 communication, government affairs for both Exelon
8 and PHI.

9 Q Do you know the names? I asked you who
10 was on the Exelon team, and you told me various
11 people from PHI.

12 A Right.

13 Q They were on the Exelon team. Were --
14 MR. LORENZO: Objection. Argumentative.
15 He did mention Mr. Khouzami. He mentioned -- you
16 know, this is an argumentative line of
17 questioning.

18 MS. FRANCIS: Your Honor, it's not
19 argumentative. He's been referencing a couple of
20 different teams. I'm trying to understand who was
21 on which team. He just told me there was an
22 Exelon merger team, and he started to tell me who

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1 was on it, and then he said "and various people
2 from PHI." On the question before he told me that
3 PHI had its own merger team.

4 So right now I'm only focused on the
5 Exelon merger team, and I'm asking him who was on
6 it.

7 CHAIRMAN KANE: You're asking for the
8 names of the persons on it?

9 MS. FRANCIS: Yes, I'm asking for --

10 MR. LORENZO: Your Honor, could I ask, is
11 this the pre-announcement team or the
12 post-announcement team? Because, you know, there
13 are several --

14 CHAIRMAN KANE: Well, let Ms. Francis ask
15 the questions.

16 MS. FRANCIS: My questions are going to
17 the --

18 CHAIRMAN KANE: And let the witness do
19 the answering, not counsel. Thank you.

20 BY MS. FRANCIS:

21 Q I am going to the team that made the
22 determination to divide the amount of net synergy

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1 savings among jurisdictions on a per customer
2 basis. That's the team that I'm focused on. You
3 told me there was an Exelon merger team. Now I'm
4 asking you, who was on it? Your first answer was
5 counsel. Which counsel? Is that Mr. Bradford or
6 is that someone else?

7 A Mr. Bradford was one of them, yes.

8 Q And who were the others, sir?

9 A Mr. Paul Bonney was on the team.
10 Mr. Khouzami was on the team. They brought in
11 other folks to support the effort. Mr. Waden was
12 on the team who helped with the financial
13 analysis. And then they rotated in folks from
14 corporate communications, government affairs.
15 There were just different people depending on the
16 topic. But those were the primary ones on the
17 joint merger team that I'm referring to.

18 Q Okay. I was focused on the Exelon merger
19 team. Is there a different joint merger team?

20 A Okay. Let me back up, Ms. Francis.

21 Three teams. Exelon puts together a
22 merger acquisition team to look at the

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1 acquisition. This is pre-merger announcement.
2 PHI puts together a team to help support the due
3 diligence on the merger transaction. Once the
4 transaction was announced, the two companies put
5 together a joint merger team to help and work
6 together on the merger applications with the
7 commissions and the jurisdictions.

8 Q Okay. Right now I only want to focus on
9 the pre-merger team --

10 A Okay.

11 Q -- that made the decision to allocate the
12 funds, the total funds, between jurisdictions on
13 numbers of customers. And just --

14 A Okay. Okay.

15 Q And the core team -- I just want to
16 understand. This is not a trick question. I'm
17 trying to understand. The core members of that
18 team were Mr. Bradford, Mr. Bonney, Mr. Waden, did
19 you say?

20 A Mr. Waden.

21 Q Mr. Waden and Mr. Khouzami.

22 A Right.

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1 Q Were there any other members or employees
2 of Exelon that were members of that core team?

3 A I'm sure there was, but I wasn't on that
4 team. This was pre-merger announcement. But I
5 think that -- relative to the question I think
6 you're trying to get to, I think those were the
7 key players.

8 Q Okay. And that was the group that made
9 the decision how to allocate the funds among
10 jurisdictions?

11 A That was the subset of the Exelon merger
12 team that made the decision on how to allocate the
13 funds.

14 Q Thank you. Have you presented in this
15 proceeding any comparison of the jurisdictional
16 allocation of the CIF dollars proposed by the
17 joint applicants to other jurisdictional
18 allocations of cost that PHI has engaged in in the
19 past?

20 A I have not provided any supporting
21 analysis. I believe that analysis is in
22 Mr. Khouzami's testimony where he presents the

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1 allocation of the synergies based on how we
2 believe those savings will flow. But in terms
3 of -- that's the only cost analysis that we
4 prepared and provided in this proceeding.

5 Q So I'm understanding your answer, you
6 have not presented any comparison of the
7 jurisdictional allocation of the CIF dollars
8 proposed by the joint applicants to other
9 jurisdictional allocations of costs that PHI has
10 engaged in in the past, and no other witness has
11 either?

12 A Can you explain to me -- when you say
13 other jurisdictional costs, what do you mean by
14 that.

15 Q Well, just as an example, we've met each
16 other in rate cases before, and in rate cases a
17 typical issue is the jurisdictional cost
18 allocation issue.

19 A Right.

20 Q So what I'm asking you: Have you
21 provided any comparison of the jurisdictional
22 allocation proposed in this case to, just as an

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1 example, to the -- an allocation that you would
2 use between utilities in a rate case? Have you
3 made any of those types of comparisons?

4 A And I'm trying to answer your question.
5 And I would -- I have not personally provided it.
6 Maybe that's your question. Mr. Khouzami --

7 Q I'm asking, is it in this case?

8 A Well, Mr. Khouzami has provided a synergy
9 study which allocates the expected cost savings to
10 the various jurisdictions based on how we believe
11 those cost savings will flow based on the cost
12 allocation manuals of the service company. So I
13 believe the answer is yes.

14 Q What I was asking about was a comparison.
15 Did Mr. Khouzami provide a comparison of the
16 allocation that was proposed in this case to any
17 other allocations that you have used in past
18 proceedings?

19 A There's -- the -- he used the 2014
20 baseline as -- on a PHI basis, and the synergy
21 study was an analysis of what the post-merger
22 company would look like relative to a 2014 PHI

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1 baseline. So it was that delta, that comparison
2 between those two that drives the synergy
3 forecast.

4 Has he compared that to an allocation
5 that was provided in a rate case? I think the
6 answer would be no.

7 Q Is it your understanding that the joint
8 applicants believe that a customer-based
9 allocation of the CIF provides a fair and
10 reasonable treatment of the District of Columbia?

11 A I believe it does because, again, the
12 goal of the CIF was to pay a hundred percent of
13 the net synergies, first five years, to customers.
14 And the allocation of that based on a per customer
15 is a good metric to -- to basically confirm that
16 the amount paid upfront using that metric will be
17 approximately equal to a hundred percent of the
18 net synergies over the first five years. And then
19 obviously we've increased that to 33.75. It's
20 almost ten years of synergies in all
21 jurisdictions.

22 So I believe it's a very fair and

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1 equitable way.

2 Q Does your rebuttal testimony present --
3 excuse me. Do you have a copy of Mr. Oliver's
4 testimony with you? Actually, it's his
5 supplemental testimony.

6 A I do, yes.

7 Q Now, does your rebuttal testimony present
8 any analysis that challenges Mr. Oliver's
9 assessment in Exhibit (2A)-1 that PEPCO's
10 distribution system investment per customer --

11 CHAIRMAN KANE: Ms. Francis, I need you
12 to slow down a little bit.

13 MS. FRANCIS: Oh, I'm sorry.

14 CHAIRMAN KANE: The reporter -- and also
15 Mr. McGowan. You're having a very lively back and
16 forth.

17 MS. FRANCIS: Okay. My apologies to the
18 court reporter.

19 BY MS. FRANCIS:

20 Q Are you ready, Mr. McGowan?

21 A I am. Yes.

22 Q Does your rebuttal testimony present any

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1 analysis that challenges Mr. Oliver's assessment
2 in Exhibit (2A)-1 that PEPCO's distribution system
3 investment per customer is more than twice the
4 average distribution system investment per
5 customer for all of the other PHI utilities and
6 jurisdictions?

7 A The answer is no. And I don't disagree
8 with that metric; I'm just saying that that metric
9 is not an appropriate way to allocate cost savings
10 because cost savings should be allocated based on
11 how costs flow. Cost savings should not be
12 allocated based on another metric such as rate
13 base, because you're mixing apples and oranges.

14 Q Now, would you please turn to your
15 rebuttal testimony --

16 A Okay.

17 Q -- at page 15 and focus your attention on
18 the discussion relating to the allocation of the
19 customer investment fund that begins on line 9 of
20 page 15.

21 A Okay.

22 Q Am I correct that you characterize

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1 Mr. Oliver's testimony as an attempt to allocate
2 benefits away from residential customers in favor
3 of the commercial class?

4 A That's what it says, yes.

5 Q Mr. McGowan, do you understand that there
6 are two parts to issues associated with the
7 allocation of the joint applicants' proposed
8 customer investment fund: The first part
9 addresses the manner in which the CIF is allocated
10 among the PHI utilities and the jurisdictions they
11 serve; and the second part addresses the manner in
12 which any CIF funds or other direct merger
13 benefits are distributed among PEPCO's customers
14 in the District of Columbia?

15 A That is correct.

16 Q Would it be fair to say that your
17 rebuttal to Mr. Oliver relating to the allocation
18 of the proposed CIF focuses only on the allocation
19 of CIF funds among rate classes and it does not
20 explicitly address his recommendation regarding
21 the allocation of the CIF among the PHI utilities
22 and the jurisdictions they serve?

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1 A Well, I think the implication of his
2 proposal is, in fact, to reallocate the CIF among
3 jurisdictions in favor of the District. And what
4 I've been trying to explain is that the intent and
5 the goal of the CIF was to pay upfront customers
6 initially a hundred percent of the net five-year
7 benefit, and then -- now it's almost ten years of
8 the net benefit, by jurisdiction.

9 To introduce either metric such as rate
10 base, per customer, is a complete -- it's
11 inconsistent with how cost savings should flow to
12 customers. And to introduce a different metric
13 would suggest that if you look at the cost savings
14 that would flow through all of PHI and reallocate
15 them based on a different metric, by default, you
16 have to pull money out of other jurisdictions to
17 fund the District of Columbia, and we think that's
18 inappropriate.

19 Q Okay. But would you agree that your
20 rebuttal testimony only explicitly addresses the
21 second part of Mr. Oliver's testimony, and that
22 has to do with the manner in which the CIF funds

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1 are allocated among PEPCO's customers in D.C.?

2 A I would say this part of my testimony
3 addresses that one part, that's correct.

4 Q Okay. And would you agree that your
5 rebuttal testimony does not explicitly address
6 Mr. Oliver's recommendation regarding the
7 allocation of the CIF among the PHI utilities and
8 jurisdictions?

9 A Well, I believe the implications of his
10 proposal is to reallocate the CIF between
11 jurisdictions. And maybe I'm not doing a great
12 job of explaining this but what we're trying to
13 say is that there is a projection of net synergies
14 to each of the jurisdictions based on how cost
15 savings will flow. The CIF was attempting to pay
16 a hundred percent of those synergies to each
17 jurisdiction.

18 What Mr. Oliver is proposing is to take
19 those costs savings, regroup them into a bucket
20 and reallocate that bucket completely different
21 than how those costs are going to flow and,
22 therefore, it is reallocating CIF dollars that

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1 would be payable to other jurisdictions to the
2 District.

3 Q I guess I was focused more on the words
4 on the page of your rebuttal --

5 A Okay.

6 Q -- testimony. And you're telling me what
7 you're trying to convey. And my focus is, in your
8 explicit testimony, you do not address
9 Mr. Oliver's recommendation regarding the
10 allocation of the CIF funds among the PHI
11 utilities, do you?

12 MR. LORENZO: Asked and answered.

13 MS. FRANCIS: Your Honor, he told me what
14 he was trying to convey. I'm asking him about
15 what's written in his testimony. They're two very
16 different things.

17 CHAIRMAN KANE: Well, finish with this
18 one question, and then we are going to take a
19 break.

20 THE WITNESS: I would say this portion of
21 my testimony only addresses the allocation between
22 residential and customer class. However, I would

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1 state that what I've testified here today covers
2 other areas that I think are implicit in his
3 recommendation.

4 MS. FRANCIS: Thank you, Your Honor.
5 Glad to take a break.

6 CHAIRMAN KANE: We will have a ten-minute
7 break.

8 (Whereupon, a short recess was taken.)

9 CHAIRMAN KANE: We are back on the record
10 at 12:32, and I want to again remind counsel and
11 witnesses to try to speak more slowly so that we
12 can get every word down accurately. Thank you.

13 MS. FRANCIS: I was working towards
14 getting done by lunch, but I will slow it down.

15 BY MS. FRANCIS:

16 Q Mr. McGowan, during some of your previous
17 answers to my questions, I believe you kept saying
18 that cost savings actually flow to jurisdictions
19 based on the numbers of customers. Is it your
20 understanding that all of the synergy savings that
21 the joint applicants have identified are customer
22 related costs?

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1 A No, that's not exactly what I had said.
2 What I said was that the cost savings will flow
3 through the jurisdictions based on the cost
4 allocation manuals and how those costs are
5 allocated by the service companies.

6 In coming up with a metric that we could
7 communicate to pay 100 percent of those cost
8 savings, the net five-year synergies, now almost
9 ten years of synergies per jurisdiction, the
10 metric that allowed us to say, how can we pay a
11 hundred percent of that upfront day one, if you
12 allocate the CIF by customer count, it's a good
13 proxy for how much the net synergy savings will
14 flow through to each jurisdiction based on how
15 they're allocated in the cost allocation manual.

16 Q Could you please tell me what percentage
17 of PEPCO's D.C. O&M costs in formal case
18 number 1103 were comprised of customer-related O&M
19 costs?

20 A I don't have that number.

21 Q Would you accept, subject to check, that
22 there were approximately \$111 million of O&M

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1 expenses, of which approximately 25 million were
2 for customer-related expenses, customer accounts,
3 customer services?

4 A Subject to check.

5 Q Yes. Your answer was yes, subject to
6 check?

7 A Yes, subject to check.

8 Q I believe also in some of your answers,
9 you stated that Mr. Bruce Oliver's proposed
10 allocations would cause CIF dollars to be shifted
11 from other jurisdictions to the District of
12 Columbia, and that that wouldn't be fair to the
13 other jurisdictions. To me, this implies a cap on
14 the total CIF dollars. Is that correct?

15 A What I'm suggesting is the CIF pays
16 almost a hundred percent of the net five-year --
17 sorry, the net ten-year synergies. To be
18 equitable to all jurisdictions, you have to use
19 the same methodology. And our methodology was to
20 keep apples to apples, to find a metric that would
21 allow us to demonstrate that we're paying upfront
22 the value of those synergies.

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1 What I'm suggesting is that by
2 introducing a different metric that's not part of
3 any allocation, by using rate base, by using
4 sales, a complete different allocation based on
5 how the savings are calculated, you will, in
6 effect, shift money from one jurisdiction to the
7 other.

8 Q But as I said, this implies that there is
9 a cap. Based on your answer, that cap would be
10 the ten-year synergy savings; is that correct?

11 A It implies that a different metric will
12 shift dollars from one jurisdiction to another,
13 because that's not how costs are allocated.

14 Q But you're only shifting between
15 jurisdictions if there's a cap; isn't that
16 correct?

17 MR. LORENZO: Asked and answered.

18 MS. FRANCIS: Your Honor, the question
19 was asked; it wasn't answered.

20 CHAIRMAN KANE: Repeat the question,
21 please.

22 BY MS. FRANCIS:

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1 Q Doesn't your responses (sic) imply that
2 there is a cap on the total CIF dollars to be
3 allocated?

4 A What it implies is if the goal is to be
5 equitable and fair to all jurisdictions, which we
6 are obviously trying to accomplish, if you have a
7 pot of dollars, regardless of whatever that pot
8 is, you have to allocate it on the same method.
9 You can't allocate benefits in one jurisdiction
10 different than the other.

11 You have a pot of dollars. If you use a
12 consistent method across all jurisdictions, it
13 will shift dollars regardless of what the total
14 size is. So it's not suggesting there's a cap.
15 It's just a statement that whatever the number is,
16 whatever the total CIF is, it's going to
17 reallocate dollars between jurisdictions.

18 Q Isn't it a fact that the cap that you
19 initially filed for in this case was based on the
20 estimated five-year net synergy savings of
21 \$100 million?

22 A That is correct, yes.

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1 Q And isn't it a fact now that the new cap
2 was established in your negotiations regarding
3 possible -- or resulting in the settlement in New
4 Jersey?

5 A Well, I wouldn't call it a cap. It's
6 called the customer investment fund. And the --
7 to be equitable across all jurisdictions, the
8 value -- customer value in New Jersey of \$128 and
9 the settlements reached in Delaware and in
10 Maryland are all comparable. And so based on
11 that, the 34 -- \$33.75 million CIF in the District
12 is comparable to those settlements and approved.

13 Q My question's focus was more on where the
14 new -- I call it a cap -- where the new amount --

15 A Right.

16 Q -- you can call it an amount of CIF funds
17 was established. And that was established in the
18 negotiations that led to the New Jersey
19 settlement; is that correct?

20 A That was the first settlement we reached,
21 and the answer is, yes, we tried to apply the
22 value of the settlement in New Jersey with the

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1 settlement in Delaware to the other jurisdictions.

2 Q Thank you. Mr. McGowan, have you
3 examined the detail of the analyses that AOBA
4 Witness Oliver presents in support of his
5 assessment of the allocation of direct merger
6 benefits?

7 A Can you refer me to a schedule?

8 Q Well, I'm referring you to -- what I'm
9 talking about is his original AOBA (A2), pages 1
10 through 3, as well as his supplemental,
11 AOBA (2A)-1, (2A)-2 and (2A)-3.

12 A I've seen these schedules. I would have
13 to go through them and refresh my memory. If you
14 have specific questions on them...

15 Q Well, I'm just asking you if you have
16 previously examined the detail of those analyses.
17 You don't have to do it now, Mr. McGowan.

18 A Just I'm looking -- the schedules look
19 familiar. I can't opine to his numbers, but I'm
20 familiar with these schedules.

21 Q Am I correct that in your testimony, your
22 rebuttal testimony, your assertion that Mr. Oliver

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1 is merely attempting to shift benefits from
2 residential customers to commercial customers is
3 presented without addressing the substance of
4 Mr. Oliver's arguments?

5 A I mean, clearly in my testimony I point
6 out the fact that the result of his proposal is to
7 shift dollars from the commercial -- from the
8 residential to commercial class. But as I've
9 mentioned previously, it's really -- the result of
10 what he's proposing is, again, if you have a total
11 dollar amount of CIF and you want to be equitable
12 and fair to all jurisdictions, it's going to move
13 money from one jurisdiction to the other in a
14 different method than how cost savings will occur.

15 Q This is my last question in this area.
16 Please point me to what substantive analysis that
17 you have presented to demonstrate that
18 Mr. Oliver's proposed allocation of the CIF among
19 jurisdictions is inappropriate or unjustified.

20 A Can you point me to what schedule in his
21 testimony you're referring to?

22 Q Well, they could be any of them, his (A2)

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1 or, better yet, his more updated supplemental
2 testimony which addresses the company's new
3 updates, AOBA (2A)-1, (2A)-2, (2A)-3.

4 But my question is going to what
5 substantive analysis that you presented to
6 demonstrate that his proposed allocation in those
7 schedules is inappropriate or unjustified.

8 A Well, I think -- my testimony here today
9 on the record is evidence that these -- I don't --
10 I can't opine to his numbers. I've seen these
11 numbers -- or have seen these schedules. What I'm
12 saying on the record here today is that if you're
13 going to allocate cost savings based on how cost
14 savings should be allocated under a cost
15 allocation manual and how costs should flow
16 through jurisdictions, and if your intent is to
17 pay a hundred percent of those upfront, you have
18 to stick with the same method. You can't
19 introduce rate base, you can't introduce a
20 different metric, because if you want to allocate
21 cost savings based on rate base, then you have to
22 allocate costs on rate base. And that would be a

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1 very bad outcome for the District. You have to
2 keep things apples to apples.

3 And what Mr. Oliver is doing here is he
4 wants to take cost savings and allocate them on a
5 different metric than how they are allocated, and
6 that's just inappropriate.

7 Q But aside from your testimony here today,
8 you haven't presented anything in your rebuttal
9 testimony, anything (sic) substantive analysis to
10 demonstrate that his proposed allocation of the
11 CIF is inappropriate or unjustified, only your
12 statement that it's a different metric; is that
13 correct?

14 MR. LORENZO: This has been asked and
15 answered, and the testimony speaks for itself.

16 MS. FRANCIS: It's just my last sum-up
17 question with Mr. McGowan. I'm asking the
18 questions a different way because he appears to be
19 avoiding some of the answers.

20 MR. LORENZO: Objection to the
21 characterization.

22 MS. FRANCIS: Excuse me. I recall that.

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1 That was inappropriate.

2 CHAIRMAN KANE: Thank you.

3 MS. FRANCIS: Because I'm having a hard
4 time communicating with him.

5 CHAIRMAN KANE: Mr. McGowan has answered
6 your question.

7 MS. FRANCIS: Okay. Then I'll move on,
8 Your Honor.

9 BY MS. FRANCIS:

10 Q During questioning of Mr. Crane and
11 Mr. Rigby earlier in these proceedings a lifetime
12 ago, there seemed to be some confusion as to
13 whether the data used was intended to reflect
14 customers or meters. Could you please clarify for
15 me which was used, customers or meters?

16 A So it's actually a metered customer. The
17 way that we define a metered customer for
18 financial reporting purposes is if there is a --
19 if a customer has a meter and the meter is active
20 and we bill the customer, that is a deemed
21 customer. So it's a metered customer.

22 We do not count customers that are -- if

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1 there's a meter that's inactive, if it's a vacant
2 house, that's not deemed a customer. It needs to
3 be an active, metered customer.

4 Q Are you able to tell me, how many meters
5 does WMATA have in D.C. under the rapid transit
6 rate schedule?

7 A I don't -- I'm not sure I have it or not.
8 I'm sure -- you'll have a number for me?

9 Q Yes, I do.

10 A Okay.

11 Q In formal case number 1103, I believe it
12 was 96 meters which came from -- it was computed
13 from the compliance filing in 1103, attachment B,
14 page 16 of 21.

15 A Okay.

16 Q Would you accept that, subject to check?

17 A Yes, I would.

18 Q Okay. And am I correct that your
19 jurisdictional allocation of the CIF treats WMATA
20 as one customer?

21 A If they have 91 meters and are sent a
22 bill, they would be treated as 91 customers. If

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1 they have -- and I'm just -- if they have a -- if
2 it's an active meter, it's counted as a customer
3 in our system.

4 Q If they have 96 active meters -- I'm
5 asking you about your testimony in this case --

6 A Yes.

7 Q -- am I correct that your jurisdictional
8 allocation of the CIF treats WMATA as, you're
9 telling me, one customer or 96 customers? Which
10 is it?

11 A If -- every meter that we send a bill to
12 that's active is counted as a customer. So I
13 don't know if WMATA -- I'm assuming that they
14 have -- and your numbers have 91 active meters --

15 Q 96.

16 A 96, excuse me. And they receive 96
17 bills. If they aggregate -- some customers will
18 aggregate, will 96 separate meters; we read the
19 meter, but they opt to have one bill sent to them.
20 There are 96 customers in how we report customers
21 for financial reporting purposes.

22 Q I'm not asking you for financial

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1 reporting purposes. I'm asking you in this case.

2 A I'm sorry. When I say financial
3 reporting purposes, the customer count that we
4 used as the metric to allocate the CIF was based
5 on the customer count we used for financial
6 reporting purposes, which is a metered customer,
7 an active metered customer.

8 Q Would you like to verify that, that in
9 this case that you treated WMATA as 96 customers?

10 A As I said, if there are 96 active meters,
11 if they receive 96 bills, or if those are
12 aggregated and they opted to receive one bill,
13 they should be treated as 96 customers.

14 Q I'm going to ask you the same questions
15 in regard to Blue Plains. Could you please tell
16 me, how many meters does Blue Plains have in D.C.?

17 A I do not know.

18 Q And do you know how your jurisdictional
19 allocation of the CIF funds treats Blue Plains?
20 Is it one customer or more than one customer?

21 A Same answer.

22 Q Now, I'm going to ask you to please

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1 reference what's been preliminarily identified as
2 AOBA Exhibit 100, which is a copy of your response
3 to AOBA data request 6-6, and has been marked for
4 the record as AOBA 103.

5 A I have it here.

6 Q In AOBA data request 6-6, you were asked
7 to provide your best estimates of the increases in
8 annual revenue requirements that would be
9 necessitated by the budgeted reliability
10 expenditures shown in table 1 in commitment 7.
11 Your answer states that, quote, the requested
12 estimate has not been performed.

13 Given that AOBA requested your best
14 estimates, should this response be interpreted as
15 indicating that the joint applicants have made no
16 assessment of the annual revenue requirement
17 impacts of the reliability budget proposed in this
18 proceeding?

19 A Our response to this is when we look at
20 rate increase and we forecast what we think annual
21 revenue requirements are and what the rate impact
22 will be on customers, there are a variety of

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1 factors that go into that. You can't just isolate
2 one item and indicate what the rate increase is
3 without knowing how all the other variables impact
4 the revenue requirements.

5 So our response was, we don't typically,
6 when we look at forecasted rate increases, pull
7 out one or two numbers to measure that. And
8 that's why we said the analysis had not been
9 performed.

10 Q Does this imply that the joint applicants
11 are insensitive to the rate impacts that their
12 budgeted reliability costs will impose on PEPCO's
13 D.C. customers?

14 A Not at all. We're extremely sensitive to
15 the cost.

16 Q Is it your assumption that your customers
17 have unlimited ability to absorb cost increases?

18 A I think with any industry, there's an
19 amount of costs that consumers can and are willing
20 to pay depending on the service that they request.
21 I think our jurisdiction, whether it was D.C. or
22 within PHI, there are many different customer

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1 classes and different income brackets, and all of
2 them have different needs and wants, and all of
3 those have to be met.

4 Q Is the presentation of capital and O&M
5 budgets without any assessment of their revenue
6 requirement impacts standard practice for PEPCO?

7 A Well, I want to just -- maybe we should
8 back up.

9 This data request asked us to calculate
10 something for AOBA that we hadn't done, and our
11 response was we hadn't done the analysis. And
12 that's kind of the response. I don't think
13 there's any inference that we're insensitive to
14 customer rates. I don't think there's inference
15 that we don't care about it. It's just that the
16 information you asked for us to calculate wasn't
17 available. And that's it.

18 Q And that's what I'm focused on, and --

19 A Okay.

20 Q -- that's what my questions are all going
21 to.

22 A Okay.

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1 Q And I asked you, is the presentation of
2 capital and O&M budgets without an assessment of
3 their revenue requirement impacts, is that
4 standard practice for PEPCO?

5 A We typically provide five-year capital
6 plans in our 10-K. It's a forecast of all of our
7 jurisdictions. We don't, in the disclosures,
8 indicate what the rate impact is. There are many
9 times when we present O&M forecasts, we present
10 information, and sometimes we show the rate impact
11 and sometimes we don't.

12 When we file a rate case, as you're very
13 well aware, we show the customer rate impact of
14 our ask.

15 So it just depends on the nature of the
16 information we're providing.

17 Q Help me with this. So you do provide an
18 assessment of the revenue requirements impacts or
19 you don't?

20 A In a rate case?

21 Q Do you calculate it? Do you calculate
22 it?

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1 A In a rate case?

2 Q Correct.

3 A Absolutely in a rate case. I'm sorry.

4 Q But you didn't calculate it here.

5 CHAIRMAN KANE: Is that a question,
6 Ms. Francis?

7 MS. FRANCIS: Yes.

8 THE WITNESS: For commitment 7, which
9 lays out the capital and O&M budget, which is a
10 subset of the entire revenue requirement
11 calculation, we did not put the number on this
12 table. That's correct.

13 BY MS. FRANCIS:

14 Q Could you please tell me, is the
15 presentation of capital and O&M budgets without
16 any assessment of their revenue requirement
17 impacts standard practice for PHI?

18 A Well, as I indicated, it depends on the
19 purpose of the presentation. And I've made some
20 examples of where we show and report our five-year
21 capital plan. We have presentations where we do
22 capital and O&M forecasts without showing what the

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1 rate impact is to customers.

2 It just depends on the nature of the
3 presentation. And as I mentioned in a rate case,
4 in that particular instance, we do show the rate
5 impact. So it just depends.

6 Q And if I asked you the same question in
7 regard to Exelon, would you be able to answer it?

8 A No, I would not.

9 Q Now, please reference what's been
10 preliminarily identified as AOBA Cross
11 Exhibit 101, which is a copy of your response to
12 AOBA data request 6-7 --

13 MS. FRANCIS: -- which has been marked
14 for the record, Your Honor, as AOBA 104.

15 BY MS. FRANCIS:

16 Q Do you understand the request in AOBA 6-7
17 to be essentially the same as the one set forth in
18 AOBA data request 6-6 except that it requests
19 estimates of the annual revenue requirement
20 impacts of PEPCO's total budgeted
21 distribution-related capital and O&M expenditures
22 as opposed to just the reliability-related portion

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1 of those costs that was addressed in AOBA data
2 request 6-6.

3 A That is the difference between those two
4 questions. That's correct.

5 Q Yet -- strike that.

6 Is your response to AOBA data request 6-7
7 identical to your response to AOBA data
8 request 6-6?

9 A Yes, it is. And again, in order to
10 forecast the revenue requirements by year and what
11 the impact will be on customer bills, we would
12 have to -- or the revenue requirement, we would
13 have to measure what the sales forecast is, what
14 our financing plan is, the timing of rate cases.
15 There's a lot of factors that go into coming up
16 with an annual revenue requirement.

17 Again, that's why our response was the
18 calculation that you specifically asked for has
19 not been performed.

20 Q Is it your understanding that the
21 presentation of capital and O&M budgets without
22 any assessment of the revenue requirements impacts

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1 is indicative of the manner in which PEPCO will be
2 managed after consummation of the proposed merger,
3 if it is approved?

4 A Managed by who?

5 Q The management team after approval of the
6 merger. Whoever is the management team.

7 A Well I think with any company, pre or
8 post-merger, we have financial objectives, we have
9 financial goals, we have capital budgets, we have
10 O&M budgets, we provide earnings guidance to the
11 street. So there's -- I think -- a lot of those
12 happen today, and I expect a lot that will happen
13 post-merger as well. So I'm not sure what would
14 be different.

15 Q Now, I'd like you, please, to look at
16 what's been preliminarily identified as AOBA
17 117 --

18 MS. FRANCIS: -- which has been marked
19 for the record, Your Honor as AOBA 106 --
20 BY MS. FRANCIS:

21 Q -- which is a copy of the joint
22 applicants' response to OPC data request 18-108.

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1 A I have it. Yes.

2 Q Now, focusing on your response to part C
3 of OPC data request 18-108, does this response
4 indicate that the costs to be billed by EBSC and
5 the PHI Service Company post-merger have not been
6 determined?

7 A Right. What this response says is that
8 the final design for the integration hasn't been
9 completed and, therefore, the costs -- the
10 services provided by the EBSC and the PHI -- the
11 Exelon Business Service Company and the PHI
12 Service Company have not been finalized and,
13 therefore, the actual allocations for each one
14 have not been completed.

15 I think as Mr. Khouzami mentioned last
16 time, this is not a duplication of cost. The
17 final design as to which service company will
18 provide the service for the PHI companies has not
19 been finalized yet.

20 Q Actually what the words of your response
21 say, Mr. McGowan -- please look at them -- the
22 allocation factors to be used by the PHI Service

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1 Company post-merger to allocate costs to PEPCO
2 have not yet been determined.

3 That is what it says, correct?

4 A That's correct. Yes.

5 Q Okay. And that statement says that the
6 costs to be billed have not yet been determined.

7 Is the reference to costs to be billed
8 intended to refer to the dollar amounts of the
9 costs to be billed or the categories of costs to
10 be billed or both?

11 A I think it means both.

12 Q Does the last sentence of your response
13 to part C of OPC data request 18-108 state --
14 scratch that. I just asked it.

15 Am I correct that the companies that will
16 remain within PHI are readily identifiable?

17 A Yes.

18 Q Would you agree that the historic
19 characteristics of the PHI utilities and their
20 historic use of the PHI Service Company services
21 are well-known to PHI?

22 A Yes.

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1 Q Now, please turn to your rebuttal
2 testimony at page 20.

3 A Okay.

4 Q Now, starting at line 4 on page 20 of
5 your rebuttal, you state, quote, following the
6 merger, PEPCO will continue to support low-income
7 customers in the District by offering ways in
8 which they can make their electric bills more
9 affordable, unquote; is that correct?

10 A That is correct.

11 Q Am I correct that the present rate
12 support provided to RAD customers in the District
13 of Columbia is funded by other ratepayers and not
14 by PHI shareholders?

15 A That is correct.

16 Q Do PHI shareholders currently provide any
17 financial assistance to low-income customers in
18 the District of Columbia as part of or through the
19 RAD program?

20 A To the extent that they are residents and
21 utility customers, the answer would be yes.

22 Q Did you just say that PHI shareholders

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1 currently provide financial assistance to
2 low-income customers in the District through the
3 RAD program? Did I hear you correctly?

4 A I said to the extent that they are
5 residents and have a utility bill and pay the
6 bill, they are helping to fund the RAD program.

7 Q To the extent that the PHI -- if -- is
8 your answer that if the PHI shareholders are also
9 customers of PEPCO -- is that how you answered the
10 question?

11 A I said if they're resident in the
12 District and pay a utility bill, whether it's a
13 Washington Gas customer, whether it's a PEPCO
14 customer, they would be -- part of their bill
15 would be used to fund the RAD customer fund.

16 Q Let's ask my question. Let's assume that
17 the PHI shareholders do not also live in the
18 District and pay PEPCO bills.

19 A Okay.

20 Q So that's assumption. I'm going to ask
21 the question again with that assumption.

22 Do PHI shareholders who do not live in

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1 the District of Columbia and pay PEPCO bills
2 currently provide any financial assistance to
3 low-income customers in the District of Columbia
4 as part of or through the RAD program?

5 A Not that I'm aware of.

6 Q Does Exelon commit that, after
7 consummation of the merger, either -- Exelon
8 shareholders will either directly or through PHI
9 or PEPCO provide financial assistance to
10 low-income customers in the District of Columbia?

11 A I think the answer is yes. If you look
12 at, number one, the upfront CIF payment, the
13 33.75, goes to all customers. That's providing
14 support to them.

15 The green sustainable bank that is
16 proposed in the Maryland settlement is a PHI-wide
17 program which provides -- allocation for the
18 District is around \$7 million. There's a
19 carve-out for 20 percent of that to multi
20 affordable housing programs.

21 And I think also the fact that, you know,
22 as part of this merger, there are synergy

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1 savings -- we've talked about the net \$14 million
2 for the first five years and \$7 million every year
3 thereafter -- is going to lower customer bills.

4 So all those, although they -- most of
5 these impact all customers, are helping low-income
6 customers.

7 Q I think you've managed to confuse me. I
8 thought that 33.75 million of the CIF was going to
9 be for the Commission to determine how it's used;
10 is that correct?

11 A Absolutely. And the Commission has the
12 authority to use that money anyway that they'd
13 like, but that money is available for customers
14 and low-income customers.

15 Q So that pot of money, if the Commission
16 wants to use that for low-income customers, that's
17 what you're committing to?

18 A That is correct, in addition to the other
19 things that I mentioned.

20 Q On line 6 through 8 of page 20 of your
21 rebuttal, you indicate that PEPCO currently
22 operates the RAD program.

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1 Would you accept that PEPCO is
2 compensated through rates for the costs it incurs
3 to operate the RAD program?

4 A I believe that's correct.

5 Q Now I would like you to look at lines 8
6 through 11 on page 20 of your rebuttal testimony.
7 And on those lines you suggest that issues
8 associated with the adequacy of the RAD subsidy
9 should be addressed in another proceeding. Have I
10 reasonably summarized your position as presented
11 on the referenced lines of your rebuttal
12 testimony?

13 A That's what the words say.

14 Q Am I correct that it was Exelon who first
15 suggested the potential that some or all of the
16 CIF could be used for increased low-income
17 customer assistance in this proceeding through the
18 direct testimony of Witness Tierney?

19 CHAIRMAN KANE: Excuse me. Someone's
20 cell phone is going off.

21 MS. FRANCIS: I checked. It's not mine.

22 THE WITNESS: Can you repeat the

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1 question? I'm sorry.

2 BY MS. FRANCIS:

3 Q Sure. Am I correct that it was Exelon
4 who first suggested the potential that some or all
5 of the CIF could be used for increased low-income
6 customer assistance in this proceeding through the
7 direct testimony of Witness Tierney?

8 A I wouldn't agree that it was introduced
9 in Ms. Tierney's testimony. I think all along
10 Exelon has proposed a CIF fund, and the purpose of
11 that fund was to give the Commission flexibility
12 to allocate that money anyway that they wanted to.

13 So I think that was always part of the
14 original application and the original intent of
15 the company.

16 Q Is what you are suggesting that as long
17 as the joint applicants get their requests in this
18 proceeding granted, they are indifferent regarding
19 how or even when the benefits of the merger in the
20 form of CIF dollars are distributed among
21 ratepayers?

22 A If I understand your question, the joint

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1 applicants are willing to fund the full CIF
2 shortly after merger or in any manner that the
3 Commission deems appropriate.

4 Q But you're indifferent regarding how
5 those CIF dollars get spent; is that correct?

6 A We believe it's the Commission's decision
7 to decide on how those CIF dollars should be spent
8 and we will obviously abide by the Commission
9 ruling.

10 Q And you've made no specific
11 recommendation in this proceeding regarding the
12 manner in which the direct merger benefits in
13 terms of CIF dollars, energy efficiency program
14 investments, or some other form should be
15 distributed among rate classes; is that correct?

16 A That is correct. We wanted to provide
17 the maximum flexibility for the parties to comment
18 on how they felt the money should be spent and to
19 give the Commission the maximum flexibility to
20 make a decision on how they thought it was
21 appropriate.

22 Q Is the joint applicants' position

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1 regarding the distribution of direct merger
2 benefits in this proceeding indicative of the
3 allocation policies and practices that D.C. can
4 expect from PEPCO, PHI and Exelon post-merger?

5 A Can you repeat that question again,
6 please?

7 Q Is the joint applicants' position
8 regarding the distribution of direct merger
9 benefits in this proceeding indicative of the
10 allocation policies and practices that the
11 District of Columbia can expect from PEPCO, PHI or
12 allocation -- or Exelon post-merger?

13 A I think the company has supported the
14 decision of the commissions on how to allocate,
15 whether it's cost -- we've -- and we abide by the
16 decisions of the Commission, and I believe that,
17 post-merger, Exelon will do the same.

18 Q Is it the joint applicants' position that
19 the Commission should postpone decisions regarding
20 the manner in which direct merger benefits should
21 be distributed among rate classes and customers
22 until a future proceeding despite the fact that

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1 such a deferral of decisions may deny customers
2 the ability to assess fully the merger impacts
3 that they will experience?

4 A When you refer to direct merger benefits,
5 are you referring to the CIF fund?

6 Q Correct.

7 A We are proposing a \$33.75 million fund to
8 be disbursed how the Commission feels appropriate,
9 and we wanted to provide them the maximum
10 flexibility, and we will abide to their decision.

11 Q Is it the joint applicants' position that
12 customers don't need to know how they will be
13 affected by the merger before this Commission
14 renders a decision regarding the merits of the
15 merger proposal?

16 A I would say no. I think the company has
17 held numerous public hearings in conjunction with
18 the Commission, we've met with many stakeholders,
19 we had -- met with several key government
20 officials to try to educate them on the merger. I
21 think we've done a very good job of trying to
22 communicate the benefits of the merger to the

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1 public and to stakeholders. So I think we've done
2 a good job of that.

3 Q Once again, at page 20, lines 15 through
4 16 of your conformed rebuttal, you state that,
5 quote, following the consummation of the merger,
6 Exelon is willing to engage with the SEU to
7 promote energy efficiency measures, end quote.

8 Am I correct that no specific proposals
9 for support of SEU energy efficiency programs have
10 been offered in this proceeding?

11 A I think what we're offering in this
12 proceeding are resources that would allow the
13 Commission to allocate dollars to energy
14 efficiency or other programs. I mentioned also
15 the green energy -- the green sustainability fund
16 that we've set up.

17 So we've provided many resources to allow
18 for energy efficiency programs and are willing to
19 work with the parties to make those happen.

20 You know, we could have proposed these
21 projects in the merger. We thought it was more
22 appropriate and more prudent to provide resources

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1 and let the intervenors and the Commission decide
2 the best way to spend those monies.

3 Q So the answer to my question is that I am
4 correct that you provided no specific proposals
5 for support of SEU energy efficiency programs in
6 this proceeding; is that correct?

7 A We provided resources, but no specific
8 proposal.

9 Q Now, briefly, Witness Khouzami's
10 conformed rebuttal testimony at page 24 indicates
11 that the change in the location of the PHI Service
12 Company within the corporate structure was made to
13 address concerns raised in Mr. Oliver's direct
14 testimony. Do you agree with that?

15 If you want to, please turn to
16 Mr. Khouzami's conformed rebuttal --

17 A Yes, please.

18 Q -- at page 24. If you look, you will see
19 that they reference Mr. Oliver's Exhibit (A), his
20 direct testimony, in footnote 33.

21 A Yes, that's correct. Can you repeat your
22 question?

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1 Q Sure. Mr. Khouzami's conformed rebuttal
2 testimony at page 24 indicates that the change in
3 the location of the PHI Service Company within the
4 corporate structure was made to address concerns
5 raised in Mr. Oliver's testimony. Do you agree
6 with that?

7 A I don't know. I don't know if it was
8 changed because of his direct testimony or if we
9 were just -- if the change was made for other
10 reasons and we were just sort of trying to address
11 the point he was raising by the fact that we made
12 the change and, therefore, his point has been
13 addressed.

14 Q I see.

15 A So I don't know the specific reasons as
16 to whether -- if his was a factor or not, but I
17 think it's definitely in here to address his
18 concern.

19 Q Okay. And you don't disagree with
20 Mr. Khouzami's testimony?

21 A I support the words he used here.

22 Q Okay.

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1 MS. FRANCIS: Your Honor, that's all I
2 have. Should I move my exhibits in now or would
3 you prefer for me to wait?

4 CHAIRMAN KANE: We'll move all the
5 exhibits in when we're finished with this witness.
6 I do want to indicate -- we will take a lunch
7 break now, but there are three witnesses, I
8 believe, that intervenors have indicated are only
9 available today, and that would be Mr. Shane,
10 Gorman and Chambers. Is that still correct?
11 Mr. Coyle?

12 MR. COYLE: It is correct, Your Honor,
13 but there's more than that. It's also -- I don't
14 want to speak for anybody else, but on our side,
15 we need to get Mr. Smith on and off today as well.

16 CHAIRMAN KANE: That wasn't mentioned
17 yesterday when we were trying to time it today.

18 MR. COYLE: I apologize, Your Honor.

19 CHAIRMAN KANE: We only have an
20 indication of 15 minutes of questioning for
21 Mr. Smith, which will probably be more when we
22 actually get to it. But -- all right. So those

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1 four, if I add that up -- it looks like about at
2 least two hours worth for those four witnesses.
3 We'll do our best.

4 MR. GRAY: Your Honor, Mr. Mara is here
5 on behalf of OPC. Currently he has a flight
6 scheduled for noon tomorrow.

7 CHAIRMAN KANE: So we can accommodate him
8 in the morning tomorrow.

9 MR. GRAY: If we can't get him on today,
10 yes, first thing in the morning.

11 CHAIRMAN KANE: No, we will not get him
12 on today. That's why I went over this yesterday
13 before we adjourned to kind of verify, and we were
14 planning on three. All right.

15 So Mr. Mara can testify tomorrow morning.
16 Witness Comings is all right for tomorrow?
17 Mr. Oliver is all right for tomorrow? And
18 Mr. Hempling and Ms. Schoolman for tomorrow?

19 MS. FRANCIS: Yes, that's correct.

20 CHAIRMAN KANE: All right. We will
21 recess now lunch -- and Mr. --

22 MR. COYLE: Mr. Chang was the other

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1 D.C. government witness.

2 CHAIRMAN KANE: And he's available
3 tomorrow?

4 MR. COYLE: That's correct, Your Honor.

5 CHAIRMAN KANE: All right. So
6 Mr. Chambers, Mr. -- I have Chang for today, but
7 we're probably not going to get to him. We'll
8 see. If we -- now you have added Mr. Smith, so
9 that may make it that we're not going to get to
10 Mr. Chang today.

11 MR. COYLE: That's fine.

12 CHAIRMAN KANE: Okay. All right. And
13 Mr. Mara for tomorrow.

14 All right. We will recess for lunch. We
15 will come back at 2:20, which will probably be --
16 no later than 2:30, and we will start with
17 Mr. Smith. Sorry to interrupt your witness again
18 in the middle of this, but we will try to get
19 through, then, Mr. Smith, Mr. Shane, Gorman, then
20 Chambers, and then we -- if we have time, we'll
21 come back to Mr. McGowan so that the other
22 intervenors and the Commission can ask questions

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1 of Mr. McGowan.

2 (Witness temporarily excused.)

3 (Whereupon, at 1:20 p.m., a lunch recess
4 was taken.)

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1 AFTERNOON SESSION

2 (2:32 p.m.)

3 CHAIRMAN KANE: We are back on the record
4 in formal case 1119. It is 2:30 p.m. Are there
5 any preliminary matters before we start with the
6 next witness? Yes, Ms. Wein.

7 MS. WEIN: Madam Chairman, I'd like to
8 ask permission to move the prefiled written
9 testimony of Michael Bodaken into the record at
10 this time. We have surveyed the parties, and he's
11 been on the list. It seems that nobody has cross
12 for him.

13 CHAIRMAN KANE: Let me confirm that with
14 the parties. Any party have any objection to
15 that? No objection from any party. Fine, that
16 will then be moved in.

17 MS. WEIN: Thank you.

18 CHAIRMAN KANE: Thank you, Ms. Wein.

19 MS. WHITE: Madam Chairman?

20 CHAIRMAN KANE: Yes, Ms. White?

21 MS. WHITE: During the break, I had
22 discussions with counsel for the joint applicants,

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1 and they have agreed to waive cross-examination of
2 Mr. Gorman. So unless the Commission has
3 questions for Mr. Gorman, I don't believe that he
4 will be taking the stand today.

5 CHAIRMAN KANE: The commissioners do not
6 have any questions for Mr. Gorman.

7 MS. WHITE: Thank you, Madam Chair. With
8 that, I thought it would be -- might be more
9 beneficial, for time savings purposes, to move his
10 testimony and exhibits at the end of the day
11 today --

12 CHAIRMAN KANE: Yes.

13 MS. WHITE: -- so that we can get right
14 to testimony.

15 CHAIRMAN KANE: So that will be noted.
16 He can be dismissed.

17 MS. WHITE: Thank you.

18 CHAIRMAN KANE: All right. We're back to
19 D.C. government witness.

20 MR. COYLE: Thank you, Your Honor.
21 District government calls Ralph Smith to the
22 stand, please.

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1 WHEREUPON,

2 RALPH SMITH,

3 called as a witness, and after having been first
4 sworn by the secretary, was examined and testified
5 as follows:

6 DIRECT EXAMINATION

7 BY MR. COYLE:

8 Q Mr. Smith, would you state and spell your
9 name for the record, please.

10 A My name is Ralph C. Smith. R-A-L-P-H,
11 S-M-I-T-H.

12 Q You're appearing today as a witness on
13 behalf of the District of Columbia government?

14 A Yes, I am.

15 Q Do you have before you on the stand your
16 prefiled direct testimony, Exhibit DCG (A) and the
17 accompanying exhibits, DCG (A)-1 through
18 DCG (A)-19?

19 A I do.

20 Q Do you have any corrections that you
21 wanted to make to your prefiled testimony?

22 A Yes, I do. Yesterday, when I was reading

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1 it, I noticed two relatively minor typos. I would
2 like to get those corrected.

3 Q All right. For the first one, would you
4 please state the page and line number and what it
5 reads now and it what should read?

6 A Yes. At page 8, line 2, it refers to
7 Internal (sic) code section 331, page 10. That
8 should be corrected to read 338, page 10.

9 Q And what is your next correction?

10 A My next correction is on page 90. And
11 this appears on line 15 of the public version and
12 line 18 of the fully conformed confidential
13 version. On that line, it says, DCG Dr. Wilson.
14 The word "witness" should be inserted between
15 "DCG" and "Dr."

16 Q Thank you. Do you have any further
17 corrections?

18 A No, I don't.

19 Q Okay. Was your direct testimony and
20 exhibits prepared by you or under your direct
21 supervision?

22 A Yes.

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1 Q All right. And the -- if you were to be
2 asked the same questions here today under oath,
3 would your answers be the same?

4 A Yes, they would.

5 Q Thank you.

6 MR. COYLE: Your Honor, I tender the
7 witness for cross-examination.

8 CHAIRMAN KANE: Company?

9 MR. DeCUSATIS: Thank you.

10 CROSS-EXAMINATION

11 BY MR. DeCUSATIS:

12 Q Mr. Smith, Anthony DeCusatis. I'm
13 appearing on behalf of the joint applicants. I
14 have some brief cross-examination for you today,
15 all of which relates to the various conditions
16 that are being proposed in your testimony.

17 And with reference to that, could we turn
18 to page 9 -- the bottom of page 9 and top of
19 page 10 of your direct testimony, where I believe
20 you list seven categories of conditions that are
21 being proposed by the D.C. government; is that
22 correct?

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1 A Yes. Page 9 -- starting on page 9 and
2 going into page 10, it lists seven groups of
3 conditions, and then on page 10, it explains which
4 particular D.C. government witnesses are
5 sponsoring which sections.

6 Q Okay. Thank you. And -- and recognizing
7 that there are other D.C. government witnesses who
8 were sponsoring other conditions, I'd just like to
9 run through with you and confirm those which are
10 being sponsored by you in your testimony. And by
11 my count, those would be the commitments numbered
12 17 through 22, 23 through 29 and 30 through 35; is
13 that correct?

14 A Yes, that's correct.

15 Q Now, Mr. Smith, I believe you are aware
16 and would ask you to confirm that after your
17 direct testimony was submitted, the joint
18 applicants presented for the record in this case
19 commitments that they are prepared to make and set
20 them forth in Joint Applicants' Exhibit (4A)-2.

21 Are you aware of that and can you confirm
22 that, in fact, those commitments have been

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1 presented in that document?

2 A I am aware that joint applicants
3 presented an updated version of their commitments
4 in Exhibit (4A)-2. I think they've also made some
5 other statements on the record to possibly -- that
6 could possibly be interpreted as clarifications or
7 supplementation of that exhibit. And they've also
8 provided the New Jersey settlement and the
9 Delaware settlement, which have some conditions
10 that are similar and some conditions that are a
11 little bit different.

12 Q And -- thank you. And I previously asked
13 Ms. Travers to provide for you a copy of
14 Exhibit -- Joint Applicants' Exhibit (4A)-2 so you
15 would have it available to you. I have some
16 questions that will at least relate to the
17 condition -- the commitments that are in that
18 exhibit. And do you have that with you at the
19 witness stand?

20 A I have -- yes, I have Exhibit -- Joint
21 Applicants' Exhibit (4A)-2 with me. 17 pages.

22 Q Thank you. And Mr. Smith, am I correct

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1 you did not submit written testimony subsequent to
2 your submission of direct testimony in this case?

3 A I think the only subsequent submission
4 was to submit fully conformed versions of that
5 earlier testimony.

6 Q Thank you. Now, I'd like to turn to your
7 direct testimony at page 33, line 15, and
8 continuing through page 34 at line 19. And I --
9 lists conditions numbered -- conditions numbered
10 12 and 17 to 22. And when you've got those and
11 have reviewed them, let me know. I have some
12 questions relating to those.

13 A So you referred to page 33 --

14 Q Line 15.

15 A -- line 15, which starts with
16 condition 12?

17 Q Correct.

18 A And then goes through page 34, line 22,
19 which contains up through condition 21?

20 Q That is correct.

21 A Yes, I have that.

22 Q Okay. And just so we're clear, because

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1 you do state it in your testimony, but I just want
2 to get this acknowledgment upfront, that
3 condition 12 is actually being supported by
4 Dr. Wilson and not by you, and therefore, I'm not
5 going to have any questions for you about
6 condition 12.

7 I would like to start by --

8 A Yes, that's correct.

9 Q Okay. Thank you.

10 And I apologize. I earlier said that it
11 was condition 17 through 22. In fact, it's 19
12 through 22. And I'd like to start with
13 condition 19, which appears at lines 23 to 28 on
14 page 33 and is captioned, Reporting of goodwill
15 and protection from push-down accounting.

16 I'll give you a moment if you'd like to
17 take a look at that.

18 A Yes, I see it.

19 Q Now, here is where I'd like to also ask
20 if you could please take a look at Joint
21 Applicants' Exhibit (4A)-2, and specifically at
22 commitment number 2. And the second sentence of

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1 that commitment states, No goodwill or other fair
2 value adjustments will be recorded at the PHI
3 utility companies upon consummation of the merger.

4 Do you see that?

5 A I do see it.

6 Q And the commitment is followed by a
7 citation to the testimony -- rebuttal testimony of
8 Mr. Khouzami. Do you see that as well?

9 A I see that as well, yes.

10 Q And have you had an opportunity to review
11 either the reference to Mr. Khouzami's testimony,
12 rebuttal testimony, or Joint Applicants'
13 Exhibit (3F)-3, which is discussed in
14 Mr. Khouzami's testimony?

15 A I did read Mr. Khouzami's rebuttal, and
16 let me just turn to that exhibit. Okay. The
17 (3F)-3 is the SEC letter about push-down
18 accounting, so I see that as well.

19 Q Okay. And that's exactly what I wanted
20 to just explore for a moment, that that is a
21 letter confirming an understanding with the
22 Securities and Exchange Commission that push-down

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1 accounting will not be required by the SEC for
2 compliance with purchase accounting for purposes
3 of the merger.

4 A Is that a question?

5 Q Yes. Do we agree that that's what that
6 letter does?

7 A Yes, the letter expresses the SEC's
8 agreement that push-down accounting will not be
9 applied to PEPCO, Delmarva or Atlantic City
10 Electric based on the facts outlined in the letter
11 dated of June 5th, 2014 and supplemented during a
12 teleconference that's also referenced there in
13 July of 2014.

14 Q Thank you. Next, I'd like to look at the
15 D.C. government's proposed condition 21 which
16 appears at page 34 of your testimony beginning on
17 line 5 and is captioned, No transaction cost
18 recovery in rates.

19 When you've had an opportunity to turn
20 there and look at it, let me know.

21 A Yes. I kept that page open, so I have
22 it.

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1 Q Thank you. And next I'd like to also
2 refer back to the Joint Applicants'
3 Exhibit (4A)-2, specifically condition 1 which has
4 two parts.

5 A Yes, I have condition 1.

6 Q And specifically condition 1A provides
7 that PEPCO will not seek recovery in rates of any
8 acquisition premium associated with the merger; is
9 that correct?

10 A That's what it states, yes.

11 Q And similarly, condition 1B provides that
12 PEPCO will not seek recovery in rates of any
13 transaction costs incurred in conjunction -- in
14 connection with the merger by Exelon, PHI or their
15 subsidiaries; is that correct?

16 A It does state that any transaction costs
17 incurred in connection with the merger by Exelon,
18 PHI or their subsidiaries -- that PEPCO will not
19 seek recovery in rates of those.

20 Q Now, am I also correct that the universe
21 of transaction costs, as they were defined for
22 purposes of these commitments, were discussed by

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1 Mr. Khouzami in his direct testimony?

2 A I think it's been an evolving definition
3 of what is included in transaction costs. There's
4 difference -- different interpretations of which
5 items are transaction costs and which are costs to
6 achieve.

7 Q But with specific reference to what you
8 listed here, hasn't Mr. Khouzami identified those
9 which are listed in your condition 21 with the
10 exception of restricted stock units?

11 A I'm not sure he's listed everything
12 there. We would prefer to see the more complete
13 listing. I notice in Joint Applicant
14 Exhibit (4A)-2, condition 3, it's clarified that
15 the incremental cost of accelerating the
16 supplemental executive retirement plan benefits
17 that otherwise would have been paid to certain
18 eligible executives will also be treated as
19 transaction costs.

20 I think in some of the detailed
21 discussions that have occurred, the company has
22 removed approximately \$73 million that it had

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1 previously included in cost to achieve and
2 reclassified that as transaction costs which will
3 not be recovered.

4 There are some other differences. The
5 cost with -- shareholder litigation related to the
6 merger, it seems to me that that's also a
7 transaction cost. We would like to see that
8 called out and explicitly excluded.

9 And I would prefer a more detailed
10 listing that is contained in Exhibit DCG (A) to
11 what the joint applicants have presented in their
12 Exhibit (4A)-2.

13 Q And with specific reference to restricted
14 stock units, can we turn to your testimony at
15 page 56 at lines 6 to 8? Am I correct that the
16 joint applicants have stated that they are
17 treating the associated costs of restricted stock
18 units as non-recoverable transaction costs?

19 A Yes. This refers to a statement in a
20 data request, specifically DCG set 6, item 18B6,
21 and per an errata that Mr. Khouzami filed on
22 September 19, 2014, all restricted stock unit

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1 costs have been moved to transaction fees.

2 Q Thank you.

3 A So I guess I would like to see that
4 formalized in the definition of transaction costs
5 in the conditions. I think that would be
6 beneficial when people are looking at this in a
7 supplement rate case to try to figure out what was
8 called out and specifically excluded as
9 transaction costs.

10 Q Thank you. I'd like to now turn to
11 pages 51 and 52 of your direct testimony where you
12 discuss the District of Columbia government
13 proposed condition 17. Do you see that?

14 A Yes.

15 Q And am I correct this condition deals
16 with and is captioned, Tax indemnification; is
17 that correct?

18 A That is correct, yes.

19 Q And have you compared condition 17 to
20 joint applicants' commitment number 91 in Joint
21 Applicants' Exhibit (4A)-2?

22 A I did compare it, and it does look very

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1 similar. I haven't done an exacting word-by-word
2 comparison to see if it was adopted exactly as
3 presented on page 51 to 52 of my testimony, but it
4 does look very similar.

5 Q And Mr. Smith, if you can, would you
6 agree that one difference is that, in
7 commitment 91, the joint applicants have actually
8 expanded the indemnification to also include local
9 income tax liabilities?

10 A I don't believe I noticed that before.
11 So if you can point me to where that is stated,
12 I'll verify it for you.

13 Q Yes. It's actually in the first line of
14 commitment 91: Exelon shall indemnify PEPCO for
15 any liability for federal or local income taxes.

16 A Okay. The words "or local" has been
17 added.

18 Q Okay. Thank you. And next I'd like to
19 turn to page 54 of your direct testimony where you
20 discuss the District government's condition 18,
21 which is captioned, No Internal Revenue Code,
22 section 338, page 10 election.

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1 And once you've got that in front of you
2 and had an opportunity to look at it, let me know.

3 A I have it in front of me.

4 Q And actually, I'd also like to refer back
5 to the previous page of your direct testimony,
6 page 53, at lines 4 and 5. And I'll give you a
7 moment to turn there and take a look at it.

8 A I have page 53 open now.

9 Q I believe there you indicate that, in
10 response to District of Columbia government
11 interrogatory 1-11, the joint applicants confirm
12 that there is no section 338, page 10 election
13 being made related to the proposed Exelon/PHI
14 acquisition. Do see that?

15 A Yes, I do.

16 Q Am I also correct that the District of
17 Columbia government proposes to make that response
18 by the joint applicants District of Columbia
19 government Exhibit (A)-14 for the record? I'm
20 looking at footnote 30.

21 A Yes. That particular response is
22 attached as one of the exhibits to my direct

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1 testimony, specifically Exhibit DCG (A)-14.

2 Q Thank you. I'd like to now turn to
3 page 46 of your testimony and look at lines 5
4 through 15 where you discuss District of Columbia
5 government proposed condition 22, which is
6 captioned, Rate protection from cost to achieve in
7 excess of synergy savings.

8 And I'll give you a moment to turn there.

9 A I have it.

10 Q And that condition posits the use of a
11 test year in which PEPCO's allocated costs to
12 achieve exceed its allocated synergy savings
13 resulting from the merger. And if PEPCO were to
14 file a base rate case in the District of Columbia
15 that, in fact, triggered those circumstances as
16 described in condition 21, is there any reason of
17 which you are aware that the District of Columbia
18 Public Service Commission could not fully review
19 the cost to achieve and, based on the evidence
20 before it, if it deemed appropriate, require an
21 amortization of those costs?

22 A Let me see if I understand the question.

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1 I guess this condition was intended to preclude
2 the filing of that rate case, but I think your
3 question is, if the company goes ahead and files
4 it anyway, will the Commission have the ability to
5 look at the costs that are included in that rate
6 case, including costs to achieve which have
7 exceeded the synergy savings used in the test
8 year? And I think your solution would be to
9 amortize the costs to achieve?

10 Q My solution would be to acknowledge that
11 the Commission has the authority and discretion to
12 do so.

13 A The Commission would certainly have the
14 authority to review costs that were included in a
15 utility rate case. And depending on what those
16 costs represented, if they were really transaction
17 costs, one solution would be to just disallow or
18 remove them. If they were costs to achieve, true
19 costs to achieve, and they were in excess of the
20 synergy savings in that particular test year, some
21 type of deferral or amortization treatment could
22 be an appropriate solution in that context.

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1 But I would think in any rate case the
2 company filed that has costs to achieve, that
3 those costs will definitely need to be reviewed.

4 Q Okay. Thank you.

5 I'd like to turn now to condition
6 number 23 at page 92 and give you a moment to
7 review that. And more specifically, Mr. Smith, to
8 save a little time, I'll let you know that I'm --
9 we would like you to see if you could compare that
10 to the joint applicants' commitment number 15 in
11 Exhibit -- Joint Applicants' Exhibit (4A)-2.

12 A So I'm comparing District government --

13 Q 23.

14 A -- recommended condition number 23 with
15 Joint Applicants' Exhibit (4A)-2, paragraph
16 number 15.

17 Q Yes.

18 A Okay. I have them both open.

19 Q My question is, aren't these
20 fundamentally the same except that D.C. government
21 proposes that the specific conditions set forth in
22 23 should extend for one additional year beyond

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1 that in commitment 15?

2 A The DCG condition 23 specifies that for
3 at least the first three years following
4 notification to FERC of the consummation of the
5 merger versus the two years contained in the
6 company's proposed condition, but there's also an
7 additional provision calling out District-located
8 employment at either the PHI Service Company or
9 PEPCO. And that specification doesn't appear to
10 be contained in the company's proposal.

11 Q Fair enough. I acknowledge that. With
12 regard to -- next I'd like to look at condition
13 number 26 which is captioned, Exelon board and
14 shareholder meetings in D.C. And that begins on
15 page 92, line 34, and continues to the top of
16 page 93.

17 And I would ask if you would agree that
18 that condition was accepted and is mirrored in the
19 joint applicants' commitment 70.

20 A It's been watered down in 70, though.
21 Condition 26 specified -- as proposed by the
22 District government specifies that Exelon's board

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1 of directors shall add Washington, D.C. to its
2 regular rotation of the location of Exelon's board
3 and shareholders meetings.

4 And in condition 70, in the Joint
5 Applicants' Exhibit (4A)-2, it says, Exelon's
6 executive committee will include the PHI utilities
7 service territories among the locations of
8 executive committee meetings.

9 So it looks like it's been watered down
10 to include the entire PHI service territory. And
11 that would, I think, also apply to the -- it's
12 similar to the board of directors meetings and the
13 executive committee meetings which are company
14 conditions 69 and 70.

15 Q Yes, and I believe I gave you the wrong
16 reference for that. 26 actually mirrors -- 26
17 matches up with 69 -- commitment 69, 27 with
18 commitment 70.

19 A Yes. And they're both similar in terms
20 of the D.C. government condition recommended that
21 Washington, D.C., and the District of Columbia be
22 the location. And in the company's -- or the

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1 joint applicant proposed conditions, that's
2 watered down to include the entire PHI utility
3 service area.

4 Q We can agree, though that the District of
5 Columbia is one of the service territories of the
6 PHI utility?

7 A It is one, and currently it's the
8 headquarters, so it seems to me it should be on a
9 regular rotation. But the company conditions
10 would allow it to spread out those meetings all
11 over the service territory and not, I don't think,
12 specifically meet the intent of this condition to
13 have regular meetings in the District of Columbia.

14 Q Okay. So the principal difference, I
15 take it, that you're focusing on is, in 26, the
16 words "regular rotation" and, in 27, "at least
17 annually"?

18 A No, I'm focusing on the words
19 "Washington, D.C." in 26 and "the District of
20 Columbia" in 27. And I'm focusing on, in company
21 condition -- joint applicant condition 69, "PHI
22 utilities service territories" and, in 70, "PHI

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1 utilities service territories."

2 So you could have meetings in the next 20
3 years in PHI utilities service territories without
4 once have having a meeting in the District of
5 Columbia. And we're trying to get regular
6 meetings of both the Exelon board and the
7 executive committee to occur on a regular rotation
8 within the District of Columbia. So I think these
9 joint applicant conditions are extremely watered
10 down and possibly a total evasion of the intent of
11 what the District government proposed conditions
12 are intending to accomplish.

13 Q But that brings me back to my point. If
14 we were trying to focus on the specific language
15 that you -- are of a concern to you that's in your
16 condition that is not in the commitment, but as to
17 26, it would be the words "regular rotation" and,
18 in 27, it would be "at least annually."

19 A No. It would be "Washington, D.C." in
20 number 26, and "District of Columbia" in number 27
21 versus, in numbers 69 and 70 of the joint
22 applicants, "the PHI utilities service

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1 territories" --

2 Q All right.

3 A -- which doesn't require any meetings at
4 any time in the District of Columbia.

5 Q Okay. I think the distinction is clear.
6 Thank you.

7 Now, could you take a look at condition
8 number 31 on page 93 at lines 27 to 30.

9 A Yes. That's our neutral merger
10 accounting?

11 Q Yes. What kinds of accounting are you
12 referring to here and specifically what forms of
13 accounting are you trying to prohibit?

14 A Basically, I'm trying to prohibit a
15 difference in accounting under Exelon's ownership
16 that would result in increased costs to Potomac
17 Electric Company and its ratepayers.

18 Sometimes companies have different
19 interpretations of generally accepted accounting
20 principles or of regulatory accounting. And if
21 those types of differences are occurring here, and
22 one way would produce higher costs for PEPCO and

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1 its customers in the District, what I'm suggesting
2 is if that method is ultimately chosen under the
3 new ownership to be applied across the Exelon
4 utility footprint, that there would need to be an
5 adjustment to protect PEPCO and its ratepayers
6 from incurring those higher costs, that would be
7 the result only of applying a different accounting
8 method or accounting method interpretation.

9 Q You don't have anything more specific
10 than that?

11 A It's more of a general principle, because
12 I haven't reviewed all of the Exelon accounting
13 policies and how they might be different from the
14 PHI accounting policies. It's meant to address
15 that type of situation proactively so, when it
16 occurs, the PEPCO District of Columbia ratepayers
17 won't end up paying higher costs just because of
18 an accounting interpretation that results in
19 higher costs.

20 Q Right. And simply because something is
21 either based on GAAP or based on a specific
22 interpretation of GAAP would not restrict the

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1 authority of the Commission to review and make an
2 independent judgment as to whether any costs that
3 were being so distributed or allocated were
4 reasonable in amount and prudently incurred, would
5 they?

6 A I guess -- this is not really intended to
7 put any kind of restriction on the Commission in
8 reviewing costs. It's attempting to proactively
9 address a situation which we've seen downstream in
10 rate cases following other mergers where the two
11 companies had different accounting interpretations
12 and, if they adopt an interpretation that results
13 in higher costs being recognized by the utility
14 specifically within a specific test year, it's
15 trying to get the company's upfront agreement
16 that, if that situation does occur, it shouldn't
17 result in additional costs to PEPCO District of
18 Columbia ratepayers.

19 Q Now, you said you've seen instances in
20 which this has occurred. Could you identify for
21 us what specific accounting interpretations would
22 have had that deleterious effect that you're

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1 referring to?

2 A Nothing comes to mind immediately, but I
3 know we've encountered this in other situations.
4 It may be an accounting interpretation of when
5 revenue is accrued and recognized -- some
6 differences exist there -- and when certain kinds
7 of expenses are accrued, an interpretation of how
8 to apply AFUDC on construction projects.

9 There's a lot of different accounting
10 interpretations out that affect utilities, and
11 different utilities apply these somewhat
12 differently. And this type of problem probably
13 won't come to light until it's uncovered in a
14 subsequent rate case unless it specifically
15 announced in a PEPCO rate filing that we had these
16 two accounting interpretations, Exelon did it one
17 way, PHI did it another way, we decided to go with
18 Exelon's because they're the owners now, and guess
19 what? Our costs are going up by several hundred
20 thousand dollars a year, but the Exelon accounting
21 interpretation is reasonable, so just let us
22 charge that extra amount of cost to PEPCO

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1 ratepayers.

2 So that's hypothetically how I can
3 envision this occurring, and that's why we're
4 trying to have it addressed.

5 Q Mr. Smith, you and I have been in a
6 number of rate cases, and I believe I've looked at
7 a lot of your standard interrogatories, and I seem
8 to recall that in every single one of them one of
9 the questions you always ask is, Please tell us
10 all of the accounting changes that have occurred
11 since the last rate case; isn't that right?

12 A That is one of our standard questions.
13 We try to ask that in every single rate case.

14 Q And Mr. Smith, even if this merger did
15 not occur and PEPCO were to file a base rate case,
16 it would still, nonetheless, be appropriate to ask
17 the question how, if at all, did your accounting
18 change since the last rate case?

19 A We would probably ask that question in a
20 rate case in an interrogatory, but I think this is
21 a little bit different. This is a situation where
22 one utilities' accounting is being changed in a

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1 manner that increased costs based on the new
2 ownership and how their accounting was a little
3 bit different.

4 Q Thank you.

5 I'd like to turn to page 92 of your
6 testimony. And looking specifically at -- I
7 apologize. Excuse me. Just one moment.

8 I apologize. That was page 93. And I'm
9 looking at conditions 32 and 33, which I believe
10 both deal with side-by-side comparisons of
11 pre-merger and post-merger shared service costs.

12 Do you see those?

13 A 32 and 33?

14 Q Yes.

15 A Yes, I do see them.

16 COMMISSIONER FORT: I'm sorry. I didn't
17 hear the page reference.

18 MR. DeCUSATIS: I apologize. That's
19 page 93, begins at line 31, and continuing through
20 page 34 through line 6.

21 BY MR. DeCUSATIS:

22 Q Mr. Smith, while the joint applicants

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1 have proposed specific time periods that are
2 somewhat different from those that have been set
3 forth in these proposed conditions, they have,
4 nonetheless, in commitment 4, agreed to provide
5 such a side-by-side comparison, haven't they?

6 A In commitment 4, the joint applicants
7 state that they will provide a side-by-side
8 comparison of pre and post-merger shared services
9 costs allocated to PEPCO. The comparison will be
10 filed as a separate letter no later than the end
11 of the second quarter in 2017. And they include a
12 reference to Mr. Khouzami's rebuttal testimony.

13 Q All right. Thank you.

14 MR. DeCUSATIS: That's all we have.

15 CHAIRMAN KANE: People's Counsel?

16 MR. DANIELS: OPC has no questions.

17 MS. FRANCIS: AOBA, no questions.

18 CHAIRMAN KANE: Didn't pick up, but I'll
19 say, AOBA says they have no questions.

20 MS. FRANCIS: AOBA has no question.

21 CHAIRMAN KANE: Thank you.

22 MR. SPECK: DC SUN has no questions.

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1 MS. WHITE: No questions from D.C. Water.

2 MS. WEIN: No questions from NCLC.

3 CHAIRMAN KANE: Commissioner Fort?

4 COMMISSIONER FORT: Hi, Mr. Smith.

5 THE WITNESS: Good afternoon.

6 COMMISSIONER FORT: Do you or another
7 District government witness have a -- or did you
8 or another District government witness do a final
9 review to determine which of your conditions are
10 not picked up by the revised conditions in (4A)-2?

11 THE WITNESS: Not formally, no. At least
12 not yet. I think we'll probably end up doing that
13 in a brief.

14 COMMISSIONER FORT: Then I won't ask you
15 about which ones are missing.

16 You talk about looking at the due
17 diligence materials on page 9 of your testimony.

18 THE WITNESS: Yes.

19 COMMISSIONER FORT: Just in general, do
20 you consider due diligence a part of transaction
21 cost or cost to achieve?

22 THE WITNESS: I would consider the due

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1 diligence material that we reviewed up to a
2 certain point to definitely be transaction costs.
3 There's part of the due diligence material that
4 looks at how the company could potentially achieve
5 synergies, so I guess you might be able to make an
6 argument that that part of the analysis that's
7 totally focused on achieving synergies could be
8 part of the cost to achieve those synergies.

9 COMMISSIONER FORT: And would that be
10 costs that occurred before the announcement of the
11 merger or after the announcement of the merger, in
12 your opinion?

13 THE WITNESS: I would probably draw the
14 line at the announcement. A lot of the due
15 diligence was done by Exelon, as the potential
16 buyer, prior to the announcement. They had to
17 develop an understanding of PHI, PHI's utilities
18 and other businesses, PHI's finances, PHI's
19 operations, potential liabilities, and they had to
20 also develop justification for the amount that
21 they proposed as the offer price.

22 So I would probably classify everything

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1 up to at least the point of the announcement of
2 the merger as transaction costs in terms of the
3 due diligence.

4 COMMISSIONER FORT: You had a discussion
5 a few minutes ago with counsel from -- for the
6 joint applicants about the treatment of different
7 accounting costs. I think he asked you what's an
8 example of the type of cost where it could be
9 treated differently. I would think -- would
10 depreciation be one of the areas where you have
11 differences and approaches on accounting that
12 causes the concern that you were talking about?

13 THE WITNESS: Depreciation is definitely
14 an area where there are differences between
15 companies, between jurisdictions. I probably
16 wouldn't put that in the same category that we
17 were trying to proactively address here because,
18 in the District, as I understand it, the utilities
19 are required to file depreciation studies that
20 address assets that are located in the District
21 and owned by the utility, and that part of it --
22 those depreciation rates are approved by the

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1 Commission.

2 Now, there may be differences in other
3 affiliated service entities, like the PHI Service
4 Company or the Exelon Business Services, and some
5 of those differences may relate to depreciation.

6 So I think that would fall into the
7 category of, if there are differences there and
8 the way they resolve the differences -- say they
9 resolve it by adopting the Exelon way of
10 interpreting something. And if that type of
11 situation results in higher costs being charged to
12 Potomac Electric Company, then that's one of the
13 items that we would want to be looking at as being
14 a ratepayer protection that -- accounting
15 differences like that, whether adopting Exelon or
16 the way PHI had traditionally done things, if that
17 accounting is resulting in increased costs, I
18 think we would want to try to shelter PEPCO
19 ratepayers from having to pay for that, if it's
20 only an accounting interpretational difference.

21 COMMISSIONER FORT: I think this
22 morning -- it may have been this afternoon when

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1 Ms. Francis from AOBA was talking with
2 Mr. McGowan, one of her exhibits focused on a data
3 request -- I think it was Exhibit 123, but I may
4 be wrong -- where the answer to a question was
5 that the -- Exelon did not intend to change any of
6 its business service accounting allocations.
7 That's kind of roughly -- I guess -- so our record
8 is clear, let me just grab that. I just thought
9 it about it while you were talking.

10 Because I wanted to know if that's the
11 kind of concern that you would have. You have two
12 cost allocations manuals. You have to decide
13 which one is the one that's used. And I think
14 there was a question, please provide a detailed
15 description of all changes in Exelon's cost
16 allocation methods that the joint application
17 anticipates will be required to integrate PHI and
18 PEPCO into Exelon's operations.

19 And the answer was, No changes to
20 Exelon's cost allocation methodologies are
21 anticipated.

22 That was in what was preliminarily marked

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1 as AOBA's 124. Is that the type of concern,
2 accounting concern, that you have?

3 THE WITNESS: I think that could be some
4 of them. As I understand it, if the merger is
5 allowed, the PHI Service Company would be kept
6 functional, but just for certain functions. Some
7 of the more, I guess, transactional-type
8 functions, like accounting, finance procurement,
9 the people that are currently doing that, or those
10 groups that are currently doing it for the PHI
11 Service Company, are going to be moved,
12 apparently, under Exelon Business Services. And
13 that could result in a different allocation of
14 those types of costs back -- when they come
15 flowing back to the utilities, including PEPCO.

16 COMMISSIONER FORT: On page 59 of your
17 testimony, you have a question: Are there factors
18 that could cause PEPCO rate increases to be higher
19 under Exelon's ownership?

20 And on lines 14 through 18, you speculate
21 that in order to enhance the cash flows that it is
22 extracting from the PHI utilities, including

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1 PEPCO, it also is reasonable that Exelon will try
2 to change the D.C. regulatory process to benefit
3 itself by reducing the regulatory lag for PEPCO.
4 This could produce higher rate increases to
5 PEPCO's D.C. ratepayers.

6 What's your basis for that concern.

7 THE WITNESS: There's basically two
8 bases. One is understanding the history of PEPCO
9 and how they claim to be struggling with
10 regulatory lag. I'm sure you hear this probably
11 ad nauseam in every rate case they file and in
12 every request they file for some alternative rate
13 mechanism -- you know, you're hearing regulatory
14 lag, regulatory lag, regulatory lag; we can't earn
15 our authorized rate of return because of
16 regulatory lag.

17 So that's one basis, is the history of
18 PEPCO and the other PHI utilities and how they
19 tend to complain vociferously about regulatory lag
20 in the rate cases.

21 The other basis is looking at some of the
22 other utilities and -- that Exelon already owns

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1 and how they have a different kind of regulatory
2 framework in place. In Illinois, ComEd is allowed
3 to use future test years. They have a whole array
4 of rider mechanisms. You don't hear the same
5 complaints, at least not anymore. About
6 regulatory lag.

7 PECO, operating in Pennsylvania, they are
8 allowed to use fully forecasted future test years,
9 which is a legislative change. They are allowed
10 to -- they have these other mechanisms called DSCs
11 (phonetic) which allow for capital recovery
12 between rate cases. They have a bunch of other
13 riders in place.

14 So you don't hear the complaints about
15 regulatory lag in these other jurisdictions where
16 Exelon already owns major utilities.

17 And part of those changes have come about
18 not by asking the regulatory commission there to
19 approve stuff, but by going around the regulatory
20 commission when they haven't approved stuff, by
21 going to the legislature.

22 The implementation -- or the

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1 authorization to use fully forecasted future test
2 years in Pennsylvania was a legislative change.
3 Authorization for DSCs, that's supported by a
4 legislative change.

5 In Illinois, ComEd has a rate rider that
6 they're able to recover. They're spending on
7 smart meters and distribution system improvement
8 costs relatively concurrently with when they're
9 making the capital investment, and that was a
10 legislative change, and that was not only one
11 legislative change; they first had a legislative
12 change to authorize that. And then, when ComEd
13 and the other big utility in Illinois, Ameren,
14 didn't like the way their commission was applying
15 that or interpreting some of that, then they want
16 back to the legislature and had it changed again.

17 So I think this is far more than
18 speculative. You know, Exelon has been very
19 successful in reducing regulatory lag for its
20 existing utilities, and I think it's only
21 reasonable to expect that if they are able to
22 acquire PHI and its utilities, you know, they may

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1 have better success in changing the regulatory
2 framework in these jurisdictions than PHI has had
3 in the past.

4 I think it's a reasonable expectation to
5 have, and when you look at the -- say -- take a
6 look back at PEPCO's last D.C. rate case. Okay.
7 One of the main issues in contention was, okay,
8 PEPCO utilized a test year, and then they had all
9 these plant additions that were occurring after
10 the end of the test year. And one of the main
11 issues was, where do you draw the line? Where do
12 you cut it off at? You know, do you go six months
13 behind the test year? Is that verifiable by the
14 time the hearing occurs? Do you go 12 months?
15 How far do you go?

16 So these types of regulatory lag issues
17 and how to solve them, you know, have been an
18 issue for PHI and its utilities. And if you were
19 to add all this additional plan into rate base,
20 that's going to increase the rate increasing that
21 ratepayers are bearing.

22 So right now there's kind of a certain

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1 balance in D.C. and some of the other PHI utility
2 states, and I think it's only reasonable to expect
3 Exelon, which is incurring a substantial premium
4 to buy PHI -- a substantial stock premium and a
5 substantial additional amount of goodwill, which
6 is not directly producing any service for utility
7 customers -- that Exelon is going to try to
8 recover that cost somehow.

9 And means of recovering it -- you know,
10 one means is changing the regulatory framework.
11 Another means is by using debt to finance the
12 stock acquisition and keep the revenue on the
13 equity return coming and keep the dividends
14 coming. I think DCG witness Dr. Wilson has
15 explained that in quite a bit of detail.

16 You know, Exelon is not just going to sit
17 here and eat \$2.4 billion of goodwill. You know,
18 they are going to try to recover that by getting
19 the authorized and earned returns -- getting the
20 earned return up to the authorized return and
21 continuing to get an equity return on capital that
22 they're refinancing now by using a large portion

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1 of debt.

2 So I think both of these concepts taken
3 together bode for increased rates for PEPCO
4 customers versus leaving the ownership with PHI.

5 Then there's also the third point of cost
6 to achieve in excess of synergy savings. I think
7 they've come right out and practically told
8 everybody here sitting in the hearing that they're
9 going to file a rate case, it will probably within
10 12 months of approving the merger, and the test
11 year that they're going to use is probably going
12 to have costs to achieve that are higher than
13 synergy savings just because the costs are
14 front-loaded and the realization of synergy
15 savings is back-loaded, primarily in years six
16 through ten where they're claiming they're going
17 to realize \$7 million on the next synergy savings.

18 But the costs to achieve those are all
19 front-loaded, so if they use a test year that's,
20 say, 2014, 2015, there's a big chance that
21 those -- a test year of one of those periods is
22 going to have costs to achieve that are in excess

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1 of the synergy savings that are being realized in
2 that particular test year.

3 So all three of those factors that I've
4 just described I think raise an expectation that
5 rates could be higher for PEPCO and the D.C.
6 customers under Exelon's ownership.

7 COMMISSIONER FORT: One of the arguments
8 people have for using forward-looking test years
9 is that the end result is that what -- the rate
10 decisions that are made are more current, and that
11 means that there are less frequent rate
12 applications. Is that your sense of what's
13 happening in the Exelon utilities that use
14 forward-looking rate years in Illinois, I think
15 you said?

16 THE WITNESS: I'm not sure that they're
17 resulting in less frequent rate cases. It does
18 result in a different form of matching of the rate
19 base and operating income that's used to develop
20 the rates with the rate effective period.

21 You know, there are pros and cons of
22 using forecasted test years versus historical test

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1 years. You know, you've probably heard most of
2 those. You know, one of the -- one of the
3 concerns about future test years is they're based
4 on -- largely on budgeted data. So it's more
5 difficult to verify numbers, and there's concerns,
6 can you trust the company's budgets? Are they,
7 you know, putting wish list-type stuff into the
8 budgets and then basing their rate request on
9 that? Or is it truly just costs that are needed
10 to operate the utility in a reasonable and
11 effective manner that's needed to provide the
12 utility service?

13 On the other hand, you know, the main
14 criticism of historic test years is that there's
15 always going to be some kind of regulatory lag
16 there, and that may impede the utility's ability
17 to earn its authorized return.

18 COMMISSIONER FORT: Turning now to a
19 different subject -- and I'm going to ask your
20 counsel about this, but it's on -- not your
21 counsel. I'm sorry. I'm going to ask joint
22 applicant.

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1 I'm going to ask him a question on
2 page 75, and it deals with information that is on
3 lines 12 through 15, which come from a
4 confidential document. If you would look at
5 that -- I think this is probably one that we have
6 looked at over the course of the hearings. And
7 I'm going to ask -- I want to know what part of
8 the document caused the concern that he had, and
9 to explain that. Can you look at that and tell me
10 whether or not that's a question I can ask in this
11 open session? Do you see the section that I'm
12 referencing?

13 MR. LORENZO: Your Honor, we don't have
14 the confidential version of the testimony. Could
15 you give us a second to --

16 COMMISSIONER FORT: Okay.

17 MR. LORENZO: -- collect it?

18 COMMISSIONER FORT: Mr. Smith, do you
19 have your confidential version so you know what
20 I'm looking at?

21 THE WITNESS: I do, and it looks like --

22 COMMISSIONER FORT: I was going to say,

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1 the conclusion is not confidential, but I'm going
2 to give them --

3 MR. LORENZO: Your Honor, we've looked at
4 that, and some of this has been de-designated,
5 because it's crossed out here, so we -- it's fine
6 to --

7 COMMISSIONER FORT: So I recall.

8 MR. LORENZO: Yes.

9 COMMISSIONER FORT: But I was just being
10 cautious.

11 So on this section, you know, it said
12 your conclusion, from the review of the Olympus
13 merger study presented to the Exelon board just
14 before the board made its final acquisition offer
15 to PHI, is that Exelon had planned for significant
16 job cuts, and consequently, there's a significant
17 risk that substantial job cuts and transfers from
18 the PHI District offices, including the Edison
19 Place headquarters, will occur within five years
20 after merger consummation is approved.

21 I want to know, first, what it is that
22 you saw that caused that concern, and have you

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1 subsequently seen something to alleviate that
2 concern?

3 THE WITNESS: What we saw that caused
4 that concern are some of the due diligence
5 documents, and I think we've attached most of the
6 ones we've relied on as exhibits to my testimony.
7 Those, at least when it was filed originally, were
8 I think all confidential.

9 COMMISSIONER FORT: Is it information
10 other than what's in the documents that are
11 attached to your testimony? Did you have
12 information other than those documents?

13 THE WITNESS: It was primarily, because
14 there was so much bulk of documents -- I think we
15 tried to attach all the key documents. There were
16 some other documents that I think were not
17 attached due to trying to draw the line on a
18 certain level of bulk. But we did try to attach
19 all the key ones.

20 And there's the Project Olympus studies.
21 I think there's two versions of those that are
22 included in my exhibits. And then, in particular,

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1 if you have the full confidential version of my
2 exhibits, DCG (A)-16, which was an April to
3 September 2014 version of the Project Olympus,
4 there are some pages within that, and I can direct
5 your attention to pages 37 and 38 in that sequence
6 where they did an analysis by department and they
7 show potential job cuts in terms of FTEs, or
8 full-time equivalent positions.

9 And also there's reference made on
10 pages 86 to 87 of my testimony. I know this was
11 originally confidential, but that has groups of
12 FTEs that were envisioned by Exelon and its team
13 initially for job cuts. And this quantifies those
14 in terms of the numbers we were seeing in the
15 Exelon documents.

16 I think we've even heard further
17 confirmation from some of the joint applicant
18 witnesses that the shared service organization,
19 and specifically PHI Services, which has a big
20 presence at the Edison Place headquarters here in
21 the District of Columbia, is where jobs are going
22 to be cut or shipped off to other Exelon Business

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1 Services locations.

2 So I do think there is still a very real
3 risk of job cuts in the District, especially for
4 PHI. And when you look at the applicants'
5 commitments, even the ones on labor, they're, you
6 know, doing a little bit of sheltering for PEPCO
7 employees, but there's no shelter for PHI Service
8 Company employees working in the District. Those
9 will probably be some of the first positions that
10 will start having the severances and downsizing
11 effects.

12 Now, I think you also asked about some
13 mitigating factors.

14 COMMISSIONER FORT: I asked if you had
15 seen anything that made you feel better than you
16 did when you wrote your testimony.

17 THE WITNESS: I still think that there's
18 a substantial risk of PHI Service Company
19 employees in the District being severed or
20 downsized. I think the joint applicants have
21 listened to some of these concerns, at least to
22 some extent, and they've offered to, I think, move

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1 50 PEPCO Energy Services employees currently
2 located in Virginia into the District, and they've
3 made a commitment to hire, I think, 102 union
4 people. They would be employed in the District.

5 So I think they realize the major concern
6 about the job cuts, and they've made some other
7 offers to, you know, try to get it balanced out.
8 But I thought I heard one of their witnesses say
9 that there's no guarantee that this merger is
10 going to be net job-positive for the District or
11 something to that effect. Maybe they said there's
12 no guarantee that it's not going to be a net job
13 reduction to the District if the merger proceeds,
14 and their attempts to ring out synergy savings
15 largely from the shared services functions proceed
16 along their plan.

17 COMMISSIONER FORT: Thank you.

18 CHAIRMAN KANE: Thank you. Mr. Smith, I
19 just have a couple of really clarifying questions.
20 On page 60 of your testimony -- this is in the
21 section where you're talking about the tax impact
22 on the District. You're asked at the top of the

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1 page, starting line 2, Do PHI and PEPCO provide
2 the District with significant tax -- with
3 significant amounts of tax revenue?

4 Do you see that?

5 THE WITNESS: I'm not sure I caught the
6 specific page number.

7 CHAIRMAN KANE: Page 60 --

8 THE WITNESS: Page 60.

9 CHAIRMAN KANE: -- of your testimony,
10 yes. I'm looking at the confidential version, so
11 it may not -- then that's not a confidential
12 question. So the lining may not be quite the
13 same. Do you see it?

14 THE WITNESS: Okay. I'm there now.

15 CHAIRMAN KANE: Okay. And then you
16 answer, Yes, as an illustrative example -- and you
17 cite to a fact sheet, PEPCO's fact sheet, that
18 indicates PEPCO in 2012 provided the District with
19 taxes -- you put in paren other than income
20 taxes -- of 143 million, 848 dollars and 936 cents
21 (sic), and the reference is to DCG Exhibit (A)-12.
22 Do you see that?

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1 THE WITNESS: Yes.

2 CHAIRMAN KANE: I want to ask you about
3 that exhibit and about that \$143 million. A
4 couple of questions.

5 So if you'd turn to DCG (A)-12 --

6 THE WITNESS: Yes, I have it.

7 CHAIRMAN KANE: -- and page 1 of 4 -- and
8 this was where you see there are three boxes on
9 the right, and the middle box, tax contributions
10 in the District of Columbia.

11 Now, this says -- let me ask you about
12 contributions. Doesn't contributions usually
13 signify something that's voluntary, like a
14 donation?

15 THE WITNESS: Yeah. This -- I think
16 these are taxes that are paid to the District.
17 The donations are in the next box down --

18 CHAIRMAN KANE: Right.

19 THE WITNESS: -- which I presume are the
20 voluntary donations.

21 CHAIRMAN KANE: Anyway, taxes. Taxes
22 paid, as it does indicate, in 2012. And this

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1 refers to taxes from PEPCO. But your testimony
2 here in your answer is to PHI and PEPCO, providing
3 the District with significant amounts of tax
4 revenue.

5 Is there a difference between the taxes,
6 or -- would PEPCO and PHI together pay more taxes
7 than PEPCO would?

8 THE WITNESS: Yes. That's true. And we
9 decided to refer to this one particular fact sheet
10 for a couple of reasons. Basically, it was
11 public. It had one number on it that was fairly
12 easy to understand. As part of our review, we did
13 obtain, I think, every single tax return that
14 PEPCO or PHI or any affiliates filed with the
15 District, and we put all that stuff onto a
16 spreadsheet and we summed it up by year. All that
17 stuff was very highly confidential. We had to go
18 through some serious hoops in order to get that
19 and arrange to obtain that.

20 And the numbers that we were seeing there
21 for PEPCO was in the ballpark of this 143 million.
22 So we decided, just go with the public number.

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1 And then I did also attach in another
2 exhibit --

3 CHAIRMAN KANE: Let me stop you there --

4 THE WITNESS: Okay.

5 CHAIRMAN KANE: -- before you go on to
6 the other attachments. My question was going to
7 be -- first of all, it says, Other than income.

8 Now, what income was excluded? Is it their
9 corporate income tax or --

10 THE WITNESS: Yes.

11 CHAIRMAN KANE: Other than their
12 corporate income tax from PEPCO to the District --

13 THE WITNESS: This number did not
14 include, as I understand it, PEPCO corporate
15 income tax to the District. But from what I
16 recall, the PEPCO corporate income tax to the
17 District was fairly minimal anyway because they
18 had net operating losses and net operating loss
19 carry-forwards, so I think they were paying the
20 absolute minimum on the corporate income tax.

21 Now, one of the other batches --

22 CHAIRMAN KANE: The other question before

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1 you -- so the -- can you tell me, the 143 million,
2 without revealing anything confidential that you
3 received, does that -- since this came from a
4 flyer of PEPCO, does that seem -- did that seem,
5 in your professional review, fairly accurate?

6 THE WITNESS: It did for PEPCO. I think
7 there were additional amounts, if I recall
8 correctly, from the returns. There were some
9 additional amounts for PHI, other PHI businesses
10 operating in the District.

11 CHAIRMAN KANE: Can you tell us, without
12 violating confidentiality, if it did not include
13 the minimal amount of corporate income taxes paid,
14 what taxes were included in here, taxes and fees?
15 Did this include right-of-way fees, for example?

16 THE WITNESS: I think it included every
17 single kind of tax that PEPCO was paying to the
18 District except for income taxes, and including
19 payroll taxes, unemployment taxes, property taxes.
20 I don't recall if there was some kind of gross
21 receipts tax in there.

22 CHAIRMAN KANE: Delivery tax?

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1 THE WITNESS: But basically everything.
2 And some of those taxes were fairly significant,
3 and others were fairly de minimis.

4 CHAIRMAN KANE: That was my question,
5 whether they had been -- since this was a public
6 FAR, you had done any kind of verification of
7 this.

8 THE WITNESS: We did compare this to our
9 summation of what was on the individual tax
10 returns.

11 CHAIRMAN KANE: In -- finally, a
12 follow-up. In your answer to questions from
13 Commissioner Fort, you gave a rather lengthy
14 explanation of a concern about the possibility
15 that should the merger be approved, there would be
16 attempts to change the regulatory process, the
17 regulatory structure on the part of the new owner
18 of PEPCO.

19 Are you aware of any instances in which
20 PEPCO has gone to our local legislature and asked
21 for or successfully received legislation that
22 would affect, say, upfront payment or surcharges,

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1 et cetera?

2 THE WITNESS: I haven't done a lot of
3 research along those lines. I'm generally aware
4 of the D.C. PLUG agreement where PEPCO is
5 undergrounding distribution -- portions of its
6 distribution system in the District, and there's
7 been a general agreement that, since the District
8 wants that done and PEPCO has agreed to do it,
9 that they're obtaining capital recovery on a more
10 accelerated method than would be if they just
11 accumulated the costs and asked for them in a rate
12 case.

13 CHAIRMAN KANE: You're aware of the
14 actions that the company successfully took in
15 terms of advanced metering infrastructure?

16 THE WITNESS: In a general sense, not
17 specifically.

18 CHAIRMAN KANE: That they did receive
19 legislative approval for collecting those costs
20 into a regulatory asset?

21 THE WITNESS: Just generally.

22 CHAIRMAN KANE: I was just trying to get

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1 a handle on what was the basis of your concern
2 that there would be some large change were the
3 merger to be approved in the either success rate
4 or the willingness of the legislature or the
5 Commission to approve alternative forms of cost
6 recovery. And this morning -- were you here this
7 morning when Mr. McGowan was testifying?

8 THE WITNESS: I was.

9 CHAIRMAN KANE: So do you recall
10 Mr. McGowan being asked about an order that the
11 Commission put out in formal case 1103,
12 order 17424, where the order says, Around the
13 country, commissions and the participants in
14 electric rate proceedings are exploring
15 alternatives to traditional historic rate-making
16 to develop win-win strategies when faced with
17 similar challenges, challenges being changes in
18 distribution system costs and configurations. We
19 urge the company, OPC and the intervenors to
20 remain open to considering some non-traditional
21 methods of moving forward during this period of
22 growth and change, especially because the

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1 resources saved from avoiding voided rate
2 proceedings can inure to the benefit of District
3 ratepayers who ultimately pay the cost of our
4 proceedings.

5 THE WITNESS: I do recall some statement
6 to that effect being made.

7 CHAIRMAN KANE: And in view of that, how
8 does that affect your concern that a new owner
9 would go to the Commission to ask for different
10 forms of rate-making such as surcharges, tracking
11 mechanisms, forward test year --

12 THE WITNESS: I guess my concern --

13 CHAIRMAN KANE: -- automatic increases,
14 et cetera?

15 THE WITNESS: My concern is not
16 necessarily the new owner coming before the
17 Commission and asking for stuff, but it's, if they
18 don't get the answer they want from the
19 Commission, then going beyond the Commission into
20 the legislature and getting whatever changes they
21 want there, just like bypassing the body that's
22 been established as the regulatory authority in

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1 the jurisdiction.

2 It seems like that's becoming fairly
3 common now in some other jurisdictions, including
4 the neighboring State of Virginia. I'm not sure
5 if you followed what legislation just passed there
6 earlier --

7 CHAIRMAN KANE: Yes.

8 THE WITNESS: -- this year, heavily
9 sponsored by Dominion, but, you know, that's --
10 when utility has such a powerful lobbying
11 presence, they can just go around the regulatory
12 commission and get their changes implemented in
13 other manners.

14 CHAIRMAN KANE: But are you aware of any
15 instance, except for the advanced metering
16 infrastructure, where that has occurred with our
17 city council, where the utility -- the current
18 local utility has been successful with the
19 legislature?

20 THE WITNESS: You're kind of testing my
21 memory. I kind of have a vague recollection of
22 something going on with Washington Gas Light, but

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1 I didn't delve into the details of it or try to
2 research it.

3 CHAIRMAN KANE: I'm sorry. I'll leave
4 that -- that's probably asking for more knowledge
5 than you would have, not being a local person.

6 But I might stipulate for the record it's
7 not the history of doing that successfully.

8 I did want to ask you one other question.
9 When I was -- I believe was asking Mr. Khouzami,
10 yes, on a tax matter, since you are testifying on
11 taxes, have you had a chance -- I don't know that
12 you were here, obviously, when he was testifying.
13 That was some time ago now. But did you have a
14 chance to review or to watch remotely his
15 testimony when we were asking him about tax
16 issues?

17 THE WITNESS: I wasn't able to watch
18 Mr. Khouzami, but I tried to read his transcript
19 fairly carefully because I thought he was an
20 important witness for the subject matter that I'm
21 addressing.

22 CHAIRMAN KANE: Did you recall that I

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1 asked him about a particular situation, a tax
2 situation, in which the company had received
3 finally a ruling from the federal IRS that they
4 could treat some of the costs from the settlement
5 during the divestiture -- we're going way back
6 into, like, 2000 -- that they could treat those
7 costs in a way that then enabled them to receive a
8 refund on federal income taxes paid, and that they
9 received that ruling from the IRS, I believe, in
10 2011, some time after the event actually occurred
11 and going through all the process of getting the
12 ruling -- got a favorable ruling? And that
13 allowed them to get a refund, and pursuant to the
14 terms of the settlement agreement related to the
15 divestiture when the company sold off its
16 generation assets, the proceeds of that
17 divestiture and the liabilities were shared with
18 the ratepayers.

19 So as a result of that IRS ruling and the
20 receipt -- or the ability of the company to refile
21 its taxes for those years, or that year, and get a
22 refund, a portion of that refund was shared with

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1 the current ratepayers. They have retained
2 similar, not in this case, a ruling -- but
3 legislation has been passed by the District
4 permitting the same kind of refiling of taxes and
5 receipt of a refund on District taxes paid, income
6 taxes, corporate income taxes, but not to be --
7 not to be filed and received, the refund, until
8 starting in 2018, which was for city budget
9 purposes, to spread out the impact. I believe the
10 amount at stake is about \$16 million.

11 And I had asked Mr. Khouzami about the --
12 anything in the merger proposal application that
13 would affect in any negative way the ability of
14 the company to either receive that refund and to
15 share it with the ratepayers, because it was going
16 to be so far in the future and there would be a
17 change in ownership, et cetera. Do you recall
18 that, reading about that?

19 THE WITNESS: I'm sorry. I must have
20 missed that part of it.

21 CHAIRMAN KANE: Do you know that, in
22 general, as a tax accountant, would there be any

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1 bar, any prohibition, with the new owner or should
2 there be some terms and conditions placed in, if
3 there were an approval of the merger, relating to
4 protecting the ability of ratepayers to receive
5 their due share of any refund?

6 THE WITNESS: I think there should be a
7 protection put in. I'm not aware of anything that
8 would interfere with it, but I think there, in
9 fact, has been a tax indemnification provision put
10 in, and maybe that explains why the word "and
11 local taxes" were added to that provision.

12 CHAIRMAN KANE: The tax indemnification
13 is to protect the District government from receipt
14 of its revenue. This is revenue that would come
15 from the District government, a refund, to the
16 company, and then be shared with -- there's a
17 formula in the settlement agreement -- on a
18 percentage basis with ratepayers.

19 THE WITNESS: Yeah, I'm not aware of
20 anything in the proposed merger that would
21 interfere with that. I thought that the word "and
22 local taxes" was added to the tax indemnification

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1 provision in the merger conditions.

2 CHAIRMAN KANE: Indemnification is for
3 liability for federal or local taxes. It's the
4 opposite.

5 THE WITNESS: I thought there was also a
6 concept embedded in there, though, that if PHI's
7 taxes ended up being higher under Exelon's
8 ownership than it would have been on a stand-alone
9 basis --

10 CHAIRMAN KANE: Right.

11 THE WITNESS: -- that there would be no
12 difference for those higher taxes.

13 CHAIRMAN KANE: But this is about taxes
14 being lower.

15 THE WITNESS: Lower.

16 CHAIRMAN KANE: Yes.

17 THE WITNESS: Okay. So I understand
18 where you're coming from. I wonder if there's
19 maybe some additional wording that would needed to
20 be added into there in order to preserve that
21 refund.

22 CHAIRMAN KANE: Thank you.

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1 Redirect, District government?

2 REDIRECT EXAMINATION

3 BY MR. COYLE:

4 Q Let me ask you, Mr. Smith --

5 Mr. DeCusatis took you through a number of
6 specific comparisons between District government
7 conditions and the statements of those conditions
8 in Joint Applicants' Exhibit (4A)-2. Did you have
9 any other observations on Exhibit (4A)-2 that you
10 wanted to share with the Commission?

11 A Yeah, I did have one other kind of
12 general observation on (4A)-2, and that is that
13 while this has come a certain distance from their
14 initial proposal, when you lay this alongside, you
15 know, the conditions that some of the parties here
16 have recommended, or even the conditions that
17 they've agreed to in the settlements in New Jersey
18 and Delaware, it looks like this is lacking.
19 Their conditions here aren't as tight. There's
20 stuff that's been left out.

21 And not to go through in a lot of detail,
22 but I believe there's a better definition of

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1 transaction costs; other items are called out in
2 some of the other settlements. In the Delaware
3 stipulation, paragraph 8, there's a workforce
4 development initiative for \$2 million over four
5 years --

6 MR. DeCUSATIS: Your Honor, I apologize,
7 but I really have to object to there as being
8 beyond the scope of my cross-examination. I
9 really do not think it's appropriate to ask a
10 witness to please offer his opinion on all the
11 things that cross-examiner did not question about.

12 CHAIRMAN KANE: Mr. Coyle, keep it to
13 redirect on cross.

14 MR. COYLE: I'm sorry, Your Honor. The
15 answer went farther than I had reason to expect.
16 I have nothing further. Thank you.

17 CHAIRMAN KANE: Thank you. Exhibits?

18 MR. COYLE: At this point, the District
19 government would move the admission of what has
20 been marked for identification as Exhibit DCG (A)
21 and Exhibits DCG (A)-1 through DCG (A)-19.

22 CHAIRMAN KANE: They are moved.

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1 (DCG Exhibit Numbers (A) and (A)-1
2 through (A)-19 were received into evidence.)

3 CHAIRMAN KANE: There were no other
4 exhibits. You are excused. Thank you very much,
5 Mr. Smith.

6 (Witness excused.)

7 CHAIRMAN KANE: I do note that we had 15
8 minutes indicated to Mr. Smith, and it's been an
9 hour and a half. Not to rush anyone.

10 All right. D.C. government, call your
11 next witness.

12 MR. COYLE: At this time, the District
13 government would call Brendan Shane to the stand,
14 please.

15 WHEREUPON,

16 BRENDAN SHANE,
17 called as a witness, and after having been first
18 sworn by the secretary, was examined and testified
19 as follows:

20 DIRECT EXAMINATION

21 BY MR. COYLE:

22 Q Would you state and spell your name for

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1 the record, please, Mr. Shane.

2 A My full name is Edward Brendan Shane.

3 It's E-D-W-A-R-D, B-R-E-N-D-A-N, S-H-A-N-E.

4 Q And Mr. Shane, do you have your prefiled
5 direct testimony before you?

6 A Yes.

7 Q Could you remind me what the letter is?

8 A This is DCG (E).

9 Q Okay. Thank you. And are there exhibits
10 to DCG (E)?

11 A Yes. Three, I believe.

12 Q DCG (E)-1 through (E)-3?

13 A Yeah.

14 Q Okay. And was that testimony prepared by
15 you or under your direction?

16 A Yes.

17 Q I want to tell you, by the way, since I
18 notice you're nodding your head and you haven't
19 been through this before, you need to give a
20 verbal answer so the court reporter can take it
21 down.

22 A Okay.

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1 Q And then -- the exhibits, were they also
2 prepared by you or under your direction?

3 A Yes.

4 Q Okay. And if I were to ask you the same
5 questions that are set forth in DCG (E) here today
6 under oath, would your answers be the same?

7 A Yes.

8 Q One last question, Mr. Shane. At the
9 time you submitted this testimony that's been
10 marked for identification as Exhibit DCG (E), you
11 were an employee of the District Department of the
12 Environment; is that correct?

13 A Yes.

14 Q Okay. And you are now no longer an
15 employee of the District Department of the
16 Environment; is that correct?

17 A Yes.

18 Q By whom are you now employed?

19 A I'm now employed by a nonprofit called
20 the C40 Cities Climate Leadership Group.

21 Q Thank you.

22 MR. COYLE: At this point, I tender the

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1 witness for cross-examination.

2 CHAIRMAN KANE: Joint applicants?

3 CROSS-EXAMINATION

4 BY MR. KULAK:

5 Q Good afternoon, Mr. Shane?

6 A Good afternoon.

7 Q My name is Ken Kulak. I'm counsel for
8 the joint applicants.

9 Mr. Shane, you testified on page 6 and 7
10 of your testimony that you read the prefiled
11 testimony in this case, correct?

12 A Yes. I have -- in preparing my
13 testimony, I reviewed a whole range of testimony
14 to varying degrees of thoroughness, I have to say.

15 Q Well, you read the rebuttal testimony
16 filed in this case, too, right?

17 A Yes, I've looked over those, but to be
18 honest, it's been quite some time, and I haven't
19 been focused on it in some months.

20 Q Well, you were focused on it when you
21 wrote your testimony, right?

22 A Yeah. Yeah.

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1 Q On page 14 of your testimony, you state
2 that you don't think this merger will support
3 energy efficiency and renewable distributed
4 generation because D.C. would, to quote your
5 testimony, quote, become part of a massive
6 national utility system, heavily invested in
7 fossil and nuclear generation, right?

8 A Let me check just to -- you're on
9 page 14, you said?

10 Q Yes, page 14, lines 9 and 10.

11 A Yes, that's how it reads. I guess the
12 distinction, in terms of Mr. Coyle's question
13 about any changes, my understanding is that Exelon
14 has divested from its coal generation since the
15 fall.

16 Q Its remaining coal generation, right?

17 A Yeah.

18 Q And do you recall how much coal
19 generation it even had at that time?

20 A It was very minimal, compared to the
21 nuclear.

22 Q Can you please look at Mr. Gould's

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1 rebuttal testimony on page 6?

2 A I'd have to --

3 CHAIRMAN KANE: Mr. Caldwell can help the
4 witness. Thank you.

5 THE WITNESS: Did you say page 6?

6 BY MR. KULAK:

7 Q Yes, of his rebuttal testimony.

8 A All right.

9 Q And as Mr. Gould explains, even before
10 the divestment of Exelon's remaining coal plants,
11 Exelon was the second lowest in terms of GHG
12 intensity among all the major U.S. utilities,
13 right?

14 A This is -- yeah. I've seen references to
15 that, but I'm not intimately familiar with the GHG
16 profile for Exelon.

17 Q And by GHG, we mean greenhouse gases?

18 A Greenhouse gas emissions, right.

19 Q You have no reason to doubt that
20 conclusion by the Bradley Group, right?

21 A No, I don't. It's consistent with the
22 amount of nuclear in their generation portfolio.

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1 Q Now, on pages 15 through 21 of your
2 testimony, you discuss a number of sustainable
3 energy measures that you believe are important to
4 the District's future, right?

5 A Yes. We had identified five in
6 particular that I was familiar with and had worked
7 with during my time.

8 Q And the first of those is microgrids,
9 right?

10 A Yes.

11 Q And you assert on page 16, line 25, going
12 on to page 17, that PEPCO should provide
13 assurances that it will promote microgrids as a
14 condition of the merger, right?

15 A I'll just check again. I'm sorry, where?

16 Q Yes. Page 16, line 25, going on to
17 page 17?

18 A Yes. And that in general is a recurring
19 theme throughout my testimony, was looking for
20 assurances from the joint applicants that any of
21 the measures that we had proposed or that had been
22 discussed in the city's sustainability measures

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1 were actually committed to in this merger.

2 Q Did you do any research in preparing your
3 testimony with respect to Exelon's work on
4 microgrids?

5 A Yes. I did some myself that included
6 searching through commercial databases, through --
7 Bloomberg Financial and several others have all
8 registered microgrids that they have in their
9 energy databases.

10 I remember finding reference to some --
11 there are very few nationally. There are many
12 more in development than there are in existence.
13 And so I did try to research what was available.

14 Q You didn't discuss any of that research
15 in your testimony, did you?

16 A Well, as I mentioned, there wasn't much
17 there. As I had been aware, just before from my
18 general experience in the field, a majority of the
19 microgrids that I found were developed by
20 municipal utilities from sister cities that I'm
21 peculiar with, places like Austin or Sacramento.

22 So some of those I had been familiar

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1 with. And others developed around the country --
2 or I should say most of my other familiarity was
3 with others that were under consideration or under
4 development.

5 Q So were you aware that ComEd, Exelon's
6 utility affiliate in Chicago, had received a
7 \$1.2 million grant in 2014 from the Department of
8 Energy to develop a microgrid controller?

9 A Yeah, I may have seen reference to that.
10 There are -- well, the reason microgrids is
11 identified in our testimony is because it's pretty
12 clearly a direction that most major cities are
13 moving. The District of Columbia has had
14 proposals move forward -- or within the District
15 of Columbia -- and a number of other cities.

16 So I forget whether I had seen any
17 reference to ComEd's activity, but the fact that
18 there was that kind of activity in Chicago would
19 not surprise me.

20 Q Were you aware of PECO's work with a
21 company called Viridity to create a microgrid in
22 Philadelphia at Drexel University?

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1 A I think it's safe to say that every
2 utility in every major market is working with
3 their cities to develop microgrids.

4 Q Including Exelon?

5 A Yeah. I mean, that I think is part of,
6 again, one of my concerns with the application and
7 the proceeding in general, is that I think
8 particularly in major cities like Washington and
9 in progressive markets you'd be hard-pressed to
10 find any that are not trying to move to sort of a
11 new generation of utility distribution, microgrids
12 being a principal element of that, but not the
13 only one for sure.

14 Sometimes it's called, you know,
15 Utility 2.0, and the idea is common across all the
16 markets. And I think the question becomes how
17 committed a given utility is to doing that.

18 So just from my own experience -- and
19 this is limited experience -- but PEPCO had worked
20 probably three or four years ago, prior to the
21 Exelon work that you're mentioning, to move
22 through and permit a microgrid design for Howard

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1 University here in the District, 0which ultimately
2 didn't proceed, to my understanding, because
3 Howard University had financial issues that
4 undercut that project.

5 But PEPCO has been working on that issue,
6 and I assume Exelon is as well.

7 Q You go on on page 16, lines 21 to 23, to
8 express a concern that if the local utility -- and
9 I'm quoting you -- if the local utility requires
10 them -- I think you refer, by "them," to a
11 developer/owner of a microgrid -- to, in effect,
12 donate the resulting microgrid to the utility
13 company and then pay the utility company in
14 services for charges for its upkeep and an adder
15 in the rate of return, unquote -- that would be an
16 issue, right?

17 A Let me just review that again.

18 Q Sure.

19 A Yeah, this is -- I think you quoted it
20 correctly.

21 Q Okay.

22 A But, sir, I'll just continue the -- this

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1 section, if folks are looking at it, is a series
2 of open questions that I asked because -- to sort
3 of demonstrate the unsettled nature or the
4 transitional nature of the microgrid question.

5 So that was a question I was asking, you
6 know, would this -- would this be a problem? And
7 several other questions are asked on that page.

8 And I think still -- you know, it's six
9 months later now, but I think still reflect
10 questions that are out there about how microgrids
11 can come to fruition, how they can be owned, how
12 they can fit in with municipal distribution, how
13 they can fit in with franchises for utilities, and
14 the fact that, in order to answer those questions,
15 there's going to be a very active dialogue with a
16 number of local implications -- this is not a
17 generic dialogue that applies one size fits all to
18 cities across the country.

19 We're going to need a very specific
20 dialogue with the District's utility about how
21 microgrids work to the benefit of District
22 ratepayers, to the environment, to reliability,

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1 cost of power, things like that.

2 Q Mr. Shane, are you aware of any instances
3 where Exelon, any Exelon utility or even anybody
4 at Exelon, has ever suggested that Exelon would
5 require an owner or developer of a microgrid to
6 donate its microgrid to the Exelon utility?

7 A No, I personally have not. And I think
8 that's why that was asked as a question.

9 Q And you aren't aware of any statement
10 by -- or any action by Exelon particularly where
11 it's been working on microgrids, to impose
12 unjustified costs to operate such microgrids in
13 its service territories, right?

14 A I'm not personally aware, no.

15 MR. KULAK: I'd like to introduce the
16 exhibit that's been marked as Joint Applicants'
17 Number 64, and that will be Cross Exhibit
18 Number 27.

19 CHAIRMAN KANE: So marked.

20 (Joint Applicants Cross Exhibit Number 27
21 was marked for identification.)

22 THE WITNESS: Is that this one? Okay.

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1 Yes, I have Exhibit 64.

2 BY MR. KULAK:

3 Q Do you want to take a moment to review
4 that?

5 A Actually, we were just handed, before the
6 lunch, a series of exhibits, 64 through -- so I
7 looked at these quickly.

8 Q Great.

9 A Should I take the time to read it or were
10 you just looking for --

11 Q Well, I have a couple of questions, but
12 you probably can answer them based on your initial
13 review. But please take your time to read the --
14 it's only two pages.

15 A Yeah, okay. Okay.

16 Q Mr. Shane, before you reviewed the
17 exhibit earlier today in preparing to testify
18 today, were you aware that Exelon had partnered
19 with a company named Anbaric to develop microgrids
20 from -- ranging from 10 to 200 megawatts in
21 New York?

22 A No. I see this is dated February. So

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1 since February, I hadn't seen this information.

2 Q Mr. Shane, on pages 17 and 18 of your
3 direct testimony, you testified that the District
4 needs a utility partner intent on expanding access
5 to large-scale renewable power facilities in PJM,
6 right?

7 A Yes, I believe so.

8 Q And on page 18, line 16 and 17, you state
9 that the Sustainable D.C. plan requires strong
10 partnership with a local utility committed to
11 complying with the District's RPS, right?

12 A Yes.

13 Q In preparing your testimony, did you look
14 at Exelon's record of RPS compliance in other
15 states?

16 A I can't say that I looked at that
17 specifically. I would have no reason to question
18 that they would be complying with, you know, RPSs
19 legislated and enforced by state commission.

20 I think that it's safe to say that when
21 they have those obligations, they would be meeting
22 them. I think that my reference to a strong

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1 partnership for local renewables and regional
2 renewables and also for microgrids such as the
3 ones referenced in New York -- I think the problem
4 is that, you know, obviously Exelon came to this
5 merger as one of the most sophisticated utilities
6 in the country, and it appears that they were
7 making deals prior to February of 2015 to enter
8 into arrangements to develop microgrids of, you
9 know, a reasonable size and I assume quality. And
10 yet we see none of that in the proposals that came
11 to the city.

12 This is exactly the kind -- these are
13 exactly the kind of tools that the District of
14 Columbia needs to achieve not only our legal RPS
15 requirements, the laws of the District, but also
16 the goals that the city has put on top of those.

17 And so for the local renewables, for the
18 regional renewables, for the microgrid generation,
19 I think that we have a situation where Exelon is
20 proposing just to do the bare minimum, and they
21 haven't brought anything that would be a real
22 benefit to the District's energy and environmental

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1 position.

2 Q Mr. Shane, I was asking you about
3 Exelon's commitment to RPS and your statement that
4 you need to see that commitment. I'd like to
5 direct your attention to Mr. Gould's supplemental
6 testimony on page 9.

7 A So that's the same as you referenced
8 before?

9 Q Actually, it's his supplemental
10 testimony, page 9.

11 A And -- so you were referencing page 9?

12 Q Yes. I want to direct your attention to
13 Mr. Gould's statements, line 7 to 10, with respect
14 to the existing Exelon utilities' RPS obligations
15 where he states, quote, I fully expect each Exelon
16 utility to continue to meet its RPS obligations,
17 resulting in the purchase of significant amounts
18 of renewable energy on behalf of the customers who
19 rely upon PECO, BG&E and ComEd for generation
20 procurement.

21 Right?

22 A That's the statement, yeah.

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1 Q That's your understanding, that Exelon is
2 certainly committed to its existing and increasing
3 RPS requirements, right?

4 A Well, just as I stated before, I don't
5 see how they could be otherwise.

6 Q And nothing in this merger --

7 A And these are legal requirements to meet
8 the RPS.

9 Q And nothing --

10 A If it was anything else, I would be
11 rather worried.

12 Q Nothing in this merger is going to change
13 the Commission's authority over its ability to
14 enforce the RPS in the District, right?

15 A Yeah -- no, I agree with that. Whether,
16 frankly, the RPS should be changed over time and
17 reviewed and increased is, I think, a very active
18 discussion, but that's one in the Commission's
19 jurisdiction.

20 Q Now, on page 17 of your testimony, you
21 explain that some large electric users in the
22 District of Columbia are contracting from

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1 dedicated renewable power facilities in the region
2 to increase their renewable energy use above
3 whatever portion they're receiving from the RPS,
4 right?

5 A Would you mind pointing me -- sorry.
6 Page 17 --

7 Q Sure. Page 17 of your testimony
8 beginning on line 8.

9 A Oh, yes. I do know the reference.
10 That's in reference to act -- the federal
11 government's actions and actions by major
12 nonprofits and universities and such.

13 Q Okay. Now, in those projects, the
14 renewable facilities are in less urban locations
15 and they're delivering energy to the regional
16 grid, right?

17 A Yes. I think they're primarily regional
18 wind. There are -- well, I shouldn't say
19 primarily. The largest one that's referenced
20 there, which is the universities and George
21 Washington Hospital, is a solar facility, but
22 located in a rural area of, I believe, North

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1 Carolina. It's somewhere in the range of 40 or
2 50 megawatts.

3 Q And the thinking is that renewable energy
4 should be cheaper because the larger projects can
5 benefit from economies of scale in less dense
6 areas, right?

7 A Well, I mean, oftentimes wind resources
8 only happen where there's wind, and that doesn't
9 happen in the District of Columbia. Solar happens
10 in the District of Columbia just as easily as it
11 does, you know, say to the west in Virginia.

12 So we have different approaches for
13 different resources. Commercial-scale wind does
14 not work in the District. Ideally, it happens as
15 close to the District as possible for reliability
16 and, you know, so you don't have line loss and
17 some of the other problems. Large-scale solar can
18 be more expensive in the District because of
19 property values, but ideally is also very
20 beneficial because it is actually here and on the
21 ground to support not only our policy goals or the
22 law, but, you know, local reliability and

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1 generation.

2 MR. KULAK: I'd like to introduce a
3 document that's been previously marked as Joint
4 Applicants' Exhibit Number 67. That would be
5 Cross Exhibit Number 28.

6 CHAIRMAN KANE: So marked.

7 (Joint Applicants Cross Exhibit Number 28
8 was marked for identification.)

9 THE WITNESS: This is the National
10 Aquarium exhibit?

11 BY MR. KULAK:

12 Q Yes. Correct.

13 A I wasn't familiar with this particular
14 project before, but it's essentially the same
15 model that's represented by the District entities
16 that I reference in my testimony in all major --
17 well, this is quite a bit smaller, but a local
18 institution contracting for development of
19 renewable sources, and this is also -- it looks
20 like it's being done in a rural area, but to
21 supply the downtown town Baltimore Aquarium.

22 Q Do you happen to know which utility

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1 franchise territory the National Aquarium is in?

2 A I assume it's in BG&E. Yeah.

3 Q On page 19 of your testimony, lines 22,
4 23, you state that the District needs a flexible
5 partner, quote, committed to making energy usage
6 data available for customers, right?

7 A Yeah, I didn't catch up with you on the
8 actual statement, but in general that statement
9 makes sense.

10 Q And you note that PEPCO currently
11 provides 15-minute interval data to building
12 owners, right?

13 A Yes. I'm fairly familiar with that
14 because I was involved with passing the
15 legislation that implemented this.

16 This is an example of where the District
17 of Columbia passed the first energy benchmarking
18 legislation in the country. It was subsequently
19 followed by Philadelphia and by Chicago.

20 And -- so we passed that legislation in
21 2006 with the Clean and Affordable Energy Act and
22 have been implementing it since then. And PEPCO

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1 has been, you know, a strong partner, moving not
2 only through that process, but to develop work
3 with the Department of Energy's Green Button
4 program.

5 Just for one second to refer back to your
6 last question on the exhibit, it's another -- I
7 was going to say, before you moved on, that that's
8 another example of where we've had some really
9 interesting work and progressive work being done
10 by PEPCO Energy Services, by their affiliate
11 that's developing biogas, solar installations,
12 pretty much like the ones that's identified here.

13 Q As you note, Chicago and Philadelphia
14 also now have benchmarking programs, and it's your
15 understanding as well that Exelon and its
16 utilities there, PECO and ComEd, have implemented
17 similar programs to PEPCO's program, right?

18 A Well, those programs -- I know them
19 intimately because I work closely with
20 Philadelphia and I have colleagues and staff that
21 are implementing the program for Chicago. So they
22 are basically like here, those are local laws;

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1 they require the local utility to implement those
2 programs.

3 And -- so it's a little bit like RPS. I
4 wouldn't necessarily expect them not to be doing
5 it. I think that one of the -- it's an
6 interesting approach and program overall because
7 D.C. was at the forefront of that policy, which is
8 now moving nationally and internationally.

9 And there are a lot of bumps in the road
10 that we had to go through with PEPCO to make that
11 happen and to make the idea of requiring building
12 owners to benchmark their reporting, benchmark and
13 report, and to make it available in an automated
14 fashion.

15 That was sort of cutting-edge policy, but
16 the kind of thing that I think the District has
17 developed a reputation for doing, and now others
18 are following.

19 Q It was fairly smoothly implemented in
20 Philadelphia, wasn't it, Mr. Shane?

21 A Well, yes, in part, because we spent a
22 lot of time talking to them and help them write

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1 their laws, helped New York write their laws.
2 New York did regulations slightly before we did,
3 and then we went back -- I think if you look and
4 compare, you'd find most of the regulations in the
5 country are pretty -- the laws themselves and then
6 the regulations that followed are very similar to
7 what was developed in the District. New York
8 obviously was leading the way as well.

9 Q Now, on pages 20, 21 of your direct
10 testimony, you recommend the use of on-bill
11 financing and green banks to help residential
12 customers help improve the energy efficiency of
13 their homes, rights?

14 A Yeah. The fifth -- sorry. This is in
15 the middle of my glasses range here.

16 The issue of innovative finance was one.
17 It's the fifth here, although probably you could
18 flip it and make it first in the priority to some
19 extent. The ability to pay for any solution is
20 often not talked about, but it's a critical
21 element. So on-bill financing, we have pursued
22 programs in the District; in particular, one

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1 called PACE Financing, which was legislated, still
2 struggles to move forward.

3 But I'm referencing here, I believe, some
4 of the models that appear to be working from other
5 jurisdictions, like on-bill financing, like green
6 banks. And as I left the District in January,
7 they were -- an RFP had been issues, just issued,
8 for a fairly intensive study using money from our
9 green building fund, of which of these innovative
10 mechanisms -- green banks, on-bill financing,
11 things like that -- which could help finance large
12 investments in these technologies in the District.

13 So the District is investing right now in
14 studying how these approaches would apply to the
15 District.

16 Q You know that, in the words of former
17 Commissioner Morgan on page 20 of his direct
18 testimony, quote, regarding their records on
19 energy efficiency, Exelon's subsidiaries are
20 acknowledged leaders and innovators among
21 utilities, unquote, right?

22 A I'll assume that's a quote from

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1 Mr. Morgan. Yeah. Yes, I think that we have had
2 a number of -- when I was with the District, we
3 had a number of direct conversations with PECO,
4 ComEd and others on particular programs. Again, I
5 think that the context -- the only reason I would
6 have pause with that kind of comparison is that
7 the District obviously has, you know, taken a
8 significant turn compared to those markets. We
9 have a Sustainable Energy Utility here that was
10 established by the Clean and Affordable Energy
11 Act, set a number of requirements for the city.

12 So the model of -- well, the model of
13 PEPCO in Maryland, where the utility implements a
14 range of efficiency or other energy programs on
15 behalf of the state or the ratepayers -- we have
16 one that's very different here. And so we have
17 our Sustainable Energy Utility working to develop
18 many of these.

19 Obviously, our utility, PEPCO, has been
20 instrumental in working on specific programs, like
21 benchmarking and reporting on smart metering and
22 automated metering, some of the areas where, you

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1 know, we've had to -- well, there's been no
2 choice, and we've been working closely with PEPCO
3 to get those projects done, frankly.

4 So I would just say that the comparison
5 of our efficiency programs in the District to some
6 of the other markets is a bit different because of
7 our context.

8 MR. KULAK: I'd like to introduce the
9 exhibits that have been previously marked as Joint
10 Applicants' Exhibits 65, 69 and 72. These will be
11 Cross Exhibits Numbers 29, 30, 31.

12 CHAIRMAN KANE: They will be so marked.

13 (Joint Applicants Cross Exhibit Numbers
14 29 through 31 were marked for identification.)

15 THE WITNESS: You mentioned 65, 69 --

16 BY MR. KULAK:

17 Q 65, 69 and 72.

18 A So these are new to me. I haven't seen
19 these before. But I think these are actually
20 exactly what I was just referring to. These are
21 examples of Exelon utilities implementing customer
22 energy efficiency and other smart meter-type

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1 programs as a part of their responsibility as
2 dictated by the state commissions, which would
3 be -- should be different from the context here
4 where we have our Sustainable Energy Utility that
5 has these -- largely has these responsibilities.

6 Q And as these announcements by Exelon
7 report, since launching their energy efficiency
8 programs, the utilities have respectively reached
9 significant customer savings milestones of
10 2 billion, 1 billion and 350 million for BGE,
11 ComEd and PECO, right?

12 A Yeah, that seems to be the case. These
13 are -- I mean, just looking at them relatively
14 quickly, obviously, the ComEd, you know, is
15 using -- is a utility-run program using a suite of
16 programs that we're very familiar with here in the
17 District. A number of these were the ones that
18 were place prior to the Sustainable Energy Utility
19 being formed, and some of them are being used by
20 the Sustainable Energy Utility still, although
21 it's sort of a different animal and it takes
22 different approaches.

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1 But some of them, like the reference to
2 PECO and lighting in particular, are, you know,
3 pretty standard energy efficiency approaches.

4 Q And you're familiar enough with these
5 programs to know they did not include any on-bill
6 financing or capitalizing by green banks, right?

7 A I'm not at all familiar with these
8 programs. I would be surprised. I would assume
9 that these are programs where they're spending
10 ratepayer money, you know, at the order of the
11 state commission to achieve efficiency.

12 Q Have you been observing or reading the
13 transcripts of any of this proceeding to date?

14 A Only very little, I'm sorry to say. I
15 would love to. I'm just more -- I've had to
16 change jobs and do different things.

17 Q Are you aware that Mr. Gould --

18 A I haven't had to change jobs; I chose to
19 change jobs.

20 Q Are you aware that Mr. Gould, on behalf
21 of Exelon, has explained that Exelon is committed
22 to working with the SEU to help the SEU achieve

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1 its energy efficiency objectives?

2 A I have not read that or seen it, but I
3 can't imagine that they would -- that you would
4 say otherwise. I mean -- well, it's not even a
5 choice. Again, the SEU is the state's -- well,
6 the District's, you know, legislative and
7 Commission-led program to implement efficiency.
8 And the utility is, therefore, you know, required
9 to work closely with them.

10 Q Mr. Shane, in discovery, you were asked a
11 question regarding the basis for your contentions
12 regarding Exelon's ability to affect the agenda at
13 PJM after the merger, right?

14 A Yes, there was a question about -- that
15 was also provided just a bit earlier, but in
16 general, if I remember --

17 Q We'll take a look at the document.

18 MR. KULAK: If we could have the document
19 that's been previously marked as Joint Applicants'
20 Cross Exhibit Number 75, and we'd like to have
21 that marked as Cross Exhibit Number 32.

22 CHAIRMAN KANE: So marked.

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1 (Joint Applicants Cross Exhibit Number 32
2 was marked for identification.)

3 THE WITNESS: Yes, I'm familiar with
4 that.

5 BY MR. KULAK:

6 Q And this response relies entirely upon
7 the concerns articulated by the Independent Market
8 Monitor, right?

9 A Yes, that's who I was referencing.

10 Q Okay. You didn't do any other
11 independent research, right?

12 A I don't believe so. I mean, I think that
13 this was -- I mean, my concern in this case, and
14 one that comes up in reference to the local
15 renewables and the large-scale regional renewables
16 that we talk about, is the general question of,
17 you know, having new competition for generation
18 within -- under this context that we'll be moving
19 from a -- from PEPCO, a company that really is not
20 so concerned about where generation comes from, to
21 a new utility that is a generator, and arguably
22 would be competing with new efforts to

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1 interconnect generation, particularly ones that
2 are lower -- ideally, lower and lower costs, as
3 we're seeing from solar, from wind, from offshore
4 wind.

5 And so the question here was a very
6 simple -- or my concern here was a very simple,
7 general point, was that there's -- we'll kind of
8 have a new game in town, right, new competition
9 and questions that go up to the PJM -- questions
10 about interconnection would go up to the PJM.

11 Q My question is very simple, Mr. Shane.

12 You did not do -- you're not offering any
13 interpretation of PJM rules in your testimony,
14 right?

15 A No. I --

16 Q That's fine.

17 A I reviewed some of the underlying rules
18 that were referenced here, I mean, just quickly,
19 to make sure that I fully understood what IMM was
20 referencing, if I recall. It's been quite a
21 while. But my point was just about as simple as
22 the one that's made here.

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1 MR. KULAK: Thank you. Mr. Shane.

2 Nothing further.

3 MR. DANIELS: OPC has no questions.

4 MS. FRANCIS: AOBA has no questions.

5 MR. SPECK: DC SUN has no questions.

6 MS. WHITE: D.C. Water has no questions.

7 MS. WEIN: NCLC has no questions.

8 CHAIRMAN KANE: Commissioner Fort?

9 COMMISSIONER FORT: Mr. Shane, have you
10 had a chance to look at the joint exhibit -- Joint
11 Applicants' Exhibit (4A)-2 that has the current
12 list of commitments?

13 THE WITNESS: I have -- if we can pull it
14 up here, it would be helpful. I was given that
15 and looked at it briefly in particular -- I'll
16 make sure I'm looking at the same document.

17 COMMISSIONER FORT: Well, I was going to
18 ask whether or not you had looked at the items on
19 your list of commitments and compared those to the
20 current list of 91 commitments.

21 THE WITNESS: Well, in general, I had
22 been using -- and I don't know where it would be

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1 up here. I had been using a summary that had --
2 Mr. McGowan, I believe, had presented it as part
3 of his testimony in the case -- that went through
4 the costs associated with each of the conditions
5 that we were proposing, and so --

6 COMMISSIONER FORT: Mr. Shane, you've got
7 to look at me or look at the mic.

8 THE WITNESS: I'm sorry. Maybe I'll just
9 say that answer in two parts. Almost none of
10 what, you know, we had requested in terms of
11 conditions for sustainability that supported the
12 Clean and Affordable Energy Act or expansion of
13 renewables were referenced. I don't know if any
14 of them were referenced in the revised terms in
15 (4A)-2.

16 As a matter of fact, I think that 4 -- so
17 this is it here? It didn't take me long to review
18 it because I think, when I got to that line, it
19 was literally a line that just said, you know, we
20 haven't changed anything since last time. And
21 there wasn't very much in the original filing
22 either.

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1 But let me just double-check, make sure
2 I'm thinking of the same document you're referring
3 to. Yeah, it is the same document. I'm sorry I
4 didn't remember the exhibit. But number 23 in
5 that, you know, basically says that they'll
6 maintain and promotes existing energy efficiency
7 and demand response programs; see the application,
8 which I assume referenced the original application
9 at Exhibit 5.

10 So -- and I believe that's the only
11 reference to energy efficiency, renewable demand
12 response, really anything that we had been focused
13 on in reference to sustainability and environment
14 in factor 7, but also in some of the other
15 factors.

16 So I guess the short answer would be --
17 well, and my primary concern in my testimony was
18 that there really were no commitments to do
19 anything in this regard.

20 COMMISSIONER FORT: On page 24 of your
21 testimony on lines 6 through 10, you're talking
22 about -- you're discussing the impact of the

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1 merger on the District's environmental protection
2 and conservation programs. And you raise a
3 question about the Benning Road cleanup, in
4 particular, of the contaminated site. As to the
5 Benning Road site cleanup, since PEPCO is under a
6 consent decree to clean up the site, is there any
7 evidence that you can present to the Commission
8 that would suggest that PEPCO is not currently
9 complying?

10 THE WITNESS: Well, I can't speak, I
11 guess, legally for the District. I couldn't even
12 probably when I was there, because I wasn't a
13 lawyer there, but I believe the consent decree is
14 in place and the parties have been negotiating.

15 My general point -- and again, I wasn't
16 coming at it from as much a legal enforcement
17 perspective as a general perspective -- PEPCO is,
18 you know, a long-standing landholder in the
19 District, and like every utility, not all of those
20 properties are as clean as you'd like them to be.
21 And so Benning Road is an example where we've
22 already -- my understanding is the District has

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1 already moved -- sort of offered to move with
2 PEPCO through to the consent decree phase, and
3 from there.

4 But the general point was there will
5 be -- that project is not done by any stretch;
6 they're just sort of still moving through a
7 consent decree. And it's quite possible that
8 there will be other properties affected by
9 contamination and you would have to then go
10 through the same type of process of working with
11 the utility to make sure that local lands are, you
12 know, cleaned up, if they need to be, or
13 maintained.

14 And the perception -- or my perception or
15 concern there was just that it gets harder when
16 you have more levels of -- well, I'll just say
17 these are big -- these are expensive projects.
18 This isn't, you know, 5,000 bucks for -- to clean
19 up the project. These become potentially
20 multi-million-dollar cleanup projects. And the
21 concern is that if we have to go through
22 additional layers of approval to get -- you know,

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1 to move forward and really clean things up and,
2 hypothetically, to approve multi-million-dollar
3 cleanups, that it gets harder when you don't have
4 as much local control of your -- of the utility
5 partner.

6 COMMISSIONER FORT: Do you have any
7 evidence that would suggest that if the merger was
8 approved, PEPCO would not continue to comply?

9 THE WITNESS: No. I do not.

10 COMMISSIONER FORT: And then my last
11 question goes to -- again, on page 23 of your
12 testimony, on lines 11 through 14, and there
13 you're talking about the effects of the
14 transaction on completion -- on competition in the
15 local retail and wholesale market.

16 And I guess you raise a question that
17 seemed to be -- you know, you say, what is your
18 recommendation on the issue? As a logical matter,
19 if the Commission cannot protect District of
20 Columbia residents and control the system, the
21 merger would have to be denied. Conversely, if
22 the Commission can put strong reliable protections

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1 in place, a merger might go forward without harm
2 to District residents.

3 And this is a follow-on for a question
4 where you're talking about competition in
5 electricity supply and examples of competition
6 being supported and the city's sustainable goals
7 being supported.

8 Do you have anything to suggest that the
9 Commission can't continue to do its job and
10 regulate, or that it would not be able to do it
11 under the merger?

12 THE WITNESS: No. I think that my
13 concern -- so I'd be glad to clarify because I
14 don't want it to be misinterpreted. I'm happy to
15 clarify. I think that my assumption is the
16 Commission maintains full authority to regulate
17 PEPCO and then, going forward, to regulate a
18 merged company if it happened.

19 My concern here was that was -- was, I
20 guess, a more general one regarding competition
21 and the fact that, as I mentioned a few moments
22 ago, if we're entering into a situation where

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1 there will be a large affiliated unregulated, you
2 know, arm of Exelon that would not be under the
3 Commission's control, that could be affecting
4 questions of competition for renewables in
5 particular, is what I was concerned about.

6 That -- the concern that I've had, or
7 that we had, in looking at either large-scale
8 renewables or at small-scale renewables was that
9 that change from a utility that is essentially
10 disinterested in generation to one that is more
11 interested in competing would be out of the
12 control of the Commission.

13 I hope -- I don't know in that makes more
14 sense, but --

15 COMMISSIONER FORT: My real question:
16 Did you have any evidence to suggest otherwise?
17 And I think you've answered that.

18 THE WITNESS: No. Yeah.

19 COMMISSIONER FORT: Thank you.

20 CHAIRMAN KANE: Thank you. Good to see
21 you.

22 THE WITNESS: Yes. Good to see you.

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1 CHAIRMAN KANE: Miss you in
2 D.C. government.

3 THE WITNESS: Thank you.

4 CHAIRMAN KANE: I wanted to ask you on --
5 two questions. Number one, you refer, and you
6 have actually included as an exhibit in your
7 testimony, the D.C. -- Sustainable D.C. plan. And
8 you have also referred to the District's RPS law.
9 Could you describe, what is the status of the
10 Sustainable D.C. plan as opposed to the RPS law?

11 THE WITNESS: Well, the plan was issued
12 under Mayor Gray, and it -- my understanding, even
13 though I left a couple of months ago now, is that
14 implementation is continuing under the new mayor,
15 Bowser. But that was a mayorally issued plan. It
16 included a whole range. It was heavy on actions
17 that the District government itself could take
18 without legislative authority. But it also did
19 raise a number of issues about future needs for
20 legislation, more stringent controls to achieve
21 the goals of -- particularly let's say, for energy
22 efficiency or renewable energy.

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1 So the plan is a plan that was issued by
2 the administration. And it may be modified
3 somewhat, but my understanding, it is continuing
4 under the new administration.

5 The law is the law. And so the RPS --
6 and I guess I would point more broadly to the many
7 programs of the Clean and Affordable Energy Act,
8 which, you know, reference the Sustainable Energy
9 Utility and programs like that for efficiency, but
10 in particular for renewables and RPS, those are
11 programs that are fundamental to the District, and
12 the District was an early leader in developing a
13 number of them.

14 So -- maybe I'll stop there. I think
15 that the idea behind the plan is that there would
16 need to be additional changes to the law.

17 CHAIRMAN KANE: Plan has goals?

18 THE WITNESS: Plan has goals and has
19 specific actions, then, a whole bunch of them,
20 that are within the goal areas.

21 And I'll just mention -- I think one of
22 the areas that is important and why the plan, I

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1 think, was well received here but also -- and is
2 similar to plans being done in other cities is
3 that it was based on the concept of a broader
4 sustainability, that you can't deal just with
5 environment or energy; you have to be dealing with
6 the social and economic impacts at the same time.

7 And so it covers a range of issues, but
8 the idea being -- and so some of the issues I
9 talked about in my testimony here, that -- these
10 issues of utility control and expansion of
11 renewables and local microgrids and generation
12 probably affect the economy as much or more than
13 they affect the environment, really. They're
14 probably as important or more important for the
15 long-term reliability of the District's power.

16 They will help reduce greenhouse gas
17 emissions. They may help clean up air quality.
18 But they're also going to be creating job
19 opportunities, business opportunities, reliable
20 power, and that this Sustainable D.C. plan very
21 much is looking for the multiple benefits from all
22 these different actions.

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1 CHAIRMAN KANE: I want to turn your
2 attention to page 23 of your testimony. If you
3 can find that, and starting on line 17. Do you
4 see that?

5 THE WITNESS: Yes.

6 CHAIRMAN KANE: You are asked, Assuming
7 that the merger is approved, do you recommend the
8 Commission set any conditions or limits?

9 And then you reference the following
10 conditions from DCG Exhibit (A2) which has been
11 put in the record. I believe that that is the
12 list of -- this is from the, actually, testimony
13 of Witness Smith, and it is a list of -- I forget
14 the number -- but a number of them; it goes on for
15 several pages -- 40 -- 40 recommendations and
16 conditions from the D.C. government.

17 THE WITNESS: Yeah.

18 CHAIRMAN KANE: Maybe Mr. Caldwell will
19 help you find that, because I want to turn your
20 attention to a couple of them, the specific ones
21 that you referenced, and ask you questions about
22 those.

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1 THE WITNESS: Okay.

2 CHAIRMAN KANE: It's DCG (A2),
3 Mr. Caldwell, and I'm looking at, first of all --
4 looking at page 10, 10 of 15. Do you see that?

5 THE WITNESS: Yeah.

6 CHAIRMAN KANE: And particularly you
7 recommend in your testimony conditions 36, 38, 13
8 to 16. I want to ask about 15, which is within
9 the 13 to 16, number 15 at the top of page 10,
10 starting line 6, funding for PSC DPR staff. And
11 you're asking that the joint applicants -- this
12 condition is -- recommend condition, or proposed
13 condition -- provide 500,000 annual funding
14 without recourse to recovery in retail electric
15 rates for enhanced Commission staff to manage the
16 dispute resolution complaint procedure established
17 in the Commission's District of Columbia's small
18 generation interconnection rules, and it will
19 support legal and engineering capacity on the part
20 of the Commission that will ensure timely and
21 effective resolution of disputes over
22 interconnection.

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1 And then, as a second priority, may be
2 used to study and promote the use of such
3 resources.

4 Have you reviewed the annual
5 interconnection reports that this Commission
6 requires PEPCO to file each year, I believe on
7 March 30th, about the number of interconnections
8 that were processed, how much they -- percentage
9 of times they met our rules, the number that were
10 sent back, et cetera, as being incomplete?

11 THE WITNESS: I only have generally
12 referenced them because we looked -- when I was
13 with the government, we would look to those to
14 find out how many systems are coming in, how many
15 are being implemented, and ideally to watch -- and
16 it has that trend increase, you know, the numbers
17 increase over time.

18 But in terms of a details of those
19 studies and the reports, no, I haven't.

20 CHAIRMAN KANE: Okay. So would you be
21 able to answer my question as to what's your
22 awareness of -- is there a significant problem?

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1 Are there a significant number of disputes to be
2 resolved? And is there -- you know, what's the
3 nature of the recommendation for legal and
4 engineering staff?

5 THE WITNESS: I really couldn't speak to
6 maybe the breakdown within that request to exactly
7 how -- let's say the Commission would choose to
8 allocate, whether -- to be perfectly honest, my
9 goal in having additional resources and staff
10 there is to see everything move faster and to see
11 the timing process for approval of systems sped up
12 to the greatest extent possible.

13 I was -- just as an anecdote, I was at
14 the State Department yesterday in an elevator with
15 an official from the State Department. And I
16 said, I used to work for the District DOE, and she
17 said, maybe you could help me get my rooftop solar
18 system permitted.

19 CHAIRMAN KANE: Permitted?

20 THE WITNESS: Yeah, permitted or through
21 the process. And I think -- and I talked to her
22 some more -- it's moving along. And PEPCO and the

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1 Department of the Environment are doing a good
2 job. There's more and more systems being added.

3 But I think her comment, and talking to
4 others -- I would love to see more than \$500,000 a
5 year out there just to help people be able to walk
6 in the door and move that process as expeditiously
7 as possible, whether they're doing a rooftop
8 project or a commercial-scale project.

9 CHAIRMAN KANE: But your recommendation
10 is -- this is before the PSC, and you recognize
11 that the PSC -- are you aware that the PSC does
12 not do the permitting?

13 THE WITNESS: Yes. Yeah.

14 CHAIRMAN KANE: We will not approve
15 the --

16 THE WITNESS: Yeah, I'm sorry --

17 CHAIRMAN KANE: -- interconnection
18 applications.

19 THE WITNESS: I'm sorry, Your Honor.
20 I'm, I guess, thinking about the overall process
21 of policies, the permitting, the oversight,
22 everything related to solar -- expansion of local

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1 solar installations in the District.

2 CHAIRMAN KANE: So you're not aware that
3 the last report -- we just got one March 30th,
4 which we haven't reviewed yet, but the 2013 report
5 showed that PEPCO met the time frames 97 percent
6 of the time?

7 THE WITNESS: That would be great. I
8 mean, PEPCO has, you know, made significant
9 improvements, and I'd say in general has been a
10 very -- a strong partner.

11 CHAIRMAN KANE: Clarify that. And then
12 the other condition that I want to ask you about
13 was condition 36 that you're recommending, which
14 is the sustainable development fund.

15 THE WITNESS: Yes.

16 CHAIRMAN KANE: And that's on page 14 of
17 15, and it starts at line 28. Do you see that,
18 number 36?

19 THE WITNESS: Yes.

20 CHAIRMAN KANE: And you're suggesting --
21 or the District government is suggesting, and
22 you're agreeing, Exelon should invest \$95 million

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1 over a five-year period in a sustainable
2 development fund not recoverable in rates and
3 promote -- the purpose, to promote the sustainable
4 development of the District of Columbia, its
5 residents and the businesses and organizations
6 within it, include the promotion of renewable
7 energy, energy efficiency, distributed energy
8 resources, relate job training, the preservation
9 and enhancement of environmental quality.

10 How did you come up with the figure of
11 95 million? What was that based on?

12 THE WITNESS: Well, I won't claim to know
13 all of the ins and outs because the numbers --

14 CHAIRMAN KANE: Sure.

15 THE WITNESS: -- did change with the
16 input from a variety of parties. This number
17 approximates \$20 million a year, just under, which
18 is sort of -- which essentially is matching the
19 District's current investment through the
20 Sustainable Energy Utility in a number of these
21 areas.

22 And so part of the concept behind this

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1 was that we were looking essentially at a
2 matching -- similar matching commitment, that
3 Exelon, you know, as a new utility partner,
4 might -- and this is only for five years, you
5 know -- reflect the level of investment that the
6 District itself is making, really, in perpetuity.
7 The District is putting 20 million in every year,
8 and it's not stopping after five years. And so --
9 COMMISSIONER FORT: I'm sorry. That's --
10 District ratepayers.
11 THE WITNESS: District ratepayers.
12 COMMISSIONER FORT: That's not the
13 District -- that's District ratepayers.
14 THE WITNESS: No, that's exactly right.
15 But -- yes, I'm sorry if I wasn't clear. This is
16 ratepayer money, but that the council of the
17 District of Columbia and this Commission have
18 agreed should be spent for this purpose and for
19 this public good, to benefit efficiency, a large
20 chunk of it, 30 percent, benefiting low-income.
21 And so that's sort of where the ballpark
22 and the rough number of \$20 million a year comes

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1 from. From my experience and my experience with
2 the discussions, I don't know -- I can't say
3 definitively whether that's why it says 95 million
4 there.

5 CHAIRMAN KANE: So your answer is that it
6 was essentially to match the ratepayer money that
7 was legislated by the council, not by the
8 Commission --

9 THE WITNESS: Well, from a --

10 CHAIRMAN KANE: -- legislated by the
11 council to go to the Sustainable Energy Utility,
12 which is about \$20 million, if you would accept
13 subject to check, from both electric and natural
14 gas customers, although 80 percent of it
15 approximately is from electricity customers.

16 THE WITNESS: Yeah, and again, I'll
17 emphasize that that's not exactly where the number
18 came from, but when we were providing input and my
19 input was -- well, when we were looking at the
20 question of whether this merger provides, like, an
21 environmental and natural resource benefit to the
22 District -- and I forget the exact wordings of the

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1 factor 7 and other elements -- you know, did they
2 meet the burden? Are they putting in -- I mean,
3 making a commitment that seems a benefit?

4 The idea that that benefit would be equal
5 to the District's commitment of its own ratepayer
6 funds seemed, from our input, like a reasonable
7 one.

8 I'll just add quickly that the number --
9 if I had my own preference, the number could
10 obviously be very much higher, because this really
11 doesn't begin to capture the total investment the
12 District of Columbia is making between ratepayer
13 funds and general budget funds each year.

14 If you look at the amount that we're
15 investing in efficiency -- and the witness Mark
16 Chambers could refer to this -- but there's a lot
17 of money of the District taxpayer money being
18 spent, millions and millions of dollars a year,
19 being spent on buildings, on renewable energy
20 installations, on a whole range of sustainable
21 development measures.

22 Just as one example, when the council

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1 authorized the PACE legislation, which would
2 involve access to -- well, I always forget the
3 best way to characterize it, but sort of
4 taxpayer-backed energy efficiency funding, that
5 was authorized up to \$250 million in the initial
6 authorization.

7 So the scale and the need for sustainable
8 development investment is very high, and the
9 District is making very significant investments
10 every year.

11 CHAIRMAN KANE: And let me -- the
12 condition after that, which you did not
13 reference -- you recommended condition 36, 38 for
14 green R&D, and market competition conditions 13 to
15 16. Now, in the District government's list there
16 is also a number 37, which is Clean and Affordable
17 Energy Act implementation funding, which is that
18 Exelon shall provide, within 90 days after
19 notification to the FERC of the merger,
20 \$70 million in funding for the District's effort
21 to advance the purposes and accelerate the
22 implementation of the Clean and Affordable Energy

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1 Act.

2 And that would be specifically for
3 financing weatherization programs for low-income
4 District residents, making significant progress in
5 the CA's goal of District consumers' money on
6 their utility bills. Is there --

7 THE WITNESS: Your Honor, I'd say
8 that's --

9 CHAIRMAN KANE: -- a particular reason
10 you didn't reference that?

11 THE WITNESS: To be honest, I should have
12 brought a reference to that earlier. I mean,
13 that's essentially an oversight on my part.

14 That condition is very much in line with
15 each of the others. And in some of the other
16 testimony from the District, I believe, there's
17 testimony about a large percentage of that funding
18 going for low-income support in particular.

19 And -- so, yeah, that -- that condition is also
20 very much supporting the goals. And I can't speak
21 exactly to why 36 and 37 were broken out other
22 than I believe 37 was heavily focused on

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1 low-income.

2 CHAIRMAN KANE: On low-income
3 weatherization specifically.

4 But this condition -- maybe I'll ask
5 Mr. Chambers also. This condition does not
6 specifically say that it shall not be recoverable.
7 Condition 36, Funds shall not be recoverable in
8 rates. And that's the one you recommended.
9 Condition 37 just says, Exelon shall provide, and
10 it's silent on recovering that cost from
11 ratepayers.

12 THE WITNESS: I don't actually know why
13 the distinction is made there --

14 CHAIRMAN KANE: Okay. Thank you.

15 THE WITNESS: -- and if it's accurate.

16 CHAIRMAN KANE: And then the 38, which
17 you also referenced, the green power R&D to an
18 institution or institutions of higher learning as
19 selected by DDOE for research.

20 So if you might summarize your testimony,
21 would it be correct, or if I were to summarize it,
22 that your main concern is that the joint

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1 applicants didn't come forward and suggest any of
2 these kinds of investments or donations?

3 THE WITNESS: I believe -- yeah, I think
4 that's accurate. And I would just add that one of
5 the reasons it was surprising, and then we put it
6 in -- you know, it's emphasized in our response or
7 our filings -- was that, you know, the District
8 has been on record for a number of years. These
9 laws have been in place for a number of years.
10 The Sustainable D.C. plan was out for quite a
11 while. And to see no real reflection, other than
12 that they'll do what the Commission tells them to
13 do, seemed to be a pretty significant oversight
14 and sort of felt like we were seeing a merger
15 proposal that you could have filed 15 years ago,
16 and it didn't really reflect the fact that the
17 market is significantly in transition and we need
18 a partner who is going to really be ready to go
19 there with the District as things change, and
20 change rapidly.

21 CHAIRMAN KANE: Thank you.

22 Commissioner Phillips?

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1 COMMISSIONER PHILLIPS: Good afternoon,
2 Mr. Shane.

3 THE WITNESS: Good afternoon.

4 COMMISSIONER PHILLIPS: I want to talk a
5 little bit about the Sustainable D.C. plan, and
6 I'll note that it's getting late in the day and we
7 have -- still have miles to go before we wrap
8 today, so I'll try to be quick.

9 To your knowledge, does the Sustainable
10 D.C. plan include any targets or goals regarding
11 jobs or training for D.C. residents?

12 THE WITNESS: Yes. Let me just pull it.

13 COMMISSIONER PHILLIPS: I think I can
14 help you a little bit. Directing your attention
15 to page 25.

16 THE WITNESS: Okay. As I had mentioned
17 earlier, the plan was drafted very much to address
18 jobs. There's actually four prongs. There's jobs
19 in economy, health and wellness, diversity and
20 equity, and then climate, environment. And so I
21 would say -- and then there's different levels.
22 There's goals and then there's actions.

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1 And the specific ones related to jobs has
2 to do with growth of District-based District jobs
3 and District-based businesses in the clean sector,
4 clean tech sector, or clean economy as you might
5 say in general, or the green economy.

6 And so there were particular numbers that
7 I could try to find here quickly, but just talking
8 off the top of my head, you know, on the order of
9 over the span of a-20 year plan, that you see a
10 five times growth in the number of green sector
11 jobs.

12 We already actually have, you know, in
13 District, a pretty robust green job sector, but
14 the idea was to see that expanded significantly.

15 COMMISSIONER PHILLIPS: I will stop right
16 there.

17 THE WITNESS: Okay.

18 COMMISSIONER PHILLIPS: Thank you.

19 CHAIRMAN KANE: Okay. Thank you.

20 Redirect?

21 MR. COYLE: No redirect, Your Honor.

22 CHAIRMAN KANE: Exhibits? Witness?

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1 MR. COYLE: Your Honor, at this time, the
2 District government would move the admission of
3 Exhibit DCG (E) and DCG (E)-1 through 3.

4 CHAIRMAN KANE: They are moved into the
5 record.

6 (DCG Exhibit Numbers (E) and (E)-1
7 through (E)-3 were received into evidence.)

8 MR. KULAK: We would move in Cross --
9 Joint Applicants' Cross Exhibits Numbers 27
10 through 32.

11 CHAIRMAN KANE: Thank you.

12 (Joint Applicants Cross Exhibit Numbers
13 27 through 32 were received into evidence.)

14 CHAIRMAN KANE: Mr. Shane, you're
15 excused.

16 THE WITNESS: Thank you, Your Honor.

17 (Witness excused.)

18 CHAIRMAN KANE: We have one more witness
19 for this evening, Mr. Chambers.

20 MR. COYLE: That's correct, Your Honor.

21 CHAIRMAN KANE: We're going to take a
22 ten-minute break. We're going to come back and

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1 then hear from Mr. Chambers. He's down for 30
2 minutes.

3 (Whereupon, a short recess was taken.)

4 CHAIRMAN KANE: We're back on the record
5 at 5:32. D.C. government, call your next witness.

6 MR. LORENZO: Your Honor, if I may?

7 CHAIRMAN KANE: Yes, Mr. Lorenzo?

8 MR. LORENZO: I'm sorry. If at all
9 possible, we would like to continue with
10 Mr. McGowan tonight and get as far as we can with
11 him so he can get off the stand. We've
12 interrupted his testimony, and there are a number
13 of witnesses to go tomorrow, like Mr. Mara has to
14 be up tomorrow. And because of the late night,
15 I'm not sure we're ready to cross him tonight;
16 we'll be ready to cross him first thing in the
17 morning.

18 But if we can get far into -- you know,
19 further into Mr. McGowan's testimony, it would
20 be -- take us a long way to getting to the
21 goalpost.

22 CHAIRMAN KANE: We probably have another

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1 two hours on Mr. McGowan?

2 MR. LORENZO: We don't have anything.

3 CHAIRMAN KANE: I'm talking about --

4 MR. LORENZO: I understand, Your Honor.

5 I would think so. So if we can try to get as much
6 of that done tonight as possible.

7 MR. DANIELS: Your Honor, if I may.

8 CHAIRMAN KANE: Mr. Daniels, yes.

9 MR. DANIELS: Yes. OPC asked Mr. Mara to
10 be here based upon the proposal that was sent by
11 the joint applicants late last week that had him
12 on today.

13 CHAIRMAN KANE: Yes.

14 MR. DANIELS: He is here today, and I
15 understand they have about 30 or 45 minutes for
16 him. I'm not sure how long the Commission has.
17 If it's at all possible to do Mr. Mara tonight, we
18 could have one less to do tomorrow.

19 CHAIRMAN KANE: Yes.

20 MR. DANIELS: If it's possible.

21 CHAIRMAN KANE: That might make more
22 sense then trying to get another hour in of

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1 Mr. McGowan and then stopping again to accommodate
2 Mr. Mara in the morning.

3 MR. DANIELS: I would agree.

4 CHAIRMAN KANE: The air goes off in this
5 building in about half an hour. Staying any time
6 past about 7:00 or 7:30 -- well, 6:00, I'd say.
7 6:00. It goes off at 6:00. It's going to get
8 very, very stuffy in here by about 6:30. I'm not
9 sure we really want -- we have not made
10 arrangements ahead of time. If we do need to stay
11 late tomorrow night, we can make arrangements
12 ahead of time with the building engineers, pay the
13 cost of keeping the air on late.

14 MR. DANIELS: Right.

15 CHAIRMAN KANE: Let me hear from the
16 other parties. Mr. Mara is OPC's witness, so --

17 MR. DANIELS: Yes. He's here and he does
18 have a commitment in Atlanta tomorrow afternoon.
19 That's why we wanted to get him out today.

20 MS. FRANCIS: Your Honor, I have no
21 issues with whatever schedule the parties want.
22 The only thing is I would like to know tonight --

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1 CHAIRMAN KANE: Yes.

2 MS. FRANCIS: -- so I can tell

3 Mr. Oliver.

4 CHAIRMAN KANE: Well, we will definitely
5 get to Mr. Oliver tomorrow. No question.

6 Tomorrow is our last day -- last scheduled day, I
7 should say.

8 All right. I would think I'd prefer that
9 we do Mr. Chambers now, we do Mr. Mara, and then
10 we'll go back to Mr. McGowan first thing in the
11 morning and go through him without any
12 interruption. Okay?

13 MR. LORENZO: Thank you, Your Honor.

14 CHAIRMAN KANE: Okay. Your witness.

15 MR. COYLE: Thank you, Your Honor. The
16 District calls Mark Chambers to the stand.

17 WHEREUPON,

18 MARK CHAMBERS,
19 called as a witness, and after having been first
20 sworn by the secretary, was examined and testified
21 as follows:

22 DIRECT EXAMINATION

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1 BY MR. COYLE:

2 Q Mr. Chambers, would you state and spell
3 your name for the record, please.

4 A Good afternoon. My name is Mark
5 Chambers. M-A-R-K, C-H-A-M-B-E-R-S.

6 Q Mr. Chambers, do you have before you
7 what's been marked for identification as
8 Exhibit DCG (G)?

9 A I do.

10 Q And is that your prefiled direct
11 testimony?

12 A It is.

13 Q Was that testimony prepared by you or
14 under your direct supervision?

15 A It was.

16 Q And if I were to ask you the questions
17 set forth in that testimony here today under oath,
18 would your answers be the same?

19 A Yes.

20 Q Thank you.

21 MR. COYLE: I tender the witness for
22 cross.

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1 CROSS-EXAMINATION

2 BY MR. KULAK:

3 Q Good afternoon, Mr. Chambers.

4 A Good afternoon.

5 Q My name is Ken Kulak. I'm counsel for
6 the joint applicants.

7 Mr. Chambers, in your direct testimony on
8 page 8, you state that DGS, quote, does not know
9 what type of partner the joint applicants will be,
10 and you express your concern that the joint
11 applicants could undermine PEPCO's efforts in
12 improving the local distribution grid and reducing
13 demand and consumption, as well as providing
14 timely access to data, right?

15 A Correct.

16 Q And on page 11 of your testimony, you
17 also explain that you are, quote, specifically
18 concerned that the applicants might hinder or
19 prevent DGS' efforts to increase distributed
20 generation in the District, right?

21 A Correct.

22 Q I note in your direct testimony you did

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1 not mention or address any of the supplemental
2 direct testimony of Christopher Gould, Exelon's
3 chief sustainability officer, and its senior vice
4 president for strategy who discussed Exelon's
5 smart grid, renewables and -- renewables programs
6 and adjustment in new technology. Did you read
7 his testimony?

8 A I believe I did, yes.

9 Q Did you do any other work to learn about
10 Exelon's actual record of performance on the
11 issues you addressed in your testimony in the
12 other jurisdictions where Exelon utilities
13 operate?

14 A I did conduct some review, yes.

15 Q Okay. Let's take a look at one of those
16 issues that you express some concern about,
17 interconnection of distributed generation. You're
18 particularly concerned about delays in
19 interconnection, right?

20 A Correct.

21 Q And you're aware that both Exelon and
22 PEPCO own utilities in Maryland, and they're

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1 subject to the same Maryland regulations for
2 interconnection of distributed generation, right?

3 A Would you repeated the question?

4 Q Sure. You're aware that both Exelon and
5 PEPCO own electric utilities in Maryland, right?

6 A Okay.

7 Q And that being the case, they're subject
8 to the same rules for interconnection of small
9 generators, right?

10 CHAIRMAN KANE: Excuse me, Mr. Kulak. I
11 know we're anxious to get through this --

12 MR. KULAK: I will slow down.

13 CHAIRMAN KANE: -- but you need to slow
14 down.

15 MR. KULAK: I apologize. We usually talk
16 much slower in Philadelphia, being in the
17 District. I sped up.

18 CHAIRMAN KANE: It's not New York.

19 BY MR. KULAK:

20 Q So my question is, with both Exelon
21 owning a utility, Baltimore Gas and Electric, in
22 Maryland, and PEPCO operating PEPCO in Maryland,

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1 my question was, your understanding is they're
2 subject to the same Maryland regulations for the
3 interconnection of distributed generation, right?

4 A In Maryland in terms of interconnection,
5 yes.

6 MR. KULAK: I'd like to introduce Joint
7 Applicants' Cross Exhibits that have been
8 marked -- previously marked as 76 and 77. And
9 this will be our Cross Exhibit Number 33 -- excuse
10 me, 34, Your Honor.

11 CHAIRMAN KANE: So marked.

12 (Joint Applicants Cross Exhibit Number 33
13 and 34 were marked for identification.)

14 BY MR. KULAK:

15 Q Mr. Chambers, if you could just take a
16 moment and look at --

17 MR. KULAK: I'm sorry. We'll have -- I
18 apologize, Your Honor. It's two exhibits, so it
19 should be Numbers 33 and 34.

20 CHAIRMAN KANE: 33 and 34.

21 BY MR. KULAK:

22 Q If you could take a look at Number 33

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1 which was previously marked as Number 76 first.

2 A Okay.

3 Q Mr. Chambers, was this included as part
4 of your research on performance of the utilities
5 in other jurisdictions?

6 A I'm uncertain. I have seen some
7 interconnection stats, but I'm not certain that
8 this is the same.

9 Q Okay. Well, as I read this document,
10 Mr. Chambers, this shows that BGE processed 1,436
11 requests for interconnection in 2013, right?

12 A I'm not seeing that number. Oh, all
13 right. Total. Got it. Yes.

14 Q And it approved 1,420 of those, right?

15 A Yes.

16 Q And of the 13 that were initially denied,
17 11 of those were then subsequently approved,
18 right?

19 A Correct.

20 Q And out of all those 1,436 applications,
21 only two were not processed within the time frame
22 of the Commission's regulations, right?

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1 A It appears so.

2 Q In fact, the report shows that, in 2013,
3 BGE connected over 1,400 net metered solar systems
4 with a nameplate capacity of over 13 megawatts,
5 right?

6 A Yes.

7 Q Let's take a look at PEPCO Maryland's
8 equivalent report. This is the next document, our
9 Cross Exhibit Number 34, previously marked as
10 Number 77. Do you have that document,
11 Mr. Chambers?

12 A I do.

13 Q So PEPCO Maryland has also done very
14 well, but do not have as many interconnection
15 applications as BGE in the same time period,
16 right?

17 A Uh-huh. Yes.

18 Q And in fact, more of PEPCO's
19 interconnection applications were not processed
20 inside the Commission's regulation time periods,
21 right?

22 A Correct.

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1 Q About 48 of a total of 927, right?

2 A Yes.

3 Q And in fact, PEPCO approved only 698 out
4 of the 927 applications it received, right?

5 A Yes.

6 Q Mr. Chambers, do you know how much net
7 metered generation BGE has on its system?

8 A I do not.

9 Q Did you hear the testimony of Mr. Gould
10 when he was examined by Mr. Coyle in the
11 proceeding?

12 A I've heard portions of it and seen some
13 transcripts, but did not directly watch the
14 testimony.

15 Q Subject to check, does a little over
16 50 megawatts sound correct?

17 A That seems feasible.

18 Q And for PECO, about 53 megawatts?

19 A Feasible as well.

20 Q You haven't provided any evidence to this
21 Commission of delays or problems in
22 interconnection in Exelon's utility services with

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1 respect to that hundred megawatts of generation,
2 have you?

3 A I have not commented on Exelon's
4 performance in terms of interconnection.

5 Q And you don't know of any problems, do
6 you, Mr. Chambers?

7 A I don't know whether there are or are not
8 problems other than the information provided.

9 Q Those two that were late out of the 1436?

10 A Yes.

11 Q Mr. Shane (sic), on pages 6 and 7 of your
12 testimony, you discuss DGS' energy retrofit
13 program, its reliance on smart grid and DGS'
14 efforts to reduce demand and increase efficiency,
15 right?

16 A Would you repeat the page number again?

17 Q Sure. Pages 6 and 7 of your testimony.

18 A Rephrase the question, please.

19 Q Sure. I'll ask the same question, if
20 that's okay.

21 A Repeat, rather.

22 Q Mr. Chambers, on pages 6 and 7 of your

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1 tomorrow, you discuss DGS' energy retrofit
2 program, its reliance on smart grid, and DGS'
3 efforts to reduce demand and increase efficiency,
4 right?

5 A Correct.

6 Q Do you know of the status of smart grid
7 deployment in the territories of the Exelon
8 utilities?

9 A Can you define status?

10 Q Do you know whether it's complete?

11 A I do not know if it's complete.

12 Q I'd like to direct your attention to
13 Mr. Gould's direct testimony, page 15.

14 A Okay. I'm there.

15 Q If I could direct your attention to that
16 last paragraph on page 15.

17 A Yes.

18 Q That explains that both PECO and BGE were
19 completing their smart meter deployments to all
20 customers by the end of 2014, right?

21 A They planned to, yes.

22 Q And that ComEd was accelerating its

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1 deployment, right?

2 A Correct.

3 MR. KULAK: I'd like to introduce Joint
4 Applicants' Exhibit previously marked as
5 Number 66, and this will be our Cross Exhibit
6 Number 35.

7 CHAIRMAN KANE: So marked.

8 (Joint Applicants Cross Exhibit Number 35
9 was marked for identification.)

10 BY MR. KULAK:

11 Q Take a moment to read the exhibit,
12 please.

13 A I've skimmed it. I think I have a
14 general idea of the content.

15 Q Before today, in preparing your testimony
16 and in doing your research, were you aware of the
17 leadership of Illinois and ComEd with respect to
18 smart grid modernization in the state?

19 A Well --

20 MR. COYLE: Object to the question, Your
21 Honor. Is this exhibit being offered for the
22 truth of the matter asserted?

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1 MR. KULAK: He said he did some research.
2 I'm curious as to whether he was aware of what has
3 been accomplished in Illinois with respect to
4 modernization of the electric grid.

5 MR. COYLE: The exhibit is a press
6 release. It's pure hearsay in the circumstances.
7 I don't think it reliably indicates whether the
8 witness is aware of anything or not.

9 CHAIRMAN KANE: The witness can answer
10 the question as to whether he's aware of the
11 information.

12 THE WITNESS: I'm definitely aware of
13 several grid modernization efforts taking place
14 throughout the country.

15 BY MR. KULAK:

16 Q And did that include Illinois?

17 A Illinois among them, yes.

18 Q Did you have any understanding of what
19 ComEd has done with respect to modernization of
20 the grid in its service territory?

21 A This particular press release references
22 developments that I was not aware of. However, if

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1 the dating is accurate, then that would be after
2 my testimony was prepared.

3 Q It refers to a law that was passed in
4 2011, doesn't it?

5 A Right, but it is documenting the account
6 of this in December.

7 Q Well, your testimony was filed in
8 November, right, Mr. Chambers?

9 A Correct.

10 Q You don't suppose they modernized the
11 grid in a month, do you, Mr. Chambers?

12 A I suppose that they announced it in
13 December.

14 Q But they had certainly been progressing
15 with respect to modernization before that.

16 A It would appear so.

17 Q Mr. Chambers, one of the particular
18 commitments you ask Exelon to make as part of its
19 merger is to continue PEPCO's policy of providing
20 Green Button Connect interval data to all
21 customers, right?

22 A Correct.

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1 Q Are you aware that Exelon has already
2 committed to maintaining PEPCO's existing energy
3 efficiency demand response programs?

4 A I believe that I have seen that reference
5 that they have a desire to -- to continue.

6 Q Well, it's more than a desire, isn't it,
7 Mr. Chambers? Didn't they commit to that as part
8 of the application?

9 A I'm uncertain about the actual wording of
10 it. I believe -- my understanding is that there
11 is a commitment to continue the Green Button. I
12 just do not know to what extent.

13 Q Do you know of any qualifications on that
14 commitment, Mr. Chambers?

15 A So the Green Button Connect deals with
16 data and data transfer, and so the rollout of the
17 Green Button Connect has within it inherent
18 potential for a lot of value considerations. So,
19 yes, the access to the data, there may be a
20 commitment to that, but the manner in which that
21 access is provided still has potential to be, I
22 guess, evaluated or to be determined as being

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1 different, so...

2 Q Has the companies -- have the companies
3 said anything about changing the manner in which
4 data is accessed?

5 A Not that I'm aware of.

6 Q Mr. Chambers, you also asked for an
7 additional commitment regarding provision of
8 5-minute interval data to customers that request
9 it instead of 15-minute interval data which PEPCO
10 currently provides, right?

11 A Correct.

12 Q Do you have any understanding what
13 increasing the amount of interval data by
14 300 percent could require in terms of an
15 investment in new software and storage capacity?

16 A Storage capacity for the data?

17 Q Yes.

18 A I do not have that number, no.

19 Q Have you done any studies to identify how
20 much DGS would save if it would have access to
21 real-time or 5-minute interval data?

22 A We are doing that analysis now, but the

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1 early understanding of being able to -- this
2 access would allow for us to participate in the
3 demand response market which is effectively to be
4 able to use real-time data to be able to shape the
5 load curves of our building and adjust how much
6 demand we are pulling from the grid in relative
7 real-time.

8 The early analysis shows that being able
9 to participate in that demand response market, in
10 particular over the summer kind of cooling months,
11 could definitely have somewhere in the 5 to
12 10 percent immediate return on investment for our
13 portfolio.

14 Q Has the District been entirely unable to
15 participate in the demand response market to date?

16 A So until the -- so the District has not
17 participated in the demand response market to
18 date. Up until the recent release of the actual
19 Green Button Connect, the District was receiving
20 15-minute interval data next day, which is --
21 which does not allow for us to fully participate
22 in the market.

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1 Q So you're now able to participate more
2 effectively in the market, just not as far as you
3 hope to in the future?

4 A Correct.

5 Q Mr. Chambers, you've also proposed that
6 this Commission require Exelon to build
7 50 megawatts of solar in the District and
8 200 megawatts of wind and PJM that would be
9 delivered to the District, right?

10 A Correct.

11 Q You didn't perform a study to identify
12 open land or rooftop space within the District for
13 that additional 50 megawatts of solar facilities
14 you proposed, did you?

15 A Yes.

16 Q Where is the study? Is it part of your
17 testimony?

18 A It is not. The District has performed an
19 analysis of our rooftop portfolio -- so maybe make
20 a correction. It was not performed for the
21 purposes of this proceeding, but we have a clear
22 understanding of our rooftop assets and their

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1 potential for generation.

2 Q Have you determined what 50 megawatts of
3 solar on the District's facilities would cost?

4 A Would cost whom?

5 Q Whoever built it.

6 A The District would be entering into any
7 type of solar agreement likely as a power purchase
8 agreement. So the direct costs would not be borne
9 by the taxpayer. So we have not done the analysis
10 that would show what we would spend on it with
11 taxpayer dollars.

12 Q Well, you propose that Exelon would build
13 it here. Are you proposing that Exelon would
14 enter into power purchase agreements with the
15 District with respect to that 50 megawatts?

16 A Yes. I would not propose that -- I don't
17 think that my proposal is suggesting that the
18 joint applicants give away free electrons. I
19 mean, I think that there's -- power purchase
20 agreements are a standard course of action with --
21 with a progressive kind of utility cooperation
22 with the city.

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1 Q And how would the price for that power
2 purchase agreements be determined?

3 A I'm not certain I understand the
4 question. I mean, the market demand would likely
5 dictate how the pricing would occur.

6 Q I just want to be very clear because this
7 is a commitment you've asked for. So then would
8 the District conduct a competitive RFP which
9 Exelon would then participate in for 50 megawatts
10 and then enter into a power purchase agreement
11 with the District at whatever the clearing price
12 was for that RFP?

13 A So I would be reluctant to commit to how
14 the procurement would actually take place, but I
15 think that the intent behind the request is that
16 the joint applicants commit to that level of
17 additionality on District assets. And the manner
18 in which the power was procured would be
19 determined in course with that deployment.

20 Q And is that also true with respect to the
21 200 megawatts of wind as well?

22 A Is what also true?

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1 Q The idea that -- let me ask it this way:

2 You've also proposed that Exelon build

3 200 megawatts of wind PJM --

4 A Correct.

5 Q -- that would be delivered to the

6 District?

7 A Correct.

8 Q Is that also going to be through a power

9 purchase agreement with the District?

10 A That was the intent, yes.

11 Q And so there would be some sort of

12 procurement to establish the price?

13 A Certainly.

14 Q In fact, DGS has a PPA now for wind,

15 right?

16 A It is not complete, but we are proceeding

17 with one, yes.

18 Q Is there any reason you couldn't do

19 another PPA for 200 megawatts of wind -- I'm

20 sorry -- another procurement to procure the output

21 of a 200-megawatt wind farm now?

22 A I'm trying to think if there's anything

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1 that would absolutely prohibit it. I do not
2 believe that there would be something to prohibit
3 moving forward with an additional PPA, but that
4 would -- I would that I have to -- there might be
5 some regulations that might prohibit that, but I
6 don't think so.

7 Q Mr. Chambers, on pages 17 through 20 of
8 your testimony, you summarize your
9 recommendations, correct?

10 A Correct.

11 Q And on lines 18 through 22 of page 20,
12 you state that the funding for any of the
13 above-referenced programs that you propose should
14 be paid for solely by the joint applicants'
15 shareholders and not the joint applicants'
16 customers, right?

17 A Correct.

18 Q Have you quantified the cost of the
19 proposals that you've made in this processing as
20 listed on pages 18 through 20?

21 A I believe that I had stated previously
22 that I had not done that.

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1 MR. KULAK: I have nothing further, Your
2 Honor.

3 MR. DANIELS: OPC has no questions.

4 MS. FRANCIS: AOBA has no questions.

5 MR. SPECK: DC SUN has no questions.

6 MS. WHITE: No questions for D.C. Water.

7 MS. WEIN: No questions from NCLC.

8 COMMISSIONER FORT: Good evening. It's
9 now 6:00. My first question is on page 6, lines 5
10 through 6 -- this is a learning experience for
11 me -- you use a phrase "block and index" in the
12 sentence that says, This requires DGS to integrate
13 its renewables supply with its retail supply
14 through a block and index for PJM account
15 strategy.

16 THE WITNESS: Yes.

17 COMMISSIONER FORT: Can you tell me what
18 that is?

19 THE WITNESS: Yes. So in short, as we
20 increase the amount of renewables into our power
21 blend -- in particular, wind -- there are certain
22 predictions that are made in terms of the wind

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1 generation. So you have an estimate as to how
2 much the wind is going to blow, when it is not the
3 entirety of your power consumption, the rest of
4 the consumption in this case the block and index,
5 needs to be flexible to allow for that
6 differential in, let's say, wind production.

7 So the block and index strategy means
8 that you would take a block of power and say, this
9 is how much we're certainly going to buy, and
10 then above that is an index portion which you
11 would pay basically at market rate and not at the
12 locked-in rate.

13 But that quantity can fluctuate based on
14 the integration of additional power sources, in
15 this case, wind. So you can reduce that index and
16 the risk exposure on the market rate based on how
17 much wind is being produced.

18 COMMISSIONER FORT: And so that would be
19 a provision in the power purchase agreement that
20 you are currently negotiating?

21 THE WITNESS: So -- no. The power
22 purchase agreement would be for the -- the

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1 quantity of wind that we expect to purchase. This
2 is referencing the supplement to that. This is
3 what we would call the brown power or the
4 non-renewable power.

5 COMMISSIONER FORT: Does that require --
6 what does that require of the distribution system?

7 THE WITNESS: Well, it requires a lot.
8 The -- part of the grave concerns that we have
9 expressed, not only in my testimony but in other
10 testimonies of members from the District, are
11 that, as we progress as a city to move towards a
12 more responsible power solution for the, you know,
13 660 residents here, as well as visitors, we need a
14 distribution partner that understands that and can
15 also in some ways assist with that integration in
16 a way that we believe is somewhat agnostic to
17 generation.

18 So it requires us to be as fully engaged
19 with the distribution network as possible because,
20 when we introduce wind, when we introduce solar
21 deployment and more complicated structures for
22 brown power, it requires active local

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1 participation.

2 COMMISSIONER FORT: Okay. So I
3 understand what you mean when you say active local
4 participation, in several of your recommendations,
5 you recommend that there be a liaison that works
6 with DGS.

7 THE WITNESS: Correct.

8 COMMISSIONER FORT: Is there currently in
9 PEPCO a liaison that works with DGS?

10 THE WITNESS: We have points of contact
11 within PEPCO that are, in essence, you know,
12 assigned to us, along with other customers. What
13 we were proposing is something more direct and
14 deliberate to ensure that a lot of the programs
15 with which we rely on our relationship with PEPCO
16 can not only be continued, but to be enhanced.

17 COMMISSIONER FORT: So I'm going to try
18 to break it down. So that would be some person --
19 a person who -- either a dedicated or an
20 identified person in PEPCO that you could work
21 with?

22 THE WITNESS: I would say so.

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1 COMMISSIONER FORT: Are there additional
2 hardware needs that you would need from PEPCO as
3 the distribution company to accommodate your block
4 and index?

5 THE WITNESS: Well, if you think about
6 it, it's not so much to -- all of this is relating
7 around data, and data is the cornerstone of the
8 Utility 2.0 and kind of development that we, as a
9 city, have committed to moving forward on.

10 So there are -- there's equipment
11 associated with that when you do get into
12 understanding more about interconnections of
13 distributed generation as well as microgrids and
14 all of the components that would make a more kind
15 of modern utility infrastructure. But a lot of it
16 is also data. It's also technology and software.
17 So it's not all, you know, physical items.

18 COMMISSIONER FORT: So you anticipated my
19 next question. I did hardware. Is there
20 additional software that you need PEPCO to invest
21 in or does PEPCO already have it?

22 THE WITNESS: Well, I think that we saw a

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1 lot of growth with the rollout of the Green Button
2 Connect. There -- it is a different data stream
3 than we were receiving previously, and so there
4 have been kind of learning curves on all sides.

5 A perfect example of that, and why I
6 mentioned before about having a local partner that
7 understands this relationship -- I mean, we have,
8 you know, excess of 800 accounts, really, that are
9 in some ways group billed with PEPCO. That
10 requires a lot of back and forth. There are --
11 each of those are reviewed. Some things come
12 digitally; other things come manually. There are
13 several different parts of our relationship when
14 it comes to actual bill paying.

15 So I think we are just looking to make
16 sure that, as the city kind of grows in its needs,
17 our network and kind of grid infrastructure can
18 grow as well.

19 COMMISSIONER FORT: Does DGS recognize
20 that PEPCO, if it needs additional hardware,
21 software, personnel to handle this Utility 2.0 or
22 the evolving distribution grid, that there are

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1 costs associated with all of those?

2 THE WITNESS: Yes.

3 COMMISSIONER FORT: And have you given
4 thought to whether or not we need a different type
5 of regulatory structure to handle the cost of
6 two-way flows and increased distributed
7 generation?

8 THE WITNESS: Not that I would say I
9 would feel comfortable kind of commenting on. I
10 mean, there -- the -- what I would say is that,
11 yes, in kind of a tertiary way I've given
12 consideration to that. In the same way as looking
13 at direct costs of implementation, we've also
14 looked at direct costs of not implementing and not
15 evolving.

16 So I think ultimately there's still
17 weight on the side of developing a modern grid for
18 the city.

19 COMMISSIONER FORT: Have you looked at
20 what the cost would be of developing a modern grid
21 for the city?

22 THE WITNESS: In pieces, yes. There are

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1 several -- and I don't think I would be -- I could
2 speak to the actual dollar values, but we have
3 several eco-districts, for example, that are under
4 development in the city, southwest eco-district,
5 Walter Reed eco-district. We have done analysis
6 and feasibility studies for net-zero facilities.
7 We've looked at -- we just recently completed one
8 of our largest high schools to date, and we've
9 done an evaluation as to what it would take to not
10 only locate but also set up an independent
11 microgrid for that facility and the adjacent
12 facilities. And so there are costs that we've
13 identified for that.

14 COMMISSIONER FORT: You've been very
15 busy. Can you talk to me a bit about your plans
16 for demand response and the timing for those
17 plans? I know that a lot of issues related to
18 demand response are now up in the air until the
19 actual case is settled, but one of the scenarios
20 would have state and local jurisdictions and,
21 therefore, the District of Columbia doing more
22 demand response on its own if it can't be done in

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1 the same way through the RTO or through PJM.

2 THE WITNESS: Yes.

3 COMMISSIONER FORT: So could you share
4 some ideas about what the District is looking at?

5 THE WITNESS: Yes. So one of the items
6 that you mentioned earlier when you were referring
7 to the block and index strategy was the -- there's
8 also a reference to a sub-account which is, in
9 essence, kind of a pool of energy data.
10 Basically, when we're talking about our
11 consumption, we -- that's coming from different
12 sources. We have a wind source coming in. We
13 will have solar coming in. We'll have other
14 fossil fuels coming in.

15 From a management standpoint, we have
16 been pursuing the establishment of a sub-account
17 which will allow for us to collectively manage all
18 of those -- all the data associated with how much
19 energy is being produced.

20 What that does, that it gives us more
21 visibility into our power blend and allows for us
22 to better anticipate what the potential for demand

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1 response savings can be.

2 So this goes back to me saying that data
3 is the cornerstone of our partnership with PEPCO.
4 As we develop our sub-account strategy, as we have
5 this new power blend, we are now able to have
6 transparency into our energy buy, our energy
7 purchase, and then we can better anticipate what
8 our load is going to be during peak usage times.

9 So what we're doing now and what we have
10 been doing over the last year and a half with the
11 15-minute interval data next day is preparing
12 ourselves to be able to look at key facilities
13 that have significant load demands and seeing
14 whether or not we are prepared to estimate what we
15 think is going to be our potential savings,
16 particular during the summer so that we could, you
17 know, put our foot into the demand response pool.

18 We were on the cusp of being able to do
19 that this summer. I think we might have missed
20 the window a little bit, but the thing about
21 demand response is that you can commit to some.
22 Whether or not you get it or not does not

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1 necessarily always impact the end result, so
2 there's room to grow.

3 COMMISSIONER FORT: So on page 13 of your
4 testimony, you're talking, again, about your
5 comprehensive data acquisition program. You want
6 the joint applicants to continue to support and
7 invest in DGS' comprehensive data acquisition
8 program. And then you also say you want -- the
9 joint applicants will allocate resources, staff
10 with expertise in data acquisition and analysis to
11 assist DGS in the development of this program,
12 thereby ensuring that the merger provides actual
13 net benefits to the District.

14 What type of arrangements or additional
15 arrangements are you looking for?

16 THE WITNESS: Well, there's a -- I guess
17 a general answer to this is that the stand of the
18 District for this merger from my testimony has
19 always been that we not only want a continuation
20 of the kind of hard-earned relationship that we've
21 developed with PEPCO, but we also want there to be
22 a net benefit that catapults us forward in all of

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1 the goals that we've set as a city.

2 The initial dive into -- excuse me. The
3 initial research into the joint applicants'
4 approach to this seemed to suggest that this --
5 there are definitely some, as we saw before, press
6 releases and some other indicators that this would
7 be in line with what we would hope to see a modern
8 utility wanting to undertake.

9 So for us, we want to go forward together
10 with a new partnership, if that's ultimately what
11 ends up happening, in a way that increases the
12 data flow, that increases the potential for
13 interconnection, that doesn't just commit to
14 figuring it out on the other side, but basically
15 says, this is what we are committing to do in
16 terms of making sure there aren't any
17 interconnection delays.

18 We want to make sure that there are
19 direct and clear commitments to investment in
20 microgrid generation, as well as education, as
21 well as kind of R&D associated with making that
22 the -- the new model for the city.

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1 So I guess when you say what I'm looking
2 for, I'm looking for clear commitments.

3 COMMISSIONER FORT: Thank you.

4 CHAIRMAN KANE: Thank you, Mr. Chambers.
5 I have a couple of questions. To set the context,
6 you are in charge of -- or your organization -- of
7 buying power energy for the District government's
8 use; is that correct?

9 THE WITNESS: For the District --

10 CHAIRMAN KANE: So when --

11 THE WITNESS: -- government, yes.

12 CHAIRMAN KANE: When we say the District,
13 in the case of your testimony, it's the District
14 government?

15 THE WITNESS: Correct. Yes.

16 CHAIRMAN KANE: And is that all agencies,
17 including the school system?

18 THE WITNESS: Correct. It is -- for the
19 most part, it is all public buildings, the
20 schools, libraries, municipal buildings, fire,
21 emergency, police department.

22 CHAIRMAN KANE: In terms of District

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1 agencies that are not in District government-owned
2 business -- excuse me, buildings, that they might
3 be in a privately rented building, do you have a
4 role in the energy purchases there?

5 THE WITNESS: That is lease-specific.

6 So --

7 CHAIRMAN KANE: Okay. Lease-specific.

8 Thank you. I just wanted to get an idea of the
9 scope.

10 Now, if you would turn to page 5 of your
11 testimony, on line 16, you've been asked, what is
12 DGS' annual consumption of electricity? I assume
13 that means how much power -- how much electricity
14 does DGS purchase for the use of D.C. agencies?

15 THE WITNESS: Correct.

16 CHAIRMAN KANE: Okay. And your answer is
17 between 380 and 400 million kilowatt hours a year
18 each year.

19 THE WITNESS: Yes.

20 CHAIRMAN KANE: What is that in terms of
21 megawatts, just for the record?

22 THE WITNESS: It's about 400,000

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1 megawatts.

2 CHAIRMAN KANE: 400 --

3 THE WITNESS: 400,000 megawatt hours,
4 sorry.

5 CHAIRMAN KANE: 400,000 megawatt hours.
6 Okay.

7 Now, on page 15 of your testimony, you're
8 asked about any -- other concerns regarding the
9 proposed merger's impact on the ability of your
10 organization to meet its mission of policy goals.
11 Your answer is, yes, DGS has a mandate to reduce
12 consumption by half of our 2012 baseline. Do you
13 see that?

14 THE WITNESS: Yes.

15 CHAIRMAN KANE: And is this 340 or this
16 400,000 megawatt hours the baseline you're
17 referring to or is this at a later date?

18 THE WITNESS: Roughly the baseline. It's
19 a 2012 baseline, so it's not dissimilar from that.

20 CHAIRMAN KANE: Not dissimilar. And what
21 is the mandate to reduce consumption by half -- by
22 what time? What is -- is there a deadline or a

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1 goal?

2 THE WITNESS: Yes. This ties to the
3 Sustainable D.C. goals, which -- I believe is
4 2032. I'd have to check that.

5 CHAIRMAN KANE: By 2032. So would it be
6 correct to say that by 2032 the goal is to only
7 consume 200,000 megawatt hours per year? That
8 would be 50 percent, right? I'm an English major,
9 but I can divide by two.

10 THE WITNESS: That would be correct.

11 CHAIRMAN KANE: That would be correct,
12 okay. Now -- I'll come back to that for a minute.
13 On page -- the page before that, on page 9, you in
14 the middle, starting on line 9 -- and you've
15 talked about this a little bit in answer to the
16 previous question -- do you see this on page 9?

17 THE WITNESS: Yes.

18 CHAIRMAN KANE: DGS will start generating
19 and receiving electricity in spring 2015 -- that's
20 now -- from a 46-megawatt wind farm in
21 Pennsylvania through a 20-year power purchase
22 agreement which accounts for 35 percent of DGS'

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1 demand.

2 Translate for me 46 megawatts of wind.

3 Is that a current demand of this 400 million

4 kilowatt hours?

5 THE WITNESS: So it's -- so what it's

6 saying is a 46-megawatt facility --

7 CHAIRMAN KANE: Right.

8 THE WITNESS: -- will produce enough

9 power to represent 35 percent of our demand.

10 CHAIRMAN KANE: And that's -- in megawatt

11 hours, what is that?

12 THE WITNESS: So it's -- well, it would

13 be --

14 CHAIRMAN KANE: We're converting -- it's

15 not one-to-one.

16 THE WITNESS: Right. It's -- we're

17 talking about -- I'm sorry, I just need a second.

18 I guess we're talking about 130, 140 million

19 kilowatt hours, so -- and you're asking for it in

20 which --

21 CHAIRMAN KANE: In megawatt hours or --

22 yeah, in megawatt hours.

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1 THE WITNESS: So it would be -- I think
2 what I'm saying is somewhere around 135 --

3 CHAIRMAN KANE: Thousand.

4 THE WITNESS: -- thousand --

5 CHAIRMAN KANE: Megawatt hours.

6 THE WITNESS: -- megawatt hours, yes.

7 CHAIRMAN KANE: And that's a 20-year
8 power purchase agreement, so it would run to 2035?

9 THE WITNESS: Correct.

10 CHAIRMAN KANE: So if you cut your
11 consumption in half by 2032, that would then, by
12 then, represent 70 percent of the District's
13 consumption?

14 THE WITNESS: If the portfolio stays the
15 same, which it will not. So there's -- yes, I
16 mean, according to that math, yes.

17 CHAIRMAN KANE: Right, because it is
18 20-year kind of fixed agreement.

19 THE WITNESS: Correct.

20 CHAIRMAN KANE: So that takes care of
21 70 percent, if all works out the way you plan.

22 THE WITNESS: Sure. Yes.

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1 CHAIRMAN KANE: Now, the District also
2 has out -- and it's in someone else -- maybe in
3 your testimony -- an RFP that's been filled for
4 putting 10, 11 megawatts on a number of
5 District-owned buildings?

6 THE WITNESS: Correct.

7 CHAIRMAN KANE: And as I recall, there
8 were about 50 buildings?

9 THE WITNESS: Correct.

10 CHAIRMAN KANE: So some of these are very
11 small. And that's solar.

12 THE WITNESS: Correct.

13 CHAIRMAN KANE: And what percentage of
14 the District's consumption do you estimate from
15 that?

16 THE WITNESS: Maybe 3 percent or so.

17 CHAIRMAN KANE: Only 3 percent.

18 Now, you're asking that -- if I can find
19 the page, I believe it's page 11. Yes. Page 11.
20 Starting at line 7: The merger should be
21 conditioned on the joint applicants agreeing to
22 continue PEPCO's efforts, et cetera, et cetera --

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1 and jumping down to line 12 -- expressly agreeing
2 to the following: 1, joint applicants will invest
3 in at least 50 megawatts of distributed
4 generation, photovoltaics and solar thermal,
5 within the District.

6 First of all, what do you mean by invest
7 in?

8 THE WITNESS: So I started to mention
9 this a little bit --

10 CHAIRMAN KANE: Right.

11 THE WITNESS: -- earlier. Invest in
12 means -- this is a reference, again, to
13 additionality. So additionality means that there
14 is -- there's more capacity for a particular
15 energy source. And so when we say invest in, in
16 this particular case, it's saying invest in the
17 establishment of additional power generating
18 capacity in the District.

19 CHAIRMAN KANE: Let me drill that down.
20 If somebody came to me and said, I would like you
21 to invest in 50 megawatts of solar, or --

22 THE WITNESS: Yes.

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1 CHAIRMAN KANE: -- invest in this office
2 building --

3 THE WITNESS: Yes.

4 CHAIRMAN KANE: -- I would take that, as
5 a layperson, to mean you want me to essentially
6 put some money into a project, buy a share, buy a
7 number of shares, buy stock, put up seed money,
8 venture capital or something, for which I would
9 receive, as an investor, a return on that.

10 Is that what you're talking about?

11 THE WITNESS: Yes.

12 CHAIRMAN KANE: Yes. And have you had --
13 the District just went out on an RFP, was
14 successful in getting investments in 10 megawatts,
15 right?

16 THE WITNESS: Correct.

17 CHAIRMAN KANE: Do you anticipate it
18 would be difficult to get any provider to, in the
19 way you describe being, invest in photovoltaics
20 and solar thermal in the District?

21 THE WITNESS: The District is a very
22 competitive market. I think there would be

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1 interest.

2 CHAIRMAN KANE: There would be interest?

3 THE WITNESS: Yes.

4 CHAIRMAN KANE: But -- I'm thinking in
5 government terms. When you're talking about the
6 joint applicants to invest in, that sounds to me
7 like a sole source kind of investment.

8 THE WITNESS: In this scenario, yes.

9 CHAIRMAN KANE: It would be --

10 THE WITNESS: Yes.

11 CHAIRMAN KANE: -- a sole source. So
12 rather than going out in the competitive market
13 and trying to find -- or attracting, as you have
14 already for 10 megawatts, 50 more megawatts of
15 solar -- solar thermal and solar (sic) voltaic on
16 the open competitive market, the District
17 government's request, as a condition of the
18 merger, was that it would be a sole source
19 investment -- a sole source arrangement with this
20 particular applicant.

21 Could you tell me why that's in the
22 District's --

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1 THE WITNESS: So let me --

2 CHAIRMAN KANE: -- best interest?

3 THE WITNESS: And maybe sole source is
4 not the best way to --

5 CHAIRMAN KANE: Well, and maybe it's not,
6 but those are my words, because you're talking
7 about --

8 THE WITNESS: Understood.

9 CHAIRMAN KANE: -- wanting this
10 particular company that is proposing to acquire
11 our company, our current distribution company, to
12 be the entity that makes that -- that makes that
13 investment.

14 THE WITNESS: Correct. I think the
15 entree understanding the sentiment here is that
16 there is an objective benefit that we've
17 established in the city to having additional
18 renewable power generation in the city, and that
19 benefit is not just in terms of cost; it's in
20 terms of health and reliability of service and
21 resilience in the city.

22 The commitment that was requested in my

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1 testimony is representative of that. So the
2 desire is for there to be -- the joint applicants
3 to commit to establishing that quantity of power
4 generation in the city.

5 Honestly, whether or not it is the
6 District that buys it or if it is multiple other
7 sources, we -- the key component is the generation
8 capacity in the city.

9 So I don't -- I would kind of be reticent
10 to focus too much on the notion of sole sourcing
11 or any other procurement structure because there
12 are -- there are numerous ways to approach it and
13 numerous entities that the District is affiliated
14 with that could potentially participate.

15 So the goal behind this was additional
16 renewable power generation in the city, utilizing
17 the District as an asset for that.

18 CHAIRMAN KANE: Utilizing the District.

19 THE WITNESS: The District. So, for
20 example, you know, rooftop space.

21 CHAIRMAN KANE: Using District --

22 THE WITNESS: District --

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1 CHAIRMAN KANE: -- government facilities.

2 THE WITNESS: -- government facilities,
3 yes.

4 CHAIRMAN KANE: But it might not be --
5 you're not necessarily asking for this for the
6 sole use of the District government, then?

7 THE WITNESS: It does not have to be for
8 the sole use of the District government. The
9 intent is that it could be, but the focus here is
10 on the -- is on the additional generation.

11 CHAIRMAN KANE: And I want to turn your
12 attention -- or you may be familiar with
13 Mr. Gould's rebuttal testimony. If someone could
14 help you --

15 THE WITNESS: Yes, I have it.

16 CHAIRMAN KANE: -- find that. You have
17 it. You anticipated there question. And I want
18 to turn you to page 10 of his rebuttal testimony,
19 and it's question 12. He is talking about this
20 request. Mr. Caldwell will help you find it.
21 Page 10 of the rebuttal testimony. Page 10,
22 starting on line 17.

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1 THE WITNESS: Yes.

2 CHAIRMAN KANE: Okay. Do you see on
3 line 17 the question is -- refers to the
4 D.C. government's proposal that the joint
5 applicants be required to build 50 megawatts of
6 new solar generation in the District and develop
7 200 megawatts of new wind generation in PJM for
8 delivery into the District?

9 THE WITNESS: Yes.

10 CHAIRMAN KANE: And he's asked, do you
11 have any comments? His comment is, Yes, both of
12 these proposals are substantial, costly and
13 difficult, if not impossible, to implement.

14 And then going over to the next page, he
15 goes on to say it would require -- 50 megawatts of
16 solar would typically require 300 acres of open
17 land, or 7-1/2 million square feet of
18 appropriately workable rooftop space.

19 And he concludes at the end of that
20 paragraph, Mr. Chambers' proposal is simply too
21 ambiguous to implement and should be rejected.

22 Well, it could be ambiguous, but when you

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1 proposed the 50 megawatts, were you proposing one
2 big facility?

3 THE WITNESS: No. I mentioned before
4 that we've done analysis of our rooftops, and in
5 our inventory alone there's, you know, around -- a
6 little over 11 million square feet that could be
7 dedicated. So that's why we were comfortable
8 making this request.

9 CHAIRMAN KANE: Thank you. And you're
10 aware of the -- in addition to District's goals,
11 your goal as the government, the District's goal
12 in the Sustainable D.C. plan, you're aware of the
13 renewable portfolio standard requirement on retail
14 suppliers in the District --

15 THE WITNESS: Yes.

16 CHAIRMAN KANE: -- that will require,
17 would you agree, subject to check, that the amount
18 of solar in the District, physically located in
19 the District, depending on how consumption keeps
20 coming down, will be by 2023 somewhere between 200
21 and 250 megawatts of solar --

22 THE WITNESS: Correct.

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1 CHAIRMAN KANE: -- installations?

2 THE WITNESS: Yes.

3 CHAIRMAN KANE: And that we are now at,
4 again, subject to check, about 33 megawatts, 13 of
5 which is in District -- maybe 14, because it keeps
6 going up, each month. And with the projects that
7 are in the pipeline, we might get to 60. Would
8 you agree that it is impossible to do 50 more
9 megawatts in the District?

10 THE WITNESS: No.

11 CHAIRMAN KANE: Would you -- let me
12 clarify again. When you say "invest in," you are
13 not talking about something being provided for
14 free.

15 THE WITNESS: Correct. This is a -- I
16 don't know how else to describe it other than a
17 win-win for everyone. This is a benefit to the --

18 CHAIRMAN KANE: But it would be
19 commercial relationship --

20 THE WITNESS: Absolutely.

21 CHAIRMAN KANE: -- is that what you're
22 saying?

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1 THE WITNESS: Correct.

2 CHAIRMAN KANE: And would that be the
3 same -- I know you say 200 megawatts of new wind
4 generation in PJM for delivery into the District.

5 THE WITNESS: Correct.

6 CHAIRMAN KANE: Into the District for use
7 by the D.C. government?

8 THE WITNESS: So the premise of both
9 requests start with the -- the demand of the
10 District government facilities. I mean, in
11 essence, this 250-megawatt total would bring us
12 too a net-zero portfolio, the, frankly, only
13 net-zero portfolio in the country, if not anywhere
14 else. So that was the basis for those quantities.

15 CHAIRMAN KANE: So primarily for use in
16 the District?

17 THE WITNESS: Correct.

18 CHAIRMAN KANE: Okay. I was trying to
19 figure out how, without a specific power purchase
20 agreement, there could be any arrangement for the
21 money -- excuse me -- for the wind to actually
22 come into the District.

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1 THE WITNESS: Understood.

2 CHAIRMAN KANE: For any other person to
3 purchase wind, it's their decision.

4 THE WITNESS: Right.

5 CHAIRMAN KANE: Then is the fact that
6 you -- what you've now clarified, that this is not
7 a free, no-cost gift that you're asking for --

8 THE WITNESS: Correct.

9 CHAIRMAN KANE: -- would that explain why
10 your two requests for the 50 megawatts and the
11 200 megawatts is not on this list of 40 merger
12 conditions that the District government has? I
13 mean, you are part of the District government, one
14 of their witnesses, but this is separate from
15 that.

16 THE WITNESS: I'm not a hundred percent
17 certain as to the relationship between the two
18 lists, but I think that might be a rationale
19 behind that.

20 CHAIRMAN KANE: So it would not be
21 included in the sustainable development fund or
22 the Clean and Affordable Energy Act implementation

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1 funding. That more seems --

2 THE WITNESS: Correct.

3 CHAIRMAN KANE: Because you're not
4 talking about a cost there. Okay.

5 That's the only questions I have. Thank
6 you.

7 Commissioner Fort?

8 COMMISSIONER FORT: Sorry. That
9 discussion made me think of two more. You talked
10 to the Chair about what it would mean to have the
11 joint applicants invest in the projects that you
12 outlined. If our laws have restrictions on
13 affiliates of our local distribution company
14 investing in generation, that is, if a company
15 that's associated with PEPCO can't invest in
16 generation, how does that change your
17 recommendation?

18 We went through restructuring. We
19 separated our formerly vertically integrated
20 company. They sold off their generation. And now
21 we're talking about conditions that would have
22 them coming back in to generation, something that

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1 is of concern to a number of people who have
2 talked to us, put testimony on record about this
3 merger. What would you say under those
4 circumstances?

5 THE WITNESS: Correct me if I
6 mischaracterize your question in my answer, but
7 ultimately, the concern comes from having a
8 vertically integrated company that has generation
9 as a key incentive and, as a result, consumption
10 as a key incentive of their business model.

11 So we've been operating with a relatively
12 progressive, yet agnostic entity in PEPCO and
13 doing so very successfully.

14 I am extremely concerned as well as
15 very -- very kind of straightforward, I guess, in
16 how I've expressed that it is -- the only way for
17 us to be able to kind of protect ourselves as a
18 consumer is to ask and kind of request that the
19 joint applicants make very clear and significant
20 commitments in order to kind of alleviate those
21 concerns.

22 Because a vertically integrated company

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1 that has generation can, in essence -- not to say
2 that they will, but they can impact
3 interconnection. They can impact, you know, just
4 energy flow across the PJM. You know, congestion.
5 They can impact schedules.

6 We have -- we have a -- right now, we are
7 just finishing an interconnection with PEPCO for a
8 new feeder line to our unified communication
9 center, and that is something that is critical
10 for, you know, emergency operations of the city.
11 And we need to have a partner that is able to
12 deliver those services without having split
13 incentives.

14 And so that -- so I guess -- I don't know
15 if I answered your question in that, but...

16 COMMISSIONER FORT: Well, I'm going to
17 give you a follow-up one. That -- there are other
18 solar developers and wind developers, some of whom
19 are involved in this proceeding, who are concerned
20 that, when you bring in a large company like
21 Exelon, which has a number of resources and could
22 do projects, then the other solar developers and

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1 wind developers will not be able to do projects
2 because the giant gets to do them.

3 So if one of the recommendations of the
4 District is that we make the giant do the project,
5 what do we say to the other solar developers and
6 wind developers who would like to be able to
7 compete as well?

8 THE WITNESS: So it's important that we
9 establish not just a pathway forward to a more
10 renewable city, but also demonstrate leadership
11 moving forward in that. We have a very
12 competitive market, and it's competitive because
13 there is a lot of work to be done.

14 I would argue in some ways that there is
15 enough work to go around and that the end result
16 of getting as much solar on rooftops and on
17 available space as possible as quickly should be
18 the chief guiding principle of our deployment
19 strategy.

20 I would say that also we should, as we
21 always do, protect our kind of local D.C.-based
22 smaller or medium-size companies to make sure that

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1 they are not competitively squeezed out of the
2 market by those with larger resources, which we
3 demonstrate a commitment to do for a long time.

4 CHAIRMAN KANE: I'm going to follow up on
5 that because you mentioned the current company is
6 agnostic. Is it not true that it's agnostic
7 because of the law passed by the council that
8 prohibits them from being in the business of
9 retail sale of electricity except as the SOS
10 provider and that also says that they shall not be
11 involved in the business of generation except
12 through an affiliate?

13 THE WITNESS: I would argue that that is
14 probably a very significant portion of them being
15 agnostic.

16 CHAIRMAN KANE: Correct. And also would
17 prohibit them from -- or does prohibit them from
18 being in the production of electricity except
19 through an affiliate. So I don't know if you've
20 thought that through in terms of how the joint
21 applicants would invest in -- if they were to own
22 the facility, how they would invest in it with

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1 that provision in the law.

2 This goes back to my question about what
3 you mean by "invest in."

4 THE WITNESS: I mean, so only in somewhat
5 of a tertiary kind of way. So I wouldn't say that
6 we have ironed out all of -- how that would be...

7 CHAIRMAN KANE: And final question.
8 According to your testimony, the District
9 government now pays about \$47 million a year in
10 electricity costs, about 15 million of which are
11 distribution fees, correct, to PEPCO?

12 THE WITNESS: That sound right.

13 CHAIRMAN KANE: That sound right.

14 THE WITNESS: Yeah.

15 CHAIRMAN KANE: And if you reduced your
16 consumption by 50 percent, and our rates are
17 volumetric, and everything stayed the same, you'd
18 be paying 7-1/2 million to PEPCO.

19 THE WITNESS: Yes.

20 CHAIRMAN KANE: And expecting more
21 services from the distribution system?

22 THE WITNESS: Well, everything is in

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1 scale, so it's not -- yeah.

2 CHAIRMAN KANE: Okay. It was more of a
3 rhetorical question than anything else.

4 All right. I think that finishes our
5 questions of Mr. Chambers.

6 Any redirect, Mr. Coyle?

7 MR. COYLE: One very brief question.

8 REDIRECT EXAMINATION

9 BY MR. COYLE:

10 Q In response to questions -- I lost track,
11 but certainly from the Chair and I think also from
12 Commissioner Fort, is it fair to say that your
13 construct on the construction of renewables or the
14 commitment to build renewables, the 200 megawatts
15 of wind and the 50 solar -- could you simplify
16 that by saying it's your expectation that they
17 would be built on a merchant basis?

18 A Correct.

19 MR. COYLE: That's it for me. Thank you.

20 CHAIRMAN KANE: Thank you. Exhibits?

21 MR. COYLE: District moves the admission
22 of Exhibit DCG (G).

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1 CHAIRMAN KANE: It is moved.

2 (DCG Exhibit Number (G) was received into
3 evidence.)

4 MR. KULAK: Joint applicants would move
5 Joint Applicants' Cross Exhibits Number 33 and
6 Number 34.

7 (Joint Applicants Cross Exhibit Numbers
8 33 and 34 were received into evidence.)

9 CHAIRMAN KANE: They are moved.

10 Mr. Chambers, you're excused.

11 THE WITNESS: Thank you.

12 (Witness excused.)

13 CHAIRMAN KANE: Now, should we try to get
14 Mr. Mara in, if he's here. Did he go home? He's
15 right here. There he is, hiding back there. All
16 right.

17 (Pause.)

18 COMMISSIONER FORT: So we're ready. The
19 Chair stepped out. I'm taking over till she steps
20 back in, but she said to go ahead, so you may
21 swear your witness in.

22 MR. GRAY: Thank you, Commissioner Fort,

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1 and thank to you the Commission for accommodating
2 our schedule as well. OPC calls Kevin Mara to the
3 stand at this time.

4 WHEREUPON,

5 KEVIN MARA,

6 called as a witness, and after having been first
7 sworn by the secretary, was examined and testified
8 as follows:

9 DIRECT EXAMINATION

10 BY MR. GRAY:

11 Q Could you please state your name for the
12 court reporter, please.

13 A Kevin Mara.

14 MR. GRAY: Your Honor, Mr. Mara prefiled
15 direct testimony which was marked as OPC (B) and
16 supporting exhibits OPC (B)-1 through OPC (B)-17
17 in November, and the conformed versions were filed
18 on March 25th. Mr. Mara also filed supplemental
19 direct testimony which was marked as OPC (2B) and
20 supporting exhibits OPC (2B)-1 to OPC (2B)-11, and
21 I would ask that those testimonies and supporting
22 exhibits be marked for identification at this

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1 time.

2 COMMISSIONER FORT: They're so marked.

3 (OPC Exhibit Numbers (B), (B)-1 through
4 (B)-17, (2B) and (2B)-1 to OPC (2B)-11 were marked
5 for identification.)

6 MR. GRAY: I tender the witness for
7 cross-examination.

8 COMMISSIONER FORT: Joint applicants.

9 MR. DUVER: Thank you, Your Honor.

10 CROSS-EXAMINATION

11 BY MR. DUVER:

12 Q Good evening, Mr. Mara. My name is Ted
13 Duver for the joint applicant. At the risk of
14 being the least popular person in this room this
15 evening, I have a few questions to ask you.

16 A Yes, sir.

17 Q Do you have a copy of your direct
18 testimony up there with you today?

19 A Yes, I do.

20 Q Could you please turn to page 5.

21 A Yes, sir.

22 Q I want to focus your attention to the

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1 very first question you have under summary of
2 testimony. And there you ask yourself the
3 question whether the merger of PHI and Exelon is
4 in the public interest. Do you see that?

5 A Yes, sir, I do.

6 Q And you answer, no, that you do not
7 believe that the merger of the two companies is in
8 the public interest for several reasons; is that
9 correct?

10 A Yes, sir.

11 Q So I just want to get an understanding of
12 the scope of your testimony and your
13 interpretation of the public interest standard.

14 Are you testifying that the specific
15 commitments that are discussed within your
16 testimony are not in the public interest, or are
17 you testifying, as you state here, that the merger
18 in its entirety is not -- taken as a whole, said
19 another way, is not in the public interest?

20 A My comments are limited to the
21 commitments mentioned in my testimony, primarily
22 due to reliability.

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1 Q Okay. And is that your understanding of
2 the way that the Commission implements or applies
3 the public interest standard, that it does so on a
4 commitment-by-commitment basis, if you know?

5 A That's my understanding,
6 commitment-by-commitment basis.

7 Q Could you please define for me what your
8 understanding of the public interest standard is?

9 A My understanding of the public interest
10 standard is that the -- that, after the merger,
11 the consumers would be able to see reliability
12 equal to or better than what they would get with
13 the existing utility company.

14 Q And when you use the term "public
15 interest" throughout your testimony, you're
16 applying that same definition?

17 A Yes, sir.

18 Q And are you aware that the company's
19 proposal or the reliability commitment in this
20 proceeding consists of various component parts?
21 Would you agree with me on that?

22 A If you could define the component parts.

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1 Q Yeah, sure. Let me clarify. You would
2 agree that the company has proposed to meet
3 certain reliability performance targets as part of
4 its commitment; is that correct?

5 A If you're referring to the three-year
6 average at the end of 2020, yes, I would agree
7 with that.

8 Q For both SAIDI and SAIFI; is that
9 correct?

10 A That's correct.

11 Q And then also as part of the reliability
12 commitment, the company is proposing to meet those
13 three-year averages within certain spending caps;
14 isn't that correct?

15 A Their commitment referred to spending
16 caps with some provisions, yes, sir.

17 Q But do you understand the commitment to
18 be that the three-year average that has been
19 identified by Mr. Alden would be met within the
20 spending caps that Mr. Gausman has identified in
21 his testimony?

22 A Yes, I understand that that was their

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1 commitment and there's been further testimony
2 about that.

3 Q And a third component of the company's
4 reliability commitment was, to the extent they
5 were not to meet those three-year average targets
6 for SAIDI and SAIFI, they would be voluntarily
7 subjecting themselves to an ROE adjustment in the
8 first base rate case filed after 2020; isn't that
9 correct?

10 A Yes, sir, that's my understanding.

11 Q So going back to your discussion of --
12 your definition of the public interest standard,
13 and please correct me if I've mischaracterized it,
14 you stated that the definition that you apply is
15 if customers in the District realize reliability
16 benefits that are better than what they should
17 expect absent the merger -- is that a fair
18 characterization of what you said?

19 A Yes, sir, it is.

20 Q And is that the same definition that you
21 would apply to the reliability commitment
22 consisting of all of the component parts that we

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1 had just discussed?

2 A Yes, sir, it would.

3 Q Mr. Mara, did you either listen -- I
4 didn't see you here, so I'm assuming that you may
5 have either read the transcript or listened over
6 the Internet to the hearings that took place a
7 couple of weeks ago.

8 A Yes, sir. I read the transcripts.

9 Q And did you have an opportunity to read
10 Mr. Gausman's testimony?

11 A Yes, sir, I did.

12 Q And do you recall Mr. Gausman testifying
13 during the hearing that the reliability
14 commitments that are being proposed by the joint
15 applicants in this proceeding are independent of
16 the -- of PEPCO's obligations post-merger to meet
17 the Commission-mandated EQSS targets?

18 A I remember Mr. Gausman talking about
19 that, yes, sir.

20 Q And do you agree with Mr. Gausman's
21 testimony that the reliability commitments are
22 independent of the company's obligation to meet

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1 the EQSS targets that had been set by the
2 Commission?

3 A The way they have provided their
4 commitment, they are required to meet the EQSS,
5 and then those commitments that they made at the
6 end of the three-year average would be independent
7 of that. So they would have to meet both of
8 those, but independently of one another.

9 Q And Mr. Mara, I'm assuming that
10 whether -- as part of your preparation for this,
11 providing testimony in this case or appearing here
12 today, that you have reviewed the Commission's
13 EQSS standards.

14 A Yes, sir, I'm familiar with those.

15 Q And are you aware of whether or not those
16 EQSS standards have incorporated into them any
17 pre-established spending limits that are imposed
18 upon the company as far as its projects that it
19 puts in place to meet the EQSS targets?

20 A Subject to check. By my recollection,
21 there is no limit on spending within the EQSS.

22 Q Sir, in your -- I believe in both your

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1 direct and your supplemental direct testimony --
2 we'll start with your direct. I believe that you
3 discuss various aspects of the Commission order
4 that resulted in the setting of the EQSS targets,
5 correct?

6 A Yes, sir, I did.

7 Q And is it fair -- well, let me ask this
8 question. I believe -- I looked at your resume
9 that was attached to your testimony. And were you
10 involved on behalf of OPC in that proceeding that
11 ultimately resulted in the setting of the EQSS
12 targets?

13 A I provided technical assistance to them
14 during those proceedings.

15 Q And I believe that the technical
16 assistance included the filing of comments and
17 making recommendations?

18 A Yes, sir.

19 Q Could you please turn to page 15 of your
20 direct testimony.

21 A Yes, sir.

22 Q I'd like to direct your attention to

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1 line 8.

2 A Yes, sir.

3 Q You see there where you ask yourself the
4 question, Is there any advantage to using an
5 average value instead of a single year value? And
6 I believe that, there, the value that you're
7 referring to is the reliability performance value;
8 is that correct?

9 A Yes, sir, it is correct.

10 Q And your answer on line 10 is, No, to the
11 contrary; use of an average is not in public
12 interest; is that correct?

13 A Yes, sir.

14 MR. DUVER: Your Honor, could I please
15 ask what's been preliminarily marked as Joint
16 Applicants' Cross Exhibit 51 as Joint Applicants'
17 Exhibit 36.

18 CHAIRMAN KANE: So marked.

19 BY MR. DUVER:

20 Q Mr. Mara, do you have that up there with
21 you? There should be a book -- I believe it says
22 joint applicants' cross exhibits, and it should be

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1 tabbed with the identifying number.

2 A Could you repeat the number again,
3 please.

4 Q It should be tab 51.

5 MR. DUVER: Your Honor, I have a
6 correction. I believe that it should be 35,
7 because one of the exhibits were not moved in.

8 CHAIRMAN KANE: Yes, the secretary has
9 confirmed. It should be 35.

10 (Joint Applicants Cross Exhibit Number 35
11 was marked for identification.)

12 MR. DUVER: Thank you.

13 THE WITNESS: I have tab 51.

14 BY MR. DUVER:

15 Q Mr. Mara, are you familiar with this
16 order? And just for the record, I'll identify
17 this. This is order number 16427 that was issued
18 in the consolidated formal case numbers 766, 982,
19 991 and 1002, and it involves the setting of the
20 EQSS standard.

21 A I'm familiar with it.

22 Q And this is the order, in fact, that you

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1 relied upon -- and correct me if I'm wrong -- when
2 you made certain statements regarding whether or
3 not using an average value is in the public
4 interest; is that correct?

5 A Yes, sir, that is correct.

6 Q Could you please turn to page 3 of 30 of
7 this order.

8 A Yes, sir.

9 Q And could you take a moment to review
10 paragraph 7, and it carries over to page 4.

11 A Yes, sir.

12 Q You see the very first sentence in
13 paragraph 7 here, it states that, With specific
14 regard to the Commission's proposed SAIDI and
15 SAIFI levels, OPC finds them to be not
16 unreasonable.

17 Do you see that?

18 A Yes, sir.

19 Q And do you understand those SAIDI and
20 SAIFI levels that the Commission has proposed to
21 be stated indice targets?

22 A Yes, sir.

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1 Q And then going -- skipping down to the --
2 two sentences down, do you see where it states,
3 Alternatively, OPC argues for the adoption of a
4 five-year rolling average calculated on an annual
5 basis?

6 Do you see that?

7 A Yes, sir, I do.

8 Q Okay. And throughout the remainder of
9 this paragraph, there are other -- there's
10 another -- there's an additional summary of OPC's
11 support for a five-year rolling average; isn't
12 that correct?

13 A Yes, sir, there is.

14 Q Do you have any reason to question the
15 accuracy of the Commission's characterization of
16 OPC's position?

17 A No, sir, I do not.

18 Q And is it, in fact, true that, when OPC
19 filed comments on the proposed targets, that OPC
20 had characterized its five-year rolling average
21 proposal as being superior to the stated indice
22 targets?

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1 A Yes, sir, that's my recollection of --
2 the five-year average was discussed at that time
3 as a way to get from the location that PEPCO was
4 with its reliability to some future level, while
5 still trying to make that transition smoother so
6 there wasn't a significant bump in cost to get
7 there.

8 Q But is it your -- you're not testifying
9 here at this point that OPC's support for an
10 average value in setting reliability targets was
11 not in the public interest, is it?

12 A No, it was the Commission that set the
13 targets and not using the rolling average.

14 Q But at the time that OPC filed comments
15 in the EQSS proceeding, it felt that using a
16 rolling average value for determining reliability
17 targets was, in fact, in the public interest;
18 isn't that correct?

19 A I'm not sure that that paragraph or their
20 testimony used the phrase "public interest." It
21 used that the rolling average would be a way to
22 move PEPCO forward to improve reliability from

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1 where they were at the time that this -- that
2 proceeding was occurring.

3 Q But as you testified before, you do
4 believe that the rolling average was superior to
5 the stated indice targets that are currently in
6 place?

7 A As a transition from point A to point B,
8 yes, sir.

9 Q Mr. Mara, could you please turn to
10 page 21 of 30 of this same order.

11 A Yes, sir.

12 Q And what I would like to direct your
13 attention to is paragraph 45. So if you could
14 please take a moment just to review that.

15 A Yes, sir.

16 Q Okay. Is it a fair characterization, my
17 paraphrase of the Commission's concern, that the
18 Commission rejected the rolling average because
19 there was a concern that to the extent that PEPCO
20 had experienced poor performance during the five
21 years, it could actually cause the reliability
22 target to increase in subsequent years. Is that a

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1 fair restatement?

2 A Yes, sir, it is.

3 Q And if we look at the chart, or table 2,
4 that appears in paragraph 45 that the Commission
5 uses as an example, it shows that very effect
6 on -- over the period of 2006 to 2011 with an
7 increasing reliability target; is that correct?

8 A Yes it does.

9 Q Now, you would agree that the joint
10 applicants, as part of its reliability commitment
11 in this proceeding, that they are not seeking to
12 set annual targets for the period of 2018 through
13 2020 based on a rolling average of historical
14 actual performance; isn't that correct?

15 A They are not planning on setting annual
16 targets. That's correct.

17 Q But they're also not intending to reset
18 the target based on historical actual performance;
19 isn't that correct?

20 A That's correct.

21 Q And, in fact, if you recall -- do you
22 recall whether the targets that are included as

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1 part of the reliability commitments sponsored in
2 Mr. Alden's testimony, that the annual figures
3 included for 2018, 2019 and 2020 that would be
4 used for the three-year average purpose has an
5 improving target each and every year?

6 A My understanding from the commitment was
7 he was committing to the average; he was not
8 committing to each one of the years in the table
9 in that exhibit.

10 Q Could you please -- I believe you should
11 have up there a copy or a binder that has
12 Mr. Alden's February 17th testimony.

13 A Yes, sir, I have it.

14 Q Great. Could you please turn to page 2
15 of that testimony.

16 A Yes, sir.

17 Q Do you see that Mr. Alden provides tables
18 that shows what the three-year average amount is
19 for SAIDI and SAIFI, but he also provides in the
20 tables annual figures that the three-year average
21 is based on?

22 A I think I'm on the wrong page.

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1 Q All right. It should be 4D.

2 A Yes, sir, I have it now.

3 Q Do you see on page 2 that Mr. Alden
4 includes two tables, one which shows what the
5 reliability commitment is, and one what the EQSS
6 standards are?

7 A Yes, sir, I do see that.

8 Q And in the table that reflects the
9 commitment where it shows what -- the three-year
10 average that the joint applicants are proposing to
11 meet for both SAIDI and SAIFI, you would agree
12 with me, would you not, that for the years 2018,
13 2019 and 2020, in each one of those successive
14 years the SAIDI and SAIFI targets improve?

15 A Well, that's what the numbers are in the
16 table. But I understand that they don't commit to
17 those annual numbers. So those are -- as far as
18 I'm concerned, those are just like placeholders
19 and have no merit in their commitment. Their
20 commitment is only for the average.

21 Q Mr. Mara, are you familiar with the
22 provision in the EQSS regulations that calls --

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1 that allows for PEPCO to come in no earlier than
2 June 2015 to seek, if necessary, re-evaluation of
3 the benchmarks?

4 A Yes, sir, I am familiar with that.

5 MR. DUVER: Your Honor I'd like to have
6 marked as -- Joint Applicants' Cross-Examination
7 Exhibit 53 as Exhibit 36.

8 CHAIRMAN KANE: So marked.

9 (Joint Applicants Cross Exhibit Number 36
10 was marked for identification.)

11 MR. DUVER: Thank you.

12 BY MR. DUVER:

13 Q Mr. Mara, could you please turn to what
14 should be tab 53 in the joint applicants' cross
15 exhibit binder.

16 A Yes, sir, I have that.

17 Q First, are you familiar with this
18 document? I believe you said that you
19 participated in assisting in the preparation of
20 comments.

21 A I believe I've read that in the past, but
22 it's been a while.

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1 Q Well, I'll give you an opportunity to
2 take a look at the sections I'm going to be asking
3 questions about, but the first one I would like to
4 ask you a question about is on page 4 of 7.

5 MR. DUVER: I apologize, Your Honor.
6 Just for the record, Exhibit -- what's been marked
7 as Exhibit 35 are comments of the Office of -- I'm
8 sorry, 36 are the comments of the Office of the
9 People's Counsel on chapter 36, electric quality
10 of service standards, and they're dated
11 January 9th, 2012.

12 BY MR. DUVER:

13 Q Sorry, Mr. Mara. Are you there at
14 page 4?

15 A Yes, sir, I am.

16 Q And I'd like to direct your attention to
17 what I believe is the fourth sentence in the first
18 complete paragraph, and that paragraph begins
19 with, "On November 30th." Do you see that?

20 A Yes, sir, I do.

21 Q Okay. In about fourth sentence it says,
22 In response to PEPCO's argument that the SAIDI and

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1 SAIFI levels may not be reasonably achievable, the
2 Commission modified the EQSS to allow PEPCO to
3 request the Commission re-evaluate the benchmark
4 levels for 2016 to 2020 and thereafter.

5 Is that correct?

6 A Yes, sir, it does.

7 Q And so in this document, OPC recognized
8 that the Commission's decision to incorporate the
9 re-evaluation provision of the EQSS was an
10 outgrowth of PEPCO's representations that it
11 didn't believe that it could -- that potentially
12 it couldn't meet the EQSS standards in those
13 out years; is that correct?

14 A Yes, back in 2011 I think that would
15 probably be a reasonable thing for them to say.

16 Q And could you direct your attention to
17 page 5 of 7.

18 A Yes, sir, I see it.

19 Q Okay. Great. And then the second
20 sentence there shows that OPC did not object to
21 the modification to include that re-evaluation; is
22 that correct?

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1 A That is correct.

2 Q Mr. Mara, I'd like to turn your attention
3 back to your direct testimony, please. In
4 particular, could you direct your attention to
5 page 11?

6 A Yes, sir.

7 Q Beginning on line 15 of your testimony,
8 you state that, PEPCO has stated its reliability
9 spending with the five-year plan will achieve the
10 annual average of 3 percent improvement in SAIFI
11 and 9 percent improvement in SAIDI that is
12 required in the EQSS through the year 2020.

13 Is that correct?

14 A Yes, sir.

15 Q And the source for your statement there
16 is Mr. Gausman's testimony from formal case 1103;
17 is that correct?

18 A Yes, sir, it is.

19 Q And that is in your Exhibit (B)-6,
20 correct?

21 A Yes, sir.

22 Q Now, could you please turn to your

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1 Exhibit (B)-6.

2 A Yes, sir.

3 Q And I'd like to direct your attention to
4 page 2 of 2 of that exhibit. Do you see that?

5 A I do.

6 Q Okay. Now, you would agree that, unlike
7 your testimony, Mr. Gausman nowhere in this
8 testimony here stated definitively that the
9 reliability spending reflected in the five-year
10 plan will, in fact, achieve the EQSS targets in
11 2020; isn't that correct?

12 A I think the last sentence on that
13 paragraph says, Reliability spending reflected
14 within the five-year plan is needed to achieve the
15 annual average of 3 percent improvement in SAIFI
16 and SAIDI -- and it goes on to say through 2020.

17 Q And is it your opinion, then, that the
18 spending that is included within the five-year
19 plan being needed to achieve 2020 is an
20 acknowledgment or a statement that they
21 definitively will meet the 2020 levels through
22 that spending?

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1 A At that time, that's how I understood
2 that to mean, yes, sir.

3 Q Do you know what five-year plan was being
4 referred to or that was referenced in
5 Mr. Gausman's testimony in formal case 1103?

6 A I believe it was the plan starting in
7 year 2013.

8 Q And are you familiar -- I'm sure you are
9 familiar with it, but are you familiar with what
10 budgets are included within the 2013 consolidated
11 report or that five-year plan?

12 A Yes, sir, I believe so.

13 Q Okay. And what five-year period is
14 covered?

15 A I believe it's 2013 to 2018.

16 Q Would you agree that it's 2013 to 2017,
17 subject to check?

18 A Subject to check.

19 Q If you could please reference page 1 of
20 your Exhibit (B)-6.

21 A Yes, sir.

22 Q If you look at the first sentence in the

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1 response to question 14, Mr. Gausman says, As
2 stated earlier in my direct testimony, the EQSS
3 required the company to achieve SAIFI and SAIDI
4 indices -- I'm not going to go through what they
5 are -- but it says, respectively in 2013 and
6 respectively in 2016. Do you see that?

7 A Yes, sir, I do.

8 Q And Mr. Gausman nowhere in his testimony
9 in formal case 1103 testified to the company's
10 expectations regarding its ability to meet
11 performance targets at any period of time beyond
12 that 2016 date, did he?

13 A That last sentence that we looked at on
14 page 2 of 2 talks about reliability spending in
15 their five-year plan needed to achieve improvement
16 in SAIFI and SAIDI that is required in the EQS
17 (sic) through 2020, is how he said it.

18 So I interpret that that was his plan,
19 was to go through 2020.

20 Q Just referring to the very next sentence,
21 the second sentence in the response to
22 question 14, do you see where it says, To date,

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1 the company is on track to meet those standards,
2 referencing back to the 2013 and 2016?

3 Do you see that?

4 A Yes, sir, I do.

5 Q And Mr. Gausman did not include any
6 similar statement at the end of the sentence on
7 page 2 of 2 of your exhibit, did he?

8 A No, sir, he did not.

9 Q Mr. Mara, I believe we discussed earlier
10 your familiarity with the EQSS provisions. And
11 are you aware whether the EQSS provisions contain
12 any penalty provisions?

13 A Not by my recollection. I remember it
14 being discussed, but I don't believe they're in
15 there.

16 MR. DUVER: Your Honor, may I please have
17 what's previously been marked as Exhibit 43 as
18 Cross Exhibit 37.

19 CHAIRMAN KANE: So marked.

20 (Joint Applicants Cross Exhibit Number 37
21 was marked for identification.)

22 BY MR. DUVER:

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1 Q I'm not going to ask you to review the
2 entire document. I'll represent that this is all
3 of chapter 36, but I would like to direct your
4 attention to page 10 of 19, please.

5 A Yes, sir.

6 MR. DUVER: And Your Honor, just for the
7 record, what's been marked as Exhibit 37 is
8 chapter 36 of the District of Columbia municipal
9 regulations.

10 BY MR. DUVER:

11 Q Could you please direct your attention,
12 Mr. Mara, to about -- I guess it's the second to
13 last paragraph on page 10 of 19, and it's
14 section 3603.13.

15 A Yes, sir.

16 Q Have you had an opportunity to review
17 that -- or could you please take a look?

18 A I'm familiar with that.

19 Q Okay. And would you agree that this is a
20 provision within the regulations which provides
21 the Commission with penalty authority to the
22 extent that PEPCO does not meet the Commission's

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1 EQSS targets? Is that correct?

2 A I do remember that now, yes, sir.

3 Q Do you know -- are you familiar with what
4 the penalties are that PEPCO potentially is
5 subject to if it fails to meet the targets?

6 A I do not recall what those penalties are.

7 Q Would you agree, subject to check, that
8 it's up to \$100,000 per event for a violation of
9 the Commission's reliability standards?

10 A Yes, sir, I would agree with that.

11 Q Mr. Mara, could you please get your
12 supplemental direct testimony out, and I'd like to
13 refer you to page 6 of that testimony.

14 A Yes, sir.

15 Q On page 6, Mr. Mara, I believe you offer
16 an example of a way in which PEPCO could meet the
17 three-year average -- or the joint applicants
18 could meet the three-year average in the
19 reliability commitment, but fail to meet the EQSS
20 annual targets in '19 and '20; is that correct?

21 A That is correct.

22 Q Now, under your hypothetical that you

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1 offer here, you would agree or acknowledge that
2 for each of the years 2019 and 2020, for failing
3 to meet those targets, the joint applicants would
4 be subjecting themselves to the Commission's
5 penalty authority; isn't that correct?

6 A That is correct.

7 Q Mr. Mara, were you involved in -- on
8 behalf of OPC in formal case 1116?

9 A Yes, sir, I believe so.

10 Q Rather than going by numbers, how about
11 we talk about the D.C. PLUG case.

12 A Yes, sir.

13 Q Thank you. And did you have an
14 opportunity to review the filings, including
15 testimony as well as the application in that
16 proceeding?

17 A I believe so. Yes, sir.

18 Q Well, sticking with your supplemental
19 direct testimony at page 10, could you please
20 review the -- and I'm sure you're familiar with
21 it, but pages 10 through 12 of your testimony.

22 A Yes, sir, I'm familiar with those.

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1 Q And here in this portion of your
2 testimony, what you're offering is you're doing an
3 analysis of certain data that Mr. Gausman had
4 provided regarding the reliability performance on
5 overhead and underground feeders; is that correct?

6 A Yes, on the feeders to be undergrounded,
7 that's correct.

8 Q And you used the percentages that
9 Mr. Gausman was provided to calculate what you
10 provide in your supplemental direct testimony as
11 being the expected benefits of the undergrounding
12 project; is that correct?

13 A That's correct.

14 Q Could you please explain how you arrived
15 at the calculation of the expected benefits?

16 A So he footnoted that the feeders to be
17 undergrounded represented 18 percent --
18 18.6 percent of the total customer interruptions.
19 And so I used that as a -- I used that as a basis
20 in my calculation, as it's detailed on page 11.

21 Q Do you know when Mr. Gausman provided the
22 data that you rely upon to calculate your expected

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1 benefits nor D.C. PLUG?

2 A I believe he was using 2012 data.

3 Q But do you know when he filed this
4 information with the Commission in formal
5 case 1116?

6 A Offhand, I do not.

7 Q Would you agree, subject to check, that
8 it was in the first half of 2014?

9 A Subject to check, yes, sir.

10 Q Would you agree that it was prior to you
11 filing your direct testimony in November?

12 A Yes, sir.

13 Q Now, you didn't raise this analysis in
14 your direct testimony in November, did you?

15 A No, sir, I did not.

16 Q And you're offering this calculation here
17 to support your opinion that joint applicants are
18 understating the value of D.C. PLUG as a possible
19 hedge against their guarantee for meeting their
20 three-year average commitment; is that correct?

21 A Yes, sir, I am.

22 Q Mr. Mara, would you agree that in formal

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1 case 1116, the D.C. undergrounding case, that the
2 company, when it was measuring and ranking
3 reliability performance of the feeders, that it
4 was to take into account all sustained
5 interruptions, inclusive of major service outages?

6 A Yes, in the ranking they took into
7 account all sustained. In my analysis, I looked
8 at their detail data, pulled out sustained outages
9 and still saw numbers similar to this, but my data
10 set wasn't as complete as theirs to be able to do
11 a full analysis, which is why I used his
12 percentages, which matched pretty close to what I
13 was able to get, even trying to work through the
14 data set that I had available to me.

15 Q So your representation is that the
16 calculations that you have made here to show the
17 expected benefits of the D.C. PLUG have taken the
18 major service outages out of the equation?

19 A It's similar to what I was able to get
20 using their data for 2012, excluding major service
21 outages.

22 Q But the calculation excluding major

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1 service outages is not included in your testimony;
2 it's just similar to that?

3 A I didn't have sufficient data to complete
4 that calculation, and so I relied on the
5 presentation by Mr. Gausman.

6 Q And you would agree, would you not, that
7 the presentation by Mr. Gausman did include major
8 service outages; is that correct?

9 A I believe it may have. I believe it may
10 have.

11 Q And, in fact, the company was actually
12 required to include major service outage pursuant
13 to the District of Columbia code; is that correct?

14 A Yes, sir. But, you know, another area
15 that I did look at was in the -- one of the
16 production of documents that PEPCO made that was
17 attached to my testimony, and they showed detail
18 regarding the improvement. Several feeders had
19 zero, no improvement, based on undergrounding.
20 Yet, when you looked at outages for those feeders,
21 excluding major service outages, there were a lot
22 of customer interruptions and customer minutes

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1 that were excluded, which is where I was coming
2 from in saying that they are understating that.

3 Q And I think that we can both agree that,
4 for purposes of calculating reliability
5 performance under the Commission's EQSS
6 regulations, that major service outages are not
7 included; is that correct?

8 A That's correct.

9 MR. DUVER: I'm completed my questions
10 for Mr. Mara, but I do have a number of exhibits
11 that we've spoken -- I've spoken with Mr. Gray,
12 and OPC has agreed to stipulate them in. But I
13 would just as soon quickly mark them now.

14 CHAIRMAN KANE: Please.

15 MR. DUVER: And I'll do them sequentially
16 (sic) as possible. But it will be -- first of
17 all, OPC's -- what has been preliminarily marked
18 as Exhibits 48, 49 and 50, we would ask to be
19 marked as 38, 39 and 40.

20 CHAIRMAN KANE: So marked.

21 (Joint Applicants Cross Exhibit Numbers
22 38 through 40 were marked for identification.)

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1 MR. DUVER: And we would ask what's been
2 preliminarily marked as Joint Applicants'
3 Exhibit 54 as 41.

4 CHAIRMAN KANE: So marked.

5 (Joint Applicants Cross Exhibit Number 41
6 was marked for identification.)

7 MR. DUVER: And then, finally, what's
8 been preliminarily marked as Exhibits 55 through
9 58 to be 42 through 45.

10 CHAIRMAN KANE: So marked.

11 (Joint Applicants Cross Exhibit Number 42
12 through 45 were marked for identification.)

13 MR. DUVER: And I have no further
14 questions.

15 MS. FRANCIS: No questions, Your Honor.

16 MR. COYLE: No questions.

17 MR. SPECK: No questions, Your Honor.

18 MS. WHITE: No questions.

19 MS. WEIN: No questions.

20 CHAIRMAN KANE: Commission has no
21 questions.

22 Redirect?

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1 MR. DUVER: None.

2 MR. GRAY: Very limited.

3 CHAIRMAN KANE: All right.

4 REDIRECT EXAMINATION

5 BY MR. GRAY:

6 Q Mr. Mara, do you recall a question about
7 Mr. Gausman's testimony from formal case 1103?

8 A Yes, sir, I do.

9 Q Would you please turn in your direct
10 testimony to page 4. I want to direct your
11 attention to line 18. Could you read the
12 description that's listed on line 18?

13 A And this is on page 4?

14 Q Yes, sir, of your November direct
15 testimony, OPC (B).

16 A Excerpt from Witness Gausman's hearing
17 transcript.

18 Q Thank you. And that's identified as
19 OPC (B)-7; is that right?

20 A Yes, sir.

21 Q Please turn to OPC (B)-7. I want you to
22 look at page 1. At the bottom there's an answer

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1 from Mr. Gausman that states, If we're talking
2 about reliability, you know, clearly one goal is
3 that we will always meet whatever standard the
4 Commission establishes.

5 With respect to Mr. Gausman's use of the
6 word "always," what did you understand him to be
7 talking about?

8 A I understood him to be talking about the
9 EQS (sic) for each year that the standard was
10 established.

11 Q Thank you.

12 Do you recall questions about OPC's prior
13 position on a five-year rolling average?

14 A Yes, sir, I do.

15 Q I think you said that was appropriate for
16 a transition period; is that right?

17 A Yes, sir.

18 Q Can you please explain where PEPCO is at
19 in terms of the pre-EQSS state of reliability and
20 where it's at now in terms of that transition
21 period?

22 A At the time the EQSS was being discussed

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1 and finally settled on, PEPCO's reliability was
2 not getting better; it was slowly getting worse.

3 And since that time, the 2010-'11 time
4 frame, they have cut their SAIFI and SAIDI nearly
5 in half. They've come a long way. They've done
6 great strides for improvement during that period
7 of time.

8 At the time the EQSS was being done, I
9 for one questioned whether or not they were going
10 to get to those reliability goals, quite frankly.
11 And so my hat is off to them for how far they have
12 come since that time.

13 Q Thank you. One last question. Do you
14 recall questions by Mr. Duver at the beginning of
15 his cross-examination about several components of
16 the reliability commitment, one of which was a
17 commitment to maintain spending caps?

18 A Yes, sir, I do remember that.

19 Q Do you have any concern with how the
20 Commission could -- let me strike that.

21 In your opinion, is the commitment to
22 maintain spending caps enforceable?

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1 A No. I think it has -- makes it difficult
2 to enforce. For example, in their current
3 five-year budget, PEPCO has a number of conversion
4 projects to convert 4KB systems to 13KB systems.
5 Some of those are in low-growth and some of those
6 are in reliability. Why they're not all in the
7 same category is, I guess, anybody's guess.
8 There's no strict criteria or criteria in the
9 industry for whether it's low-growth or
10 reliability or customer-related when doing a
11 highway relocation.

12 MR. GRAY: Thank you. That's all I have.

13 CHAIRMAN KANE: Thank you. Exhibits?

14 MR. GRAY: Your Honor, at this time I
15 would move for admission of OPC (B), supporting
16 Exhibits OPC (B)-1 through OPC (B)-17, as well as
17 OPC (2B) and supporting Exhibits OPC (2B)-1 to
18 OPC (2B)-11.

19 CHAIRMAN KANE: They are admitted.

20 (OPC Exhibit Numbers (B), (B)-1 through
21 (B)-17, (2B) and (2B)-1 through (2B)-11 was
22 received into evidence.)

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1 MR. DeCUSATIS: And, Your Honor, joint
2 applicants move for the admission of Joint
3 Applicants' Exhibits 35 through 45.

4 CHAIRMAN KANE: They are admitted.

5 (Joint Applicants Cross Exhibit Numbers
6 35 through 45 was received into evidence.)

7 CHAIRMAN KANE: All right. Ms. White?

8 MS. WHITE: Madam Chair, I need to move
9 the admission of Mr. Gorman's testimony --

10 CHAIRMAN KANE: Yes.

11 MS. WHITE: -- and his exhibits.

12 CHAIRMAN KANE: Yes.

13 MS. WHITE: So at this time, I would move
14 the admission of Mr. Gorman's direct testimony,
15 which we've marked as D.C. Water (A), and
16 supporting Exhibits D.C. Water (A)-1 through
17 (A)-6, as well as the supplemental direct
18 testimony of Mr. Gorman which we've marked as
19 D.C. Water (B) and the supporting Exhibit
20 D.C. Water (B)-1. Thank you.

21 (WASA Exhibit Numbers (A), (A)-1 through
22 (A)6, (B) and (B)-1 were received into evidence.)

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1 MS. TRAVERS: And, Your Honor, D.C. Water
2 has agreed to stipulate to cross-examination
3 exhibits into the record. Before I continue, I'm
4 Nicole Travers for the joint applicants.

5 The two exhibits in question have been
6 preliminarily marked as Joint Applicants'
7 Cross-Examination Exhibit 78 and Joint Applicants
8 Cross-Examination Exhibit 79. And I would ask
9 that they be marked as Joint Applicants'
10 Exhibits 46 and 47.

11 CHAIRMAN KANE: They are so marked.

12 (Joint Applicants Cross Exhibits Numbers
13 46 and 47 were marked for identification and
14 received into evidence.)

15 MS. TRAVERS: Thank you.

16 CHAIRMAN KANE: And the commissioners
17 have consulted. We do not have any questions for
18 Witness Mr. Mathur, so he does not need to -- the
19 other intervenors have indicated they have no
20 questions for him, so he does not need to appear.
21 Thank you. We will --

22 MR. COYLE: With trepidation about

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1 following up, has the Commission decided whether
2 it wishes to hear from Dr. Wilson, the other DCG
3 witness?

4 CHAIRMAN KANE: No, we do not have any
5 questions from the bench for Dr. Wilson.

6 MR. COYLE: Thank you.

7 CHAIRMAN KANE: So we will start tomorrow
8 at 10:00 a.m. with Mr. McGowan, and then we will
9 hear from Mr. Comings, Witness Comings, Chang,
10 Oliver, Hempling and Schoolman.

11 And that looks like, given that we were
12 halfway through Mr. McGowan, that we would be able
13 to finish. We probably should be prepared to stay
14 late tomorrow, if necessary, and I'll make the
15 appropriate arrangements for air, comfort.

16 You're excused, Mr. Mara.

17 (Witness excused.)

18 CHAIRMAN KANE: And the hearing is
19 recessed until tomorrow.

20 (Whereupon, at 7:34 p.m., the above
21 proceedings were adjourned.)

22

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1 CERTIFICATE OF COURT REPORTER

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

17 *Denise M. Brunet*
18

19 _____
20 Denise M. Brunet
21 Certified Court Reporter
22



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