

Capital Reporting Company  
Formal Case No. 1119 04-22-2015

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PUBLIC SERVICE COMMISSION OF THE  
DISTRICT OF COLUMBIA

-----:  
IN THE MATTER OF THE JOINT :  
APPLICATION OF EXELON CORPORATION, :  
PEPCO HOLDINGS, INC., POTOMAC :  
ELECTRIC POWER COMPANY, EXELON : Formal Case  
ENERGY DELIVERY COMPANY, LLC AND : 1119  
NEW SPECIAL PURPOSE ENTITY, LLC :  
FOR AUTHORIZATION AND APPROVAL OF :  
PROPOSED MERGER TRANSACTION. : VOLUME XI  
-----:

Washington, D.C.

Wednesday, April 22, 2015

The evidentiary hearing in the  
above-captioned matter began at 10:06 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. COYLE		3249		
5	BY MR. SPECK		3328		
6	BY MS. WEIN		3334		
7	MAXIMILIAN CHANG				
8	BY MR. COYLE	3415			
9	BY MR. DUVER		3417		
10	BRUCE OLIVER				
11	BY MS. FRANCIS	3449			
12	SCOTT HEMPLING				
13	BY MR. RORIES	3454			
14	BY MR. DeCUSATIS		3455		
15	BY MR. RORIES			3530	
16	ANYA SCHOOLMAN				
17	BY MR. SPECK	3539			
18	BY MR. KULAK		3541		
19					
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21					
22					

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1	EXHIBIT NO.	MARKED	RECEIVED
2	Joint Applicants (3L) and		
3	(3L)-1 through (3L)-3		3406
4	Joint Applicants Cross 26		3406
5	OPC Cross 101 through 108		3407
6	AOBA Cross 101 through 107		3407
7	DCG Cross 117 through 120,		
8	122, 123, and 127 through		
9	129		3408
10	DCG Cross 121 and 124		
11	through 126		3411
12	Joint Applicants Cross 48		
13	through 51		3409
14	Joint Applicants Cross 52	3438	3447
15	Joint Applicants Cross 53		
16	through 57	3446	3447
17	Joint Applicants Cross 58		
18	through 66	3538	3538
19	Joint Applicants Cross 67		
20	and 68	3543	3582
21	AOBA (A)	3448	3454
22	(Exhibits continued on the next page.)		

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1	EXHIBIT NO.	MARKED	RECEIVED
2	AOBA (2A)	3449	3454
3	DCG (B), (B)-1 and (2B)		3447
4	DC SUN (A) and (A)-1		
5	through (A)-21		3581
6	GRID (A) and (A)-1 through		
7	(A)-57		3538
8	GRID (B), (C) and (C)-1		3589
9	DCG (D), (D)-1 through		
10	(D)-4, (F), (F)-1		
11	through (F)-2, (2F),		
12	(2F)-1, (C), (C)-1, (C)-2,		
13	(2C) and (2C)-1 through		
14	(2C)-3		3591
15	Joint Applicants Cross 69		
16	through 73	3592	3592
17			
18			
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1 P R O C E E D I N G S

2 CHAIRMAN KANE: Good morning. We are  
3 back on the record for the final day of the  
4 hearings in -- evidentiary hearings in FC 1119.  
5 It is 10:05 a.m. on Wednesday, April 22nd.

6 Before we begin with -- or resume with  
7 Mr. McGowan, are there any preliminary matters  
8 with any of the parties?

9 MR. LORENZO: Yes, Your Honor.

10 CHAIRMAN KANE: Mr. Lorenzo?

11 MR. LORENZO: This morning we filed a  
12 response to Commissioner Fort's questions on the  
13 organization of a special purpose entity to  
14 ring-fence PHI, and hopefully that will clarify  
15 some of her -- the issues that she had when  
16 discussing this with Ms. Lapson. Also last night  
17 we sent an e-mail to the parties and to  
18 Commission's general counsel that we were waiving  
19 cross on Mr. -- on AOBA witness Bruce Oliver in  
20 order to expedite the proceeding and ensure we end  
21 today.

22 That's all I have, Your Honor.



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1 CHAIRMAN KANE: Thank you.

2 MS. FRANCIS: Your Honor?

3 CHAIRMAN KANE: Ms. Francis?

4 MS. FRANCIS: Yes. Good morning, Your  
5 Honors. We did receive the e-mail last night from  
6 the joint applicants. However, Mr. Oliver is here  
7 in the hearing room and is available for  
8 cross-examination by the Commission. However, he  
9 is also here because, in reviewing the transcript  
10 of Ms. Lapson last night, the joint applicants'  
11 counsel, in his questioning of Mr. Oliver's  
12 testimony, mischaracterized his testimony. As a  
13 result, Ms. Lapson's response further amplified  
14 that mischaracterization. AOBA requests the  
15 opportunity very briefly -- I can do it with one,  
16 maybe two questions -- to correct that  
17 mischaracterization when he takes the stand.

18 CHAIRMAN KANE: That would be fine.

19 MR. FRANK: Thank you very much, Your  
20 Honor.

21 CHAIRMAN KANE: Do any of the other  
22 parties have cross-examination for Mr. Oliver?

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1 Okay.

2 MS. FRANCIS: Thank you, Your Honor.

3 MR. COYLE: Your Honor?

4 CHAIRMAN KANE: Mr. Coyle.

5 MR. COYLE: One of less moment, but at  
6 some point today, I will need to move the  
7 admission of the prefiled testimony of Dr. Wilson  
8 and Mr. Mathur, neither of whom will be called for  
9 cross, so if you could just let me know when would  
10 be a convenient time to do that, we'll take of it.

11 CHAIRMAN KANE: Why don't we do that  
12 right now as a preliminary matter, if you're  
13 ready.

14 MR. COYLE: It will take me a minute. It  
15 will probably be faster if we waited till --

16 CHAIRMAN KANE: All right. Fine. We  
17 will then resume with Mr. McGowan.

18 MR. COYLE: Thank you.

19 CHAIRMAN KANE: Who is -- Mr. Coyle,  
20 you're up.

21 MR. COYLE: I'm up.

22 WHEREUPON,

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1 KEVIN MCGOWAN,  
2 called as a witness, and after having been  
3 previously sworn by the secretary, was examined  
4 and testified as follows:

5 CROSS-EXAMINATION (RESUMED)

6 BY MR. COYLE:

7 Q Good morning, Mr. McGowan.

8 A Good morning.

9 Q My name is John Coyle. I'll be asking  
10 you some questions this morning on behalf of the  
11 District of Columbia government.

12 Would you please turn to your rebuttal  
13 testimony, Joint Applicants' Exhibit (3L) at  
14 page 3, line 15 through 5, line 14, and just read  
15 that quietly to yourself and let me know when  
16 you're finished.

17 A Can you give me that page reference one  
18 more time?

19 Q Page 3, line 15, through 5, line 15.

20 CHAIRMAN KANE: And Mr. McGowan and --  
21 for Mr. McGowan and everybody, just again a  
22 reminder to talk slowly and talk into your mic

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1 directly. Thank you.

2 THE WITNESS: Page 3, line 15 through?

3 BY MR. COYLE:

4 Q 5, line 14.

5 A Okay.

6 Q Okay. Is it fair to say, Mr. McGowan,  
7 that the objective of this portion of your  
8 testimony is to persuade the audience -- the  
9 Commission, excuse me, that the D.C. government is  
10 being unreasonable in its recommended merger  
11 conditions?

12 A I mean, the purpose of this section is to  
13 quantify what the D.C. government testimony has  
14 asked for in this merger proceeding and to  
15 quantify what that benefit is.

16 Q But your objective is to persuade the  
17 Commission that those asks are unreasonable, isn't  
18 it? You do use that expression in your testimony,  
19 don't you?

20 A I do, yes. I do believe that the asks  
21 that the District government has in their  
22 testimony goes beyond the public interest and

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1 beyond the direct and traceable test that the  
2 Commission has typically used. That is correct.

3 Q Let me ask you a couple of preliminary  
4 questions, Mr. McGowan. Would you go to your  
5 rebuttal at page 5, lines 8 through 11, please.

6 A Okay. I'm there.

7 Q Okay. Now, other witnesses punted the  
8 question to you what the relative size of the rate  
9 base of the various PEPCO operating companies --  
10 PHI operating companies is, and I'm wondering if  
11 you have that information today.

12 A What the size of the rate base is?

13 Q Yes.

14 A Give me one second.

15 Q Sure.

16 A I don't have that schedule. I don't  
17 recall being asked what the rate base was for the  
18 various jurisdictions, but I don't have that  
19 schedule with me. I apologize.

20 Q Okay. That's all right. I wouldn't mind  
21 if you were able to supply it after a break.

22 A Okay.

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1           Q       Let me ask you something else along that  
2 line. Do you know what the relative  
3 non-coincident peak demand of each of the PHI  
4 operating companies is?

5           A       I don't have that information.

6           Q       Same request, I guess, if you can find it  
7 over a break, I'd be happy to have the  
8 information.

9           A       Okay.

10          Q       Another thing that came up yesterday,  
11 does the District Department of Transportation  
12 have any PEPCO meters for its street lights and  
13 stop lights?

14          A       There are around 35 meters for the street  
15 light class. Who actually owns those meters, if  
16 it's Department of Transportation, I don't know  
17 the exact customer name, but there are around  
18 35 meters.

19          Q       Do you know whether those 35 meters are  
20 for federal street lighting as opposed to District  
21 street lighting?

22          A       I do not know.

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1 Q Would you accept, subject to check,  
2 Mr. McGowan, that the District Department of  
3 Transportation has no PEPCO meters for street  
4 lights and stop lights?

5 A Subject to check.

6 Q In terms of the allocation of the CIF,  
7 would that mean there was no CIF allocated to the  
8 District Department of Transportation as a PEPCO  
9 customer?

10 A The way that the CIF was allocated to  
11 PEPCO D.C., again, was to ensure that a hundred  
12 percent of the synergies that would flow through  
13 to the District of Columbia initially was paid.

14 As I mentioned yesterday, the net  
15 five-year synergies that we forecast for the  
16 District is \$14 million for the first five years.  
17 It's about \$55 million for the first ten years.  
18 And the intent of the CIF was to remove any doubt  
19 that those benefits would be direct and traceable  
20 to customers. And so we put the CIF to ensure  
21 that originally the \$14 million was paid, and then  
22 that's been increased to 33.75.

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1           So the CIF is designed to pay these  
2 synergies to the District. How that is allocated  
3 amongst the customers in the District is the  
4 purpose of this hearing.

5           Q     Do you know how much revenue, annual  
6 revenue, is associated with the District  
7 Department of Transportation accounts for -- PEPCO  
8 accounts for delivery of the electricity for DDOT  
9 street lights and stop lights?

10          A     I do not know that.

11          Q     Would you accept over half a million  
12 dollars a year, subject to check?

13          A     Subject to check.

14          Q     Now, if DDOT has no meters for that  
15 demand, that's a pretty substantial omission,  
16 isn't it, in the calculation of your allocation of  
17 your CIF?

18          A     Not at all. Again, the -- the CIF is  
19 designed to pay out the net synergies to the  
20 jurisdictions that will we expect over a period of  
21 time. So the intent of the -- the calculation of  
22 the CIF for each jurisdiction is aligned to the



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1 synergies that we expect to be generated and  
2 accrue to customers in the District.

3           So example. The original CIF number of  
4 \$14 million that was allocated to the District was  
5 based on the five-year synergies that would flow.  
6 How we calculated the CIF is what we decided, but  
7 at the end of the day, the goal was to ensure that  
8 a hundred percent of that benefit was paid to  
9 customers up front. That's been increased to  
10 33.8.

11           So regardless of how the allocation of  
12 the CIF fund was done, the goal was to ensure that  
13 it paid out a hundred percent of the net synergies  
14 that would benefit the District. And that was  
15 accomplished.

16           Q     But I think we just determined, did we  
17 not, that in the case of a customer, which you've  
18 agreed, subject to check, doesn't have any meters,  
19 you've omitted a rather substantial portion of the  
20 electric demand in the District of Columbia, at  
21 least the non-trivial portion of the electric  
22 demand in the District of Columbia in your

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1 allocation, right?

2 A I would say that if we're talking about  
3 how the CIF with the District is being paid, the  
4 33.8, how that's being allocated, I think that  
5 would be a good discussion to have. But what I  
6 want to -- maybe we should take a step back and  
7 just understand the purpose of the CIF and what  
8 it's tied to.

9 Q I think we understand that amply,  
10 Mr. McGowan. I think -- I'd ask you to accept  
11 we'll get done a lotted quicker if you --

12 MR. LORENZO: Your Honor --

13 BY MR. COYLE:

14 Q -- confine yourself to answering my  
15 questions.

16 CHAIRMAN KANE: Mr. Lorenzo?

17 MR. LORENZO: Yes. I request that  
18 Mr. Coyle be directed to let the witness answer  
19 the questions as is a typical practice before this  
20 Commission.

21 CHAIRMAN KANE: Thank you.

22 MR. COYLE: And I'd request an

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1 instruction --

2 CHAIRMAN KANE: Mr. Coyle.

3 MR. COYLE: I'd request an instruction  
4 that the witness confine himself to answering my  
5 questions, unless we want to be here a lot longer  
6 than we expect.

7 CHAIRMAN KANE: We also need to get on  
8 the record all relevant information, in spite of  
9 the time that it may take.

10 Mr. McGowan, you may proceed. Thank you.

11 THE WITNESS: Okay. What I was going to  
12 say is that the value of the transaction is the  
13 cost savings -- to customers is the cost savings  
14 that will be generated and allocated to the  
15 various jurisdictions. And those cost savings are  
16 developed through the cost allocation manuals and  
17 our allocation processes which looks at sales, O&M  
18 plant, and the costs are allocated down to the  
19 jurisdictions.

20 Based on that analysis, which was a  
21 synergy study, approximately \$14 million over the  
22 first five years, the net synergies, would accrue

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1 to the District customers. So that was the basis  
2 for the CIF.

3 The CIF was, how do you determine a  
4 metric that would allow us to pay customers a  
5 hundred percent of the net five-year synergies in  
6 the District, which has now been increased to  
7 33.8. And so the customer count doesn't really  
8 matter in the cost allocations because the costs  
9 are allocated based on sales, O&M property, plant.

10 So once we come up with the CIF to pay  
11 out the savings to the customers in the District,  
12 the discussion of how that's allocated to  
13 customers is a relevant topic. But it's not  
14 relevant for is the 33.8 million fair, because it  
15 ties into the synergy savings.

16 BY MR. COYLE:

17 Q Is the substance of your answer -- I'm  
18 sorry -- the substance of your speech, since it  
19 wasn't really an answer, but the substance of what  
20 you just said --

21 MR. LORENZO: Objection as to the  
22 characterization.

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1 MR. COYLE: The record speaks for itself.

2 BY MR. COYLE:

3 Q The characterization of what you just  
4 said is that synergies were allocated to the  
5 District based on Exelon's modified Massachusetts  
6 formula, rather than by meter count. Is that what  
7 you were just saying?

8 A That is correct.

9 Q Okay. Now, let me ask you to take a look  
10 at two exhibits side by side, your Exhibit (3L)-1  
11 and what's been marked for identification as  
12 Exhibit DCG 117, which is -- which was provided to  
13 us as your work paper for (3L)-1.

14 A What was the D.C. exhibit?

15 Q 117 for identification.

16 A I have it here.

17 Q Now, two of the things that you list in  
18 your summary of the D.C. government's position are  
19 things that the joint applicants themselves  
20 proposed; is that right? That would be the  
21 customer investment fund which you have at  
22 33.75 million in Exhibit (3L)-1 and 14 million in

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1 the work paper, DCG 117?

2 A That is correct.

3 Q Okay. And going down to additional  
4 proposals, costs estimated by the company, one  
5 that you attribute to District government Witness  
6 Smith, maintenance for ten years of the level of  
7 charitable contributions at 1.6 million a year,  
8 that's also a joint applicants' proposal, isn't  
9 it?

10 A Yes, it is.

11 Q Okay. And while we're on the subject of  
12 charitable contributions, Mr. McGowan, could I ask  
13 you to take a look at Exhibit DCG -- what's been  
14 marked for identification as Exhibit DCG 122.

15 A Okay.

16 Q And that is your -- first of all, you're  
17 the author of that response, correct?

18 A Yes, I am.

19 Q Okay. And that's the response to staff  
20 data request 4-22 -- sorry, 4-12 to the joint  
21 applicants?

22 A Correct.

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1 Q And that's a compilation of PEPCO's  
2 charitable giving for the years 2004 through 2013?

3 A PEPCO D.C.

4 Q Okay. Thank you. PEPCO D.C., correct.  
5 Do you have the figure for 2014, by any  
6 chance?

7 A Yes. For 2014, the contribution level  
8 was about \$1.9 million.

9 Q Thank you. Now, let me ask you, finally,  
10 to take a look at Joint Applicants'  
11 Exhibit (4A)-2. That's the master list, the  
12 conditions, commitments.

13 A Yes.

14 Q Page 4, condition 22, and just confirm to  
15 me that's the charitable giving commitment.

16 A Correct.

17 Q Okay. Good. Now, let me take a look at  
18 another one of your complaints here in  
19 Exhibit (3L)-1 and Exhibit DCG 117. You attribute  
20 to District Witness Smith, under the heading  
21 additional proposals, costs estimated by the  
22 company, a requirement that the company can't

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1 file -- can't use as a base rate case test year  
2 any year in which PEPCO's allocated costs to  
3 achieve exceed its allocated savings. Do you see  
4 that?

5 A I do, yes.

6 Q Now, you say that has a direct cost of  
7 between 25.8 million and 70.1 million in foregone  
8 rate increases; is that right?

9 A That would be the revenue requirement,  
10 cumulative, during that time period, that's  
11 correct.

12 Q The cumulative increase in revenue  
13 requirement, isn't it?

14 A Right. So over the -- if we were not  
15 allowed to file a rate case for -- I think the  
16 25.8 is for two years -- that would be the amount  
17 of revenue requirement that the company would not  
18 be able to earn during that period of time. So it  
19 might be 12 million a year as an example; over two  
20 years, it would be 25 million.

21 Q Okay. Let me ask you, Mr. McGowan, to  
22 take a look at a couple of exhibits.



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1           A       Okay.

2           Q       Let me ask you to take a look, first, at  
3 Exhibit DCG 120, what's been marked for  
4 identification, and that is a confidential  
5 response to OPC data request 18-112.

6           A       Okay. I have it here.

7           Q       All right. So we're clear, Mr. McGowan,  
8 you are the author of that response?

9           A       Yes, I am.

10          Q       Okay. And confidential attachment A is a  
11 calculation performed by you?

12          A       That's correct.

13          Q       And it's styled as the value of deferring  
14 rate cases through the merger approval process?

15          A       Yes, that's correct.

16          Q       Did you use that information in preparing  
17 Exhibit (3L)-1 or what's been marked for  
18 identification as DCG 117?

19          A       The information comes from the same  
20 source. I would note that, in response to  
21 AOBA 18-112, was measuring the value of deferring  
22 the rate case during the merger application

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1 process. So it uses a different test period and  
2 different factors.

3 The calculation that we included on my  
4 Exhibit (3L)-1 is, after the merger process is  
5 completed, it would be the inability to continue  
6 filing those rate cases in the future.

7 Q Okay. Let me ask you next to take a look  
8 at what's been marked for identification as  
9 Exhibit DCG 128, which is a response -- joint  
10 applicants' response to OPC data request 18-8.

11 A Okay.

12 Q Okay. You are the author of that  
13 response, correct?

14 A I am, yes.

15 Q Okay. And I didn't see a work paper  
16 associated with this answer, but in that response,  
17 you argue that the value of a two-year and  
18 three-year rate moratorium are 20.1 and  
19 \$70.1 million respectively?

20 A That's correct, yes.

21 Q And is that 70.1 the same figure that  
22 shows up in Exhibit (3L)-1 and DCG 117 under the

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1 condition you attribute to Mr. Smith, no base rate  
2 cases in any year where CTAs exceed allocated  
3 savings?

4 A That's correct.

5 Q Now let me ask you to take a look at  
6 what's been marked for identification as  
7 Exhibit DCG 129.

8 A Okay.

9 Q Okay. And there's an attachment A that  
10 follows that.

11 A Yes, I have it here.

12 Q Is attachment A the source of the  
13 \$25.8 million figure that, again, you attribute to  
14 the cost of Mr. Smith's proposal, that there be no  
15 base rate cases with a test year where CTAs exceed  
16 synergies?

17 A Yes, that's correct.

18 Q Now, those exhibits that we looked at,  
19 Mr. McGowan, DCG 120, 128 and 129 for  
20 identification, are essentially arguments on your  
21 part about the kinds of rate cases that PEPCO  
22 might be granted if it filed hypothetical rate

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1 cases; isn't that right?

2 A These calculations estimate, if PEPCO was  
3 precluded from filing a rate case for a period of  
4 time, it was our best estimate of the amount that  
5 we would be awarded in those rate cases based on  
6 past Commission precedent and based on our  
7 assumptions around the timing of that. So I think  
8 the answer is yes to your question.

9 Q Thank you. You don't actually know what  
10 the Commission would do in the event that PEPCO  
11 were to make those rate filings based on a full  
12 record, do you?

13 A No. These are estimates based on their  
14 past precedent.

15 Q The Commission could deny any rate  
16 increases; isn't that true?

17 A They can deny and they can approve.

18 Q Okay. They could also grant an increase  
19 significantly smaller than the customers request;  
20 that happens, doesn't it?

21 A Yes, it does.

22 Q Now let me ask you to take a look at

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1 Exhibit 123, what's been marked for identification  
2 as Exhibit DCG 123, which is joint applicants'  
3 response to data request DCG 338.

4 A Okay. I have it here.

5 Q The sponsor of that data request is given  
6 as PHI, but can you vouch for the information  
7 that's in it?

8 A Yes, I can.

9 Q Okay. In particular, the attachment A is  
10 given as a schedule of what rate cases PEPCO would  
11 have filed but for the merger in 2014?

12 A Yes, that's correct.

13 Q I think you testified to this yesterday,  
14 so I -- I don't need the whole answer again.  
15 Well, let me try the question this way: Is it  
16 true that PEPCO decided not to file -- let me  
17 rephrase the question.

18 You testified yesterday as to why PEPCO  
19 decided not to file rate increases during the  
20 pendency of the merger proceeding. Could you  
21 remind us what your response was?

22 A My response was that the merger presented

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1 a very unique opportunity to combine with Exelon  
2 to provide very significant value to our customers  
3 and our company, and we felt it was important to  
4 have the Commission, our company and all  
5 intervenors focus on the merger application and  
6 not be distracted or have another filing pending  
7 in front of the Commission.

8 Q So PEPCO saw an advantage in deferring  
9 filing rate cases in order to, what, free up  
10 regulatory bandwidth for consideration of the  
11 merger application?

12 A Well, I don't think deferring the rate  
13 case was an advantage. I think it was a  
14 consideration in deciding how we wanted to move  
15 forward with the merger application and how to  
16 best use the resources of all parties involved.

17 Q Now, Mr. McGowan, would you turn to your  
18 rebuttal at page 13, line 4 through 20, please,  
19 and read that to yourself.

20 A Page 13.

21 Q Lines 4 through 20, sir.

22 A Okay.

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1           Q       Now, when you assert in your rebuttal, in  
2   that portion of your rebuttal, that PEPCO's  
3   District customers are getting what you call a  
4   benefit in the form of what you characterize as  
5   \$39 million worth of deferred rate increases due  
6   to PEPCO's decision not to pursue rate cases  
7   during the pendency of the merger, wouldn't it be  
8   more accurate to call that deferral a benefit of  
9   PHI's tactical decision with respect to  
10   prosecuting the merger application than a benefit  
11   of the merger itself?

12          A       When we -- no. When we considered the  
13   merger application, we looked at whether or not it  
14   made sense to pursue a rate case filing, and the  
15   decision was that we would defer that filing. It  
16   was part of the overall plan to -- again, to focus  
17   on the merger application.

18                 The fact that we didn't file a rate case  
19   and the fact that we had planned to file a rate  
20   case -- and, again, under did assumption that we  
21   would have been treated and received a rate  
22   increase based on past precedent, the customers --

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1 it is a value benefit to the customers, and we  
2 estimate that to be about \$39 million over the  
3 period.

4 Q But it's a fact, isn't it, Mr. McGowan,  
5 that whatever rate increases, if any, that might  
6 have come along had PEPCO not made the decision  
7 not to file any, those rate increases will now not  
8 happen regardless of whether or not the merger is  
9 approved, correct?

10 A That is correct.

11 Q So they're not contingent on the merger.  
12 They're contingent on the way PHI decided to  
13 prosecute its merger application.

14 A Well, clearly the customers received a  
15 benefit whether or not the merger is approved.  
16 However, the decision was made in conjunction with  
17 the merger that we would not file a rate case and,  
18 therefore -- but the customers get the benefit  
19 either way. But the decision was made only  
20 because the merger was pending and the application  
21 was made.

22 Q Okay. And of course we know that PHI



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1 stockholders will be kept whole whether or not the  
2 merger is approved because they have the benefit  
3 of the \$180 million reverse breakup fee under the  
4 merger agreement. You're familiar with that,  
5 right?

6 A I'm familiar with the \$180 million  
7 breakup fee, but I would disagree with the fact  
8 that they're made whole.

9 Q That's not the intention of the reverse  
10 breakup fee?

11 A The intention of the reverse breakup fee  
12 is to provide liquidity to PHI during the merger  
13 process, approval process, to ensure that there's  
14 adequate liquidity to fund the utilities so they  
15 can continue making their investments throughout  
16 this process.

17 Q How would PHI get that liquidity if it  
18 didn't have the -- well, how would PHI get that  
19 liquidity if the merger wasn't pending?

20 A They would either go out and raise more  
21 equity, they could raise debt, or it could be  
22 continued rate increases from earnings.

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1 Q All right. Thank you.

2 Now, let me go back to costs to achieve  
3 in future rate cases. You recall a discussion --  
4 I think it was yesterday; it may have been the day  
5 before -- between Mr. Lorenzo and Ms. Ramas for  
6 OPC in which the questioning took us through D.C.  
7 WASA Witness Gorman's proposal to treat CTAs as a  
8 regulatory asset and amortize them over a  
9 specified period. Do you recall that?

10 A I do recall that discussion.

11 Q Okay. And do you recall also Mr. Lorenzo  
12 referring to Mr. Khouzami's statement on the stand  
13 that the joint applicants were amenable to that  
14 approach?

15 A I do you recall that discussion.

16 Q Adopting that solution would make the  
17 costs you associate with a stay-out condition when  
18 CTAs exceed -- when CTAs exceed synergies --  
19 taking that approach would resolve that problem to  
20 which you attribute 25.8 to \$70.1 million in  
21 costs, wouldn't it?

22 A Yeah. Based on our projections, if you

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1 were to amortize the cost to achieve over a  
2 five-year period -- I believe is what we had  
3 discussed -- then the net synergies would be  
4 positive and there would not be a need to stay out  
5 for the two or three years. Yes.

6 Q Okay. Great. Now let me ask you now to  
7 take a look, first, at the largest single category  
8 of costs that you attribute to the District  
9 government's proposals, and that's the bottom of  
10 (3L)-1 or DCG 117 -- take your pick. You  
11 attribute a cost of between 100 and \$180 million  
12 to Mr. Chambers' proposal that the joint  
13 applicants invest in at least 50 megawatts of  
14 distributed solar. Yes?

15 A Yes.

16 Q And between 400 and 523 million, to  
17 Mr. Chambers' proposal, that the joint applicants  
18 should invest in 200 megawatts of renewables,  
19 right?

20 A That's correct.

21 Q Okay. Let me ask you, Mr. McGowan, to  
22 take a look at what's been marked for

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1 identification as Exhibit DCG 118. I will  
2 represent to you that that is an excerpt of the  
3 Maryland Public Service Commission's decision and  
4 order 84698, case 9271, approving the Exelon  
5 acquisition of Constellation. Are you familiar  
6 with that case?

7 A I'm not familiar in detail with the  
8 order, but I am familiar with the merger.

9 Q Okay. My question was, are you familiar  
10 with the conditions?

11 A No, I'm not.

12 Q Okay. Let me ask you to take a look,  
13 Mr. McGowan, at the page -- let me ask you to take  
14 a look, first, at the page marked 105 on the  
15 bottom, and just ask you to read to yourself from  
16 page 105 over to 109 and let me know when you're  
17 finished.

18 COMMISSIONER FORT: Excuse me. I heard  
19 him say that he wasn't familiar with the article.  
20 Are you going to have him read four pages, 105 to  
21 109, of the Commission order at this point in  
22 time? I hope that's not what I heard you ask him

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1 to do.

2 MR. COYLE: I take it that the bench is  
3 offering me some gentle guidance. I should  
4 perhaps try a different approach to this line of  
5 questioning?

6 COMMISSIONER FORT: If you have a  
7 question, yes, but I don't think we have the time  
8 today.

9 MR. COYLE: Very well. I'll try and get  
10 at it a different way.

11 COMMISSIONER FORT: Thank you.

12 BY MR. COYLE:

13 Q Mr. McGowan, do you see on page 105 of  
14 what's been marked for identification as Exhibit  
15 DCG 10 that there's a condition that requires  
16 Exelon to install 120 megawatts of primarily  
17 gas-fired combustion turbines in Maryland? That's  
18 condition 10A.

19 A Yes, I see those words.

20 Q Okay. Mr. McGowan, do you know what it  
21 cost to install a gas-fired CT these days?

22 A Not off the top of my head.

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1 Q Would you accept the figure \$750 a  
2 kilowatt installed, subject to check?

3 MR. LORENZO: Your Honor, I'm going to  
4 object to this line of questioning. We have  
5 Mr. Coyle now testifying on the cost of a gas  
6 turbine, combined cycle gas turbine, and asking  
7 Mr. McGowan to take it, subject to check. It's  
8 basically reading in the Maryland order which  
9 Mr. Coyle can do on brief if he wants to make such  
10 an argument.

11 CHAIRMAN KANE: Mr. Coyle?

12 MR. COYLE: The witness has testified,  
13 Your Honor, that he thinks the District's  
14 proposals were unreasonable. The District's  
15 proposals bear some relationships to the proposals  
16 that the people on whose behalf he is testifying,  
17 Exelon, have accepted in another case. And it  
18 seems to me not unreasonable to inquire about the  
19 relative merits of the burdens that they accepted.  
20 I suppose, Your Honor --

21 CHAIRMAN KANE: The witness --

22 MR. LORENZO: I suppose -- go ahead.

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1           CHAIRMAN KANE: The witness has said that  
2 he does not know what the cost of the turbines is.  
3 If you want to ask him about the cost if he's  
4 familiar with the cost or the promises or the  
5 offers in Maryland, that would be a legitimate  
6 line of questioning.

7           MR. COYLE: Fair enough. Thank you, Your  
8 Honor.

9 BY MR. COYLE:

10       Q     So, Mr. McGowan, as you sit there in the  
11 stand today, you don't have any idea what cost  
12 undertaking Exelon made when it agreed to build  
13 120 megawatts of gas-fired combustion turbines in  
14 the State of Maryland as part of the  
15 Exelon/Constellation merger?

16       A     I do not know the cost of this, but I  
17 would note that this talks about the gas-fired  
18 system being built on a merchant basis, which  
19 assumes that they would be able to get cost  
20 recovery of that through the market.

21       Q     Were you here when Mr. Chambers testified  
22 yesterday?

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1           A       I was, yes.

2           Q       Did you hear him say that what he meant  
3 to say was that Exelon should make the investments  
4 of which he spoke on a merchant basis?

5           A       I did, which is, I believe, a  
6 modification from his direct testimony. And he  
7 did clarify what the government's intent was.

8                   His direct testimony, which this schedule  
9 was based on, said that the joint applicants --  
10 I'll paraphrase -- should be required to build the  
11 facilities and not recover costs from customers  
12 and that the shareholders should be the sole  
13 person that would pay for those costs.

14                  He clarified yesterday that what he meant  
15 was that the facilities would be built on a power  
16 purchase agreement to the District which would, in  
17 fact, allow us to recover cost and imply that we'd  
18 also be able to earn a return on investment. So  
19 that's a big difference.

20                  And I would also note that in your  
21 redirect of him, you introduced the merchant  
22 concept, and I'm still a little confused



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1 personally as to what the government's -- District  
2 government's position is on this, because the  
3 issue we have on a merchant basis, if there's a  
4 condition for us to build this and we can't  
5 recover costs from the District customers, if we  
6 can't agree on a PPA on a merchant basis with the  
7 District -- we have an obligation to build this  
8 and we can't recover costs from the District, so  
9 I'm just not exactly sure where the position is.  
10 So...

11 Q Okay. Well, while we're talking about  
12 things that you don't know about, do you know  
13 whether or not there was a PPA associated with the  
14 condition in Maryland to build 120 megawatts worth  
15 of CTs?

16 A I don't know. I know that BG&E has  
17 Constellation, which is unregulated generation,  
18 and that was being built in their generation  
19 company, not BG&E.

20 Q Okay. Let's take a look at  
21 condition 10B, Mr. McGowan. That's  
22 125 megawatts -- Exelon's undertaking there is to

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1 build 125 megawatts of tier 1 renewable resources  
2 by January 15, 2022. Do you know at what a tier 1  
3 renewable resource is in Maryland?

4 A I believe that's solar.

5 Q Could it also be wind?

6 A Could be.

7 Q Okay. Now, in terms of wind,  
8 Mr. McGowan, in Exhibit DCG -- what's been marked  
9 for identification as DCG 117, or (3L)-1, take  
10 your pick --

11 A 117?

12 Q Yep. (3L)-1 will work too. It doesn't  
13 matter.

14 A Okay.

15 Q Okay. You have a range of costs  
16 associated with the 200 megawatts renewables that  
17 you're looking at in those exhibits, right?

18 A Yes.

19 Q And am I right to say that the range of  
20 installed costs that you assumed in developing  
21 this exhibit in your testimony was somewhere  
22 between 2,000 and \$2600 in installed kilowatt?

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1           A       Subject to check. I mean, I -- I've  
2   given you a range in megawatt hours. I'm not  
3   going to convert this into a kilowatt hour.

4           Q       No, I actually -- we were talking units  
5   of capacity, Mr. McGowan. That's kilowatts or  
6   megawatts. Let me ask you this: Did you develop  
7   this information yourself or did you have some  
8   help?

9           A       I sponsored these numbers, but my team  
10   went out and looked at the cost of solar and wind,  
11   cost to install per megawatt.

12          Q       Okay. So you would agree with me that  
13   the figures that you've used in (3L)-1 and DCG 117  
14   represent an installed cost per megawatt?

15          A       Yes.

16          Q       Okay. Great. And that range, then, per  
17   megawatt -- if did I this in kilowatt, it would be  
18   between 2 million and \$2.6 million per megawatt.  
19   That's the range you're proposing, right? If you  
20   do the math.

21          A       That sounds correct.

22          Q       Okay. All right. Now, if you pick the

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1 mid-point of that range, \$2300, or \$2.3 million  
2 per installed megawatt, Exelon's agreement to  
3 build 125 megawatts of tier 1 resources would  
4 translate to \$287,500,000, wouldn't it?

5 A The math sounds right.

6 Q Okay. Plus whatever the CTs cost.

7 A I don't know.

8 Q Right. Okay. Now, let me go back to  
9 DCG 118. Mr. McGowan, let me ask you to take a  
10 look quickly, I'm sorry, at DCG 127 while we're on  
11 the subject of what renewables cost.

12 A Okay.

13 Q And you were one of the sponsors of that  
14 response, correct?

15 A That is correct.

16 Q Okay. Let me ask you, first, to --

17 A I believe just Exhibit A of that  
18 request -- attachment A, excuse me.

19 Q Where did that data come from that's  
20 presented in attachment A?

21 A Well, attachment A comes from a wind  
22 technologies market report from the Department of

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1 Energy. There's a footnote on the very bottom  
2 left-hand side.

3 Q And is it true that the document that's  
4 appended as attachment B, which is referenced in  
5 the answer to part E, subpart 2, of the data  
6 request, the document -- excuse me. Is the  
7 document that follows attachment A the document  
8 that's referenced in subpart E2 of the data  
9 request response, to your knowledge?

10 A I believe that's correct.

11 Q If you could -- do you know where the  
12 Fourmile Wind project is, Mr. McGowan?

13 A No, I do not. Mr. Gould has sponsored  
14 attachment B to this data request.

15 Q Okay. Would you take a look at page 30  
16 of attachment B. Page 30 in the lower left-hand  
17 corner.

18 A Okay.

19 Q Do you see a figure in the bottom of that  
20 table for total construction costs with IDC of  
21 \$2,303 a kilowatt?

22 A Yes, I do.

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1 Q Let me ask you also to take a look at  
2 page 3 of attachment B, again, in the lower  
3 left-hand corner. The page is headed, Strategic  
4 considerations.

5 A Okay.

6 Q Do you see the first bullet there? Does  
7 that refer to the Exelon/Constellation merger  
8 settlement with the State of Maryland?

9 A That's what it says.

10 Q Okay. Thank you.

11 Now, going back to what's been marked for  
12 identification as Exhibit DCG 118, Mr. McGowan,  
13 going to page 106, Romanette (iv), top of the  
14 page --

15 A Okay.

16 Q -- do you see where that condition  
17 requires Exelon to make a payment of \$500,000 per  
18 megawatt to the State of Maryland where resources  
19 are developed in response to a state-sponsored  
20 RFP?

21 A I see those words.

22 Q Okay. Do you know what the total cost

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1 that might be associated with that condition was?

2 A I do not.

3 Q Okay. Let me ask you to turn to

4 page 107, condition 10C, which talks about new

5 animal waste to energy generation.

6 A I see that.

7 Q Do you have any idea what cost is

8 associated with that condition?

9 A No, I do not.

10 Q And then if you turn to page 108, you see

11 condition D, new solar generation, which refers to

12 30 megawatts of solar generation in the City of

13 Baltimore.

14 A I see that.

15 Q Now, going back to Exhibit (3L)-1 or

16 DCG 117 -- take your pick.

17 A Uh-huh. Okay.

18 Q You, again, used an installed cost for

19 solar generation to estimate the cost impact of

20 Mr. Chambers' proposal, correct?

21 A That is correct.

22 Q And would it be correct that the

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1 installed cost you used was between \$2 and \$3.60  
2 per watt installed?

3 A Well, what my estimate here shows is the  
4 cost to install, you know, between the 400 and  
5 523 million installed 200-megawatt system.

6 Q No. I'm asking you to look at the line  
7 above that for solar, Mr. McGowan --

8 A For solar?

9 Q -- I'm sorry. Yeah.

10 A So at the estimate was 100 and  
11 180 million for 50 megawatt.

12 Q Right. So we divide that by -- we divide  
13 the hundred million by 50,000 to get a cost per  
14 watt, or kilowatt or whatever? What sort of unit  
15 cost are you assuming?

16 A I use megawatt.

17 Q Okay.

18 A These are my numbers.

19 Q Okay. So what was the range of installed  
20 cost per megawatt that you assumed?

21 A Well, it would be 2 million to 3.6.

22 Q 3.6, okay. So if we picked the midpoint



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1 of that range, Mr. McGowan, say, 2.7 or --

2 A 2.8.

3 Q -- 2.8, 2.8 million times 30 megawatts  
4 gives us what?

5 A 84.

6 Q 84 million for Baltimore, right?

7 A 2.8 times 30 is 84.

8 Q Okay. And as we were just discussing,  
9 the condition in the Maryland case involves the  
10 installation of 30 million -- excuse me --  
11 30 megawatts of solar generation in the City of  
12 Baltimore, correct?

13 A That's what the condition reads.

14 Q All right. So in the middle of the range  
15 that you ascribe to the cost of Mr. Chambers'  
16 conditions, the Maryland condition for Baltimore  
17 solar was worth 84 million, right?

18 A Those are your numbers. I just did some  
19 math for you. I have not gone back and verified  
20 that. And I would also note we're trying to  
21 compare an installation in Baltimore versus D.C.  
22 I think you have to also consider what the

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1 different characteristics -- and I don't know what  
2 the parameters are in the Exelon/Constellation  
3 merger, where that facility has to be built or  
4 what the conditions are around that.

5 I know in District, the rule is that the  
6 unit needs to be built within the city limits of  
7 the District and provide power to meet the RPS  
8 standard. I'm assuming that was the  
9 recommendation of the District government.

10 So there's a lot of factors to take into  
11 consideration. Location -- as you know, building  
12 a solar plant in the farms out in Maryland is a  
13 lot cheaper than building a solar plant in  
14 downtown D.C. because of land. So there's many --

15 Q They have farms in Baltimore,  
16 Mr. McGowan? I must have missed that.

17 A I said Maryland, not Baltimore.

18 Q Okay. But the condition we were looking  
19 at in the Exelon/Constellation merger is specific  
20 to the construction of solar generation in the  
21 City of Baltimore.

22 A All I'm saying is that there are many

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1 characteristics that go into the cost of installed  
2 generation, whether it's wind or solar. We used  
3 information that came from the Department of  
4 Energy. We looked at information from the U.S.  
5 Energy Administration reports on what an estimate  
6 of installed solar and installed wind would be as  
7 a basis for coming up with an estimate.

8 Q Okay. Now, Mr. McGowan, I take it from  
9 your testimony that you prepared this portion of  
10 your rebuttal testimony and when I say that, I  
11 mean Exhibit (3L)-1 and the testimony that  
12 surrounds it. You prepared that, I take it,  
13 without examining the Maryland PSC's order in the  
14 Exelon/Constellation case; is that correct?

15 A That is correct.

16 Q Did you discuss your testimony with  
17 anybody from Exelon? I don't want to pry into any  
18 attorney/client or work product stuff, but did you  
19 discuss your testimony on this issue with anybody  
20 from Exelon?

21 A When you say issue, which issue? The  
22 cost range?

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1           Q       Yeah, I'm talking about -- well, your  
2       complaints about how much the District conditions  
3       would cost.

4                   MR. LORENZO: Your Honor, I'm still going  
5       to object to this question of how the testimony  
6       was drafted and who reviewed that. That's totally  
7       improper as -- prying into attorney/client and  
8       work product relationships.

9                   MR. COYLE: I specifically asked the  
10      witness not to disclose any of that information.  
11      I just wanted to know whether he had discussed his  
12      testimony with anyone from Exelon.

13                  CHAIRMAN KANE: I'll allow the question.  
14      There have been other questions about how  
15      testimony and how documents, et cetera, and  
16      studies were put together.

17                  THE WITNESS: So my testimony was  
18      prepared by me or under my direction, and it was  
19      reviewed by members of Exelon as it was reviewed  
20      by those individuals that had been working on this  
21      merger application.

22      BY MR. COYLE:

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1 Q Okay. Was it reviewed by any  
2 non-lawyers?

3 A I would say yes.

4 Q Okay. Did you ever come to have an  
5 understanding that Exelon had agreed to conditions  
6 in the Constellation merger that required it to  
7 develop generation in the State of Maryland?

8 A Well, I was aware that there was a  
9 requirement. I did not go back and review the  
10 detailed orders, but assuming that the folks from  
11 Exelon knew that there was a requirement as well.

12 Q Okay. Let's change topics, Mr. McGowan.  
13 Take a look at your rebuttal testimony at page 5,  
14 line 15, through 6, line 11.

15 A Page 5?

16 Q 5, line 15, through 6, line 11.

17 A Okay.

18 Q Now, your topic there is basically jobs,  
19 correct?

20 A You said page 5, lines 6 through 11?

21 Q No. I'm sorry, sir. You misunderstood.  
22 Now I understand why you're confused. Let me make

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1 sure I have the reference correct.

2 It's page 5, line 15, through page 6,  
3 line 11?

4 A I'm sorry. Yes, that's correct.

5 Q Now, let me ask you, first, to take a  
6 look at Joint Applicants' Exhibit (4A)-2,  
7 condition 18 on page 4 of 17.

8 A Okay. I'm there.

9 Q Okay. Commitment 18, I guess is the  
10 proper nomenclature, is the commitment that talks  
11 about moving 50 PES employees from Arlington into  
12 the District?

13 A That is correct.

14 Q Would you take a look at what's been  
15 marked for identification as Exhibit DCG 119.

16 MR. COYLE: And I will note for the  
17 record that there is a confidential attachment to  
18 that exhibit. I have one brief question  
19 concerning the attachment, but before I ask it, I  
20 need to ask Mr. Lorenzo if it's all right to  
21 examine on that attachment.

22 MR. LORENZO: Your Honor, it depends on

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1 the question he asks because it identifies  
2 individuals and salary ranges and it deals with  
3 some personnel information which I would not want  
4 to divulge publicly. But some -- and so it  
5 depends on the question, I suppose.

6 MR. COYLE: I certainly don't propose to  
7 get into any of those areas.

8 CHAIRMAN KANE: Fine. You may proceed.  
9 And before there's an answer, if Mr. Lorenzo feels  
10 that it's inappropriate, he can say so.

11 BY MR. COYLE:

12 Q Now, Mr. McGowan, part of Exhibit DCG 119  
13 is your response to data request DCG 8-93,  
14 correct?

15 A That is correct.

16 Q And the confidential attachment is the  
17 list of positions and salary ranges involved in  
18 the 50 positions referred to in joint applicants'  
19 commitment 18; is that correct?

20 A Correct.

21 Q Now let me ask you to take a look at what  
22 is in evidence as Exhibit DCG 84, which is the

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1 joint applicants' response to AOBA data  
2 request 1-23, attachment A, errata version 1.

3 A You said DCG 84?

4 Q Yes, sir.

5 A Okay. Which page of the exhibit?

6 Q I'll get to that in a minute.

7 A I'm sorry.

8 Q I have to observe a formality with  
9 Mr. Lorenzo before I ask you any questions about  
10 that.

11 MR. COYLE: Customary understandings in  
12 place, Mr. Lorenzo?

13 MR. LORENZO: The customary  
14 understandings are in place, yes. You can ask  
15 about this as long as the exhibit is kept  
16 confidential.

17 MR. COYLE: Thank you.

18 BY MR. COYLE:

19 Q Mr. McGowan, would you turn to page 36 of  
20 78 as marked in the upper right-hand corner of the  
21 pages.

22 A Okay.



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1 MR. LORENZO: Your Honor, I'm going to  
2 object to the extent it's been established that  
3 Mr. McGowan -- this is an Exelon document -- that  
4 Mr. McGowan has seen this and is familiar with the  
5 document and can testify. It seems to be a  
6 document put together for Mr. Khouzami.

7 THE WITNESS: Yeah. I --

8 BY MR. COYLE:

9 Q Well, let me ask you this, Mr. McGowan:  
10 You are a member of what I believe is called the  
11 BAT; is that right?

12 A Yes. Business area team --

13 Q Yep.

14 A -- as part of the integration effort.

15 Q And, in fact, you have a fairly prominent  
16 position in the integration effort on behalf of  
17 PHI, do you not?

18 A I'm a lead for the integration effort for  
19 regulatory, government affairs and some other  
20 areas.

21 Q Okay. All right. Now let me ask you  
22 whether you have seen Exhibit DCG 84 before.

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1           A       I don't recall seeing this document. I  
2 would note that typically it would have Exelon/PHI  
3 on it, but this one I do not -- this one only has  
4 Exelon on it, and I don't recall seeing this  
5 presentation. If I do, I just don't remember it.

6           Q       Okay. Let me ask you now to go to  
7 page 36 and to take a look at the synergy column,  
8 the column on the right-hand side of the page  
9 headed, Synergy FTE, and the second cell from the  
10 bottom reflects a negative number 26 with regard  
11 to PES. Do you see where I am?

12          A       I do, yes.

13               MR. LORENZO: Your Honor, now I'm going  
14 to object because the witness is totally  
15 unfamiliar with the document. Mr. Coyle is just  
16 going to have him read numbers into the page (sic)  
17 without being able to explain what the numbers  
18 mean.

19               MR. COYLE: My question with reference to  
20 this document actually relates to what the current  
21 integration planning is. That is a subject with  
22 which Mr. McGowan has given testimony that

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1 indicates he ought to be familiar. If he's not,  
2 he can tell me. But I have to establish a  
3 foundation for the question.

4 CHAIRMAN KANE: Mr. McGowan can answer  
5 whether or not he's familiar with the document.  
6 And he already has said he has not seen it. So  
7 the document is in the record, but Mr. McGowan is  
8 not familiar with the document or can't answer --

9 MR. COYLE: Let me --

10 CHAIRMAN KANE: -- has said he cannot  
11 answer any questions on it because he's not  
12 familiar with the document.

13 BY MR. COYLE:

14 Q Then let me ask the question without  
15 reference to the document, Mr. McGowan. What are  
16 the plans currently, if you know, with respect to  
17 the integration of the PES employees that are  
18 going to be moved from Arlington to the District  
19 with respect to the integration of those employees  
20 into the Constellation operation and specifically  
21 how many full-time equivalent positions in PES are  
22 expected to be eliminated over the first five

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1 years following the merger?

2           A       So the plans are to relocate the entire  
3 office that's in Virginia into the District,  
4 specifically into the Edison Place facility. As I  
5 mentioned yesterday, the cost to break the lease  
6 to remodel the Edison Place building for their --  
7 their access will be about \$1.5 million and --  
8 which is a pretty sizable investment if we weren't  
9 planning to keep PES.

10                   The plan is that PES will become a part  
11 of the Constellation Energy Services group. So  
12 that group will be more than twice the size that  
13 the PES Energy Services group is today.

14                   In terms of what the plans are for the  
15 next five years, as we've noted, integration  
16 efforts are still underway, and those decisions  
17 have not been made.

18                   But I would just note that it's an  
19 investment we're making to move these employees,  
20 and if we had no intention to do that, we wouldn't  
21 make the investment.

22           Q       Okay. There were a number of questions

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1 about this that were referred to you by previous  
2 witnesses, and I have selected a few of them. I  
3 think you said yesterday that since PES withdrew  
4 from the retail energy market business, the size  
5 of its operations in Arlington has decreased; is  
6 that right?

7 A Yes. So the retail supply business was  
8 wound down in the 2011, '12 time frame. I can't  
9 remember the exact year, but around there, and the  
10 staff was downsized as well.

11 Q Okay. And I forget whether you  
12 associated a number with that downsizing.

13 A I did not know the number of employees.

14 Q Okay. You still don't?

15 A I do not.

16 Q Okay. All right. Is it true that the  
17 space that PES -- that's currently leased for PES  
18 in Arlington is substantially larger than what is  
19 required to house its current complement of  
20 employees?

21 A I would agree with that.

22 Q And there wouldn't be anything

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1 inconsistent with commitment 18 about moving 50  
2 PES employees from Arlington to the District,  
3 laying off 26 and moving some down from Baltimore  
4 from Constellation if you need to fill the space  
5 at Edison Place, right?

6 A Are you talking hypothetically?

7 Q Yep. Since you don't know what's really  
8 going to happen.

9 A Well, I mean, I think I've mentioned to  
10 you what I know will happen. If -- you're saying  
11 is there anything that would preclude us from  
12 moving from other areas into the District?

13 Q Yep. Well, that's part of it.

14 A There's no -- there's nothing that would  
15 preclude us from adding to the PES staff in D.C.  
16 or moving employees from other locations into the  
17 Edison Place building.

18 Q And once you move the employees from  
19 Arlington, the 50 that you're talking about in  
20 commitment 18, there's nothing that prevents you  
21 from laying them off, or some of them, right?

22 A There's no commitment in the Joint

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1 Applicants' Exhibit (4A) on that point. I agree.

2 Q Okay. Thank you.

3 Now, let's take a look at what's in  
4 evidence as Exhibit DCG 91. That is the  
5 collective bargaining agreement extension executed  
6 by PEPCO and IBEW Local 1900 on June 13, 2014.

7 A Yes.

8 Q Are you familiar with that document,  
9 Mr. McGowan?

10 A Yes, I am.

11 Q Mr. McGowan, this collective bargaining  
12 agreement extension was executed on June 13th,  
13 2014, correct?

14 A That is correct.

15 Q And the joint applicants' application in  
16 this proceeding was filed on June 18th, 2014; is  
17 that correct?

18 A I believe that's correct.

19 Q Okay. If you go to Exhibit (4A)-2 --  
20 okay?

21 A Uh-huh.

22 Q I think in the context of what we're

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1 talking about here, additional positions or  
2 positions in the Local 1900 bargaining unit, we  
3 are talking about condition 17; am I correct?  
4 Commitment 17, sorry.

5 A That is correct.

6 Q Okay. Now, when did commitment 17 first  
7 surface, Mr. McGowan, if you know?

8 A Well, the commitment was made when the  
9 contract extension was signed June 13th. If your  
10 question is when did it actually come into our  
11 testimony, subject to check, I believe it came in  
12 in -- I believe it came in in the December  
13 rebuttal testimony.

14 Q Yep, I believe you're correct. And why  
15 did it take until the rebuttal testimony for that  
16 commitment to surface, Mr. McGowan, if you know?

17 A I do. When the contract extension was  
18 signed, it wasn't that we were trying to hide it.  
19 We actually had a press release that month to let  
20 people know that it was signed. We had various  
21 communication outreach efforts underway. We noted  
22 that the unions were supportive and we had signed



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1 the extension.

2 In the direct testimony of the  
3 intervenors, there was concern about the number of  
4 job impacts to D.C. And so in order to address  
5 those issues, we tried to be as comprehensive as  
6 we can and wanted to note that we had made this  
7 commitment back in June of 2014 to hire the 102  
8 union workers for the District. So it was really  
9 in response to concerns about the number of jobs  
10 that might be affected in D.C.

11 Q Okay. Let me ask you to take a look at  
12 Roman numeral III on page 2 of 4 of the collective  
13 bargaining agreement extension.

14 A Okay.

15 Q Do you see the heading is merger approval  
16 bonus?

17 A Yes.

18 Q And that provides for a one-half of  
19 1 percent increase in the general wage -- in the  
20 level of general wage increase for each of 2016,  
21 2017 and 2018 if the merger is approved, right?

22 A Yes.

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1 Q In other words, if the merger wasn't  
2 approved, there's a generate increase for each of  
3 those years at 2-1/2 percent under the extension  
4 and, if the merger is approved, there's a general  
5 wage increase of 3 percent, right?

6 A That's correct.

7 Q Okay. Is the extra half percent pay  
8 increase for 2016, '17 and '18 treated as a  
9 transaction cost or a cost to achieve?

10 A It would be treated as an ongoing  
11 operating expense.

12 Q Okay.

13 A Neither.

14 Q Okay. So you'd be looking to recover  
15 that from the ratepayers?

16 A That's correct. The -- as part of the  
17 contract negotiation, the unions are -- always try  
18 to get a higher wage increase, and you know,  
19 they're using the 3 to 3.5 percent range. We're  
20 usually at a 2.5. This was a way to compromise  
21 and come to an agreement with the union on the  
22 actual wage increase.

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1           Q       How much money is involved, if you know,  
2 Mr. McGowan, in the merger approval bonus?

3           A       We have not made that calculation, but I  
4 would also just add one comment to this, is that  
5 we talked about these union employees; the vast  
6 majority will be working on reliability O&M and  
7 the reliability capital projects, and we've  
8 committed to stay within budget.

9                   So the fact that there's a .5 percent  
10 general wage increase, we've already committed to  
11 stay within the budget, which these employees will  
12 be part of.

13          Q       Excuse me. Bear with me a second.

14                   Mr. McGowan, would you take a look next  
15 at Roman VII.

16          A       Okay.

17          Q       Does Roman VII relate to the letter to  
18 the Public Service Commission that's attached to  
19 the contract extension?

20          A       It's my understanding that Roman  
21 numeral VII sort of talks about the union's role  
22 throughout the merger process. They acknowledge

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1 that they're not going to show up to public  
2 hearings, they're not going to show up to this  
3 merger proceeding. That's what they meant by  
4 active role.

5 They define the role that they would  
6 take. They would support it and they had also  
7 sent a letter to the Commission stating their  
8 support.

9 So it does many things, that paragraph.

10 Q The text of the letter was worked out as  
11 part of the contract extension, wasn't it?

12 A This letter came from Mr. Griffin. It's  
13 his letter.

14 Q Yeah. That's not what I asked you. What  
15 I asked you was whether the text of the letter was  
16 worked out as part of the contract extension. It  
17 says in paragraph 7, does it not, that the union  
18 agrees to submit the attached letter to the D.C.  
19 and Maryland commissions.

20 A It does say that, yes. But I guess my  
21 point is it doesn't matter how this was drafted.  
22 Mr. Griffin, who is the president of the local

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1 union, signed this letter and sent it to the  
2 commissions. So it's his letter.

3 Q Now, let's take a look, Mr. McGowan, at  
4 the staffing commitment in part 5 of attachment A.  
5 Under subpart A, are the 102 hires referenced in  
6 joint applicants' merger commitment 17 part of the  
7 195 bargaining unit hires that PEPCO undertakes to  
8 make a good-faith effort to make in part 5A?

9 A Yes, that's correct. As you know, the  
10 Local 1900 union covers both PEPCO D.C. and PEPCO  
11 Maryland which includes Prince George's County and  
12 Montgomery County. So the 195 was the total  
13 service territory of those areas. And the 102 was  
14 our best estimate of how those jobs would be  
15 filled for D.C. employees.

16 Q Okay. Where did the company end up on  
17 its commitment to make a good-faith effort to post  
18 and fill 220 bargaining unit positions under the  
19 second paragraph of part 5A?

20 A That commitment has been completed.

21 Q Okay. So 220 were actually hired between  
22 June 1, 2012 and the present?

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1           A       Between June 2012 and today, those 220  
2 employees have been hired.

3           Q       Okay. And do you know how many of those  
4 actually hired between June 1, 2012 and the  
5 present are still employed by PEPCO?

6           A       I do not know that number.

7           Q       Were those all new hires or were some of  
8 them transfers from other bargaining units?

9           A       I do not know. I suspect that the  
10 majority -- vast majority of these would be -- if  
11 not all, would be new hires.

12                   But it's possible that others from our  
13 service territory, others from other service  
14 territories were hired.

15          Q       Okay. Now, looking at the contractual  
16 commitment to use a good-faith effort to  
17 externally hire 195 bargaining unit employees, the  
18 agreement states, quote, if a temporary employee  
19 fills a regular full-time position, that  
20 constitutes hiring an employee under this  
21 agreement, closed quote. Do you see where I am?

22          A       Yes, I am.

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1           Q       Does that apply to the 220 bargaining --  
2       or did that apply to the 220 bargaining unit  
3       positions the company was going to make a  
4       good-faith effort to post and fill between 2012  
5       and the present?

6           A       I don't recall if it did. I would just  
7       note that -- I mean, a temporary employee is not a  
8       full-time employee of the union. And so the  
9       carve-out or the clarification in paragraph A was  
10      if there was an employee that was not a full-time  
11      employee of the union and there was an opening and  
12      the person was qualified, we could hire that  
13      person as a full-time union employee and it would  
14      meet that requirement.

15                 I don't know specifically if that was the  
16      same requirement in the 2012 contract.

17           Q       But we can agree that it's applicable to  
18      the 195 employees that there's a good-faith  
19      undertaking to try to hire --

20           A       It does apply, yes.

21           Q       Okay. All right. Now, you said, I  
22      think, yesterday, that 450 employees in the

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1 Local 1900 bargaining unit were  
2 retirement-eligible as of year-end 2014; is that  
3 right?

4 A I think it was -- the report I saw was  
5 last summer. I'd say within the first year about  
6 450 were eligible for retirement. So about today.

7 Q Okay. And I think you also testified  
8 that you didn't have a bargaining unit-specific  
9 attrition rate for Local 1900, but said there's a  
10 company-wide average attrition rate of about  
11 8 percent a year?

12 A For the power delivery group.

13 Q Okay. And about how many employees are  
14 in the Local 1900 bargaining unit today?

15 A There's approximately 1150 in 1900.

16 Q Mr. McGowan, it's entirely possible, is  
17 it not, that the company could literally comply  
18 with condition 17, the 102 bargaining unit  
19 positions, and 18, moving the 50 PES positions  
20 from Arlington to D.C., and yet have no net  
21 increase in employment in the District of  
22 Columbia, isn't it?



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1           A       It is our belief that with the commitment  
2 to not have any net job reductions related to the  
3 merger in the utility, moving the 50 employees  
4 from PES into Virginia, making the good-faith  
5 effort to hire the 102 bargaining employees, that  
6 this will be job-positive for the District.

7                   Other scenarios could work out. We could  
8 have more employees than we expected. We could  
9 have less. But we think it more likely that this  
10 will be job-positive for the District.

11          Q       But I think the answer to my question was  
12 it is possible that you could literally comply  
13 with conditions -- or commitments 17 and 18 and  
14 have no net increase in employment in the  
15 District.

16                   MR. LORENZO: I think Mr. McGowan has  
17 answered that. Asked and answered.

18                   MR. COYLE: I wanted to make sure that he  
19 did. I'm not sure I got that answer. I wanted to  
20 make sure that I had it.

21                   THE WITNESS: There is an unlikely -- I'm  
22 sorry.

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1 CHAIRMAN KANE: You didn't hear the  
2 answer? Is that what you're saying?

3 MR. COYLE: I wanted to clarify the  
4 witness' response.

5 CHAIRMAN KANE: So repeat your question.

6 BY MR. COYLE:

7 Q My question was, it is entirely possible,  
8 isn't it, that the merged company could comply  
9 literally with its commitments 17 and 18 and yet  
10 have no net increase in employment in the District  
11 of Columbia?

12 CHAIRMAN KANE: That calls for a yes or  
13 no answer.

14 THE WITNESS: Yes, but that's a very  
15 unlikely scenario.

16 CHAIRMAN KANE: Thank you.

17 BY MR. COYLE:

18 Q Now, Mr. McGowan, would you take a look  
19 at confidential Exhibit (3F)-2. That's  
20 Mr. Khouzami's exhibit.

21 A Okay. I have it here.

22 MR. LORENZO: Your Honor, could I have a

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1 minute to get the exhibit?

2 CHAIRMAN KANE: Yes.

3 MR. LORENZO: I'm there, Your Honor.

4 Thank you.

5 MR. COYLE: Mr. Lorenzo, since it's a  
6 confidential exhibit --

7 MR. LORENZO: Yes, you can --

8 MR. COYLE: Thank you.

9 BY MR. COYLE:

10 Q Mr. McGowan, are you familiar with  
11 Exhibit -- confidential Exhibit (3F)-2.

12 (Cellular telephone interruption.)

13 CHAIRMAN KANE: Let me remind everyone to  
14 turn off any cell phones, pagers, anything that  
15 might make noise, anything that would transmit a  
16 signal that would interfere with our system.

17 Thank you, Mr. Lorenzo.

18 MR. LORENZO: I beg your pardon Your  
19 Honor.

20 BY MR. COYLE:

21 Q Are you familiar with confidential  
22 Exhibit (3F)-2, Mr. McGowan?

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1           A       I understand the information that's on  
2 here. I don't know how these numbers were  
3 developed. This is Mr. Khouzami's schedule.

4           Q       I didn't have any particularly detailed  
5 questions about it --

6           A       Okay.

7           Q       -- Mr. McGowan. The question that I did  
8 want to ask you, though --

9                   CHAIRMAN KANE: He has answered the  
10 question.

11                  MR. COYLE: Right. The question that I  
12 wanted to ask Mr. McGowan, is --

13 BY MR. COYLE:

14           Q       -- with reference to that exhibit, it is  
15 the joint applicants' present plan to eliminate  
16 257 full-time equivalent positions, correct?

17           A       Of which 57 are open positions. The  
18 answer is yes; however, 57 of those are open  
19 positions.

20           Q       Thank you.

21           A       Sorry.

22           Q       And is it correct that there is still no

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1 decision made by the joint applicants concerning  
2 where those positions will be eliminated?

3 A That is correct.

4 Q So is it possible that all of the  
5 positions that will be eliminated to achieve the  
6 synergy referenced in confidential Exhibit (3F)-2  
7 will be positions that would otherwise have been  
8 in the District of Columbia; isn't that right?

9 A Can you say that one more time?

10 Q It is possible that all of the positions  
11 that will be eliminated to achieve the synergy  
12 referenced in confidential Exhibit (3F)-2 will be  
13 positions that would have otherwise have been in  
14 the District of Columbia; is that correct?

15 A Sir, are you asking me if it's possible  
16 that the entire 200 filled positions on this chart  
17 would come only from the District of Columbia?

18 Q Yes.

19 A I would say no.

20 Q And where would I look to find that  
21 assurance.

22 A Given there's 200 -- the plan is for 200

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1 employees across the entire PHI footprint to be  
2 reduced over five years, we have operations in  
3 D.C., we have operations in Delaware, Maryland,  
4 New Jersey, and so this plan is focused on the  
5 entire PHI footprint. I do not see a scenario  
6 where all 200 would come from the District,  
7 because we're spread out across a large  
8 jurisdiction.

9 Q There's no commitment on the part of the  
10 joint applicants that would prevent all 200 filled  
11 and 57 open positions that are proposed to be  
12 eliminated from -- to come from the District of  
13 Columbia; is that right?

14 A There's nothing in Exhibit (4A)-2 that  
15 talks to that point.

16 Q Let's change topics again, Mr. McGowan.  
17 I'd like you to take a look at your rebuttal  
18 testimony at page 18, line 4, through page 19,  
19 line 13.

20 A Page 18, line?

21 Q 4, through page 19, line 13.

22 A Okay.

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1           Q     Now, when you talk about double leverage  
2     in your testimony, you are aware, are you not,  
3     that Dr. Wilson doesn't use that expression in any  
4     of his testimony in this proceeding?

5           A     I believe he doesn't use those words. I  
6     think the concept of overleverage, additional  
7     leverage, double leverage all describe the same  
8     concept.

9           Q     In your testimony, you're really adopting  
10    Ms. Lapson's characterization of Dr. Wilson's  
11    testimony, aren't you?

12          A     In terms of the use of the word  
13    "double leverage"?

14          Q     Yes.

15          A     I think that was a word that we used to  
16    describe what his concept was doing.

17          Q     So was the answer to my question yes or  
18    no?

19                MR. LORENZO: Asked and answered.

20                CHAIRMAN KANE: He's answered the  
21    question.

22                MR. COYLE: Very well.

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1 BY MR. COYLE:

2 Q Would you go to page 10 of your rebuttal  
3 testimony, Mr. McGowan, at lines 15 to 16. You  
4 say there that the price paid to PHI shareholders  
5 was determined by the market, correct?

6 A That is correct.

7 Q Have you, over the past ten months,  
8 acquired any understanding of what drove what you  
9 call the market and what I might call Exelon to  
10 pay the \$1.6 billion premium that's at issue in  
11 this case?

12 A What my testimony is saying here is that  
13 the price that was -- that's being paid for PHI  
14 was the result of a competitive process in the  
15 market.

16 Q And what I asked you to clarify -- my  
17 question is, have you acquired any understanding  
18 of why Exelon was willing to pay a \$1.6 billion  
19 premium to acquire PHI?

20 A I think Mr. Crane and others before me  
21 have talked about that. That was -- that's their  
22 offer. They were the ones that developed that



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1 price.

2 Q Isn't it true that one of the primary  
3 considerations that drives the merger premium is  
4 the ability to use about \$3-1/2 billion in debt  
5 with an after-tax cost of about 3 percent and  
6 1.1 billion in mandatory convertible securities to  
7 acquire the stock of PHI?

8 MR. LORENZO: Objection. He's answered  
9 that that's a Mr. Crane question, and we have  
10 Mr. Coyle, again, testifying before the  
11 Commission.

12 CHAIRMAN KANE: The witness has answered  
13 that he doesn't know these things, that it was  
14 other witnesses and other persons who have made  
15 that decision.

16 BY MR. COYLE:

17 Q Let me ask you, Mr. McGowan, to take a  
18 look at what's in evidence as Exhibit DCG 92.

19 A Okay. I have it here.

20 Q Before I question you about that specific  
21 document, let me ask you whether, in developing  
22 your testimony, your critique of Dr. Wilson at

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1 pages 18 to 19 of your testimony, did you examine  
2 any Exelon internal documents relative to the  
3 merger?

4 A I did not review this document you're  
5 referencing on DCG 1-10, attachment B.

6 Q Okay. Did you review any Exelon internal  
7 analyses of the merger, in particular the  
8 economics of the merger, in connection with  
9 developing your critique of Dr. Wilson's testimony  
10 at pages 18 to 19 of your rebuttal?

11 A Most of -- I don't recall a specific  
12 document. Most of the discussion was with folks  
13 from Exelon as to how this was being financed.

14 Q Let me ask you to go to Exhibit (3L)-3,  
15 Mr. McGowan. That's the Maryland Public Service  
16 Commission decision that you cite in your  
17 testimony.

18 A Yes. Okay.

19 Q I'd ask you to turn to page 17, second  
20 paragraph on the page, and read the first sentence  
21 to yourself.

22 A Page 17 of 18?

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1           Q       Just asking you to look at page 17, the  
2 second paragraph, and read the first sentence of  
3 that second paragraph to yourself.

4           A       Okay.

5           Q       The Maryland commission says there that  
6 it, quote, has a long-standing preference for use  
7 of actual capital structure absent evidence that  
8 the actual capital structure is unduly burdensome  
9 to ratepayers, closed quote.

10                   Am I correct?

11          A       That is one of many things they cite in  
12 this paragraph. I think the most important part  
13 of this paragraph where it talks about -- is the  
14 rate of return -- the reason they object -- they  
15 rejected OPC's proposal was it assumes a rate of  
16 return depends on the source of capital rather  
17 than the risks faced by the capital.

18                   I think that's a very important point,  
19 and that's also included in that paragraph.

20          Q       Did you come up with this decision  
21 yourself or did you have some help finding it?

22          A       This exhibit?

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1 Q Yeah.

2 A As part of the application process, the  
3 team developing testimony, this was discussed, and  
4 we thought it would be helpful in this case.

5 Q That doesn't quite answer my question.  
6 My question is, did you come up with that decision  
7 yourself or did you have some help?

8 A I did not personally come up with this  
9 decision myself.

10 Q Okay. Let me ask you whether your  
11 scholarship of Maryland PSC precedent extended to  
12 ascertaining what criteria the Maryland Public  
13 Service Commission applies in determining whether  
14 a utility's actual capital structure is unduly  
15 burdensome to ratepayers?

16 A I don't know what criteria they apply.

17 Q Did you have any occasion to find out  
18 what the Maryland Public Service Commission does  
19 when it determines that a utility's actual capital  
20 structure is unduly burdensome to ratepayers?

21 A I mean, we typically have discussions  
22 around capital structure in our rate cases in all

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1 of our jurisdictions and -- but based on what  
2 criteria the Maryland commission uses, I'm not  
3 familiar with.

4 Q Okay. Now, Mr. Lorenzo had you do some  
5 live sur-rebuttal on Dr. Wilson in reference to  
6 Dr. Wilson's suggestion in his supplemental  
7 answering testimony that rather than have the  
8 joint applicants rebate what Dr. Wilson considers  
9 to be excessive amounts collected in rates, the  
10 Commission could treat that as a customer  
11 contribution to capital, right? And you launched  
12 into a critique of that?

13 A His rebuttal testimony talked about a  
14 reduction to rate base. I'm not sure I understand  
15 your question.

16 Q Well, is that your understanding; it  
17 talks about a reduction to rate base?

18 A His proposal was a \$50 million -- the  
19 effect of his proposal was to reduce rate base by  
20 \$50 million initially and that would increase  
21 \$50 million each year for five years, to a total  
22 of 250, and that would stay constant for 15 more

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1 years. That was my understanding.

2 Q Do you recall that Dr. Wilson's  
3 suggestion was that the amount that you're talking  
4 about be treated as a customer contribution to  
5 capital?

6 A A customer contribution -- can you point  
7 me to his testimony where it says?

8 Q Sure. I think so. It will take me a  
9 minute, but I'll get there.

10 Let me invite your attention,  
11 Mr. McGowan, to page 13 of Dr. Wilson's  
12 supplemental answering testimony, Exhibit DCG (2F)  
13 at page 13, lines 1 through 5 for starters.

14 A Hold on one second.

15 Can you give me the page reference one  
16 more time?

17 Q Sure. Page 13, lines 1 through 5.

18 A Okay. I'm there.

19 Q You see, do you not, where Dr. Wilson  
20 says if the Commission -- it may be possible, if  
21 the Commission is determined to approve this  
22 merger, for the Commission to require that the

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1 joint applicants treat as a customer contribution  
2 to capital the excessive revenues that I have  
3 shown in my November 3rd, 2014 direct testimony to  
4 be attributable to the presence of the  
5 merger-created hypothetical capital structure?

6 A I see that. I guess the sentence that  
7 causes me trouble is, if you go to line 14, it  
8 says, In each subsequent D.C. general rate case,  
9 the balance of this DCCC account would be deducted  
10 from the company's D.C. jurisdictional rate base,  
11 thus giving consumers a rate base credit for the  
12 consumer-contributed capital resulting from the  
13 merger-related finance cost savings that were  
14 obtained by the company.

15 And when I read that, it's my  
16 understanding from his testimony that he is  
17 suggesting that this revenue be a reduction to  
18 rate base for the 20-year period.

19 Q Do you have an understanding,  
20 Mr. McGowan, of how customer contributions to  
21 capital are treated for purposes of utility  
22 rate-making generally?

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1           A       I'm familiar with construction -- or  
2       contributions in aid of construction, but in terms  
3       of customer revenues being contributed to capital,  
4       I've never been -- I'm not familiar with anyone  
5       who has done that.

6           Q       Okay. Do you know whether the D.C. PLUG  
7       financing involves a form of contribution to  
8       capital?

9           A       It does, yes.

10          Q       So you're familiar with it to that  
11       extent?

12          A       That is a construct -- it's a  
13       contribution in aid of construction is what that  
14       is.

15          Q       Is that your understanding, Mr. McGowan?

16          A       Well, the way the D.C. PLUG works is  
17       the -- I can walk you through if you'd like.

18          Q       I don't think that's necessary. Let me  
19       ask you a clarifying question and see if we can  
20       speed this up.

21                   With respect to D.C. PLUG, and you say  
22       it's a contribution in aid of construction, does



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1 PEPCO have to treat the funds that are provided  
2 for the D.C. PLUG program through the District  
3 bonding -- the District's share of construction  
4 funds, is PEPCO required to treat that as ordinary  
5 income on its income tax returns?

6 A I believe in some cases, we do report the  
7 contribution as taxable income. There are some  
8 situations where we construct work for companies,  
9 but I'm not clear on whether that's -- as I say,  
10 there are some that are taxable and some are not,  
11 depending on the project.

12 Q Right.

13 A But I would say it's different in the  
14 fact that the District is constructing an asset,  
15 and they're contributing that to the company at no  
16 cost and there's no impact to rate base.

17 What this proposal does, it takes  
18 \$50 million of revenue that the company would  
19 otherwise earn, and it's reallocating that to --  
20 to equity. And that's, to me, two complete  
21 different situations.

22 Q Okay.

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1 MR. COYLE: If I could have just a  
2 moment, Your Honor, I think I'm almost finished.

3 I have no further questions for  
4 Mr. McGowan.

5 Thank you, Mr. McGowan.

6 CHAIRMAN KANE: Thank you, Mr. Coyle.

7 DC SUN?

8 MR. SPECK: Thank you, Your Honor.

9 CROSS-EXAMINATION

10 BY MR. SPECK:

11 Q I have only a few questions, Mr. McGowan.

12 CHAIRMAN KANE: Excuse me. Introduce  
13 yourself.

14 MR. SPECK: Oh, I'm sorry.

15 BY MR. SPECK:

16 Q I'm Randy Speck. I represent DC SUN in  
17 this proceeding.

18 A Good to see you again.

19 Q Thank you. My questions relate primarily  
20 to issues that were raised in other witnesses'  
21 testimony and that they punted to you or, in some  
22 cases, I implied that you were probably the best

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1 person to answer.

2 A Okay.

3 Q So let me just go through these. The  
4 first is, in Mr. Rigby's testimony, he described  
5 PEPCO's direct load control program where he said  
6 that customers have devices on their  
7 air-conditioning units to allow PEPCO to manage  
8 the load in peak periods. Are you familiar with  
9 that program?

10 A I am, yes.

11 Q Am I correct that PEPCO instituted the  
12 direct load control program pursuant to Commission  
13 order 16602 in formal case 1087 in November 2011?

14 A Subject to check your order number, but  
15 it was November of 2011. We had filed an  
16 application, and the Commission issued an order in  
17 November of 2011.

18 Q And am I correct that the Commission's  
19 order approved a specific tariff covering the  
20 direct load control program?

21 A It's my understanding that they approved  
22 a regulatory asset for -- we have not received

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1 recovery of that yet, so it's a regulatory asset  
2 that we set up, and I think there was \$3 million  
3 of federal funding that was used to help reduce  
4 the cost. But there is a regulatory asset set up  
5 for recovery in future rate cases.

6 Q And it was approved as a tariff; is that  
7 correct?

8 A It was approved as a regulatory asset.

9 Q Well, there was also -- in that 2011  
10 order, the Commission required PEPCO to prepare a  
11 comprehensive education plan that would  
12 incorporate any lessons learned from the operation  
13 of the Maryland direct load control program; is  
14 that correct?

15 A I don't recall that.

16 Q Subject to check?

17 A Subject to check, yes.

18 Q And do you recall whether PEPCO, in fact,  
19 prepared an education plan?

20 A I do not know. I think if we were -- if  
21 we had a commitment to prepare the education plan,  
22 I would have to say that we comply with that

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1 commitment.

2 Q So I assume you're not familiar with the  
3 Commission's order approving that plan in March of  
4 2012?

5 A No, I'm not.

6 Q Am I correct that PEPCO is currently  
7 implementing the direct load control program based  
8 on the Commission's orders?

9 A Yes. In fact, we've completed the  
10 phase 1 of the order that was issued in  
11 November 2011 and, as you may know, we've applied  
12 for a phase 2 which covers -- I believe it's up  
13 through 2017.

14 Q And that is illustrative, I guess, of my  
15 next question. If PEPCO sought to modify that  
16 direct load control program, it would have to come  
17 to the Commission to do so; is that correct?

18 A That's correct, yes.

19 Q In your capacity as PEPCO's vice  
20 president for regulatory affairs, do you have  
21 overall responsibility for reporting to the  
22 Commission on PEPCO's progress in achieving

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1 policies that the Commission and the District of  
2 Columbia have established?

3 A Yes.

4 Q And do you have responsibility for  
5 ensuring that those reports are accurate?

6 A It's the responsibility of the company to  
7 ensure it files truthful and accurate information.

8 Q Now I'm going to go to an issue that was  
9 raised in Mr. Gould's cross-examination. He  
10 testified that he thought there were 33 megawatts  
11 of solar installed in the District, and that's at  
12 transcript page 1579 at lines 5 through 13. And  
13 then, in her examination of Mr. Gould, the Chair  
14 indicated that the actual number was closer to  
15 13 megawatts. Do you know what the correct number  
16 is?

17 A Of installed solar?

18 Q Yes.

19 A I do not. Not in the District.

20 Q Is there a report that is filed with the  
21 Commission that would identify that number? Are  
22 you familiar with any report?

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1           A       I'm not aware of one.

2           Q       Also in my -- in this cross-examination  
3 of Mr. Gould, he said he thought that the number  
4 of net metered customers in the District was  
5 between 1500 and 2,000. That was at transcript  
6 page 1589, lines 21, through 1590, line 6.

7                   Do you know the number of net metered  
8 customers in the District?

9           A       I do not.

10          Q       Do you know if there's a report that's  
11 filed with the Commission that identifies that  
12 number?

13          A       I'm sure we have the information. I  
14 don't know if that number is actually filed with  
15 the Commission or not. But it may be; I don't  
16 know.

17          Q       Do you know if it's in a public report  
18 with the Commission?

19          A       I do not know.

20          Q       Finally, Mr. O'Brien testified that the  
21 penetration rate for distributed generation is a  
22 good measure of how well a utility is doing on

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1 facilitating the installation of distributed  
2 generation. And he made that -- gave that  
3 testimony at transcript page 1065, line 22 through  
4 1066, line 7. Do you know what the penetration  
5 rate is for distributed generation in the  
6 District?

7 A I do not.

8 Q Do you know that number is reported to  
9 the Commission?

10 A I do not.

11 Q Thank you.

12 MR. SPECK: I may have no further  
13 questions.

14 CHAIRMAN KANE: Thank you, Mr. Speck.

15 D.C. WASA?

16 MS. WHITE: D.C. Water has no questions  
17 for Mr. McGowan.

18 MS. WEIN: Hi, I have just a few  
19 questions.

20 CHAIRMAN KANE: Yes.

21 CROSS-EXAMINATION

22 BY MS. WEIN:



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1 Q Hello, Mr. McGowan.

2 A Good morning.

3 Q I'm Olivia Wein, National Consumer Law  
4 Center, and I'm representing National Consumer Law  
5 Center, National Housing Trust and National  
6 Housing Trust Enterprise.

7 A Yes. Good morning.

8 Q Good morning. To provide a little bit of  
9 context, our organizations have an interest in  
10 preserving low-income access to affordable utility  
11 service, as well as ensuring adequate energy  
12 efficiency and affordable multi-family housing.

13 A Okay.

14 Q And so I'd like to turn to your rebuttal  
15 testimony on page 19, starting with line 14, the  
16 section 9 on low-income consumers --

17 A Okay.

18 Q -- where you're addressing our  
19 recommendations as well as D.C. government's  
20 Witness Mathur.

21 A Yes.

22 Q Okay. And so I wanted to sort of explore

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1 this a little bit more to make sure I understand.  
2 On page 20 of the rebuttal testimony, starting  
3 with line 4, but sort of going through that whole  
4 paragraph, you point us to PEPCO's residential aid  
5 discount program and -- with the assurance that  
6 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.

10 And to the extent that the residential  
11 aid discount program is inadequate, you recommend  
12 that that be addressed in a separate proceeding;  
13 is that correct?

14 A That's correct.

15 Q I wanted to know if you are familiar with  
16 the testimony filed by our witness, Michael  
17 Bodaken, as well as D.C. government's witness  
18 Mathur, and in particular I'm pointing to their  
19 description of the demographics of the low-income  
20 ratepayers in the District of Columbia. And so in  
21 particular, I'm going to turn to actually  
22 D.C. government Witness Mathur's testimony. I'll

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1 give you a second to find it.

2 A Okay.

3 Q If you could turn to page 6 once you get  
4 that settled.

5 A Okay.

6 Q Okay. So it's sort of describing the  
7 residential aid discount program and how it  
8 applies to low-income households in the District  
9 of Columbia. But towards the bottom, starting  
10 with line 18, Witness Mathur describes those  
11 income-eligible low-income households who do not  
12 participate and notes that a large number probably  
13 don't participate because they live in  
14 master-metered apartments.

15 A Okay.

16 Q So I wanted to then turn to the  
17 commitments that are in front of us in D.C.  
18 regarding low income.

19 A Okay.

20 Q And so that would be (4A)-2.  
21 Commitment 21, low-income assistance.

22 A Yes.

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1           Q       Okay. Looking at this commitment, it  
2 focuses on maintaining the low-income assistance  
3 programs. And I wanted to ask you if you think  
4 this is a separate and distinct benefit only if  
5 one assumes that PEPCO in the near future is going  
6 to be reducing its commitments to the low-income  
7 programs in the absence of the merger?

8           A       No. We are -- we will maintain our  
9 commitments to low-income customers and the  
10 programs with or without the merger. And so I  
11 think this was more of a statement that there will  
12 be no changes to the existing programs.

13                   However, I would say that there are  
14 benefits in this merger application that will help  
15 provide assistance to customers and low-income  
16 customers. As I mentioned before, there's the  
17 \$33.8 million CIF fund that the Commission could  
18 allocate a portion to low-income customers.  
19 There's the green sustainable fund that we set up  
20 in Maryland, which is a \$50 million fund for doing  
21 energy efficiency projects average those things.

22                   There's a 20 percent carve-out for

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1 not-for-profit affordable multi-house customers.

2 And then 7 million of that has been allocated to  
3 the District.

4 And also we've talked about the synergies  
5 throughout this proceeding where the net five-year  
6 synergies is \$14 million over the first five  
7 years --

8 THE REPORTER: I'm sorry. Slow down,  
9 please.

10 THE WITNESS: The net synergies over the  
11 first five years is 14 million for all customers  
12 in the District. It's about 55 million over the  
13 first ten years. And so that will help reduce  
14 rates, which obviously the low-income customers  
15 will benefit from that as well.

16 So I think it's all that combined is the  
17 commitment toward the low-income customers.

18 BY MS. WEIN:

19 Q To follow up and sort of unpack that --

20 A Sure.

21 Q -- list a little bit, so we did notice  
22 that, in the New Jersey settlement which is filed

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1 as part of the Joint Applicants' (4A) -- which one  
2 is it? -- (4A)-1 --

3 A Yes.

4 Q -- when you look at page 13, under low  
5 income, there's language very similar for ACE  
6 about maintaining. But they also use the word  
7 "enhance" in their sort of list of commitments for  
8 low-income programs in New Jersey.

9 And then I wanted to turn to the Maryland  
10 settlement which is in this proceeding as OPC  
11 Exhibit 7. So I'll give you a chance to find  
12 that.

13 A I have it.

14 Q Oh, you do? Okay. Great. We noticed  
15 there in the Maryland language in attachment -- in  
16 Exhibit B, settlement agreement and stipulation,  
17 page 46 of 70 in OPC's cross-examination exhibit  
18 marked Number 9, entered as Number 7, on page 2 of  
19 Exhibit B, in their language for the low-income  
20 assistance, also very similar language that we see  
21 in D.C. and in New Jersey, again, we see the word  
22 "enhance" appear in commitment 6 for low-income

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1 assistance.

2 A Yes.

3 Q So I'm wondering why the different  
4 treatment for the District of Columbia in that  
5 merger commitment.

6 MR. LORENZO: Your Honor, I'm going to  
7 object. Early on in this proceeding you ruled  
8 that we weren't going to negotiate on the stand  
9 about what -- from negotiated settlements and  
10 what -- picking a piece of a settlement and trying  
11 to get commitments, if you recall the first or  
12 second day with Mr. Crane on the stand. And I  
13 think -- these were negotiated agreements. We're  
14 perfectly willing to negotiate an agreement in the  
15 District.

16 CHAIRMAN KANE: I'm going to overrule  
17 that objection. The question was as to why there  
18 was something different proposed for the District.  
19 It was not -- I did not take it as an attempt to  
20 negotiate something different.

21 THE WITNESS: Okay. So my answer is that  
22 we're not proposing anything different for the

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1 District than in those two jurisdictions. That  
2 wording was important for the parties in those  
3 jurisdictions and is part of a settlement to  
4 settle all issues in those jurisdictions. That's  
5 the language that we agreed to.

6 BY MS. WEIN:

7 Q Thank you. Also going -- staying with  
8 that Maryland settlement agreement, you had  
9 mentioned the commitments in there for low income,  
10 the 20 percent carve-out for low income and the  
11 green sustainability fund. Just wanted to ask you  
12 about whether or not those commitments are  
13 actually triggered right now.

14 The status of the Maryland settlement, I  
15 believe, is that the hearings just concluded in  
16 Maryland. So those -- that agreement, that  
17 settlement agreement, has not formally been  
18 approved, correct?

19 A That's correct.

20 Q Okay. And if that settlement agreement  
21 is not approved, those things would not occur for  
22 the District, the green sustainability fund



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1 portion, a portion for the District of Columbia,  
2 in the Maryland settlement agreement?

3 A That is correct.

4 Q That is correct, okay. Thank you.

5 And then, finally, with the synergies,  
6 could you turn to -- sorry to do this; I thought  
7 this would just be a few questions --

8 Dr. Tierney's conformed testimony. This would be  
9 her conformed direct testimony, page 21 --

10 A Okay. I have it.

11 Q -- lines 1 to 8. I hope I'm in the right  
12 place. She is talking about the synergy benefits,  
13 and on lines 4 and 5 in particular, she sort of  
14 indicates that there are -- that these benefits  
15 will not flow equally to all customers and that  
16 there are some customers, for example -- and she  
17 calls out residential and low income -- for whom  
18 the economic value of other regulatory  
19 commitments, such as enhanced reliability  
20 commitments, may be lower than it is to commercial  
21 and industrial.

22 Do you see that?

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1           A       I do see that.

2           Q       So in light of all of that, I was  
3 wondering if that was also taken into account when  
4 you were figuring out the language for the  
5 low-income commitment for the District of  
6 Columbia?

7           A       Absolutely. As I mentioned, the  
8 \$33.8 million CIF fund -- the reason we did not  
9 come and make a proposal as to how that would be  
10 spent, we thought it would be -- give the  
11 Commission more flexibility to listen to all the  
12 intervenors and to provide their comments on how  
13 they thought the money should be spent, whether  
14 it's for low-income families, whether it's for  
15 renewable energy, whether it's a credit back to  
16 customers.

17                   And so that fund is available. And part  
18 of this proceeding was to listen to all the  
19 intervenors and to provide input as to how they  
20 thought the Commission should spend the money.  
21 But the ultimate decision is for the Commission.

22           Q       Understood. And then one other sort

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1 of -- a couple of questions about the low  
2 income -- the energy efficiency commitments to the  
3 District of Columbia.

4 A Okay.

5 Q So turning back to (4A)-2 and that  
6 language in commitment 23.

7 A Okay.

8 Q And then I also wanted to also open up  
9 the New Jersey settlement, if you have that handy  
10 still.

11 A I do.

12 Q In particular, commitment number 8.

13 So understanding that, based on the  
14 testimony of Witness Michael Bodaken for the  
15 National Housing Trust, NCLC, and Witness Mathur  
16 about the particular demographics of the D.C.  
17 residents and the large number of tenants, and  
18 with particular concern to those tenants in  
19 master-metered housing, would you agree that a  
20 bill credit would not be as helpful for a tenant  
21 in master-metered housing?

22 A I would agree that each jurisdiction has

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1 its own unique characteristics, and that's why we  
2 wanted the flexibility of the CIF and the  
3 Commission to decide how to spend the money  
4 relative to the -- certain circumstances in the  
5 District.

6 I would agree the way we -- a direct bill  
7 credit, since a customer who lives in a  
8 master-metered apartment does not pay a utility  
9 bill, it's part of their rent, a bill credit --  
10 since they don't pay a utility bill, a bill credit  
11 would not do them any good.

12 Q And we noticed that in the New Jersey --

13 A Unless the master-metered apartment owner  
14 passed those benefits on, which probably is --  
15 I'll just say that.

16 Q Depending on the number of units, that --

17 A Yes.

18 Q -- yes, would not go very far.

19 In terms of the New Jersey settlement, we  
20 did notice that, in commitment 8, there was a  
21 particular carve-out to direct funds, I believe  
22 some of the CIF funds, perhaps, to energy

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1 efficiency with a shout-out to low-income  
2 customers as well, benefiting from those energy  
3 efficiency funds.

4 A Correct.

5 Q And so in light of, you know, the  
6 direct -- and then in the Maryland settlement  
7 agreement, there were definitely substantial funds  
8 earmarked for low income --

9 A Right.

10 Q -- energy efficiency in particular and  
11 multi-family in particular. So is -- I guess, in  
12 looking at commitment 23 for the District, was any  
13 of that weighed, the potential to be more specific  
14 about low-income customers or low-income housing,  
15 in developing how much was going to go into that  
16 commitment 23?

17 A I would say that we started in the same  
18 place in each jurisdiction. We offered a CIF fund  
19 and, as part of the settlement agreement, the  
20 parties agreed to how that CIF would be allocated  
21 to the various programs.

22 In New Jersey, they wanted the energy

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1 efficiency that was directed toward low-income  
2 customers. In Maryland, they wanted programs for  
3 Montgomery County and for Prince George's County.

4           So each jurisdiction decided on how they  
5 wanted that CIF fund to be allocated. And of  
6 course they had bill credits in each of those two  
7 jurisdictions. Delaware was different as well.

8           So again, because of the unique  
9 characteristics of each jurisdiction, starting  
10 with the fund that was not pre-identified as to  
11 where it was going to be allocated, just provides  
12 a flexibility for the parties to negotiate and  
13 come to agreement on how those funds would best  
14 suit that jurisdiction.

15       Q     And then one final question which you  
16 reminded me of when you had mentioned Delaware,  
17 but I won't go into -- in the Maryland settlement,  
18 for low-income customers -- actually, I believe  
19 for all residential customers there was language  
20 about an arrearage forgiveness.

21       A     In Maryland, it was for residential  
22 customers that had receivables that were three

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1 years or older.

2 Q And in Maryland there was also a  
3 commitment to, in good faith, explore arrearage  
4 management programs, I believe.

5 A That's correct, yes.

6 Q That is correct. Okay. Thank you very  
7 much?

8 A Thank you.

9 CHAIRMAN KANE: Thank you, Ms. Wein.

10 We will take a break now, a ten-minute  
11 break. We will be taking -- since we are going to  
12 go late today, perhaps, we have ordered air  
13 conditioning to stay on. We will take a  
14 ten-minute break and then we will come back  
15 with -- the commissioners have questions for  
16 Mr. McGowan.

17 (Whereupon, a short recess was taken.)

18 CHAIRMAN KANE: We're back on the record.

19 Mr. McGowan, the commissioners have some  
20 questions for you. I'll start with Commissioner  
21 Fort.

22 COMMISSIONER FORT: Good afternoon.

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1 THE WITNESS: Good afternoon,  
2 Commissioner.

3 COMMISSIONER FORT: You told OPC counsel  
4 that you served on the business area team, the  
5 BAT. Who led the team that you served on?

6 THE WITNESS: There was -- there are  
7 multiple business area teams. Mr. Dickerson from  
8 PHI and Mr. Alden from Exelon were the two leads  
9 for the utility operations business area team.  
10 And my team is a subset of that.

11 COMMISSIONER FORT: Okay. And so your  
12 subset team, who led the subset team?

13 THE WITNESS: Myself and my counterpart  
14 at Exelon.

15 COMMISSIONER FORT: You talked with  
16 AOBA's counsel about the -- several teams that  
17 were developed in the process of the merger. One  
18 of them was a PHI due diligence team you  
19 mentioned; is that correct?

20 THE WITNESS: Yes.

21 COMMISSIONER FORT: Did you track the  
22 time that you worked on each of the teams that you



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1 worked on?

2 THE WITNESS: I have personally, yes.

3 COMMISSIONER FORT: And do you know if  
4 the other PHI members of the teams kept track of  
5 their time?

6 THE WITNESS: The accounting group issued  
7 an accounting policy when the merger was announced  
8 and set the guidelines for how individuals at the  
9 company should charge their time either on the  
10 merger or the integration effort.

11 COMMISSIONER FORT: Do you know if the  
12 same thing was done by Exelon?

13 THE WITNESS: I do not know.

14 COMMISSIONER FORT: If the merger is not  
15 approved, would any of the costs related to the  
16 work that was done on all of the teams be  
17 allocated to D.C. ratepayers?

18 THE WITNESS: The way the cost allocation  
19 manual works is -- take myself, for example. Part  
20 of my time is charged to the regulatory work, part  
21 of it is charged to integration and part of it is  
22 charged to the merger application process. All my

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1 costs get allocated to the utilities because  
2 that's where I work. There's a part that goes to  
3 corporate, but most of my time goes to the  
4 utilities.

5 So the costs have to follow where my time  
6 is spent. And -- but within each of the  
7 utilities, it's separate so we can track  
8 integration time spent and also time spent on the  
9 merger so we can identify that.

10 When we file a rate case -- if the merger  
11 is not approved and we file a rate case, rate  
12 cases are set on rates going forward, so  
13 presumably that time, although it might be in a  
14 test period, our position would be that the time  
15 that was previously spent on merger integration  
16 would no longer be needed but additional time on  
17 regulatory going forward would be needed. So we  
18 would not have that -- we would propose that not  
19 to be disallowed.

20 COMMISSIONER FORT: Are you familiar with  
21 the details of the \$180 million payment that was  
22 made to PHI as part of the merger agreement?

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1 THE WITNESS: Yes, I am.

2 COMMISSIONER FORT: Is there an  
3 expectation that that would cover some of those  
4 costs that were incurred related to the merger if  
5 the merger were not to be approved?

6 THE WITNESS: There's two payments. If  
7 the merger is not approved, the \$180 million would  
8 stay with PHI. We've talked about that was used  
9 for liquidity to fund the utilities during the  
10 process.

11 There's also another, I believe, a fee  
12 reimbursement -- I believe it's 30 or \$40 million;  
13 I can't remember the exact amount -- which would  
14 help cover our costs for bankers, attorneys,  
15 et cetera.

16 COMMISSIONER FORT: Did your BAT compare  
17 the cost allocation manuals for the two service  
18 companies for Exelon and PHI?

19 THE WITNESS: Mine did not specifically.  
20 There are many BAT areas. The controller's group  
21 has one as well, and they would have looked at the  
22 two cost allocation manuals.

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1                   COMMISSIONER FORT:   Would you know  
2 whether or not they produced a report or anything  
3 similar that discussed the differences between the  
4 cost ratios and the factors as they appear in the  
5 two manuals?

6                   THE WITNESS:   So the -- I'm not sure if  
7 there's a report that was issued.   I can speak to  
8 some of the differences if that would be helpful.  
9 The allocation ratios -- there's a lot of  
10 similarities between the two companies.   We're  
11 both in the same industry.   These are shared  
12 services, so we do a lot of the same functions.  
13 And so a lot of the allocation factors, such as  
14 salaries, rent, telephone -- they're all very  
15 similar.   And so you'll see a lot of similarities  
16 between the two of them.

17                   What Exelon -- the big difference between  
18 the two shared service organizations is that  
19 Exelon direct charges, I believe, about 70 percent  
20 of their costs, whereas PHI Service Company, we  
21 direct charge probably around 35 percent.   So they  
22 have a lot less to allocate.

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1           And so it's -- in terms of looking at  
2 what's direct charges, it's more -- you can easily  
3 understand and have support as to why the time is  
4 being spent versus going through an allocation.

5           And then they -- their allocation is  
6 based on the modified Massachusetts formula, which  
7 includes sales, assets and labor, whereas ours is  
8 a two-factor which we just look at property, plant  
9 and equipment and labor. So there's a slight  
10 difference in the allocation of the residual  
11 amount.

12           COMMISSIONER FORT: Do you know whether  
13 or not there's any agreement as to which manual  
14 and the method of allocation would be adopted  
15 going forward?

16           THE WITNESS: So the PHI Service Company  
17 will stay in existence. It will be within in the  
18 ring-fenced company, and that cost allocation  
19 manual will stay in place.

20           And we would join -- for the costs that  
21 would be allocated from the Exelon Business  
22 Service Company, we would follow under that

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1 manual, because that manual governs a much broader  
2 set of companies.

3           So in addition to the regulated, it also  
4 has unregulated. So we would be under both cost  
5 allocation manuals.

6           COMMISSIONER FORT: So when you say that  
7 manual stays in place, is that meant to  
8 describe -- is that meant to say that the  
9 particular manual that you currently have will  
10 stay in place in its current form or that there  
11 will be a cost allocation manual for PHI separate  
12 from the cost allocation manual for Exelon, and  
13 that manual may change going forward?

14           THE WITNESS: Yes. So the PHI Service  
15 Company cost allocation manual will stay the same,  
16 the one we have today. There will be obviously  
17 less costs in that company. And then the Exelon  
18 Business Service Company cost allocation manual  
19 will need to be modified to address the PHI  
20 companies in terms of how costs are being  
21 allocated, but will also fall under that  
22 allocation manual.

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1           COMMISSIONER FORT: Has PES already given  
2 notice that it will break its lease?

3           THE WITNESS: I do not know. I know that  
4 they have been looking for lease space for quite  
5 some time. I mentioned earlier that the office  
6 space is larger than what they need and they have  
7 been looking for about a year.

8           COMMISSIONER FORT: You had a discussion  
9 at the very end with Ms. Wein about the  
10 differences between -- you had a discussion about  
11 Maryland's programs and the settlement agreement  
12 and the provisions for the use of energy  
13 efficiency within that agreement. Do you have an  
14 understanding of how Maryland does its low-income  
15 programs and its energy efficiency programs and  
16 how those programs are funded and how that  
17 compares to how D.C. does its programs?

18           THE WITNESS: So for the -- there's a lot  
19 of differences between the energy efficiency. The  
20 energy efficiency is done generally through the  
21 EmPOWER Maryland program, and that is funded  
22 through an annual surcharge, and we administer

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1 that program for the State of Maryland.

2 In the District, the SEU has the -- takes  
3 the lead on the majority of those energy  
4 efficiency programs in the District. I think we  
5 supplement those under the direct load control  
6 programs we have. We're looking at pricing so we  
7 can supplement what they do in the District. But  
8 the SEU, as you know, goes through a tariff  
9 through all utilities bills.

10 COMMISSIONER FORT: Do you know whether  
11 or not the Maryland programs are also funded in  
12 part from funding from the RGGI program, the  
13 regional greenhouse gas initiative?

14 THE WITNESS: I did not know that.

15 COMMISSIONER FORT: Thank you. Those are  
16 all my questions.

17 THE WITNESS: Thank you.

18 CHAIRMAN KANE: Thank you.

19 COMMISSIONER PHILLIPS: No questions.

20 CHAIRMAN KANE: Mr. McGowan --

21 THE WITNESS: Good afternoon, Chairman  
22 Kane.



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1           CHAIRMAN KANE: Good afternoon. I want  
2 to really touch on three issues with you,  
3 clarification and follow-up, hopefully without  
4 being repetitive, but I still am trying to get a  
5 handle over the allocation of the consumer  
6 investment fund.

7           To be clear, I'm not talking about how  
8 the Commission might allocate it if we approve the  
9 merger and if it includes a customer investment  
10 fund, but how the joint applicants determined how  
11 big the fund would be and how it would be --  
12 specifically how it would be allocated among the  
13 jurisdictions.

14           As you probably know from participation  
15 in past cases before this Commission, as well as  
16 other issues, that we're particularly sensitive in  
17 the District, partly because of our size and  
18 partly because of our restricted governance, to  
19 getting our fair share of anything in the  
20 District.

21           So I want to ask -- I also want to be  
22 clear: I'm not asking about how the Commission

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1 might choose to use the fund, if there would be  
2 one. But let me start, in the other  
3 jurisdictions, the settlements that you have  
4 reached have specified how the fund would be used.  
5 Is it necessary for this Commission -- were there  
6 to be an approval and were there to be a fund,  
7 would it be necessary on the part of the joint  
8 applicants for this Commission to determine as  
9 part of any final action of approving a merger to  
10 specify at that time how the fund would be used?

11 THE WITNESS: I think there's two  
12 approaches. One is in the order they could  
13 specify the dollar amount of the fund and they  
14 could specify how those programs -- how the funds  
15 would be spent on the programs or if there was  
16 going to be credits back to customers.

17 An alternative is to hold a proceeding  
18 where there would be a separate proceeding as to  
19 how the various intervenors could apply for  
20 funding for the programs and the Commission could  
21 make a separate ruling.

22 CHAIRMAN KANE: So the offer -- or the

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1 commitment is not contingent on the Commission  
2 making a determination of how the funds would be  
3 used at the time that they were provided?

4 THE WITNESS: That is correct.

5 CHAIRMAN KANE: Thank you. Now let me go  
6 to how you determined -- "you" being the joint  
7 applicants -- the size of the fund and  
8 particularly the allocation of -- whatever the  
9 size is, the allocation among the jurisdictions.

10 I believe you said, in answer to a  
11 question from previous questioners, that the  
12 dollar amount of the fund, the total amount, was  
13 based on the synergy savings; is that correct?

14 THE WITNESS: Yes.

15 CHAIRMAN KANE: And you did a synergy  
16 study in order -- some kind of study or  
17 investigation to see -- to determine what the  
18 synergy would be. And the original amount of that  
19 was about \$100 million? Is that -- or was it  
20 50 million?

21 THE WITNESS: Sure. So there was a  
22 synergy study that looked at how the cost savings

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1 from the merger would flow to the various  
2 jurisdictions. And the result of that over the  
3 first five years, the net synergy savings was  
4 \$92 million. And that was rounded up to  
5 \$100 million.

6 CHAIRMAN KANE: And did that synergy  
7 study look jurisdiction by jurisdiction or just at  
8 a total?

9 THE WITNESS: So it looked at how costs  
10 currently -- it used the 2014 PHI baseline and how  
11 costs were being allocated from the shared  
12 services group, and then it compared it to --  
13 those costs that would be eliminated from the PHI  
14 shared services group and would be done at the  
15 Exelon shared services group and how the costs  
16 would then be allocated to PHI going forward.

17 And there was a delta. As you merge the  
18 two operations and -- as you merge the two shared  
19 service companies' functions and spread those over  
20 a larger amount of companies, there's a cost  
21 savings.

22 CHAIRMAN KANE: So did I understand

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1 correctly you're saying that the baseline, the  
2 synergy savings were only looking at those savings  
3 that are now being incurred at the PHI level?

4 THE WITNESS: No. So the -- it's the  
5 combination of what the O&M costs would be of PHI  
6 as a stand-alone company -- and they looked at the  
7 cost allocations that would occur post-merger, the  
8 two companies being merged, and what savings would  
9 occur if you merged certain functions.

10 CHAIRMAN KANE: So O&M costs are not done  
11 at the PHI level; they're done company by company?

12 THE WITNESS: Well, the shared services  
13 company is primarily O&M costs, and that's what  
14 gets allocated down to the utilities. And so the  
15 value -- the real value of the merger comes from  
16 the combination of shared services functions,  
17 trying to combine shared services functions that  
18 are typically allocated to the utilities, if you  
19 combine those functions, reduce those costs and  
20 then spread those costs over more companies, there  
21 will be less costs being allocated to the three  
22 utilities today than would have been under a PHI

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1 stand-alone plan.

2 CHAIRMAN KANE: Let me understand. For  
3 example, we have -- one of the examples that was  
4 cited in the application of the improvement or the  
5 benefit that would come to the District would be a  
6 system where there was shared purchasing, a  
7 procurement, certain number -- transformer and  
8 lines and cable, et cetera, now being bought for  
9 each of the companies. Is that all done now at  
10 the PHI level?

11 THE WITNESS: It's done, but it's done  
12 just for three utilities.

13 CHAIRMAN KANE: Right. Okay. That was  
14 my question. For all three utilities. So if  
15 PEPCO D.C. is purchasing cable to replace a line  
16 somewhere in the District, that purchase is done  
17 at the PHI level?

18 THE WITNESS: It's done at -- it's done  
19 at the PHI Service Company level.

20 CHAIRMAN KANE: Service Company level.

21 THE WITNESS: Right. That's correct.

22 CHAIRMAN KANE: And then when that comes

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1 to the Commission for rate recovery, it's that  
2 portion of it that was only for the District that  
3 goes into the request?

4 THE WITNESS: That's right. So maybe the  
5 way to describe it is that, on the purchasing  
6 side, we have consolidated at PHI purchasing for  
7 all the company. And so we get the scale of  
8 discounts because we're buying on behalf of three  
9 utilities, but that function is centralized to  
10 reduce the cost.

11 CHAIRMAN KANE: And functions such as  
12 linemen, repairmen, the cost of the labor for  
13 that, is that done at the PHI level?

14 THE WITNESS: No. So those individuals  
15 work directly for one utility. And so those  
16 costs -- they're employees of -- we'll take the  
17 linemen of PEPCO at 1900; they're employees of  
18 PEPCO and so their costs are paid for by PEPCO and  
19 there's no allocation because they spend their  
20 time just working for one utility.

21 CHAIRMAN KANE: So any cost savings that  
22 might occur as a result of a more efficient use of

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1 practices by the linemen, which -- that was not  
2 part of the synergy study?

3 THE WITNESS: That gets to a level of  
4 detail that was not part of the synergy study.

5 CHAIRMAN KANE: And so, then, the synergy  
6 study -- then the savings, the total savings I  
7 understand were done total at the PHI level, and  
8 then they were allocated to the jurisdictions  
9 based on the current allocation of those costs to  
10 the various jurisdictions, various companies --  
11 operating companies?

12 THE WITNESS: Right. Let me --

13 CHAIRMAN KANE: Let me make sure I'm  
14 talking about operating companies, not  
15 jurisdictions because, for example, Maryland has  
16 Delmarva Maryland and PEPCO Maryland --

17 THE WITNESS: Right.

18 CHAIRMAN KANE: So we're really talking  
19 about five companies for rate-making purposes.

20 THE WITNESS: Sure. So let me give an  
21 example in the shared services that might help  
22 explain this. So let's take the treasury



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1 function. So right now there's a treasury  
2 function at the service company that provides  
3 treasury services for the three utilities.

4           So many of those functions will no longer  
5 need to be -- to go forward, and so the treasury  
6 function will be managed by Exelon. There will be  
7 employees within our company that does cash  
8 management, but in terms of doing PHI equity  
9 issuances, PHI investor relations, those roles go  
10 away.

11           And so what PHI will say is the three  
12 utilities will save a hundred percent of the costs  
13 that we eliminate at the PHI Service Company.

14           CHAIRMAN KANE: And let's say that was a  
15 million dollars --

16           THE WITNESS: Okay.

17           CHAIRMAN KANE: -- that's going to be  
18 saved. So then you take the million dollars --

19           THE WITNESS: Right.

20           CHAIRMAN KANE: -- and allocate that  
21 savings among the five operating --

22           THE WITNESS: Jurisdictions.

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1 CHAIRMAN KANE: -- regulatory --

2 THE WITNESS: That's right. So that  
3 would be a cost reduction.

4 CHAIRMAN KANE: And what was the basis  
5 for that? How did you divide up that million  
6 dollars?

7 THE WITNESS: It's based on -- we know  
8 how the costs today flow to the three -- or the  
9 five jurisdictions, as you mentioned. So by  
10 taking that cost out, there's less cost being  
11 allocated.

12 CHAIRMAN KANE: So just so I'm very  
13 clear, say there was a million-dollar savings  
14 identified for X function --

15 THE WITNESS: Right.

16 CHAIRMAN KANE: -- and currently that X  
17 function, which is being performed at the PHI  
18 level, the District is paying 20 percent of it.  
19 So then \$200,000 would be allocated, or 20 percent  
20 of that savings, to the District, correct?

21 THE WITNESS: That's correct.

22 CHAIRMAN KANE: Okay. Now, was that done

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1 individually for each of those services or is the  
2 allocation of those services currently by PHI the  
3 same no matter what the service is; that is, what  
4 the District is saving -- the District's  
5 allocation, say, for procurement services, the  
6 District's allocation for treasury services, the  
7 District's allocation for HR services, is that the  
8 same percentage all the way down the line?

9 THE WITNESS: No, it's not.

10 CHAIRMAN KANE: It's not?

11 THE WITNESS: So -- and the reason that  
12 we have -- there was a data request we went  
13 through where I think we identified there's 110  
14 unique allocators in our service company and we  
15 use -- I think there's 80 that are ones that -- 70  
16 or 80 that we actually use.

17 And so depending -- we look at each of  
18 the functions, and for HR it's probably allocated  
19 based on number of employees. Telephone costs are  
20 based on number of telephones that we have in the  
21 company, if we even have any more telephones.  
22 Computers by PC. So we try to identify the cost

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1 and the activity.

2 CHAIRMAN KANE: Okay. So then that was  
3 all rolled up into a percentage allocation for  
4 each jurisdiction of the total, correct?

5 THE WITNESS: Of the savings.

6 CHAIRMAN KANE: Of the savings.

7 THE WITNESS: That's right.

8 CHAIRMAN KANE: And if this was a service  
9 that a jurisdiction was paying 20 percent of and  
10 they were paying 10 percent of another service or  
11 15 percent of another service, that was all rolled  
12 up based on dollar amount and put into the total  
13 final allocation?

14 THE WITNESS: Right. So there's two  
15 parts --

16 CHAIRMAN KANE: Is that correct?

17 THE WITNESS: Yes, it's correct, but  
18 there's -- I want to make sure there's a second  
19 part that we want to talk about. So I think what  
20 you and I have talked about is the cost savings  
21 from --

22 CHAIRMAN KANE: From the synergy.

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1 THE WITNESS: -- the PHI --

2 CHAIRMAN KANE: From PHI.

3 THE WITNESS: Right. Now, in that same  
4 function, the million dollars for treasury, we  
5 still need those services, but we'll pick those up  
6 from the Exelon Business Service Company, and the  
7 allocation to the PHI companies might be \$200,000,  
8 just to pick a number. So the net of those  
9 savings is 800,000. And so we looked at that  
10 across many functions.

11 CHAIRMAN KANE: So it was the net  
12 savings, then --

13 THE WITNESS: That's right.

14 CHAIRMAN KANE: -- that was allocated  
15 based on the current percentage allocation to each  
16 of the five companies, the five jurisdictions, and  
17 then rolled up to one final percentage allocation  
18 or dollar allocation to that jurisdiction; is that  
19 correct?

20 THE WITNESS: Right. So for -- the  
21 answer is yes. And what we did for Maryland, when  
22 you look at how they -- they did it by utility.

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1 So it was PEPCO, it was done by Delmarva and then  
2 ACE. And then within the PEPCO corporation, they  
3 captured the savings. That was actually allocated  
4 between Maryland and D.C. based on customers.

5 CHAIRMAN KANE: That's where I was going.

6 THE WITNESS: Okay.

7 CHAIRMAN KANE: Because when you do the  
8 allocation from PHI down to the District from the  
9 service company, is that the way it's done? Do  
10 you take the allocation of all of that to PEPCO  
11 Maryland and D.C. and then divide it between us  
12 based on customers?

13 THE WITNESS: So the way the allocation  
14 was done in the synergy study --

15 CHAIRMAN KANE: No, I'm not talking about  
16 the synergy study. I'm not sure it was  
17 understood. Currently.

18 THE WITNESS: So currently --

19 CHAIRMAN KANE: PHISCO allocation --

20 THE WITNESS: Right.

21 CHAIRMAN KANE: -- let's say it's  
22 treasury. Do you then allocate that to Maryland

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1 and D.C. for PEPCO together and then divide it up  
2 again by customers?

3 THE WITNESS: So what the --

4 CHAIRMAN KANE: Currently.

5 THE WITNESS: The answer is no.

6 CHAIRMAN KANE: No.

7 THE WITNESS: Right. The way the process  
8 works is that the service company allocates the  
9 cost to each of the three utilities, and so today,  
10 currently, based on the activities we described.

11 And then it's the cost of service study that the  
12 company does that takes PEPCO and breaks them out  
13 between Maryland and D.C. It's a second process.

14 CHAIRMAN KANE: So what you did for the  
15 synergy savings study is different than what you  
16 did -- than what is done now with PHISCO; is that  
17 correct?

18 THE WITNESS: That's correct.

19 CHAIRMAN KANE: That is correct. One is  
20 done on a cost of service study now, and --

21 THE WITNESS: Right.

22 CHAIRMAN KANE: -- for the synergy

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1 savings, instead of using cost of service study,  
2 you use customers.

3 THE WITNESS: Right.

4 CHAIRMAN KANE: And now --

5 THE WITNESS: That's correct. Yes.

6 CHAIRMAN KANE: Now, I want to turn to  
7 page 5 of your rebuttal testimony.

8 THE WITNESS: Okay.

9 CHAIRMAN KANE: And if you would look  
10 at -- this is -- I want to look at page -- line 8  
11 in particular. You were answering -- or you were  
12 explaining the opposition to some of the District  
13 of Columbia government's requests. You say  
14 because -- based on the number of customers  
15 served, the District of Columbia constitutes  
16 14 percent of PHI's total customer base, the  
17 extension similar to the other jurisdictions would  
18 result in benefits of over seven times, et cetera,  
19 et cetera.

20 But I want to focus on this customer base  
21 being 14 percent of PHI's total, correct?

22 THE WITNESS: Yes, ma'am.



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1 CHAIRMAN KANE: That's customer base.

2 THE WITNESS: Yes.

3 CHAIRMAN KANE: Now, if you did the  
4 synergy -- and this is synergy savings that -- so  
5 you then allocated 14 percent of the synergy  
6 savings to PEPCO D.C.; is that correct? Is  
7 that --

8 THE WITNESS: That's correct.

9 CHAIRMAN KANE: -- what you're saying?  
10 Okay. 14 percent of the synergy savings are  
11 allocated to PEPCO D.C.

12 THE WITNESS: Actually, I'm not sure  
13 that's correct. What we're saying is the  
14 synergies were -- you don't allocate synergies, as  
15 you know. Basically, it's lower costs. I know  
16 we're talking about synergies, but --

17 CHAIRMAN KANE: The net synergy  
18 savings were allocated to D.C. and you --

19 THE WITNESS: Right. So --

20 CHAIRMAN KANE: -- stipulated that, at  
21 least when you started, it was \$100 million --

22 THE WITNESS: Yes.

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1 CHAIRMAN KANE: -- and it was \$14 million  
2 allocated to D.C.

3 THE WITNESS: That's correct.

4 CHAIRMAN KANE: Correct. And I'm looking  
5 at your statement here that the District of  
6 Columbia constitutes 14 percent of PHI's total  
7 customer base, correct?

8 THE WITNESS: Yes. That's correct.

9 CHAIRMAN KANE: And 14 percent of  
10 100 million is \$14 million, correct?

11 THE WITNESS: That's correct.

12 CHAIRMAN KANE: So my question is, was  
13 the allocation to the District based on the  
14 results of the net savings for this jurisdiction  
15 in the synergy study or was it based on the  
16 customer base, the percentage of customer base?  
17 And I'll get to a question about what you mean by  
18 customer --

19 THE WITNESS: Okay. So -- if I can add  
20 one more piece of information --

21 CHAIRMAN KANE: Well -- okay.

22 THE WITNESS: -- I think it will help

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1 clarify. The amount the allocation based on the  
2 lower cost was done through the allocation process  
3 by the utility. So PEPCO received our best guess  
4 of what the cost savings will be for PEPCO.

5 CHAIRMAN KANE: And what was that number?

6 THE WITNESS: That number was -- was  
7 \$42 million.

8 CHAIRMAN KANE: \$42 million for PEPCO --

9 THE WITNESS: PEPCO Maryland and PEPCO  
10 D.C.

11 CHAIRMAN KANE: PEPCO D.C. combined?

12 THE WITNESS: Right.

13 CHAIRMAN KANE: And that was based on the  
14 synergy study --

15 THE WITNESS: Yes.

16 CHAIRMAN KANE: -- not on number of  
17 customers.

18 THE WITNESS: That's correct.

19 CHAIRMAN KANE: Actual savings.

20 THE WITNESS: Yes. And in the cost  
21 allocation -- cost of service study, these types  
22 of costs that we're talking about, the shared

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1 services, are generally allocated 37 percent to  
2 the District and 63 percent to Maryland. In the  
3 last -- case 1103, the general A&G allocation is  
4 about 37/63.

5 So when they use the customers between  
6 Maryland and D.C., it's about a third/two-thirds.  
7 So it's 33 percent of the customers are in D.C.  
8 relative to Maryland.

9 So the fact that they used customers to  
10 allocate PEPCO between Maryland and D.C., it's a  
11 pretty close estimate based on the cost of service  
12 study.

13 CHAIRMAN KANE: 37 percent of 42 million  
14 is?

15 THE WITNESS: 15.5 million.

16 CHAIRMAN KANE: 15.5.

17 THE WITNESS: And 14 was the estimate.

18 CHAIRMAN KANE: So what are you proposing  
19 to allocate to D.C., 15.5 or 14 -- I mean,  
20 originally? I know it's changed.

21 THE WITNESS: Sure. So what will  
22 actually go to customers going forward --

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1 CHAIRMAN KANE: Well, it doesn't go to  
2 customers. It's going to the customer investment  
3 fund, correct?

4 THE WITNESS: Right. So the original  
5 proposal was the CIF was -- the design of the CIF  
6 was to ensure that the customers in each  
7 jurisdiction were paid a hundred percent of the  
8 net synergies that we expected them to benefit  
9 from through the merger.

10 And so the 14 million was our best  
11 estimate of how synergies would actually flow  
12 through to PEPCO D.C. And so the CIF fund was set  
13 at 14 million which was to pay that 14.

14 CHAIRMAN KANE: Why was that the best  
15 estimate if the cost allocation or the cost of  
16 service allocation that's been used in the most  
17 recent rate case was 37 percent?

18 THE WITNESS: At the time that the CIF  
19 was developed, they used customers as a proxy for  
20 what the allocation would be. So I would agree  
21 there's a slight difference between actually what  
22 occurred versus what they estimated.

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1 CHAIRMAN KANE: And now that the -- so  
2 the synergy study was done and came up with --  
3 excuse me -- \$100 million of synergy savings.  
4 Now, the synergy savings has been sort of doubled,  
5 right?

6 THE WITNESS: No. The synergy --

7 CHAIRMAN KANE: No. Now we're up to \$33  
8 million --

9 THE WITNESS: Right.

10 CHAIRMAN KANE: -- being offered.

11 THE WITNESS: That's correct.

12 CHAIRMAN KANE: And how did that occur?

13 THE WITNESS: So the synergy study stays  
14 the same. That hasn't changed. It's still the  
15 \$14 million over the first five years and the 51  
16 over the first ten years.

17 The -- what the offer is -- we've  
18 increased it from 100 percent of the net five-year  
19 synergies, we've increased that 2.4 times, and now  
20 the CIF is at 33.75 million for the District  
21 and -- which is almost 100 percent of the ten-year  
22 net present value savings from the synergies.

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1           So we're always trying to keep the  
2   customer investment fund -- we want to base it on  
3   the synergies by jurisdiction.

4           CHAIRMAN KANE: Now, synergies are  
5   savings due to the efficiencies, you say, the net  
6   synergies. And you're saying you get different  
7   results per jurisdiction, correct?

8           THE WITNESS: That's correct. Yes.

9           CHAIRMAN KANE: Because there are -- is  
10   it true that there are significantly different  
11   customer usage, customer load profiles, mix of  
12   customers in each of the jurisdictions?

13          THE WITNESS: That's correct. Yes.

14          CHAIRMAN KANE: So that, for example, in  
15   the District would you agree that 15 percent of  
16   the usage, the load, is residential and 85 percent  
17   is non-residential?

18          THE WITNESS: That sounds correct.

19          CHAIRMAN KANE: And are any of the  
20   synergies related to load? Are they all just PHI  
21   overhead kinds of costs?

22          THE WITNESS: So based on the synergy

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1 study, it was primarily focused on shared  
2 servicing, purchase procurement, IT costs. Those  
3 were probably the key drivers. To the extent that  
4 there are other savings that we can achieve  
5 through best practices, or by whatever means,  
6 100 percent of those, as you know, will  
7 automatically go to customers through future rate  
8 cases as we have lower costs of service.

9 CHAIRMAN KANE: Do you know what  
10 percentage of all current PHI revenue from  
11 regulated companies PEPCO D.C. represents?

12 THE WITNESS: Revenues? I don't have  
13 that information. I can find out for you.

14 CHAIRMAN KANE: Or of rate base?

15 THE WITNESS: I didn't bring those up  
16 here with me.

17 CHAIRMAN KANE: Or of profit, for  
18 example, or of expenses?

19 THE WITNESS: I'm sorry?

20 CHAIRMAN KANE: The percentage of PHI  
21 regulated entities, D.C., PEPCO D.C. represents as  
22 a percentage of PHI revenue, as a percentage of



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1 PHI rate base, regulated rate base, of PHI  
2 expenses or operating expenses, and of what I'll  
3 call profit, because I want to -- I believe you  
4 indicated on page -- in your rebuttal testimony  
5 that the net -- I don't want to use the word  
6 profit -- net of PEPCO D.C. for the 12 months  
7 ending June 30th, 2014 was \$49 million? Page 4.

8 THE WITNESS: Yes, that's correct.

9 CHAIRMAN KANE: Yes, I'm sorry. It's  
10 right there. I'm looking at it. The annual net  
11 income from PEPCO D.C. distribution operations for  
12 the 12 months ending June 30th, 2014 was only  
13 \$49 million. And what percentage of net income  
14 for PHI does that \$49 million represent?

15 THE WITNESS: I can find that out for  
16 you. I do have some other percents you mentioned  
17 in terms of sales, rate base and -- actually, I  
18 have net income for 2013 -- these are all calendar  
19 years -- to give you some perspective. And if you  
20 want, I can give you the actual numbers.

21 But this is D.C. versus PHI regulated  
22 total. Sales are about 23 percent.

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1 CHAIRMAN KANE: It's by sales --

2 THE WITNESS: I'm sorry. Revenues.

3 CHAIRMAN KANE: Revenues.

4 THE WITNESS: Rate base is about  
5 25 percent.

6 CHAIRMAN KANE: Rate base, 25 percent.

7 THE WITNESS: And net income is about  
8 24 percent. And these are all as of 12/31/2013.

9 CHAIRMAN KANE: And primarily under rate  
10 design that this Commission has put in place,  
11 rates are volumetric; that is, revenue is  
12 volumetric, largely volumetric; is that correct?

13 THE WITNESS: Well, we have the BSA, but  
14 the rates -- the monthly rates are volumetric.

15 CHAIRMAN KANE: Yes. The monthly rates  
16 are volumetric. And the income that -- or the  
17 revenue that PEPCO receives from District  
18 customers, excuse me, is largely volumetrically  
19 based; is that correct?

20 THE WITNESS: Yes, that's correct.

21 CHAIRMAN KANE: And if the customer  
22 investment fund is to -- is designed -- if the

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1 purpose of it, as I understand, is to share back  
2 to customers their -- or to the jurisdiction for  
3 the customers, for use by the customers, an  
4 appropriate proportional share of the savings, and  
5 the savings go against -- are supposed to be --  
6 and the rates are volumetric and the revenue is  
7 volumetric, how do you justify using 14 percent  
8 for the District rather than, say, 23, 25 or  
9 24 percent?

10 THE WITNESS: Well, it's all based on how  
11 the cost savings and the particular costs that  
12 will be eliminated will flow through the  
13 jurisdictions. As an example, going back to my  
14 treasury example, we don't allocate treasury based  
15 on sales or rate base. It's based on some other  
16 function that might evenly spread those costs over  
17 the various jurisdictions. IT is based on number  
18 of PCs or computers.

19 So depending on the costs that are being  
20 saved, the allocations might be different and may  
21 not actually align with the sales or rate base.

22 CHAIRMAN KANE: Let me ask you about

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1 customers. I am still getting conflicting and  
2 confusing information from various witnesses about  
3 how customers is defined, even if we accept that  
4 using customers is an inappropriate allocation.

5           You may recall -- and I think this was  
6 another one that was bumped down to you. People  
7 keep using the word "punting." I keep thinking  
8 about the Mississippi River that rolls along, and  
9 it picks up debris that -- so it all ends up at  
10 the end and it makes the Mississippi Delta, and  
11 you're the delta.

12           THE WITNESS: It's good to be at the end.

13           CHAIRMAN KANE: Ms. Francis, as AOBA, was  
14 originally -- their Exhibit 1118. And she --  
15 that -- I believe that form was your 10-K, your  
16 December 31st 10-K, showing that there were  
17 264,634 customers in the District.

18           I believe -- and I don't recall, to tell  
19 you the truth, which witness, company witness,  
20 joint applicant witness, I asked it of, but put on  
21 the record the December 31st report on the  
22 progress -- from PEPCO D.C. on the progress of

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1 installing the new meters in the District.

2 THE WITNESS: AMI meters.

3 CHAIRMAN KANE: The AMI meters, which  
4 showed that, as of December 2013, there were  
5 277,222 AMI meters installed and a remaining 4318  
6 to be switched out, meaning that there were, at  
7 that time, 281,540 meters in the District.

8 THE WITNESS: Yes.

9 CHAIRMAN KANE: And that is a difference  
10 of 17 to 18,000 meters.

11 THE WITNESS: Yes.

12 CHAIRMAN KANE: Yes. Now, we've been  
13 told that -- and I think you said it yesterday --  
14 that there were -- you used meters -- defined  
15 customer for this allocation, this percentage of  
16 allocation -- you used customer as a meter that  
17 had an account.

18 THE WITNESS: Yes.

19 CHAIRMAN KANE: Is that correct? Okay.

20 Now, I believe I heard Mr. Chambers from  
21 the District yesterday say that the District had  
22 800 accounts that he was in charge of --

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1 THE WITNESS: Right.

2 CHAIRMAN KANE: -- for electricity  
3 accounts.

4 Did the District get counted as 800  
5 customers?

6 THE WITNESS: So if there is a metered  
7 customer where we send a bill, that is counted as  
8 a customer. I do want to correct the record. I  
9 had forgotten yesterday that WMATA and Blue  
10 Plains, they have a special tariff, but they're  
11 the only customer in that tariff class, and so  
12 they're counted as one customer. And I made a  
13 comment that, in general, if you have a meter and  
14 receive a bill, that's a customer. But I did want  
15 to correct that.

16 CHAIRMAN KANE: So the 96 meters that  
17 WMATA has only counts as one customer --

18 THE WITNESS: One customer, because they  
19 had --

20 CHAIRMAN KANE: -- in the 10-K --

21 THE WITNESS: Yes.

22 CHAIRMAN KANE: -- report?

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1 THE WITNESS: That's correct.

2 CHAIRMAN KANE: And in the numbers that  
3 you used for allocation?

4 THE WITNESS: That is correct. Right.

5 CHAIRMAN KANE: Okay. And that's --

6 THE WITNESS: So WMATA and Blue Plains.

7 CHAIRMAN KANE: And Blue Plains.

8 THE WITNESS: Right. So they're the  
9 exception because they have a special --

10 CHAIRMAN KANE: Are they the only  
11 exceptions?

12 THE WITNESS: In general, I would say  
13 that a metered customer, if you receive a bill,  
14 that's a customer account.

15 CHAIRMAN KANE: Now, if a customer -- and  
16 I do not know what the practice of the District  
17 government is, but I do know how they do it for  
18 Washington Gas. They would ask that -- they get  
19 one bill.

20 THE WITNESS: Right.

21 CHAIRMAN KANE: A consolidated bill  
22 for -- if the District government is receiving one

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1 bill for all 800 customers -- excuse me -- for all  
2 800 meters --

3 THE WITNESS: Right.

4 CHAIRMAN KANE: -- so that they -- for  
5 their own efficiency, will they -- did you count  
6 them in this number of 264,634 as one customer or  
7 as 800?

8 THE WITNESS: It's my belief that they  
9 are counted as -- if you have separate locations  
10 with meters that we actually read and you opt to  
11 have one bill -- 7-Eleven is a great example.  
12 They are counted as individual separate customers,  
13 so not one, but multiple locations. So if you  
14 have 800 meters that we read and we process a  
15 bill, but you ask to have one bill sent to you,  
16 it's 800 customers.

17 CHAIRMAN KANE: How do you account, then,  
18 if it's not as a result of consolidated billing --  
19 and I would expect the federal government and  
20 other large institutions -- is it correct to say a  
21 university, you cited 7-Eleven --

22 THE WITNESS: Right.



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1 CHAIRMAN KANE: -- that one owner with  
2 multiple locations of multiple meters getting one  
3 bill is still being counted as separate  
4 customers -- if that is true, how do you account  
5 for this 17 to 18,000 meter difference?

6 THE WITNESS: So the numbers that you  
7 cited were December 2013. So we do customer  
8 counts at a point in time. So on December 2013,  
9 we run the customer count. And of that about  
10 17,500 or 18,000 customers, almost 17,000 of those  
11 are inactive meters. So we'll install AMI meters  
12 at an apartment building. If 20 of those are  
13 vacant, we don't count those as a customer,  
14 because there's no bill to send that person. So  
15 there's about 16 to 17,000 that were inactive on  
16 December 31st, 2013.

17 And then the other --

18 CHAIRMAN KANE: You verified that from  
19 inactive customer accounts?

20 THE WITNESS: Yes. So there's no one to  
21 bill. The account -- the person has moved out and  
22 there's no customer to bill.

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1 I thought that was a little high --

2 CHAIRMAN KANE: Yes.

3 THE WITNESS: -- and I called our  
4 customer service group and I said, this is a  
5 pretty high vacancy rate; is that typical for D.C.  
6 or for urban -- or large cities? And they weren't  
7 surprised. They said the turnover in D.C. is  
8 fairly high. And it might be that a month later  
9 all those meters are activated, but then there's  
10 10,000 other ones that are inactive. So it's just  
11 the vacancy rate that they typically see in the  
12 District.

13 The other difference is about 1,000 or  
14 1500. There are certain circumstances where you  
15 have a building which is a customer, and there  
16 might be two feeds coming into that building just  
17 because of the way the engineering is designed.  
18 And there's a main meter and there's probably a  
19 sub-meter. Those two meters work together to send  
20 one bill to the company. So there's about a  
21 thousand meters that are sub-meters, but there's  
22 one main meter for that customer. So that's

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1 counted as one customer.

2 CHAIRMAN KANE: Okay. I'm going to  
3 switch to another topic very quickly, and that's  
4 the \$180 million --

5 THE WITNESS: Okay.

6 CHAIRMAN KANE: -- the reverse breakup  
7 fee.

8 THE WITNESS: Yes.

9 CHAIRMAN KANE: Okay. I'm trying to pin  
10 down exactly what it's being used for.

11 Mr. Rigby, in his testimony -- and this  
12 is the April 1st transcript, page 855, line 14 --  
13 said that PEPCO could make it as a stand-alone  
14 company, but the board felt that they were not  
15 getting enough shareholder value or that the  
16 company was not providing enough shareholder  
17 value.

18 Do you recall his general -- or subject  
19 to check that that's -- I can pull out the  
20 transcript, but --

21 THE WITNESS: No, I recall the comment.

22 CHAIRMAN KANE: -- I wrote down what he

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1 said.

2 THE WITNESS: Yes.

3 CHAIRMAN KANE: Okay. And so I want to  
4 ask you, is that hundred -- and then I want to  
5 turn your attention to D.C. government Exhibit 92  
6 at page 7. Now, this is a confidential document,  
7 but the only thing I want to ask about -- and I  
8 think it's already been put in the record -- is  
9 the two lines that are not blacked out. This is  
10 page 7, and it's joint applicants' response to  
11 data request DCG 1-10, attachment B.

12 THE WITNESS: Okay.

13 CHAIRMAN KANE: I want to turn to page 7  
14 of the document.

15 THE WITNESS: I see that.

16 CHAIRMAN KANE: You see that. And  
17 everything except the first two lines are blacked  
18 out, and that's just what I want to ask about, if  
19 that's all right. I'll give counsel a chance to  
20 look at it.

21 The title on this page -- this is part of  
22 a PowerPoint presentation. It says, Merger

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1 agreement key issues. And then there's a bullet  
2 and it says, \$180 million upfront investment in  
3 PHI non-voting preferred stock to fund PHI  
4 dividends pending completion of the merger.

5 Is that correct?

6 THE WITNESS: Yes.

7 CHAIRMAN KANE: So my question is, is  
8 that what the money has been used for? Has it  
9 been used to pay dividends?

10 THE WITNESS: Well, I guess, first, the  
11 \$180 million is paid over a period of time. It  
12 was 90 million upfront and then there was  
13 18 million per quarter for five quarters for a  
14 total of 180. The way that I look at -- I mean,  
15 money is fungible. We have a --

16 CHAIRMAN KANE: Yes, I have a quote from  
17 Mr. Rigby saying it's all fungible.

18 THE WITNESS: Okay.

19 CHAIRMAN KANE: But in a rate -- this is  
20 not a rate case, but in oversight, fungibility is  
21 problematic.

22 THE WITNESS: Understood. The -- when

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1 you look at the PHI business plan over the 12 to  
2 18 months that we expected the merger process to  
3 go, we knew that we would not be in for rate  
4 cases, and we knew we wanted to continue -- we've  
5 got about a \$1.2 billion construction program in  
6 all of our jurisdictions. We wanted to continue  
7 that.

8 And so the fact that we would not be able  
9 to really tap into the market at the PHI level and  
10 we would not be able to raise, you know, funds  
11 through higher revenues, we needed a liquidity  
12 injection into the company to help fund not only  
13 the capital investments into the utilities, but  
14 also the operating expenses of PHI, which includes  
15 dividends.

16 But I would say the \$180 million was not  
17 earmarked for dividends. It's really to provide  
18 liquidity for PHI during this 12 to 18-month  
19 period to do all the things that it would normally  
20 do.

21 CHAIRMAN KANE: So this is not accurate  
22 that the purpose was to fund PHI dividends pending

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1 completion of the merger?

2 THE WITNESS: This is the first time I've  
3 seen this page. I know it's an Exelon  
4 presentation. My comment -- I'm not trying to  
5 avoid the question. The way I viewed the  
6 \$180 million is we knew that we would have to  
7 continue to make equity contributions into the  
8 three utilities over the 12 to 18-month period to  
9 maintain the capital structure, and if we weren't  
10 able to go out and issue equity, we did not want  
11 to issue long-term debt at PHI, we needed an  
12 equity infusion into PHI to be able to continue  
13 the business plan.

14 CHAIRMAN KANE: I believe you said  
15 earlier today, in answer to Mr. Coyle, that the  
16 purpose was -- of the reverse breakup fee was,  
17 quote, to provide liquidity during the merger  
18 process for utility operations.

19 THE WITNESS: That's correct. Yes.

20 CHAIRMAN KANE: And utility operations  
21 include paying dividends.

22 THE WITNESS: It does not.

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1 CHAIRMAN KANE: It does not.

2 THE WITNESS: The dividends -- what I was  
3 referring to is -- PHI does two things. It funds  
4 the utility operations and it pays dividends to  
5 our shareholders.

6 CHAIRMAN KANE: Has PHI continued to pay  
7 dividends since the receipt of the \$90 million, I  
8 guess the first tranche of the --

9 THE WITNESS: Yes. Our dividend has  
10 stayed at \$1.08 per year.

11 CHAIRMAN KANE: It has not been  
12 increased? It has stayed --

13 THE WITNESS: It has not.

14 CHAIRMAN KANE: -- \$1.08 per year?

15 THE WITNESS: That's right.

16 CHAIRMAN KANE: Of the -- going back to  
17 page 4 where you say the annual net income from  
18 PEPCO D.C. distribution operations for the 12  
19 months ended June 30th, 2014 -- and that was  
20 before you received any of the \$180 million,  
21 because it was June 30th, 2014.

22 THE WITNESS: We would have received at



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1 least 90. We may have received another  
2 \$18 million payment at that time.

3 CHAIRMAN KANE: Before June 30th, 2014?

4 THE WITNESS: Yes, ma'am.

5 CHAIRMAN KANE: And how much of -- so  
6 this \$49 million was net of that 180 -- this is  
7 just D.C.

8 THE WITNESS: Right. So the  
9 \$180 million -- the way I would look at that is  
10 that's similar to an equity raising at the PHI  
11 level. We're actually issuing stock in exchange  
12 for cash coming into PHI through the preferred  
13 stock. So it's not revenues. It's really equity  
14 that PHI is raising.

15 CHAIRMAN KANE: So that goes to my next  
16 question. How was this entered on your books? To  
17 what account was it credited?

18 THE WITNESS: So at the PHI level, very  
19 high level, you would debit cash and you would  
20 credit equity -- preferred stock equity as a  
21 liability in the shareholder equity section.

22 CHAIRMAN KANE: You debit it as cash and

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1 then net it out as equity?

2 THE WITNESS: Right. At PHI.

3 CHAIRMAN KANE: At PHI level.

4 THE WITNESS: Right. So it's similar to,  
5 when we issue PHI stock and raise equity, we debit  
6 cash and we credit common stock and pay it in  
7 capital. It's the same process. We debit cash,  
8 but we credit preferred stock issued.

9 But it's an equity issuance at the PHI  
10 level.

11 CHAIRMAN KANE: So the only expense  
12 that's been booked against this infusion of cash  
13 was the issuance of the stock?

14 THE WITNESS: Only expense? I believe  
15 that's correct. I'm not sure what other expense  
16 we would have.

17 CHAIRMAN KANE: So how does that provide  
18 any ability to pay dividends or to operate if it  
19 all went to buy stock --

20 THE WITNESS: No, I'm sorry. The --

21 CHAIRMAN KANE: -- issue stock?

22 THE WITNESS: PHI -- in order to put the

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1 \$180 million of liquidity into PHI, the mechanism  
2 for doing that was that PHI would issue preferred  
3 stock to Exelon up to \$180 million. And so --

4 CHAIRMAN KANE: For which you received --

5 THE WITNESS: For which we received  
6 144 million to date and will receive the next two  
7 payments --

8 CHAIRMAN KANE: My question is, what did  
9 you do with that 144 million?

10 THE WITNESS: So the \$144 million has  
11 been used to either -- as equity into the  
12 utilities. We could have paid down commercial  
13 paper at the PHI level. And it could have been  
14 paid -- I mean, dividends were paid, so it may  
15 have funded part of that. It just funds --

16 CHAIRMAN KANE: So --

17 THE WITNESS: -- the operations of PHI.

18 CHAIRMAN KANE: I tell other people not  
19 to speak over the witness; I'm telling myself not  
20 to.

21 Has it been used to hire people to keep  
22 operations going?

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1           THE WITNESS: The company has adequate  
2 cash flow to run the operations of the company.  
3 The -- transactions between PHI and PEPCO  
4 specifically is only to maintain the capital  
5 structure, the 49 percent equity in the company.

6           Every quarter we put money in as an  
7 equity contribution or pay a dividend to maintain  
8 that 49 to 50 percent ratio. So that money -- any  
9 interaction with PEPCO would be to maintain that  
10 equity ratio.

11          CHAIRMAN KANE: Okay. Finally, just  
12 one -- page 20 of your rebuttal, line 8. You were  
13 answering -- the issue of low-income customers and  
14 support.

15          THE WITNESS: Yes.

16          CHAIRMAN KANE: And particularly it is in  
17 response to the proposal by the National Consumer  
18 Law Center and National Housing Trust that the  
19 joint applicants provide a \$50 million fund for  
20 the purposes of making low-income homes more  
21 energy efficient and for the purpose of  
22 supplementing the subsidies provided to low-income

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1 customers.

2           And you say, starting in line 9 in  
3 reference to the residential aid discount program,  
4 to the extent -- line 8 -- to the extent that  
5 there is an issue as to whether the RAD subsidy is  
6 adequate, that issue should be addressed in the  
7 context of a separate proceeding, not part of the  
8 merger proceeding.

9           Are you aware of the proceeding that the  
10 Commission already has underway to review the RAD  
11 program, including how to equitably permit the  
12 participation of low-income customers who are  
13 using a competitive supplier as well as a review  
14 of the design --

15           THE WITNESS: Yes, I am.

16           CHAIRMAN KANE: -- formal case 1120, and  
17 is PEPCO participating in that proceeding?

18           THE WITNESS: Yes, I'm aware of that.

19           CHAIRMAN KANE: Thank you.

20           Okay. Commissioner Fort?

21           COMMISSIONER FORT: I have one question I  
22 forgot to ask you. AOBA Witness Mr. Oliver

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1 pointed out, quite correctly, that in the  
2 application, the general services agreement that  
3 is Exhibit 7 to the application doesn't list BGE  
4 as one of the signatories or one of the parties to  
5 the agreement, and that it appears to be an old  
6 agreement, one that was done maybe in 2001.

7 THE WITNESS: Okay.

8 COMMISSIONER FORT: Do you know whether  
9 or not the BAT group that was looking at the cost  
10 allocation issues and the service agreement issues  
11 was working from the Exhibit 7 that's attached to  
12 the application or is there a different agreement  
13 that we don't have?

14 THE WITNESS: I'm very certain that's  
15 probably an old agreement. I know that BGE is  
16 part of the current Exelon Business Service  
17 Company. They receive allocations from it.  
18 And -- so I think what -- that may be an old  
19 agreement. But I'll have to confirm that. I do  
20 know that the allocation, the synergy study, would  
21 have included them because I've seen their name on  
22 several presentations.

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1 COMMISSIONER FORT: So would you know  
2 whether or not the attachments -- okay. Let me  
3 just make that a request.

4 MR. LORENZO: Yes, Your Honor. We'll  
5 make it a bench data request.

6 CHAIRMAN KANE: That concludes the  
7 Commission's questions for Mr. McGowan.

8 THE WITNESS: Thank you.

9 CHAIRMAN KANE: Do you have redirect?

10 MR. LORENZO: Given the lateness of the  
11 hour --

12 CHAIRMAN KANE: I don't want to rush  
13 anyone.

14 MR. LORENZO: I understand. But I think  
15 we will -- we will have no redirect.

16 And I would -- I've got a two-part --  
17 I'll move the admission of Joint Applicants'  
18 Exhibits (3L), (3L)-1 through (3L)-3, as well as  
19 Joint Applicants' Exhibit Number 26, which was  
20 bench data request 5. I understand the Commission  
21 would like us to move the admission of the  
22 remaining bench data requests. I know one has

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1    been admitted.

2                   And what I would suggest we do is -- I  
3    assume we'll take a lunch break and we'll get that  
4    straightened out, and when we come back, we can  
5    move the admission -- we'll get the other bench  
6    data requests moved into the record.

7                   CHAIRMAN KANE:   Yes, with the concurrence  
8    of the parties.

9                   MR. LORENZO:    Yes.

10                  CHAIRMAN KANE:   So the ones you moved now  
11   are moved into the record.

12                  (Joint Applicants Exhibit Numbers (3L)  
13   and (3L)-1 through (3L)-3 was received into  
14   evidence.)

15                  (Joint Applicants Cross Exhibit Number 26  
16   was received into evidence.)

17                  MR. LORENZO:    Thank you.

18                  MR. GRAY:    Thank you, Your Honor.   At  
19   this time, I'd move for admission of OPC  
20   Cross-Examination Exhibits 101, through and  
21   including, 108.

22                  CHAIRMAN KANE:   They are moved.



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1 (OPC Cross Exhibit Numbers 101 through  
2 108 were received into evidence.)

3 CHAIRMAN KANE: Ms. Francis?

4 MS. FRANCIS: Your Honor, at this time,  
5 AOBA moves the exhibits starting with AOBA 100  
6 through and inclusive of AOBA 107.

7 CHAIRMAN KANE: They are moved in.

8 (AOBA Cross Exhibit Numbers 101 through  
9 107 were received into evidence.)

10 CHAIRMAN KANE: Mr. Coyle?

11 MR. COYLE: Your Honor, subject to asking  
12 the bench's indulgence to confer briefly with  
13 Mr. Lorenzo about the admission of a couple of  
14 other exhibits, we would move at this time for the  
15 admission of DCG 117 through 120, 122 to 123, and  
16 127 through 129. And I wanted to confer with  
17 Mr. Lorenzo to see if I could get the remaining  
18 exhibits in that sequence admitted by stipulation.

19 MR. LORENZO: Your Honor, why don't we  
20 take that up after lunch.

21 CHAIRMAN KANE: Take that up during the  
22 lunch break for the remaining ones. But the ones

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1 you've indicated will be moved in.

2 (DCG Cross Exhibit Numbers 117 through  
3 120, 122, 123, and 127 through 129 were received  
4 into evidence.)

5 MR. COYLE: Thank you.

6 CHAIRMAN KANE: Anybody else? DC SUN has  
7 none.

8 MR. SPECK: DC SUN has no exhibits.

9 CHAIRMAN KANE: WASA?

10 MS. WHITE: No exhibits.

11 CHAIRMAN KANE: Grid 2.0.

12 Ms. Wein, did you --

13 MS. WEIN: No.

14 CHAIRMAN KANE: All right. We will  
15 recess till 2:30. Mr. McGowan, you are excused.

16 (Witness excused.)

17 (Whereupon, at 1:31 p.m., a lunch recess  
18 was taken.)

19

20

21

22

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1 AFTERNOON SESSION

2 (2:33 p.m.)

3 CHAIRMAN KANE: Preliminary matters?

4 MR. LORENZO: Yes, Your Honor. Before  
5 the break, we've analyzed which of the bench data  
6 requests have been admitted and we would move the  
7 admission of bench data request number 1 as Joint  
8 Applicants' Exhibit 48, bench data request  
9 number 3 as Joint Applicants' Exhibit 49, bench  
10 data request number 4 as Joint Applicants'  
11 Exhibit Number 50, and the bench data request  
12 number 6 as Joint Applicants' Exhibit Number 51.  
13 It's been a long couple of days.

14 CHAIRMAN KANE: Yes.

15 (Joint Applicants Cross Exhibit Numbers  
16 48 through 51 were received into evidence.)

17 MR. LORENZO: And as another preliminary  
18 matter, Your Honor, Commissioner Fort had said  
19 that, citing Bruce Oliver, that there is -- BG&E  
20 was not a signatory to the general services  
21 agreement.

22 COMMISSIONER FORT: Not a signatory.

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1 There's signatures on the end. It's the front  
2 that they're not on. There's a page that --

3 MR. LORENZO: Yes. They were added  
4 through appendix A. If you look at appendix A on  
5 the front, they're added as one of the companies  
6 which appears on the page right after the  
7 signatory page -- the signature page. This is the  
8 latest document. It was just amended to add them  
9 with the signatory page and attachment A.

10 COMMISSIONER FORT: Okay.

11 MR. LORENZO: So I guess we'll -- bench  
12 data request number 7? Very good.

13 COMMISSIONER FORT: You don't need to  
14 consider that a bench data request, but for an  
15 explanation, you know, that that is the -- you're  
16 confirming that that's the latest --

17 MR. LORENZO: That's the latest version.

18 COMMISSIONER FORT: Okay.

19 CHAIRMAN KANE: Mr. Coyle?

20 MR. COYLE: Also over the lunch break,  
21 Your Honor, Mr. Lorenzo and I had the opportunity  
22 to confer, and it's my understanding that the

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1 joint applicants are stipulating to the admission  
2 into evidence of what has been marked -- what have  
3 been marked for identification as Exhibit DCG 121,  
4 which is joint applicants' response to commission  
5 staff data request 4-2, Exhibit DCG 124, which is  
6 joint applicants' response to District government  
7 data request 8-64, DCG 125, which is joint  
8 applicants' response to District government data  
9 request 8-92, and DCG 126, which is joint  
10 applicants' response to District government data  
11 request 8-96.

12 MR. LORENZO: That's correct, Your Honor.  
13 We'll stipulate to the admission of those  
14 exhibits.

15 CHAIRMAN KANE: Thank you. And they will  
16 be admitted.

17 (DCG Cross Exhibit Numbers 121 and 124  
18 through 126 were received into evidence.)

19 MR. COYLE: Your Honor, also -- it was a  
20 very eventful lunch break and --

21 CHAIRMAN KANE: I'm glad it was  
22 productive.

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1 MR. COYLE: The joint applicants advised  
2 us that they also propose to waive  
3 cross-examination of District government Witness  
4 Comings. He's here if the commissioners have any  
5 questions for him. If not, we'll release him.

6 CHAIRMAN KANE: We do not have any  
7 questions for Witness Comings.

8 MR. COYLE: Thank you, Your Honor.

9 The last question is really a point of  
10 procedure. We're prepared to move the admission  
11 of Mr. Mathur and Dr. Wilson, but it might be more  
12 efficient of their testimony -- it might be more  
13 efficient to wait until the end of the day to do  
14 that, to get on with the cross-examination. I  
15 just ask the bench's guidance on that.

16 CHAIRMAN KANE: I think we have a couple  
17 of procedural matters also that are related to the  
18 marking and admission of testimony and exhibits.  
19 We can resolve them at this time. The Commission  
20 secretary's office has informed us that D.C. Water  
21 Witness Gorman's supplemental testimony was  
22 incorrectly marked and admitted as D.C. Water (B)

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1 at the conclusion of yesterday's hearing, and in  
2 accordance with commission rule 133.7B, it should  
3 have been marked and admitted as D.C. Water (2A).

4 MS. WHITE: Yes, Madam Chair. I spoke  
5 with the secretary about that.

6 CHAIRMAN KANE: And in keeping with our  
7 rules and to avoid any confusion that might result  
8 from the mismarked testimony, we're going to  
9 direct D.C. Water to correctly mark the documents  
10 as D.C. Water (2A), submit them into the record in  
11 lieu of or in substitute for the ones that were  
12 admitted yesterday. So if you would file those by  
13 close of business tomorrow.

14 MS. WHITE: Yes, we will.

15 CHAIRMAN KANE: Thank you. Secondly, in  
16 a letter filed with the Commission on April 17th,  
17 2015, the general counsel for Monitoring  
18 Analytics, LLC, which is acting as the Independent  
19 Market Monitor for PJM, requested the Commission  
20 to enter into the record the testimony and  
21 exhibits of Joseph E. Browning, Dr. Howard J.  
22 Haas/Dr. Howard J. Haas that's labeled Exhibits

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1 Number IMMB/H and IMMB/H 1-3. The -- IMM, the  
2 Independent Market Monitor, represents all parties  
3 have waived cross-examination of the IMM  
4 witnesses. No party has filed any objection to  
5 the IMM's request to all the parties to stipulate  
6 to the testimony in absentia.

7           However, like D.C. Water's testimony, the  
8 IMM testimony is also not correctly marked as  
9 required by our rule, and we, therefore, direct  
10 the IMM to resubmit the testimony and exhibits and  
11 correctly mark them as IMM (A) and IMM (A)-1-3  
12 pursuant to our rules. That will be by close of  
13 business on Friday.

14           And let me ask if any party has any  
15 objection to the admission of the IMM testimonies  
16 and exhibits?

17           MR. LORENZO: No objection, Your Honor.

18           MS. FRANCIS: No objection.

19           MR. COYLE: No objection.

20           MR. SPECK: No objection.

21           CHAIRMAN KANE: No objection. Okay.

22 Then they are admitted into the record upon



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1 receipt of the new documents that would be  
2 properly marked.

3 I think that, at the moment, concludes  
4 the procedural ones. We'll have a procedural  
5 summation at the end for the going-forward issues.

6 So our next -- Witness Comings will not  
7 appear. D.C. government, do you have Witness  
8 Chang?

9 MR. COYLE: Yes. We call Max Chang to  
10 the stand, please.

11 WHEREUPON,

12 MAXIMILIAN CHANG,  
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. COYLE:

18 Q Mr. Chang, would you state and spell your  
19 name for the record, please.

20 A My name is Maximilian Chang.

21 M-A-X-I-M-I-L-I-A-N. Chang, C-H-A-N-G.

22 Q Mr. Chang, do you have before you your

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1 prefilled direct testimony and exhibits?

2 A I do.

3 Q And could you identify the exhibits for  
4 the record, please?

5 A I have in front of me Exhibit DCG (2B)  
6 and Exhibit DCG (B).

7 Q Okay. And are there numbered exhibits  
8 also that accompany your prefilled testimony?

9 A No, there are not.

10 Q Okay. Thank you. Was the -- your  
11 prefilled direct, Exhibit DCG (B), and your  
12 supplemental answering testimony, Exhibit DCG  
13 (2B), were they both prepared under your -- by you  
14 or under your direct supervision?

15 A Yes, they were.

16 Q And if I were to ask you the same  
17 questions as set forth in those exhibits here  
18 today under oath, would your answer be the same?

19 A They would be.

20 MR. COYLE: At this point, Your Honor, I  
21 tender the witness for -- I'm sorry.

22 BY MR. COYLE:

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1 Q Mr. Chang, do you have any corrections  
2 you wanted to --

3 A I do. I have three corrections to make  
4 in DCG (2B). On page 11 on footnote 13, it should  
5 be OPC 3-33. On page 20, lines 6 and 7, the error  
6 reference "source not found" should be figure  
7 MPC3. And footnote 32 should be OPC 20-6.

8 BY MR. COYLE:

9 Q And does that conclude your corrections,  
10 Mr. Chang?

11 A Yes, it does.

12 MR. COYLE: Thank you, Your Honor. At  
13 this point, I tender the witness for  
14 cross-examination.

15 CROSS-EXAMINATION

16 BY MR. DUVER:

17 Q Good afternoon, Mr. Chang. My name is  
18 Ted Duver on behalf of the joint applicants.

19 A Hello.

20 Q And I'm confident you'll make your flight  
21 tonight.

22 A Thank you.

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1           Q     Mr. Chang, do you have your direct  
2 testimony in front of you?

3           A     I do.

4           Q     Could you please turn to page 3.

5           A     Yes.

6           Q     I'm focusing in on line 10 of your  
7 testimony there. And you use the phrase "direct  
8 and tangible benefit to ratepayers." Do you see  
9 that?

10          A     I do.

11          Q     And do you please define what your  
12 understanding of that phrase is?

13          A     I can. It is referred to in my direct  
14 testimony on pages -- on page 4, specifically  
15 lines 18 through 19, where I quote -- where I cite  
16 the D.C. code 34-504, The merger under  
17 consideration must benefit the public rather than  
18 merely leaving it unharmed.

19          Q     Okay. And on page 4, carrying over to  
20 page 5, this is the section of your testimony  
21 where you summarize your understanding of what the  
22 public interest standard is that the Commission

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1 will apply in this proceeding; is that correct?

2 A That is correct.

3 Q And did you prepare this portion of your  
4 testimony?

5 A I had assistance from counsel.

6 Q And did you review any prior commission  
7 orders before preparing or supervising this  
8 portion of your testimony being prepared?

9 A I reviewed the Commission's order  
10 pertaining to the factors under consideration for  
11 this case.

12 Q So -- and the order that you're referring  
13 to was the order that the Commission issued at the  
14 outset of this proceeding, formal case 1119?

15 A Yes.

16 Q Did you have an opportunity to review the  
17 Commission's order in formal case 951?

18 A I believe that was -- subject to check,  
19 that was the proposed merger of PEPCO and BGE  
20 from -- is that correct?

21 Q That's correct.

22 A I generally reviewed it, but I don't

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1 recollect it off the top of my head.

2 Q And in preparation or supervising the  
3 preparation of this portion of your testimony, did  
4 you have an opportunity to review the Commission's  
5 order in formal case 1002?

6 A No, I did not.

7 Q Now, is it your understanding that when  
8 the Commission applies the public interest  
9 standard, as you've articulated it here on pages 4  
10 and 5, that the Commission applies it to each and  
11 every commitment that the joint applicants are  
12 proposing as part of this merger proceeding?

13 A In my testimony, I applied it to the  
14 areas of matter that I was testifying on.

15 Q And so when you say you applied to the  
16 areas of matter that you were testifying on, you  
17 did like a public interest analysis from your  
18 perspective as to the very specific  
19 recommendations that you're making?

20 A What I did in my testimony and my  
21 analysis in preparation for my testimony was to  
22 apply that standard to those specific items.

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1           Q     Okay. I noticed that in your testimony  
2     you make various recommendations that refer to an  
3     attachment to Mr. Smith's testimony; is that  
4     correct?

5           A     That is correct.

6           Q     And that attachment, DCG (A)-2 I believe,  
7     includes approximately 40 or so -- I don't have  
8     the exact number -- recommendations; is that  
9     correct?

10          A     Subject to check, but I believe that's  
11     the case.

12          Q     Is it your understanding that to the  
13     extent that the District government is making a  
14     recommendation for consideration by the Commission  
15     in this merger proceeding, that those  
16     recommendations also must pass the public interest  
17     standard as you understand it?

18          A     I will take your word on that.

19          Q     Well, I guess I'm trying to get an  
20     understanding of what your position is as to your  
21     understanding of the standard. Is it your belief  
22     that to the extent that the District government is

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1 making a recommendation along the lines of those  
2 that you sponsor in your testimony, that each one  
3 of those must pass the public interest standard as  
4 you've articulated it here on pages 4 and 5?

5 A Yes.

6 Q Are you familiar with whether or not the  
7 Commission has ever made a statement that, when it  
8 does apply the public interest standard, it looks  
9 at the merger taken as a whole? Have you ever  
10 heard of that?

11 A I am not aware of that.

12 Q Mr. Chang, you also offer testimony  
13 concerning the company's reliability commitment;  
14 is that correct?

15 A Yes, that is.

16 Q What is your understanding of the  
17 percentage of customers in the District of  
18 Columbia that are served by overhead feeders  
19 versus underground feeders?

20 A I don't know that percentage off the top  
21 of my head.

22 Q Okay. And have you performed any



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1 analysis regarding the percentage of outages and  
2 outage minutes attributable to events either on  
3 overhead versus underground feeders in the  
4 District of Columbia?

5 A I have not, and I was relying on the  
6 numbers that were provided by the joint  
7 applicants.

8 Q So, then, similarly, to the extent that  
9 there is any information regarding the nature  
10 and/or frequency of causes of outage events on  
11 either the overhead or the underground system, you  
12 have not performed any independent analysis?

13 A I have not done that independent  
14 analysis.

15 Q Okay. So those portions of your  
16 testimony in which you are commenting on or  
17 addressing the company's representations regarding  
18 reliability is not based upon any, like,  
19 independent knowledge or understanding. It is  
20 just based upon what has been provided in  
21 discovery?

22 A That's correct.

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1           Q     Mr. Chang, could you please turn to  
2     page 19 of your direct testimony. I'm going to  
3     focus your attention to bottom of the page, the  
4     very last question that you ask yourself. There  
5     it says, Assuming that the merger is approved, do  
6     you recommend that the Commission set any  
7     conditions or limits?

8                     Do you see that?

9           A     I do.

10          Q     And there, you reference DCG (A)-2, and  
11     if I'm correct, that's the exhibit or the  
12     attachment we were just talking about that  
13     includes all of DCG's recommendations which was  
14     attached to Mr. Smith's testimony?

15          A     That is correct.

16          Q     Do you have a copy of Mr. Smith's  
17     testimony with you?

18          A     I do not.

19          Q     And once you have a copy of it, I'd like  
20     to direct your attention to that very attachment,  
21     (A)-2.

22          A     I have it.

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1 Q I would like to focus your attention for  
2 the time being to item number 15 where it says,  
3 Funding for PSC DER staff. Do you see that?

4 A I do. Just turning to the page.

5 Q Great. Please feel free to review  
6 item 15.

7 A Yep.

8 Q Okay. And this is one of the  
9 recommendations that appears on page 19 of your  
10 direct testimony and that question that I just  
11 directed you to; is that correct?

12 A That is correct.

13 Q And you would agree with me that, in this  
14 recommendation, the District government is asking  
15 the Commission to approve as a condition of the  
16 merger a \$500,000 annual fund for, quote, enhanced  
17 commission staff to manage the dispute resolution  
18 complaint procedure established in the Commission  
19 small generator interconnection rules; is that  
20 correct?

21 A That is correct.

22 Q In support of sponsoring this

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1 recommendation, have you individually performed  
2 any analysis regarding the staffing levels at the  
3 Commission?

4 A I have not. And I understand from  
5 yesterday's hearings that this is -- that the  
6 Commission staff does not approve the  
7 interconnection specifically.

8 Q Correct. I believe that the discussion  
9 was over whether there is a -- whether the  
10 Commission is involved in the permitting process,  
11 correct?

12 A That's correct.

13 Q And we learned yesterday that the  
14 Commission is not involved in that process; is  
15 that correct?

16 A That's correct.

17 Q Then could you please explain or describe  
18 for me what the \$500,000 annual fund would be used  
19 for?

20 A I think the language speaks for itself as  
21 to how it would be used.

22 Q Well, then -- so the language here says

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1 it would be to manage the dispute resolution  
2 complaint procedures established under the  
3 Commission rules for interconnections; is that  
4 correct?

5 A That is correct. But then it continues  
6 on lines 10 through 13 that the funding shall  
7 support legal and engineering capacity on the part  
8 of the Commission; that will ensure timely and  
9 effective resolution of disputes over  
10 interconnection and local renewable resource and,  
11 as a second priority, may be used to study and  
12 promote the efficient use of such resources.

13 Q Okay. So I'm going to back to my  
14 question that I had asked before, and that is  
15 whether you have performed any type of an  
16 independent analysis regarding the levels of  
17 staffing or the level of funding that would be  
18 necessary to be able to accomplish the goals set  
19 forth in item 15.

20 A I have not conducted an independent  
21 study. I have reviewed some of the materials  
22 provided by the joint applicants, specifically

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1 their response to -- I believe it was DC SUN 1-4.  
2 I can't remember the attachment, but it was some  
3 of the statistics of PEPCO's approval process for  
4 interconnection requests.

5 Q But did that attachment that you have  
6 reviewed that came from the joint applicants and  
7 not from the Commission, did it address Commission  
8 staffing levels and the adequacy of funding at the  
9 Commission to be able to carry out its  
10 responsibilities under these referenced rules?

11 A No, it did not.

12 Q Could you please turn to page 29 of your  
13 direct testimony? Okay. I would like to direct  
14 your attention to the question that begins on  
15 line 8. And would it be fair to say that this is  
16 where you discuss in your testimony concerns that  
17 you have regarding the merger's potential impact  
18 on the interconnection process; is that correct?

19 A That is correct.

20 Q And if I'm -- just to use your words here  
21 on line 10, you said you fear a worsening of the  
22 status quo for solar projects. Do you see that?

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1           A       I do.

2           Q       Have you done any research or analysis  
3 related to the interconnection experiences of any  
4 of the Exelon operating companies?

5           A       I have not done an independent analysis.  
6 And for the record, the attachment that I was  
7 referencing in an earlier question is  
8 attachment Q.

9           Q       And are you aware of the percentage of  
10 requests that result in disputes for the other  
11 Exelon operating companies?

12          A       I am not aware of that specific number.

13          Q       And would it be fair to say, then, that  
14 that is what informed your statement on line --  
15 beginning on line 14 of your direct testimony  
16 where you state, It is not known how the merger  
17 would impact the PEPCO interconnection process or  
18 the maintenance of the local District of Columbia  
19 office?

20                   Do you see that?

21          A       I do.

22          Q       And based on the fact that you haven't

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1 done that type of independent analysis, that's why  
2 you stated here that it is not known what the  
3 merger's impact will be; is that correct?

4 A I would say that that is -- my statement  
5 was based on the earlier statement in that  
6 paragraph, that PHI has successfully completed  
7 99 percent of all interconnection requests. So  
8 that -- that is a laudable percentage, and my  
9 concern was that if there is a change of control,  
10 that that percentage would be worsened.

11 Q And we've already established that you  
12 hadn't performed any type of an analysis regarding  
13 what percentage of requests result in disputes or  
14 exactly what is happening at the Exelon operating  
15 utilities regarding interconnection requests;  
16 isn't that correct?

17 A That is correct. But I would point out  
18 that a 99 percent successful completion rate --  
19 there is not much you can go higher.

20 Q Well, Mr. Chang, I'm just wondering, you  
21 state on -- beginning on line 14 that it is not  
22 known how the merger would impact the PEPCO



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1 interconnection process; yet, DCG is recommending  
2 an annual fund be established in the amount of  
3 \$500,000 to address interconnection disputes that  
4 may actually never happen; isn't that correct?

5 A That is a possibility.

6 Q And Mr. Chang, if your fears of a  
7 worsening of the status quo do not come to  
8 fruition, what is DCG's recommendation for the  
9 \$500,000 if it, in fact, is not used?

10 A Is that a hypothetical?

11 Q Well, we've already established that  
12 there's a possibility that there may not be a  
13 worsening of the interconnection process. We just  
14 don't know. And so, yes, I am asking the  
15 hypothetical. If your fears do not come to be,  
16 what is DCG's proposal or recommendation as to how  
17 that half a million dollars would be treated?

18 A I think it's stated in condition 15 that  
19 there is the flexibility as a second priority that  
20 the fundings could be used to study and promote  
21 sort of the efficient use of the distributed  
22 generation, which is on line 13, I believe.

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1 Q And this recommendation is a perpetual  
2 recommendation; isn't that correct?

3 A As it's currently written down, yes.

4 Q Could you please turn to page 31 of your  
5 direct testimony. And I'm going to ask you to  
6 actually look at two documents. Could you also --  
7 you have in front of you Mr. Smith's DCG (A)-2; is  
8 that correct?

9 A I do.

10 Q I'd like to direct your attention to  
11 recommendation number 14 on DCG (A)-2.

12 A Yep.

13 Q And this is one of the recommendations  
14 that you are sponsoring on page 31 of your direct  
15 testimony; is that correct?

16 A It is.

17 Q And if I'm reading this recommendation  
18 correctly, it is seeking a fund of \$3 million per  
19 year for six years to defray in equal allocations  
20 the cost burden that the merger will impose on the  
21 appropriate discharge of local and regional market  
22 monitoring, investigative development and

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1 reporting activities by the Commission, the OPC  
2 and DDOE; is that correct?

3 A That's what's stated, yes.

4 Q Do you know what section 34-1512 is?

5 A I do not.

6 Q What is the District Department of the  
7 Environment's role in the investigation,  
8 monitoring, development and recording as it  
9 relates to local and regional market activity?

10 A I don't think the DDOE has a specific  
11 outline or a specific plan, to my knowledge, of  
12 what that activity would currently entail, but I  
13 believe that the funding -- the proposed funding  
14 would be a placeholder to sort of -- to conduct  
15 appropriate studies and evaluations as a result of  
16 the merger should it be approved.

17 Q And studies and evaluation of local and  
18 regional market monitoring? Is that what it would  
19 be for?

20 A Yes.

21 Q And so I guess I ask again, what  
22 currently is the DDOE's role in monitoring local

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1 and regional markets?

2 A I don't know that one specifically.

3 Q So you don't know whether, in fact, the  
4 DDOE has any investigative, developmental or  
5 reporting activities as it relates to local and  
6 regional markets; is that correct?

7 A I don't know specifically. They may.

8 Q What role does the Commission have in the  
9 monitoring -- let me ask the question a different  
10 way. What is your understanding of the  
11 Commission's role in the investigation and  
12 monitoring of local and regional markets?

13 A I would say that the -- insofar as they  
14 impact rates, I believe that the Commission has  
15 purview.

16 Q And is this -- are you referring to the  
17 Commission's presiding over rate cases by the  
18 company when the company comes before the  
19 Commission to seek an increase in rates?

20 A That would be one example, yes.

21 Q And would it include, as far as rates,  
22 the Commission's monitoring of the SOS process?

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1           A       That could be a possibility, yes.

2           Q       But that's not something that is  
3 contemplated in what you believe this covers right  
4 now; you're just thinking in the rate case  
5 context?

6           A       As an example, but there may be other  
7 examples.

8           Q       Would it be fair to say that your -- that  
9 you have that same understanding as it relates to  
10 the Office of People's Counsel's role in the rate  
11 case process?

12          A       Yes.

13          Q       Mr. Chang, are you familiar with the  
14 concept of the public service agency fund in the  
15 District of Columbia?

16          A       I am not familiar with the specifics.

17          Q       Would you -- so you're not -- you do not  
18 know whether or not the District of Columbia code  
19 has a specific funding mechanism that is  
20 established to cover the costs of the Commission  
21 when it presides over rate cases that the company  
22 brings before the Commission?

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1           A       I do know of that, but I just don't know  
2   the specifics of how -- I don't know the specifics  
3   of the mechanism of that process.

4           Q       Okay. And are you aware that there's  
5   also an Office of the People's Counsel agency fund  
6   that performs a similar function?

7           A       Yes, in a general sense.

8           Q       And could you please explain to me how  
9   either the D.C. code's provision for the public  
10   service agency fund or the Office of People's  
11   Counsel agency fund is deficient in that it  
12   doesn't provide adequate funding for the  
13   monitoring of the rate case process in the  
14   District of Columbia?

15          A       It may or may not be deficient, but I  
16   understand that there is an application process  
17   that OPC has to file, such that this additional  
18   funding may help alleviate that process or  
19   ameliorate that process.

20          Q       Mr. Chang, could you please turn to  
21   page 13 of your direct testimony.

22          A       I have that in front of me.

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1           Q     I just want to get -- by way of  
2     confirmation, I just want to confirm that  
3     beginning on line 5 of this testimony here, here  
4     is where you acknowledge that the company -- or  
5     the joint applicants have noted that their ability  
6     to meet the SAIDI EQSS requirement beginning in  
7     2016 is at risk; is that correct?

8           A     As when this -- as when this testimony  
9     was prepared by me, yes.

10          Q     Right. And also at that time, you also  
11     noted the company's statements within its 2014  
12     consolidated report, that the planned expenditures  
13     levels that are included in the 2000 (sic) report  
14     may not be sufficient in order to allow it to meet  
15     the SAIDI targets of the Commission by the end of  
16     the five-year period; is that correct?

17          A     At the time that this was prepared, yes.

18          Q     Do you know what years are covered by the  
19     2014 consolidated report?

20          A     I understand that it was 2014 through  
21     2018.

22          Q     I'd like to direct your attention now to

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1 page 19 of your direct testimony. Are you there?

2 A I am there.

3 Q Okay. Now, I just want to revisit --  
4 we've already dealt with recommendation number 15,  
5 but I just wanted to discuss a couple of the other  
6 recommendations that you have here. You should  
7 have up there a binder that is labeled joint  
8 applicants cross exhibits. And I'm --

9 MR. DUVER: Your Honor, I'm going to ask  
10 at this time if we could please have marked as  
11 Joint Applicants' Cross Exhibit Number 80 to be  
12 Number 52.

13 CHAIRMAN KANE: So marked.

14 (Joint Applicants Cross Exhibit Number 52  
15 was marked for identification.)

16 BY MR. DUVER:

17 Q So, Mr. Chang, if you could please turn  
18 to tab 80 in that binder.

19 A Yep. I'm there.

20 Q Have you had an opportunity to review  
21 this response?

22 A Yes, I have.



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1 Q Okay. And this response corresponds to  
2 the question that we are looking at in your direct  
3 testimony; is that correct?

4 A Yes, it does.

5 Q And in this response you are asked  
6 whether you had performed any type of an analysis  
7 to identify electric or gas utility mergers since  
8 2000 in which any of the conditions that you're  
9 recommending on page 19 were, in fact, imposed; is  
10 that correct?

11 A That is correct.

12 Q And if I'm reading this data request  
13 response correctly, you've identified -- you note  
14 two specific requests that were previously set  
15 forth in the decision governing the  
16 Exelon/Constellation merger; is that correct?

17 A That's correct.

18 Q And as for the others that are identified  
19 in this request, which are DCG recommendations 15,  
20 16 and 30, you have not identified any such other  
21 mergers; is that correct?

22 A That's correct.

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1           Q       Could you please grab Mr. Smith's (A)-2  
2       again. I'm going to ask if you could please also  
3       have in front of you the Exhibit (4A)-2 to  
4       Mr. Crane's testimony.

5           A       I have it in front of me.

6           Q       Great. I'm actually going to ask you to  
7       do this just side by side very quickly. But could  
8       you please take a look at what is identified as  
9       item -- or recommendation 23 in DCG (A)-2, and  
10       then I would ask you to also open up to  
11       commitment 15 on (4A)-2.

12          A       Did you say commitment 15?

13          Q       Yes. And would you agree with me that  
14       DCG recommendation 23 is captured in the  
15       company -- or the joint applicants' commitment 15?

16          A       The DCG recommendation 23 has three  
17       years, and I believe that the Exhibit (4A)-2,  
18       number 15, has two years.

19          Q       But with that distinction -- with that  
20       one distinction aside, these cover the same  
21       subject matter area?

22          A       They cover the same subject matter, but I

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1 think the wording is slightly different -- but  
2 subject to check, yes.

3 Q Okay. And do you know whether DCG  
4 recommendation 24 is in (4A)-2?

5 A I believe it is. I don't know what the  
6 number is. Actually, it's number 10 in (4A)-2.

7 Q Okay. I would like to now turn your  
8 attention to recommendation 30.

9 A Of Exhibit (4A)-2?

10 Q I apologize. It's DCG (A)-2.

11 A Yes.

12 Q Now, this is a recommendation that DCG  
13 makes for PEPCO to make capital and O&M  
14 expenditure level reporting; is that correct?

15 A Yes.

16 Q I want to focus your attention to the  
17 second sentence where you say, In 2015, and at  
18 least within 90 days after notifying FERC of the  
19 consummation of the merger, PEPCO shall provide  
20 the Commission with a report of its actual capital  
21 and O&M expenditures for 2013 and 2014.

22 Do you see that?

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1           A       I do, but this was Witness Smith's  
2 testimony, so I did not write that.

3           Q       But you're sponsoring that  
4 recommendation?

5           A       That's correct. I just wanted to make  
6 that clarification.

7           Q       I understand. This was appended to his  
8 testimony and it's included in your discussion on  
9 page 19 of your testimony; is that correct?

10          A       Yes.

11          Q       And you would agree with me, would you  
12 not, that the company has already filed with the  
13 Commission its actual 2013 and 2014 capital and  
14 O&M expenditures?

15          A       Subject to check, but yes.

16          Q       I believe that you said at one point in  
17 time you had reviewed the 2014 consolidated  
18 report?

19          A       That's correct.

20          Q       You would also agree with me that the  
21 company provides capital projection levels already  
22 pursuant to Commission order in its consolidated

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1 report that projects capital expenditures out five  
2 years; is that correct?

3 A That's correct. That's captured in the  
4 consolidated report.

5 Q I want to focus your attention on the  
6 first sentence. The first sentence of that  
7 recommendation says, Unless the Commission orders  
8 otherwise, PEPCO shall maintain its District of  
9 Columbia capital and O&M expenditures at or above  
10 95 percent of its combined project capital and O&M  
11 expenditures for 2013.

12 Do you see that?

13 A I do.

14 Q If the Commission were to approve this  
15 recommendation as part of this merger, what impact  
16 would this minimum floor spending level have in  
17 future rate cases before the Commission?

18 A I believe I show the -- I show that  
19 graphically on page -- actually, on -- bear with  
20 me.

21 Q Are you referring to page 15?

22 A Thank you. Yes.

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1           Q       Well, my question was a bit different.  
2   My question basically was saying that if the  
3   Commission -- if we were to assume that the  
4   Commission were to determine -- or that the  
5   Commission were to approve recommendation 30, then  
6   you would agree with me that the company would  
7   have an obligation to spend a minimum of  
8   95 percent of those 2013 levels; is that correct?

9           A       Yes.

10          Q       Okay. So if the company were to  
11   determine that a prudent level of spending in  
12   future years was an amount lower than  
13   95 percent -- I'm not saying that it would happen,  
14   but let's assume, for purposes of this discussion,  
15   that it is the case -- are you saying that the  
16   company must nevertheless spend the additional  
17   funds or be exposed to the potential for violating  
18   a merger condition?

19          A       I think -- well, I think what -- I think  
20   if the company is going to come in and say that  
21   the least cost capital expenditures that it  
22   requires to spend is less than -- well, less than

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1 what is currently shown in that figure and at the  
2 same level as 2013, I don't think -- I think it  
3 stands to reason that -- it stands to reason that  
4 the Commission would probably -- well, now I'm  
5 speculating, but it stands to reason that  
6 certainly if PEPCO comes in at -- spending lower  
7 than it's projected, that would be a good thing  
8 for ratepayers.

9 Q But it would be a violation of a merger  
10 condition, correct?

11 A As it's currently stated, but I think  
12 this was a recommendation and it's certainly  
13 subject to final approval. If approved by the  
14 Commission, the wording could be modified to be  
15 more logical.

16 MR. DUVER: Your Honor, could I just have  
17 one moment and I think I'm going to be done?

18 BY MR. DUVER:

19 Q Mr. Chang, I'm sorry. I do have one more  
20 question.

21 Mr. Chang, have you conducted any type of  
22 an analysis of the economic value of the District

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1 of Columbia government's recommended conditions  
2 that appear in DCG (A)-2?

3 A No, I have not, and I believe I answered  
4 that in an interrogatory directed to me.

5 Q Thank you.

6 MR. DUVER: Your Honor, that's all the  
7 questions I have, but I would like to mark a  
8 series of exhibits that, through agreement with  
9 Mr. Coyle, they would be stipulated in. So I  
10 would like to mark what has been previously marked  
11 as Joint Applicants' Cross Exhibit 81 to be Joint  
12 Applicants' Exhibit 53, and then 82 and 83 to be  
13 54 and 55, respectively, and then Joint  
14 Applicants' Cross Exhibit 86 to be 56, and  
15 finally, 84 to be 57.

16 CHAIRMAN KANE: So marked.

17 (Joint Applicants Cross Exhibit Number 53  
18 through 57 were marked for identification.)

19 MR. DANIELS: OPC has no questions.

20 MS. FRANCIS: AOBA has no questions.

21 MR. SPECK: DC SUN has no questions.

22 MS. WHITE: D.C. Water has no questions.



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1 MS. WEIN: NCLC has no questions.

2 CHAIRMAN KANE: We have no questions.

3 Redirect?

4 MR. COYLE: No redirect.

5 At this time, I would like to move the  
6 admission of D.C. government Exhibits (B), (B)-1  
7 and (2B). And just let me check whether there  
8 were exhibits associated with (2B). No. It's  
9 (B), (B)-1 and (2B).

10 CHAIRMAN KANE: They are moved in.

11 (DCG Exhibit Numbers (B), (B)-1 and (2B)  
12 were received into evidence.)

13 MR. DUVER: And, Your Honor, joint  
14 applicants respectfully move Joint Applicant  
15 Exhibit 52 to 57 into the record.

16 CHAIRMAN KANE: Thank you.

17 (Joint Applicants' Cross Exhibit Numbers  
18 52 through 57 were received into evidence.)

19 CHAIRMAN KANE: You are excused,  
20 Mr. Chang. Thank you very much.

21 (Witness excused.)

22 CHAIRMAN KANE: Ms. Francis?

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1 MR. LORENZO: Your Honor, I'm going to  
2 seed my seat to Mr. Meier.

3 MS. FRANCIS: Your Honor, the Apartment  
4 and Office Building Association would like to call  
5 Bruce R. Oliver to the stand. While Mr. Oliver is  
6 taking the stand, according to the procedure we  
7 adopted in this proceeding, I would like to mark  
8 his direct testimony for the record as AOBA  
9 Exhibit (A), with Exhibits (A)-1, (A)-2 and (A)-3,  
10 as well as attachments 1, 2 and 3 as AOBA  
11 Exhibit (A).

12 CHAIRMAN KANE: It is so marked.

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

15 MS. FRANCIS: Next, Your Honor I'd like  
16 to mark the supplemental direct testimony of  
17 Bruce R. Oliver on behalf of AOBA as AOBA  
18 Exhibit (2A), with Exhibits (2A)-1, (2A)-2,  
19 (2A)-3, (2A)-4 and (2A)-5, as well as  
20 attachment 1. I would like to have that marked as  
21 AOBA (2A).

22 CHAIRMAN KANE: They will be so marked.

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

3 MR. FRANK: Thank you, Your Honor.

4 WHEREUPON,

5 BRUCE OLIVER,

6 called as a witness, and after having been first  
7 sworn by the secretary, was examined and testified  
8 as follows:

9 MS. FRANCIS: Your Honor, as I  
10 discussed -- Your Honor, as I discussed earlier  
11 this morning, yesterday during the testimony of  
12 joint applicant witness Ellen Lapson, the witness  
13 was asked to provide rejoinder testimony. The  
14 first question beginning at transcript 2,482 and  
15 continuing on the next page, 2,483, was asked, In  
16 the supplemental direct testimony, AOBA Witness  
17 Oliver claims that because joint applicants'  
18 commitment number 35 does not explicitly require  
19 Exelon to contribute additional equity capital to  
20 PHI and PEPCO, Exelon will inadequately fund  
21 PEPCO's equity needs.

22 DIRECT EXAMINATION

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1 BY MS. FRANCIS:

2 Q Mr. Oliver, is that what your  
3 supplemental direct testimony stated?

4 MR. MEIER: Your Honor, the joint  
5 applicants object. They object to this  
6 clarification which, in fact, appears to be live  
7 rebuttal testimony. It wasn't contemplated by the  
8 procedures of this court. It's to the prejudice  
9 of the joint applicants who have the burden of  
10 proof and the right to have the last word.

11 Moreover, as you can tell from the fact  
12 that she's quoting the question of Mr. Lorenzo,  
13 AOBA has had multiple remedies available. They  
14 could have objected to the question at that time.  
15 They could have, as they had not conducted  
16 cross-examination of Ms. Lapson yet, they could  
17 have conducted cross-examination of Ms. Lapson at  
18 that time on the specific point.

19 They're free to argue on brief their  
20 disagreement with Ms. Lapson's answer. And I  
21 suppose, conceivably, they might even file a  
22 motion to strike Ms. Lapson's testimony if they

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1 could meet the burden to do so.

2 Having had ample opportunity to respond,  
3 it would be inappropriate to now allow them to  
4 address issues -- and, again, that's really  
5 tantamount to live rebuttal, and I don't think  
6 there's an efficient procedure and I don't think  
7 it's an appropriate precedent.

8 MS. FRANCIS: May I respond, Your Honor?

9 CHAIRMAN KANE: Yes.

10 MS. FRANCIS: Your Honor, this is not  
11 rebuttal. It is directed towards the specific  
12 mischaracterization of the testimony and the words  
13 that I am discussing is "Exelon will inadequately  
14 fund PEPCO 's equity needs."

15 Now, Ms. Lapson's response responded to  
16 those words, and that's what -- and that was not  
17 Mr. Oliver's testimony. The exact words of the  
18 question weren't completely clear to me until last  
19 evening when I read the transcript. While we did  
20 have it in the afternoon, my attention was  
21 elsewhere and not reading the transcript, so I did  
22 not review it until last night, and I ask that

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1 Mr. Oliver be briefly allowed to address that one  
2 question: Was that your testimony?

3 MR. MEIER: And, Your Honor --

4 MS. FRANCIS: May I just -- I'm sorry.  
5 May I just finish?

6 CHAIRMAN KANE: Yes.

7 MS. FRANCIS: And, of course, if the  
8 joint applicants want to cross-examine Mr. Oliver,  
9 of course, we have no objection to that.

10 CHAIRMAN KANE: We're going to go off the  
11 record.

12 (Discussion held off the record.)

13 CHAIRMAN KANE: Thank you. After  
14 reviewing the record and reviewing the -- excuse  
15 me -- procedural record of this hearing and what  
16 the parties and the applicants agreed to, and  
17 which is a different procedure than we normally  
18 use, to have direct, supplemental direct and  
19 rebuttal all filed at one time, and not the normal  
20 procedure where there would be rebuttal in a  
21 different order, an opportunity to do that, I'm  
22 going to uphold the objection.

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1           The parties, by agreeing -- everyone, by  
2   agreeing to that procedure, essentially waived the  
3   opportunity to do this kind of rebuttal testimony  
4   or clarification testimony. So you may not ask  
5   the question.

6           MS. FRANCIS: Your Honor, the witness is  
7   available for cross-examination.

8           CHAIRMAN KANE: Thank you.  
9   Mr. Meier?

10          MR. MEIER: Joint applicants waive, Your  
11   Honor.

12          MR. DANIELS: OPC has no questions.

13          MR. COYLE: District government has no  
14   questions.

15          MR. SPECK: DC SUN has no questions.

16          MS. WHITE: No questions.

17          MR. RORIES: No questions.

18          MS. WEIN: NCLC has no questions.

19          CHAIRMAN KANE: All right. And the  
20   Commission has no questions. So thank you,  
21   Mr. Oliver.

22                 (Witness excused.)

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1 MS. FRANCIS: Your Honor, at this time, I  
2 would like to move the admission of AOBA  
3 Exhibit (A) as well as AOBA Exhibit (2A).

4 CHAIRMAN KANE: They are moved.

5 (AOBA Exhibit Numbers (A) and (2A) were  
6 received into evidence.)

7 CHAIRMAN KANE: Grid 2.0, call your  
8 witness.

9 MR. RORIES: Grid 2 would like to call  
10 Mr. Scott Hempling as a witness.

11 WHEREUPON,

12 SCOTT HEMPLING,  
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. RORIES:

18 Q Mr. Hempling, can you please state your  
19 name for the record.

20 A Scott Hempling.

21 Q And by whom are you employed?

22 A I'm self-employed. I have my own law



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1 practice.

2 Q Do you have before you your prefiled  
3 responses to questions 28, 31A and B, 32, 34A and  
4 B, 35 and 38 of the joint applicants' data request  
5 number 1 to Grid 2 that was filed on December 5th,  
6 2014?

7 A Yes, sir.

8 Q These are Joint Applicants'  
9 Cross-Examination Exhibits 100 to 105. Did you  
10 prepare these responses yourself?

11 A Yes, sir.

12 Q Do you have any corrections to make to  
13 these responses?

14 A No, sir.

15 MR. RORIES: Your Honor, consistent with  
16 the Commission's order 17790, we stipulate that  
17 Mr. Hempling's answers to these data request  
18 responses for entry into the record.

19 The witness is available for  
20 cross-examination.

21 CROSS-EXAMINATION

22 BY MR. DeCUSATIS:

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1 Q Good afternoon, Mr. Hempling. My name is  
2 Anthony DeCusatis. I'm one of the counsel of  
3 record for joint applicants.

4 A Good afternoon, sir.

5 Q Mr. Hempling, I'd like to begin on  
6 page 3, footnote 1 of your testimony in which you  
7 list 13 proceedings involving utility mergers in  
8 which you have been involved. In which of these  
9 proceedings did you present testimony?

10 A Working backwards, sir, Exelon  
11 International Transmission Company, secondly,  
12 Exelon and Constellation. Carolina Power Light  
13 and Florida Power Corp. I believe that's it.

14 Q Thank. And I just -- believe you may  
15 have misspoken. You said Exelon and International  
16 Transmission Company, and I believe that's Entergy  
17 and International Transmission Corporation.

18 A Correct.

19 Q Thank you.

20 A And, of course, in this proceeding, a  
21 witness in Maryland -- I mean, the this  
22 transaction.

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1 Q Yes. Thank you. And with regard to the  
2 Entergy/ITC transaction, in what regulatory forum  
3 did you present testimony in that case?

4 A Mississippi Public Service Commission.  
5 No witnesses appeared, so I offered written  
6 prefiled testimony, as the other witnesses did,  
7 but none of us appeared. There was a stipulation  
8 that none would appear.

9 Q Okay. And what was the nature of the  
10 transaction for which approval of the Mississippi  
11 Public Service Commission was being sought in that  
12 case?

13 A Very roughly speaking, Entergy was going  
14 to divest its transmission assets to ITC, I  
15 believe.

16 Q And Entergy in that case would have been  
17 their Mississippi subsidiary, Entergy Mississippi,  
18 Incorporated, abbreviated as EMI?

19 A Well, the transaction as a whole involved  
20 all of the utility subsidiaries of Entergy  
21 disposing of their transmission assets. But  
22 you're correct, the specific factual and legal

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1 issue before the Mississippi commission had to do  
2 with the Mississippi subsidiary of Entergy, yes,  
3 sir.

4 Q Okay. And what kind of company is  
5 International Transmission Company, or ITC?

6 A If what you're asking is what kind of  
7 business is it in, it is -- was at the time  
8 exclusively a transmission provider. In other  
9 words, it owned transmission assets and provided  
10 transmission service subject to FERC regulation.  
11 It was a holding company that held various  
12 subsidiaries that themselves owned the  
13 transmission assets, if that's what you mean by  
14 what kind of company. Plus, it's a large company.  
15 Plus, it's a profitable company.

16 Q Thank you. And after the proposed  
17 transaction, had it been completed, would ITC have  
18 been part of Entergy Corporation, the holding  
19 company structure, or otherwise affiliated with  
20 Entergy Corporation?

21 A That's what I'm trying to remember. If  
22 you give me a second --

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1 Q Sure.

2 A -- I'll remind myself. Would you mind?

3 Q No. Go right ahead.

4 A I don't want to take too much time. I  
5 apologize, but I'm not remembering what the  
6 post-transaction relationship between EMI, meaning  
7 Entergy Mississippi, Inc., and ITC was. If you  
8 want to refresh my recollection, I'll probably  
9 agree with you.

10 Q Okay. I thought that they were going to  
11 actually drop the assets into a subsidiary, spin  
12 it off to their shareholders, and then the stock  
13 was going to be -- the shareholders would receive  
14 ITC stock and become shareholders of ITC with  
15 respect to -- as a result of the transaction so  
16 that the -- it would be, in effect, a corporate  
17 split-off.

18 A Yeah, let me restate it, because I think  
19 we're both understanding it. The result of  
20 Entergy disposing of its transmission assets would  
21 be that shareholders of Entergy would receive  
22 stock in ITC. Is that what you just said?

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1 Because that --

2 Q Yes. Yes.

3 A And that's my understanding as well. So  
4 there would be no corporate relationship between  
5 ITC and Entergy afterwards. There would be, for a  
6 while, common ownership in terms of those Entergy  
7 shareholders, but of course, they could sell their  
8 stock and there wouldn't necessarily be any  
9 commonality anymore. I hope that answers your  
10 question, sir.

11 Q It does. Thank you.

12 And with respect to that transaction, did  
13 you recommend approval or disapproval by the  
14 Mississippi Public Service Commission of the  
15 proposed transaction?

16 A Disapproval.

17 Q Thank you. I'd like to look at page 11  
18 at lines 7 to 17 of your testimony.

19 A By the way, the Mississippi commission  
20 disapproved, and cited my testimony, along with  
21 others, as part of the basis for that.

22 What was the page number, sir?

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1 Q Yes. Page 11, lines 7 to 17. And I'll  
2 give you a moment. If you'd take a look at that,  
3 I just have a couple of questions.

4 A Okay, sir.

5 Q I'm looking at lines 9 through 10 where  
6 you state, This part 1 contains recommendations  
7 for those policies in the following order:

8 And then you list six topics that you  
9 subsequently address. Am I correct that part 1 of  
10 your testimony begins on page 10 and continues  
11 through page 36 of your testimony?

12 A Yes.

13 Q And when you state at lines 9 through 10  
14 of part 1 -- excuse me. When you state at lines 9  
15 through 10 that part 1 of your testimony contains  
16 recommendations, should we properly understand  
17 that testimony to mean that you are the person  
18 making those recommendations?

19 A Yes.

20 Q Those recommendations are not being  
21 offered either explicitly or implicitly as  
22 recommendations of any organization with which you

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1 are or had been employed or affiliated other than  
2 the client on whose behalf you are now testifying  
3 in this case?

4 A I assume the clients agrees with them,  
5 but they're my professional recommendations. I  
6 signed the document.

7 Q And, similarly, the discussion of current  
8 policies or, in some instances, what you described  
9 as the absence of a policy, as well as various  
10 prescriptions for new or different policies that  
11 appear in part 1 of your testimony represent your  
12 analysis and your recommendations; is that also  
13 correct?

14 A Yes, sir.

15 Q Now, can we agree that in subsequent  
16 portions of part 1 of your testimony -- and I'll  
17 simply cite one example -- page 12, lines 15 to  
18 16, there are places where you have used the words  
19 "should" or "must" in discussing your conception  
20 of how a public utility commission should analyze  
21 and decide issues presented by a proposed utility  
22 merger or consolidation?



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1           A       I use those words, yes.

2           Q       Okay. And am I correct that in each  
3 instance where you have used the prescriptive  
4 terms "should" or "must," you are, again,  
5 expressing recommendations that represent your  
6 views regarding how a regulatory commission should  
7 go about making decisions to approve or disapprove  
8 a proposed utility merger or consolidation?

9           A       Yes.

10          Q       And again, those recommendations are not  
11 being offered explicitly or implicitly as  
12 recommendations of any organization with which you  
13 are or had been employed or affiliated other than  
14 the client you're now representing in this case.

15          A       I just want to make sure I understand  
16 your question. If the client didn't agree with  
17 the front page, which says it's my testimony on  
18 behalf of Grid .0 (sic), they wouldn't have  
19 allowed it to be filed.

20          Q       Okay. Thank you. With specific  
21 reference to the transaction currently before the  
22 District of Columbia Public Service Commission, in

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1 your testimony, you are making recommendations  
2 about how this Commission should apply  
3 specifically the District of Columbia code  
4 section 34 -- 34-504; is that correct?

5 A Yes.

6 Q And once again, these again represent  
7 your recommendations with respect to various  
8 interpretations of the public interest.

9 A Asked and answered, Counselor.

10 Q So that's a yes?

11 A Yes, it is.

12 Q Okay. Now, I'd like to look at page 16  
13 at lines 11 to 12. I have a few questions about  
14 that sentence. And for present purposes, I'd like  
15 to direct your attention to the first part of that  
16 sentence which states, Once the Commission has  
17 articulated its four-part view of the public  
18 interest, paren, the subject of part 1B above --  
19 do you see that?

20 A Yes, sir.

21 Q And with that phrase as a backdrop, I'd  
22 like to go back and look at part 1B which is

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1 referenced, and specifically page 5, lines 13 to  
2 17.

3 A Yes, sir.

4 Q And am I correct that there you have  
5 provided a four-part view of the public interest?

6 A If you're referring to page 5, lines 13  
7 through 17, I agree with you.

8 Q And -- now, lines 13 to 17 are  
9 immediately preceded by two sentences where you  
10 state, This acquisition will not be in the public  
11 interest. Here is an overview of my reasons with  
12 cross-references to the relevant sections of my  
13 testimony.

14 Do you see that, just for purposes of  
15 reference?

16 A Yes, sir.

17 Q So the four-part view of the public  
18 interest that follows is offered in support of  
19 your view that the proposed transaction is not in  
20 the public interest; is that correct?

21 A I think so, but I want to make sure I  
22 understand your question. I developed this

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1 four-part approach to interpreting the words and  
2 applying the words "public interest" independently  
3 of this transaction. I didn't concoct the four  
4 parts in order to make them come out a particular  
5 way.

6 In my mind, the four parts are the way I  
7 advise regulators to analyze these transactions,  
8 and then I proceeded to apply those concepts to  
9 this transaction.

10 Q Okay. So they represent your formulation  
11 of what you think are the four elements of a  
12 public utility test which you are proposing to  
13 apply to this transaction?

14 A Public interest test.

15 Q Yeah.

16 A I think you said public utility test.

17 Q I'm sorry. I should have said public  
18 interest test. I apologize.

19 A Yes, sir. I'll make my mistakes too.

20 Q Now, just going back to page 16, lines 11  
21 to 12 again, you had stated, Once the Commission  
22 has articulated its four-part view of the public

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1 interest.

2 Mr. Hempling, you would agree, wouldn't  
3 you, that the four-part view of the public  
4 interest referenced on page 16, lines 11 to 12, is  
5 really yours and not this Commission's?

6 A I'm hoping it will be this Commission's,  
7 but it's not yet, no, sir.

8 Q Okay.

9 A It's mine.

10 Q All right. Thank you. Next, I'd like to  
11 take a look at your testimony at page 28, line 16  
12 and running through page 29, line 2. And I'll  
13 take a moment to let everyone get to that part of  
14 the testimony.

15 A Yes, sir.

16 Q I want to focus on the italicized  
17 language on page 28, at the bottom of page 28,  
18 that states, Where the Commission has not required  
19 otherwise.

20 Do you see that?

21 A Yes, sir.

22 Q And the Commission you are referring

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1 there is the District of Columbia Public Service  
2 Commission; is that correct?

3 A Yes, sir.

4 Q The italicized language is followed by  
5 the sentence that states, That is the omission  
6 that the Commission now must correct.

7 Do you see that?

8 A Yes, sir.

9 Q Generally when one uses the verb "to  
10 correct," it refers to an error of commission or  
11 omission that needs to be corrected. Would you  
12 agree?

13 A Yes.

14 Q And it appears that the error represented  
15 by the italicized language in your testimony is  
16 the, quote, omission that you are admonishing this  
17 Commission to now correct; is that correct?

18 A I wouldn't presume to admonish the  
19 Commission. What I intend to do with this  
20 testimony is make explicit my recommendation that  
21 where the Commission puts no constraints on a  
22 bidding war that Mr. Rigby can conduct to acquire

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1 value for shareholders, that that leads to a  
2 transaction like this where the public interest is  
3 put second and the returns to the PHI shareholders  
4 are put first.

5 Q Well, removing the word "admonishing," I  
6 will say it appears that the error represented by  
7 the italicized language is the omission that you  
8 are recommending this Commission to correct now;  
9 is that correct?

10 A Yes, sir.

11 Q And is it also correct that the omission  
12 you are referring to is further defined at lines 1  
13 and 2 on page 29 as a conflict of interest that  
14 the Commission has allowed to develop; is that  
15 correct?

16 A What is your question, sir?

17 Q I'm saying, the omission you are  
18 referring to in the previous sentence is further  
19 defined, is it not, at lines 1 and 2 on page 29 as  
20 a, quote, conflict of interest that the Commission  
21 has allowed to develop?

22 A That's what I wrote, yes, sir.

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1           Q     And once again, the Commission you are  
2     referring to here is the District of Columbia  
3     Public Service Commission?

4           A     Yes, sir.

5           Q     Now, is it your testimony that the  
6     Commission either did not perceive the alleged  
7     conflict of interest that you have identified or  
8     that, having identified it, they failed to take  
9     appropriate action to protect the public interest?

10          A     I'm not sure I understand the question,  
11     but I think the answer is I don't know. I don't  
12     know whether the Commission intended this omission  
13     or whether the omission is inadvertent. What's  
14     relevant is the recommendation that, with respect  
15     to this merger and future mergers, I recommend  
16     that the Commission articulate a policy that  
17     requires the CEO of a target company to put the  
18     ratepayers first.

19          Q     Now, I'd like to direct your attention to  
20     page 30 at lines 1 and 2. And I'll give you an  
21     opportunity to turn there. I'd like to focus on  
22     the statement on line 2 that, quote, the



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1 Commission has no policy regarding that standard.

2           And since "Commission" is capitalized, I  
3 assume and ask you to confirm that you're  
4 referring to the District of Columbia Public  
5 Service Commission in this context as well?

6           A     Yes, sir. Whenever I use the word  
7 "Commission" with a capital C, I'm referring to  
8 this specific commission, yes, sir.

9           Q     And in this context, this is -- just so  
10 I'm clear, you're not saying the Commission has a  
11 policy with which you disagree, but rather you  
12 don't think they have a policy at all?

13          A     Yes.

14          Q     Now, turning to regulatory policy dealing  
15 with how to discern whether a merger is in the  
16 public interest --

17          A     Excuse me. I'm sorry to interrupt, but I  
18 just want to elaborate, if I may, briefly.

19          Q     Sure.

20          A     I base the answer that I just gave on my  
21 reading of the Commission's prior decisions on  
22 mergers and on my reading of the merger statute

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1 and on my not -- and my reading of the filing  
2 requirements relating to mergers. And so I based  
3 my conclusion of, quote, no policy, closed quote,  
4 on the study of those materials.

5 Q Very good. Thank you. And in fact, you  
6 actually referenced the two lengthy opinions on  
7 mergers I believe at page 30, beginning at line 8  
8 and continuing through line 10.

9 A Yes, sir.

10 Q Those are the opinions you were referring  
11 to?

12 A Yes, sir.

13 Q And am I correct that in both of those  
14 opinions, the Commission granted its approval of  
15 the proposed transactions?

16 A Correct. Although in the PEPCO BG&E  
17 context, that merger did not go forward. I should  
18 disclose I was an advisor to the Commission in the  
19 PEPCO/BG&E case, an internal advisor.

20 Q And is it your testimony that despite the  
21 Commission having found in both instances that the  
22 proposed transactions were in the public interest,

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1 there is nothing in either opinion that -- and  
2 I'll just use the language that appears in your  
3 testimony -- there was nothing that articulated a  
4 policy that distinguishes consolidations that  
5 serve the public interest from those that do not?

6 A That is my testimony, not in the specific  
7 terms that are the context of our current  
8 dialogue, Counselor, which is whether the  
9 Commission has a policy that prevents the CEO of a  
10 target company from seeking the highest possible  
11 price without regard to whether the customers will  
12 get the best possible acquirer.

13 Those issues were not, as I recall, even  
14 raised in those two cases. They are being raised  
15 here.

16 Q Thank you. And next I'd like to explore  
17 what you describe as a public interest vision at  
18 lines 14 and 16 of page 30. And is it your  
19 testimony that the Commission has not yet declared  
20 a clear public interest vision as it pertains to  
21 utility mergers and consolidations?

22 A As I have defined with additional

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1 paragraphs in my testimony, the concept of, quote,  
2 vision, closed quote, that is correct.

3 Q Is it your view that the Commission must  
4 declare such a clear public interest vision before  
5 it can undertake deciding the case that's  
6 presently before it?

7 A My testimony is that it would be better  
8 for everybody if it had, but given that it hasn't,  
9 this is a perfectly fine place to do so, that a  
10 decision in this case that articulated a vision  
11 for geographic scope, for mixing of utility and  
12 non-utility businesses, for corporate structure  
13 and for financial structure would give guidance.

14 Regardless of how they decide the case  
15 with respect to the specific transaction, if they  
16 gave guidance on those issues, it would serve  
17 shareholders, customers, the public well, yes,  
18 sir.

19 Q Thank you. You also address the issue of  
20 national policy regarding utility consolidations,  
21 I believe on page 30 at -- beginning at line 14  
22 and continuing through page 31. And I'll give you

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1 a moment to turn there and take a look at it.

2 A Yes, sir.

3 Q The sentence that begins on line 1 of  
4 page 31 refers to, quote, this trend. Do you see  
5 that?

6 A Yes.

7 Q Am I correct that "this trend" refers  
8 back to page 30, line 21 through page 31, line 1  
9 where you describe a trend in the past 30 years  
10 that has consolidated many formerly stand-alone  
11 utilities into a smaller number of holding company  
12 systems.

13 That's the trend which is referenced at  
14 that point.

15 A Yes, sir.

16 Q Mr. Hempling, do you believe that the  
17 trend that you describe as having occurred over  
18 the last 30 years has increased customer welfare,  
19 diminished -- excuse me -- increased consumer  
20 welfare, diminished consumer welfare or left it  
21 about the same?

22 A I would have to do a technical study that

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1 involved engineering, economists, financial  
2 experts and others to give a professional opinion  
3 on that. I'm skeptical that the trend has been a  
4 positive for the public, but I wouldn't presume to  
5 give a generic answer without the study that it  
6 deserves, but skepticism is the basis for my  
7 concern.

8 Q So just -- you think that, after 30  
9 years, in your view, the evidence is still  
10 inconclusive?

11 A I don't know that anybody, sir, has  
12 performed a peer-reviewed or even  
13 non-peer-reviewed study to answer your question.  
14 But my general view and experience with utilities  
15 is that the trend toward mixing utility and  
16 non-utility businesses, the trend of growing  
17 remoteness of management from local concerns, the  
18 trend of paying higher and higher acquisition  
19 premia which rewards shareholders for owning a  
20 government-controlled franchise is not a trend  
21 that easily can be reconciled with the public  
22 interest. And that's the basis for my skepticism.

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1           Q       And did the transactions that formed this  
2 30-year trend require in either all or many  
3 instances the approval of federal regulatory  
4 authorities such as the Federal Energy Regulatory  
5 Commission?

6           A       I think the answer is yes, but I can't  
7 remember the opening words to your question. If  
8 you're saying in most cases, the answer would be  
9 yes. If you said in all cases, I'd have to stop  
10 and think if there were exceptions.

11          Q       I actually said in all or many cases,  
12 many instances.

13          A       I'm not aware of a utility merger that  
14 didn't have to go through the FERC, at least since  
15 1985 when I've been involved in these.

16          Q       Thank you. And did the transactions that  
17 form this trend require in many instances, perhaps  
18 all, the approval of state regulatory authorities,  
19 namely those that regulate public utility rates,  
20 service and structural changes?

21          A       Every utility merger that I'm familiar  
22 with had to get approval from some state, although

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1 there have been mergers affecting states where a  
2 particular state did not have jurisdiction.

3 Q And did the transactions that form this  
4 trend require, again, in, I presume, most and  
5 perhaps all instances, the review and acquiescence  
6 of the United States Department of Justice and/or  
7 the Federal Trade Commission under the  
8 Hart-Scott-Rodino Antitrust Improvement Act of  
9 1976?

10 A I'm not familiar with any of that. It  
11 would not have required the Hart-Scott-Rodino  
12 review. I'm pausing on your word "acquiescence"  
13 because I don't know whether I would always  
14 interpret silence as equivalent to acquiescence.  
15 But I think I got your drift. And so my answer,  
16 with that qualification, is yes.

17 Of course, as you know, Counselor, each  
18 of these jurisdictions that had to pass on these  
19 mergers had its own statutory limitations on what  
20 it could take into account.

21 Q Yes. Understood. Thank you.

22 Now, with regard to the national policy



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1 that you are discussing at this point in your  
2 testimony, how would the government of the United  
3 States express such a national policy if it were,  
4 you know, inclined to follow you -- the course  
5 that you are prescribing?

6 A Putting aside whether I think such a  
7 policy should be done at the national level or at  
8 the state level, what it would do would answer the  
9 type of questions that I posed in the introduction  
10 that we discussed.

11 It would express limits or permissiveness  
12 with respect to the areas of geographic scope,  
13 mixing of utility and non-utility businesses,  
14 corporate structure and financial structure. It  
15 would express some connection between complexity  
16 and size of the post-transaction entity and the  
17 ability and readiness of regulatory infrastructure  
18 to address that complexity and size. And that  
19 would be the first paragraph of what could be a  
20 very, very long answer.

21 Q Okay. I just wanted to sort of clarify  
22 in my own mind, when you talk about national

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1 policy, I assume that, since you have a separate  
2 discussion of it and use the word "national," you  
3 were talking about something that was national in  
4 scope and imposed from -- by the United States  
5 government. But you're saying it might be  
6 something else?

7 A No. I meant my answer that I just gave  
8 you to be with respect to national policy. I was  
9 only pointing out that one could imagine multiple  
10 states promulgating similar policies.

11 Maybe to make things clear, let me use  
12 the example briefly of the Public Utility Holding  
13 Company Act of 1935. I'm not proposing that we  
14 re-enact it. I'm offering it as an example of a  
15 national policy that said if we're going to have  
16 utility holding company systems, those systems  
17 should be confined to what the act defined as a,  
18 quote, single integrated public utility system.  
19 And that definition of system focused on the local  
20 nature, the ability of engineering and finance  
21 experts to keep track of events on the system,  
22 et cetera.

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1           It's an example of a national policy  
2 because it promoted economical and efficient  
3 structures and it discouraged or prohibited  
4 different structures.

5           That's what I mean by policy, something  
6 that distinguishes holding companies that are out  
7 for the public good and holding companies that are  
8 out for themselves.

9       Q     If the United States were to adopt such a  
10 policy, would it constrain the authority of state  
11 regulatory commissions to approve mergers or  
12 consolidations they found to be in the public  
13 interest?

14       A     It could. Just, again, to use the  
15 example, if the federal statute prohibits a  
16 particular type of corporate structure, then the  
17 states can do all they want to approve such a  
18 corporate structure, but it won't be permitted.

19       Q     And again, looking at page 31 and lines 1  
20 to 4, is it your opinion that such a coherent  
21 national policy that distinguishes utility  
22 consolidations that serve the public interest from

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1 those that do not needs to be adopted before this  
2 Commission can decide the case before it?

3 A I want to make sure we understand each  
4 other. The reason I spoke about an absence of a  
5 national policy in my testimony is because it is  
6 that very absence that means that the states do  
7 have to act to have that vision.

8 And if I understood your question, it  
9 would be the answer I gave before, that the  
10 Commission has that opportunity, and in my mind,  
11 has that obligation in this proceeding to declare  
12 that policy. It shouldn't merely say yes or no to  
13 this transaction. It should say yes or no to this  
14 transaction by establishing a context that gives  
15 guidance to the future.

16 Q Thank you. I'd like to look at -- now,  
17 at page 36, lines 9 to 16 of your testimony.

18 A One second, please.

19 Q Oh, sure. Take your time.

20 A Yes, sir.

21 Q With respect to discerning and applying  
22 what you call the public interest principles, do

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1 you believe that unless the Commission adopts your  
2 position, this Commission should not have the last  
3 word on this subject?

4 A Sorry. Could I get the question again,  
5 please?

6 Q Yes. Certainly. And with respect to  
7 discerning and applying what you referred to as  
8 public interest principles, do you believe that  
9 unless they adopt your position, this Commission  
10 should not have the last word on this subject?

11 A I think that would be presumptuous. What  
12 I'm saying is that the District would be better  
13 served by articulating a vision. Whether the  
14 articulator of that vision is the Commission or  
15 the city council is for those two bodies to  
16 decide.

17 I'm not saying that it has to be my  
18 vision. Obviously, I'd prefer that it is, but  
19 somebody else might have a better idea if only the  
20 dialogue were to occur.

21 Q Mr. Hempling, it strikes me that perhaps  
22 in this portion of your testimony, you are not

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1 speaking to the Commission, but instead making  
2 policy prescriptions directly to the D.C. council.  
3 Is that what you're doing?

4 A Not directly. One could say indirectly,  
5 but this is why I put the paragraph in there, to  
6 emphasize that, depending on what type of decision  
7 emerges from this proceeding, there may or may not  
8 be a public interest reason for the city council  
9 to act. And that is why I recommended that the  
10 Commission say something about these principles,  
11 so that those who ultimately define the  
12 Commission's authority can make a decision about  
13 what that authority should be with more clarity.

14 Q So it is your testimony, then, that if  
15 the Commission does not accept your position in  
16 this case, you are inviting the District of  
17 Columbia council to legislatively overrule the  
18 Commission?

19 A Overrule in what respect, sir? In  
20 respect of rejecting a merger that this Commission  
21 has approved or with respect to the Commission's  
22 policy bases for its decision?

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1           Q       Actually, I would like if you could  
2   address both, whether they could legislate --  
3   whether they should legislatively overrule a  
4   decision to approve the merger and, secondly,  
5   whether they should legislatively overrule  
6   whatever guiding principles inform the  
7   Commission's decision.

8           A       Frankly, I haven't thought about whether  
9   the legislature ought to be in the business of  
10   overruling a decision as specific as approving or  
11   rejecting the merger, so I can't answer that  
12   question. It would take more thought than I've  
13   given to it, frankly.

14                   But I think with respect to the other  
15   half of the question, I believe I've answered it,  
16   that it is my view that the District will be  
17   better off with a clear policy as to the nature of  
18   the corporate entities that control the franchise.  
19   And whether that clarity comes from the Commission  
20   or from the city council to me is a matter of  
21   indifference as long as the clarity occurs.

22           Q       Thank you. I'd like to explore with you

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1 your proposed four-part view of the public  
2 interest which you outlined on page 5, lines 13 to  
3 17 and do so in the context of some concrete  
4 factual scenarios that you have alluded to  
5 elsewhere in your testimony.

6 A Excuse me. You said page 5?

7 Q Yes, page 5, lines 13 to 17. I think  
8 that's the first and most complete articulation of  
9 the four-part test.

10 A Well, sir, this is not complete. This is  
11 executive summary. I'm glad to use it for  
12 purposes of the conversation, but I assume people  
13 know that the next 25 pages fleshes it out.

14 Q I -- I agree with that.

15 A Okay.

16 CHAIRMAN KANE: May I interrupt?

17 Mr. Hempling, we need you to slow down a little  
18 bit --

19 THE WITNESS: I'm sorry. I'm very sorry.

20 CHAIRMAN KANE: -- to accommodate our --

21 THE WITNESS: It's my New Jersey --

22 CHAIRMAN KANE: I'm from New Jersey, too.



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1 But our resolute court reporter here is nearing  
2 the end of a very long stint, and I can see that  
3 keeping up is very difficult.

4 THE WITNESS: Yes, ma'am.

5 BY MR. DeCUSATIS:

6 Q I would like to focus on two of the four  
7 elements you identify, specifically part B,  
8 permeates its organization with a full commitment  
9 to its jurisdiction's policies, and part C, has no  
10 motivations, incentives or pressures that are not  
11 aligned with its utility service obligations and  
12 its jurisdiction's policies.

13 While we can provide citations to your  
14 testimony, perhaps we can agree that one of the  
15 issues about which you expressed concern is a  
16 post-merger entity's commitment to its  
17 jurisdiction's policies on distributed generation.  
18 Is that correct?

19 A Yes, sir.

20 Q Could we agree that one source, and a  
21 very important source, for discerning this  
22 jurisdiction's policies is the decisions embodied

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1 in its orders -- in the orders that it issues and  
2 the regulations that it adopts?

3 A Yes, sir.

4 Q Given the fact that you have made  
5 government policies related to distributed  
6 generation an element of the merger analysis in  
7 your testimony, are you generally familiar with  
8 this jurisdiction's decisions in that area?

9 A No. I'm only remotely familiar.

10 Q Would you be at all familiar with the  
11 Commission's February 4, 2015 order in formal  
12 case 944, identified as order 17794, and  
13 specifically the portions that dealt with the CREF  
14 credit rating?

15 A No, sir. I'm not going to be a very  
16 useful witness on specifics of D.C. policies,  
17 other than mergers.

18 Q Would you agree that -- and to the extent  
19 that that order sets forth clear policy guidance  
20 on the CREF credit rate, that it would constitute  
21 one of those policies regarding distributed  
22 generation that a public utility providing service

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1 in the District, seeking to act in conformity with  
2 the public interest, would need to have permeate  
3 its organization?

4 A Yes.

5 Q Thank you. And just so we're clear,  
6 given a clear policy direction in such an order, a  
7 continued advocacy by a utility providing service  
8 in the District of Columbia of a position that is  
9 different from the one articulated in that order  
10 might not be consistent with part B of your  
11 four-part test?

12 A I can't say that for sure, sir. What  
13 matters is their behavior. It's certainly  
14 possible to advocate for one thing while  
15 vigorously adhering to a current policy. I would  
16 never deny a company or person's ability to argue  
17 for change as long as they're fully and  
18 enthusiastically complying with what exists.

19 Q Very good. Thank you. Could we turn to  
20 page 54? And I'd like to look at the question and  
21 answer beginning on line 14, and it continues -- I  
22 believe this discussion continues through the top

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1 of page 56.

2 A Yes, sir.

3 Q This discussion relates to the position  
4 that Exelon took with respect to the provision in  
5 FERC order -- that's F-E-R-C -- order 1000 to  
6 remove incumbent transmission owners' right of  
7 first refuel the build transmission facilities  
8 within a regional transmission plant. Is that  
9 correct?

10 A That was one aspect of order 1000, yes,  
11 sir.

12 Q And as you note, Exelon opposed the  
13 elimination of the right of first refusal in its  
14 comments to the FERC. Is that also correct?

15 A That was my understanding.

16 Q And at lines 27 to 29 on page 55, you  
17 ascribe Exelon's opposition to the elimination of  
18 the federal right of first refusal to -- and I'll  
19 use your words, your testimony -- resisting  
20 competition in the market for new transmission  
21 facilities because that competition could reduce  
22 profit. Is that correct?

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1           A       That's what I said, yes, sir.

2           Q       And you state further that, quote, there  
3 is, furthermore, a direct conflict between the  
4 District's interest in lower transmission costs  
5 and the Exelon utilities' interest in maintaining  
6 transmission profit.

7                   Is that also correct?

8           A       That's what I said, yes, sir.

9           Q       Thank you. Mr. Hempling, I take it that  
10 in your view -- it is your view that a utility  
11 like PEPCO, pre-merger PEPCO, that serves a  
12 discrete service area like the District of  
13 Columbia and needs transmission to link its  
14 service area to low-cost power supplies should  
15 strongly favor the elimination of the federal  
16 right of first refusal?

17          A       Such a utility, yes, would be better off  
18 if there were competition to provide transmission  
19 facilities. To the extent that competition is  
20 effective and efficient competition, it will lower  
21 the cost of transmission service, which would be  
22 better for such a utility.

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1           Q     And at page 56, lines 2 to 7, you state  
2     that one of the downsides you perceive to the  
3     proposed merger is -- and again, I'll quote --  
4     Exelon will have the governance power to keep  
5     PEPCO from pressing for these policies. PEPCO's  
6     silence, ordered by Exelon, will leave the  
7     Commission without the guidance it needs and  
8     expects from PEPCO to take appropriate positions  
9     in the regional transmission planning process.

10               Is that correct?

11          A     Yes, sir, with one clarification. I  
12     meant that sentence to be in the subjunctive in  
13     the sense that if you inserted the word "if"  
14     before the word "ordered," it's really what I  
15     meant. I wasn't predicting that they would compel  
16     silence by PEPCO. I was meaning to suggest that  
17     as the -- as a scenario. If that happens, then  
18     that happens.

19          Q     I understand. Now, let's look at the  
20     next sentence which appears at lines 5 to 7 on  
21     page 56. And you can take a moment to review it.

22          A     I have it.

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1           Q       Is the pre-merger PEPCO a, quote,  
2 knowledgeable voice in the transmission planning  
3 process?

4           A       I assumed so when I wrote this language.

5           Q       Is the pre-merger PEPCO a, quote, voice  
6 whose economic interests have aligned with the  
7 District's in the order 1000 planning process?

8           A       The way you ask that question, sir, is --  
9 it leaves out the dash and I think joins two  
10 phrases that I wouldn't have joined. Could you  
11 reask the question, please?

12          Q       Yes. Just give me a moment. I want to  
13 make sure I get it exactly as it's stated in your  
14 testimony. Excuse me. I don't. I mean, the  
15 sentence begins on page 5 --

16          A       I'm sorry. I was on page 56.

17          Q       I apologize. Page 56, line 5. It's the  
18 sentence beginning, The District will lose a  
19 knowledgeable voice -- a voice whose economic  
20 interests has aligned with the District's in the  
21 very order 1000 planning process FERC has created  
22 to give the District a voice.

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1           A       Again, there's a dash, and it actually  
2 matters for your question, after "the District's."

3                   But what is your question?

4           Q       Yes. My question is that when you talk  
5 about losing a knowledgeable voice -- I think  
6 we've agreed that the knowledgeable voice would  
7 refer to a pre-merger PEPCO. And I'm simply  
8 asking whether the antecedent for the phrase that  
9 appears between the dashes, "a voice whose  
10 economic interests has aligned with the  
11 District's," is also the pre-merger PEPCO?

12          A       Yes, sir. The confusion I meant to avoid  
13 is that the alignment I'm talking about is not an  
14 alignment with respect to order 1000. It's an  
15 alignment with respect to the interest in low-cost  
16 import of power which depends on low-cost  
17 transmission service which depends on low-cost  
18 transmission facilities, which can be affected by  
19 the extent of competition to build transmission  
20 facilities.

21          Q       Thank you. I'd like to ask if you could  
22 turn to a document which I think has preliminarily



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1 been marked as Joint Applicants' Cross-Examination  
2 item (sic) 32, which I believe needs to be  
3 properly identified as the next consecutive  
4 number.

5 MR. DeCUSATIS: I apologize. I want to  
6 make sure I get my numbers right. I don't want to  
7 have to redo it. Yes, it's been pre-marked as  
8 Joint Applicants' Cross-Examination Exhibit 97,  
9 but it needs to be re-marked as Joint Applicants'  
10 Exhibit 58. So I believe Ms. Travers is  
11 indicating that it would appear in the binder at  
12 tab 97.

13 CHAIRMAN KANE: Does the witness have  
14 that exhibit?

15 THE WITNESS: Yes, ma'am.

16 BY MR. DeCUSATIS:

17 Q Mr. Hempling, this particular document  
18 bears a FERC caption Transmission planning and the  
19 cost allocation by transmission-owning and  
20 operating public utilities on its title page and  
21 is titled, Comments of indicated PJM transmission  
22 owners.

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1 I just want to make sure we're both  
2 looking at the same thing.

3 A I have it. I've never seen it before,  
4 before this afternoon.

5 Q Okay. Could we take a look at page 2?

6 A Yes, sir.

7 Q And the first paragraph of the  
8 introduction and summary is what I'm looking at.  
9 Can we agree that this document represents the  
10 comments of certain PJM transmission owners on the  
11 FERC notice of proposed rulemaking to eliminate  
12 the federal right of first refusal for incumbent  
13 transmission owners with respect to facilities in  
14 regional transmission planning?

15 A Yes, sir.

16 Q Okay. And I can direct your attention to  
17 page 43 and ask if you would agree that this  
18 document bears the date of September 2010.

19 A Yes, sir. September 29 --

20 Q September 29, 2010?

21 A Yes, sir.

22 Q And I think, you know, perusing the table

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1 of contents and the various section headings, we  
2 could probably agree that these comments were  
3 filed in opposition to FERC's proposal to  
4 eliminate the incumbent right of first refusal.

5 A Yes.

6 Q Mr. Hempling, could you turn to page 1 of  
7 those comments, please --

8 A Yes, sir.

9 Q -- and refer to footnote 2, which lists  
10 the various parties who comprise the PJM  
11 transmission owners submitting the comments?

12 A Yes, sir.

13 Q This footnote indicates, does it not,  
14 that among those parties are PEPCO Holdings, Inc.,  
15 as well as its affiliates Potomac Electric Power  
16 Company, Delmarva Power Company and Atlantic City  
17 Electric Company; is that correct?

18 A Yes, sir.

19 Q Would you agree that the pre-merger  
20 PEPCO, as both a knowledgeable voice in the  
21 transmission planning process and a voice whose  
22 economic interests has aligned with the District's

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1 in the order 1000 planning process, also opposed  
2 the elimination of the federal right of first  
3 refusal?

4 A Yes. Again, you joined two phrases from  
5 my testimony at 56 that I separated with a dash.  
6 But I clearly gave PHI and its subsidiaries more  
7 credit for wanting transmission costs reduced than  
8 I should have. No good deed goes unpunished.

9 Q Turning to another topic in your  
10 testimony, you --

11 A And that was before Exelon took them  
12 over.

13 Q Turning to another topic, there are a  
14 number of places in your testimony where you  
15 discuss and -- and I think offer a warning about  
16 what you regard as a risk of harm that could exist  
17 in the post-merger corporate structure because  
18 PEPCO would have to compete for capital within the  
19 Exelon family of companies.

20 Is that a fair summary of the testimony I  
21 think I've seen at several points in your direct  
22 testimony describing what you view as being that

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1 risk?

2 A It's one of the risks I discuss. Yes,  
3 sir.

4 Q Now, Mr. Hempling, let us assume just for  
5 purposes of our discussion that the condition that  
6 you've posited, namely, a competition for capital  
7 by PEPCO with other companies in the Exelon system  
8 post-merger were to occur. Would you agree that  
9 PEPCO would, nonetheless, remain a fully regulated  
10 public utility that is subject to this  
11 Commission's jurisdiction?

12 A Yes, sir. There is nothing about this  
13 transaction that alters the Commission's legal  
14 powers -- legal powers, as distinct from their  
15 practical ability, to extract appropriate  
16 performance from PEPCO.

17 Q Let us assume further that this  
18 Commission determined that, in the competition for  
19 capital to meet PEPCO's legal obligations, that  
20 there was or there was created a divergence  
21 between the goals of its holding company's  
22 management and PEPCO's duties to this corporation

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1 (sic). Under those --

2 A I'm sorry. PEPCO's duties to what, sir?

3 Q A divergence between the goals of its  
4 holding company parent and PEPCO's duties to this  
5 Commission.

6 A Commission, yes, sir. I'm with you on  
7 the assumption.

8 Q Okay. Under those circumstances, this  
9 Commission could address and remedy the perceived  
10 problem by issuing orders and imposing fines,  
11 couldn't it?

12 A If you mean, by the word "could,"  
13 legally, is it possible legally, the answer is  
14 yes. The question that I pose in my testimony,  
15 particularly in the section on conditions, is  
16 whether mas a practical matter, it will be able to  
17 act in a way that its legal authority otherwise  
18 would allow.

19 Q Mr. Hempling, I'd like to turn next to  
20 Cross-Examination -- Joint Applicants'  
21 Cross-Examination Exhibit preliminarily marked 98.  
22 It appears at tab 98 of your binder and it would

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1 be marked for the record as Joint Applicants'

2 Exhibit 59.

3 A What is it, sir?

4 Q It's your direct testimony in the Entergy  
5 Mississippi IT case.

6 A Okay. I have it.

7 Q Just so we can get it on the record, this  
8 is -- and you can take a moment to look at it.

9 This is your direct testimony that was submitted  
10 and made part of the record before the Mississippi  
11 Public Service Commission; is that correct?

12 A Yes, sir.

13 Q And I think you had earlier indicated,  
14 when we began our discussion and were talking  
15 about this case, you had said that this was the  
16 testimony that the Mississippi Public Service  
17 Commission, in fact, relied on in its decision.

18 A Sir, I didn't say it was the testimony.  
19 It was one of the testimonies.

20 Q It was one of the testimonies.

21 A Yes, sir.

22 Q Would you please turn to page 65 and look

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1 at lines 10 through 22 of that direct testimony.

2 And take a moment -- turn the page.

3 A Page 65. Lines, please?

4 Q Mr. Meier is just reminding me I need to  
5 give you two references, and I apologize for that.

6 It is page 65 of your testimony. It is page 70 of  
7 Exhibit -- preliminarily marked Exhibit 98.

8 There's a difference in numbering between the  
9 exhibit and your testimony page numbering.

10 A Page 65 at the bottom and page 70 at the  
11 top?

12 Q That's absolutely right.

13 A Okay.

14 Q And I'm looking at lines 10 through 22.  
15 After you've had a moment to refamiliarize  
16 yourself with that paragraph, you can let me know  
17 and we will continue our dialogue.

18 A Yes, sir.

19 Q Now, I want to focus for a moment on --  
20 actually on the three sentences beginning on  
21 line 17 and continuing through the sentence ending  
22 on line 21. And in that first sentence, you



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1 state, If EMI is suggesting that ITC will not have  
2 to compete for capital, EMI is wrong.

3 Am I correct that EMI refers to Entergy  
4 Mississippi, Inc., a subsidiary of Entergy  
5 Corporation, which is a holding company with both  
6 regulated public utility subsidiaries and  
7 subsidiaries in unregulated business, including  
8 generation, merchant generation?

9 A Yes, I'm agreeing with your  
10 characterization of EMI. But I was concerned  
11 about your paraphrasing of a full sentence. I  
12 assume it's not relevant at the moment.

13 Q Well -- excuse me a moment. I was --

14 A Oh, I see. I was looking it a different  
15 sentence. My apologies.

16 Q Yes, I was hoping to quote it exactly. I  
17 thought I did, and I think you would agree I have.

18 A You absolutely did, sir.

19 Q Now, I also have a question regarding the  
20 rest of the passage I referenced, which states  
21 further, And if EMI is saying that, within its  
22 corporate family, it has to compete for sufficient

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1 capital to meet its holding company's obligations,  
2 then it is admitting to a divergence of goals  
3 between its holding company controllers and its  
4 duties to this Commission.

5 So --

6 A Hold on. You added a word "holding  
7 company" after the first "its" that's not there.  
8 Did you want to restate it."

9 Q I apologize. It should read -- let me --  
10 I apologize for the confusion. Let me start over.

11 And if EMI is saying that, within its  
12 corporate family, it has to compete for sufficient  
13 capital to meet its legal obligations, then it is  
14 admitting to a divergence of goals between its  
15 holding company controllers and its duties to this  
16 Commission.

17 So that would be something we could  
18 characterize as a competition for capital?

19 A Yes.

20 Q And your concluding sentence indicates,  
21 If such a divergence exists, the Commission can  
22 address it by issuing orders and imposing fines.

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1           With regard to that statement, the  
2 Commission you were referring to there was the  
3 Mississippi Public Service Commission?

4           A     Yes. There's a context that you're  
5 omitting from this conversation. I don't know if  
6 I deal with it now or later.

7           Q     You know, go right ahead. We want to  
8 make sure the record is complete.

9           A     If you're suggesting that there's a  
10 conflict between my statement before the  
11 Mississippi Public Service Commission that, if  
12 there's a divergence of interest, the Commission  
13 can address it by issuing orders and imposing  
14 fines, the conflict between saying that there and  
15 my saying here that there could be a practical  
16 problem with the Commission doing so -- I want to  
17 make sure the record is clear that the comparison  
18 that was at issue in the Mississippi case was a  
19 choice between the Commission at the state level  
20 retaining its legal authority over the owner of  
21 transmission versus the state commission utterly  
22 losing that authority because the transmission

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1 assets would now have migrated to an entity  
2 exclusively jurisdictional at FERC.

3 Q I see.

4 CHAIRMAN KANE: Mr. DeCusatis, we are  
5 going to need to take a break any minute now. I  
6 don't know in you're in the middle of a particular  
7 question that has a sequence to it. I don't want  
8 to stop in the middle of a thought process but --

9 MR. DeCUSATIS: Actually, this would be a  
10 very --

11 CHAIRMAN KANE: A good time to stop?

12 MR. DeCUSATIS: An opportune time. I was  
13 going to move on to another area.

14 CHAIRMAN KANE: Very good. Thank you.  
15 We will take a ten-minute break.

16 (Whereupon, a short recess was taken.)

17 CHAIRMAN KANE: We will resume on the  
18 record at 4:55 p.m.

19 MR. DeCUSATIS: Thank you, Chairman Kane.

20 BY MR. DeCUSATIS:

21 Q Mr. Hempling, turning to another topic, I  
22 would direct your attention to your discussion of

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1 what you describe as franchise competition which  
2 appears at page 152, starting with the question on  
3 line 10, and continues through the top of  
4 page 153. And I'll take a moment to let folks get  
5 there and have an opportunity to review it.

6 A Yes, sir.

7 Q Now, just as a matter of clarification, I  
8 want to look at the first sentence of your answer  
9 at lines 1 and 2 where you quote from two cases  
10 for which citations are provided in footnote 53.  
11 Do you see that?

12 A Yes, sir.

13 Q And just so we don't go chasing down  
14 those cases, can we agree that they did not  
15 involve mergers of regulated utilities?

16 A Correct.

17 Q Thank you. Now, turning back to your  
18 testimony at line 19 of page 152 --

19 A Excuse me. I really don't mean to be  
20 difficult. If you mean, by regulated utilities,  
21 companies like PEPCO that provide us essential  
22 service on an exclusive basis, yes. But

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1 Hecht (phonetic) concerned a stadium, features of  
2 which would be subject to some kind of regulation,  
3 but with that clarification, please continue.

4 Q Okay. Thank you. Thanks for that  
5 clarification.

6 With respect to your testimony at line 19  
7 of page 152 through line 1 of page 53, I  
8 understand and would ask you to confirm that you  
9 are positing a situation where this Commission  
10 would contemplate revoking the certificate of  
11 public convenience of PEPCO because the Commission  
12 would be substantially dissatisfied with PEPCO's  
13 performance.

14 Is that a fair summary of the kind of  
15 scenario you're trying to examine at this point of  
16 your testimony?

17 A Yes. It could be the Commission. It  
18 could be the city council. It actually would  
19 depend on who has the legal authority to revoke.

20 Q Thank you. And in order to do that --  
21 that is, in order for revocation of a certificate  
22 of public convenience to be a viable option, there

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1 would have to be another public utility that is  
2 ready, willing and able to take over service  
3 within the franchise area of the disenfranchised  
4 company, and I think that is my understanding of  
5 the point you're trying to make at this portion of  
6 your testimony; there has to be an alternative, a  
7 good alternative.

8 A Yes. The point is that BG&E, being  
9 adjacent, being familiar with a similar type of  
10 service territory, having a record that is known,  
11 would be an example of a candidate that might be  
12 ready, willing and able and, therefore, be an  
13 appropriate choice.

14 And it's the loss of such an option that  
15 is a negative from this transaction.

16 Q And in fact, I think the language you use  
17 in your testimony on the top of page 153 is that  
18 BGE would be a logical candidate for that role.

19 A And I mean logical, I don't necessarily  
20 mean factual. There's a lot of questions we'd  
21 have to ask.

22 Q Okay. So in that scenario that we've

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1 just described, you would not be opposed to an  
2 Exelon subsidiary, namely BGE, acquiring PEPCO's  
3 D.C. service territory.

4 A I don't know if I would be opposed. My  
5 only was that it would be a logical candidate that  
6 we'd be losing. I'd have to take into account all  
7 the other elements of Exelon about which I've  
8 expressed concern in this testimony.

9 Q But the -- I think the -- some of the  
10 things that you identified as qualities that make  
11 it a logical candidate or an attractive candidate  
12 would be its proximity and the fact that it serves  
13 a major metropolitan area and presumably has a  
14 track record on which you can assess its ability  
15 to provide safe and reliable service.

16 A Yes, sir. Those would be features that  
17 would end up in the positive side of the column.  
18 All of the many pages in which I describe the  
19 negatives of Exelon would end up in the negative  
20 side of the ledger.

21 Q Okay. And -- so if we're, again, dealing  
22 with this scenario and we were not going to look



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1 at BGE because it's an Exelon subsidiary, you'd  
2 have to look to another alternative. What about a  
3 Dominion subsidiary, since Dominion is just on the  
4 other side of the river? Would they be an  
5 attractive alternative?

6 A Again, if they had the characteristics  
7 that made them attractive, they would have the  
8 characteristics that made them attractive. It  
9 could be Southern California Edison. It could be  
10 Puget Power and Light. The point is that if we  
11 lose someone who's so similar, so nearby, so  
12 known, it's a loss.

13 Q I guess I'm just stumbling over the  
14 notion of what you mean by losing, because BGE is  
15 right now an Exelon subsidiary. And to the extent  
16 you put any negatives on that negative side of the  
17 ledger because they're an Exelon subsidiary, that  
18 would be just as much the case if this merger did  
19 not occur.

20 A It's a fair point. They wouldn't be a  
21 great candidate, but losing them as a candidate is  
22 worse than not losing them.

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1           Q       Staying with the topic of competition,  
2       could you please turn now to page 159? And I  
3       direct your attention to your testimony beginning  
4       with the sentence on line 18 and continuing to  
5       page 60 (sic) that states, Also, because of  
6       Exelon's large size, it would get volume discounts  
7       on products or contracted services, discounts that  
8       would not be available to independent entrants.

9                   Do you see that?

10          A       Yes, sir.

11          Q       Would you agree that volume discounts on  
12       products or services based on Exelon's large size  
13       would flow from its increased bargaining power,  
14       which is one of the advantage that its size  
15       provides?

16          A       I don't know that to be the case. That  
17       phrase "bargaining power" gets used loosely, and  
18       in particular, got used loosely by your client.  
19       Bargaining power can suggest market power. I'm  
20       happy to suggest -- and I meant to --  
21       theoretically, large size can get you volume  
22       discounts. It could be because of the efficiency

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1 of the purchasing process. It could be because  
2 it's a Walmart, more highly respected and actually  
3 having market power as a buyer.

4 But be careful about taking the full  
5 context of this sentence, because what I referred  
6 to in the remainder of the paragraph is a  
7 distinction between static efficiency, which would  
8 be a gain in this particular part of our  
9 conversation, and dynamic efficiency which would  
10 be a loss.

11 Q Okay. Well, I'm going to leave the sort  
12 of more detailed economic analysis and just sort  
13 of focus on this notion of whether size provides  
14 advantages in the procurement process. Would you  
15 agree that that would generally fall under the  
16 rubric of an economy of scale?

17 A It's a possibility. Size can reflect a  
18 diseconomy of scale. I meant to be objective in  
19 this testimony. I'm going to give credit where  
20 credit is due and I'm going to acknowledge that  
21 there's the possibilities that large size can  
22 bring static efficiencies, yes.

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1           Q       Now -- and perhaps you've covered this  
2 with what you just acknowledged, but do you  
3 believe that the facts discernible from the  
4 existing record support your view for the  
5 existence of scale-based economies that, in your  
6 opinion, might be used to impede competition?

7           A       I'm sorry. It's my fault, but I didn't  
8 understand the question.

9           Q       Sure. Do you believe that the facts that  
10 are discernible from the existing record support  
11 your view that -- of the existence, post-merger  
12 existence of scale-based economies that might be  
13 used to impede competition?

14          A       Again, I apologize -- I'll try to answer  
15 the question as I understand it. First of all, I  
16 don't know that there's any part of this record  
17 that convinces me that there are scale economies.  
18 It's an example of the many vague phrases that the  
19 company uses in its application that aren't backed  
20 by facts.

21                   What I'm saying here is that it's  
22 possible that scale economies, because of Exelon's

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1 large size, can provide a competitive advantage.  
2 And actually, that would be an earned advantage.  
3 It wouldn't necessarily be an unfair advantage,  
4 but if the purpose that the Commission has at this  
5 stage in this era is to introduce more diversity  
6 and more democratization into the distributed  
7 energy space, it's something to take into account.

8 Q Okay. And maybe we're really on the same  
9 page here, but I take it that you are at least  
10 admitting that there are facts discernible from  
11 the record that would suggest the possibility and  
12 perhaps the probability that scale economies would  
13 be created by the proposed transaction?

14 A I'm talking only about possibility. I  
15 don't know about probability. Size can convey an  
16 economy of scale. It can also convey a diseconomy  
17 of scale. I don't know which one it will be here.

18 You know, the president of the California  
19 Public Utilities Commission just said at a hearing  
20 that maybe Pacific Gas and Electric -- the problem  
21 isn't that it's too big to fail; it may be too big  
22 to succeed.

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1 I don't know if that's the case with  
2 Exelon, but it's a question that I would have.

3 Q Okay. But with specific reference to  
4 pages 159 to 160, I think you were positing the  
5 existence of scale economies that could be used to  
6 impede competition. That was the purpose of this  
7 part of your testimony, to posit the existence of  
8 post-merger economies of scale that might be used  
9 to impede competition.

10 A No, sir. I did not use the word "impede"  
11 unless I've -- my memory has failed me. The word  
12 "impede" implies anticompetitive behavior. I was  
13 being even more honest about it and simply  
14 suggesting that they could have a static  
15 efficiency advantage, an earned advantage, that  
16 would result in potentially discouragement of  
17 competitors and less competition.

18 That's something I hope to do every day  
19 when I wake up as a competitor. It's not impeding  
20 conversation (sic); it's hopefully discouraging  
21 others so I can maintain a monopoly over my  
22 personality that brings in my business. It's not

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1   impeding.

2           Q     If I change the word "impede" to the one  
3   you used, which is "discourage competition," would  
4   you agree with my statement?

5           A     Well, I can't run away from the word that  
6   I just used, no, but I think the problem -- I  
7   think the way I would put it sir, and I hope I'm  
8   not being difficult -- the way I would put it  
9   would be that it would result in a market that  
10  they could dominate more easily than some of their  
11  smaller competitors. And that is a factor that  
12  the Commission should take into account as it  
13  considers this merger in an era where distributed  
14  energy resources is trending toward diversity and  
15  democracy.

16          Q     And here's the thing. If those economies  
17  of scale could exist with respect to competitive  
18  services, they could also exist with respect to  
19  the elements that are used to provide regulated  
20  service as well.

21          A     Always a possibility, yes, sir.  
22  Economies of scale and diseconomies of scale.

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1 Q Thank you.

2 I'd like to turn to page 148 of your  
3 testimony and I'd like to focus on the testimony  
4 from line 1 through the sentence --

5 A One second, please, sir.

6 Q I apologize. I got too far from the  
7 microphone. Please turn to page 148 of your  
8 testimony. I'd like to focus on line 1 through  
9 the sentence ending on line 15. And I'm going to  
10 need a moment to get there myself.

11 Mr. Hempling, I have a question related  
12 to the sentence on line 5 that says, Embedded cost  
13 rates are based on book value.

14 Can we agree that book value in this  
15 context means, with regard to utility plant and  
16 service, original cost less accrued depreciation?

17 A Yes.

18 Q Okay. So when you say embedded cost  
19 rates are based on book value, you're saying that  
20 electric rates charged by PEPCO in the District of  
21 Columbia reflect original cost rate-making and not  
22 something else like, for example, fair value



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1 rate-making, correct?

2 A I'm not making a statement specifically  
3 about PEPCO's rates, but I'll accept, subject to  
4 check, that that's how they're set here.

5 Q And under original cost rate-making,  
6 customers pay rates that reflect the cost of  
7 providing service, utility service, which includes  
8 a return on the depreciated original cost, not a  
9 return on some conception of fair value of the  
10 assets that are used to provide service; is that  
11 correct?

12 A Yes.

13 Q To the extent that the going concern  
14 value of a utility may be more than its book  
15 value, can such appreciation in value be  
16 attributed, at least in part, to the utility's  
17 meeting its obligation to manage prudently?

18 A That's a hard question to answer. And I  
19 want to try to be useful to you. There can be  
20 many reasons -- excuse me. When you use the word  
21 "going concern value," I assume you mean the value  
22 in the stock market of the -- of the utility; is

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1 that correct?

2 Q Yes. I'd be -- yes, a willing buyer and  
3 a willing seller -- a value set by a willing buyer  
4 and willing seller.

5 A So we have to assume that we're talking  
6 now about a utility whose stock is directly traded  
7 in the market rather than a utility whose stock is  
8 the owned by one or more layers of holding  
9 companies whose stock is then traded in the  
10 market, correct?

11 Q Yes. Or indeed it could be an asset  
12 transaction as well if someone were purchasing  
13 assets at more than book value.

14 A Okay. And your question again, please?

15 Q To the extent that the going concern  
16 value of a utility may be more than its book  
17 value, can such appreciation in value be  
18 attributable at least in part to the utility's  
19 meeting its obligation to manage prudently?

20 A I don't want to be difficult, but I  
21 wouldn't put it that way. The reason why the  
22 market value would be in excess of book value

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1 would be because the market thought that the  
2 managers of the utilities would be able to sustain  
3 rates at a level above those assumed for purposes  
4 of their current revenue requirement and/or were  
5 able to make sales in a quantity that exceeded the  
6 level assumed in establishing the current rates.

7 Those two factors could flow from prudent  
8 management or they could flow from other factors  
9 like misleading the Commission as to what the  
10 costs or sales would be.

11 Q And Mr. Hempling, with respect to such  
12 asset appreciation, are the benefits of that  
13 associated appreciation enjoyed by shareholders?

14 A I'm sorry. I was writing something down.  
15 Could I ask you to use the word "differential"  
16 rather than "appreciation," because appreciation  
17 connotes some change over time, and I think you  
18 and I are both talking about a differential? May  
19 I suggest...

20 Q Actually, you may. But I'll come back  
21 and we'll have a little dialogue about the word  
22 "appreciation" in --

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1           A       Can I withdraw the comment I just made?

2                   What was your question, sir?

3           Q       Well, I said, are the benefits of the  
4 associated appreciation enjoyed by shareholders?

5           A       Well, if the market value exceeds the  
6 book value, that's a joy I would have if I were a  
7 shareholder, yes. So the answer is yes.

8           Q       Yes. And, Mr. Hempling, do you know  
9 where I got the words "benefits of associated  
10 appreciation" and "enjoyed by shareholders"?

11          A       I'm afraid to ask.

12          Q       Do you recall using those words in  
13 testimony you submitted before the Indiana Utility  
14 Regulatory Commission?

15          A       Do I remember something I wrote 15 years  
16 ago? No. But if you want to refer me to --

17          Q       Okay.

18          A       -- the document, I'll be glad to look at  
19 it.

20          Q       Fair enough. Actually, we've got it as  
21 Joint Applicant Cross -- Joint Applicant Cross  
22 Exhibit 99. It's at tab 99 of the binder. And

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1 we're asking that it be marked for the record as  
2 Joint Applicants' Exhibit 60.

3 A Oh, I'm sorry. Are you asking me a  
4 question?

5 Q I just wanted to make sure you had  
6 that -- you were at that tab. I'm going to have  
7 some questions and I wanted to make sure you got  
8 to that part of the binder.

9 A Right. I was just making my mind float  
10 back through 15 years to remember what was about  
11 to happen, but go ahead, sir.

12 Q I understand. And I just want to note we  
13 got this testimony from your website, which is  
14 where you directed us in an interrogatory where we  
15 asked for prior testimony.

16 I'd like to direct your attention to  
17 page 21, and -- it's page 21 of your testimony.  
18 It's page 22 of 24 -- 22 of 34 of the exhibit  
19 because of the difference in pagination between  
20 testimony and exhibit.

21 And since there are no line numbers on  
22 this document, and for continuity of the

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1 transcript, could you read the four sentences  
2 comprising the last paragraph on that page? And  
3 for convenience, you can skip the citation of the  
4 case and just provide the caption if you'd like.

5 A You're referring to paragraph that  
6 begins, quote, I am aware?

7 Q Yeah. That's the one.

8 A Okay. Excellent. Yes. This is from  
9 page -- typed page 21 of my testimony before the  
10 India Commission. Quote, I am aware on that on  
11 this issue, the Commission has stated that, quote,  
12 the Commission may not ignore the fact that  
13 property wisely acquired and prudently deployed  
14 may further appreciate in value, apart from,  
15 quote, inflation, closed quote, closed quote.  
16 Well, there's period before those two quotes. And  
17 then there's a citation to a Commission decision.

18 Continuing, quote, I do not disagree that  
19 the Commission must not ignore such appreciation.  
20 My position is that such appreciation is  
21 attributable, at least in part, to the utility's  
22 obligation to manage prudently, in return for

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1 which the utility has a relatively secure  
2 guarantee of a customer base obligated to pay the  
3 costs associated with the utility's prudence.

4 Under these circumstances, to assign to  
5 the shareholders the full appreciation associated  
6 with performance would be to separate the burden  
7 of paying for utility operations (borne by the  
8 ratepayers) from the benefits of the associated  
9 appreciation (enjoyed by shareholders).

10 Q Now, Mr. Hempling --

11 A Closed quote.

12 Q Okay. Thank you. And I recognize that  
13 this was not a merger case, but subject to that  
14 qualification, does this testimony still represent  
15 views to which -- you haven't repudiated these,  
16 you don't disagree with these, you don't think  
17 this was anything that you now do not agree with.

18 A I continue to agree with this testimony.  
19 Very briefly, to set the context, this was a case  
20 under a statute which used the words, quote, fair  
21 value, closed quote, in delegating to the  
22 Commission its rate-making authority.

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1           The question before the Commission  
2   presented by the utility in a rate case was  
3   whether they should be able to have rates set  
4   based on fair market value of the stock which was  
5   much higher than book value because they argued  
6   that higher market value was a version of, quote,  
7   fair value, closed quote.

8           And the purpose of my testimony was to  
9   explain that to set rates based on a floating  
10   market value was not in the public interest.

11       Q     Thank you. I'd like to now look at -- I  
12   believe it's two sentences that appear on page 26.  
13   That's 26 of the testimony, page 27 of 34 of the  
14   exhibit. And I'll give you a moment to turn  
15   there.

16       A     And you're referring to the Indiana  
17   testimony?

18       Q     Yes, I am.

19       A     Testimony page 26, exhibit page 27?

20       Q     Yes. And I'm looking at the sentence  
21   that begins on the second line, "similarly," and  
22   continues through the end of the next sentence,



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1 and ask if you could read those for the record  
2 since there's no line numbers on the testimony.

3 A Yes. I assume the whole testimony is  
4 going into the record, though?

5 Q Yes, it is.

6 A Okay. Quote, similarly, the assertion  
7 that accounting costs are irrelevant accuses  
8 original cost of something it does not purport to  
9 be: A proxy for value. Closed quote.

10 Q And could you read the next sentence  
11 also?

12 A Yes, sir. I'll leave out the quotes.  
13 I'm just reading from the testimony.

14 Q Okay.

15 A The market value of the utility is  
16 determined by the trading of its shares in public  
17 equity markets.

18 Q And do you still agree with the sentiment  
19 expressed in those two sentences?

20 A Yes.

21 Q Thank you. Mr. Hempling, I have one last  
22 question, and it's more or less ministerial. But

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1 we have discussed with your counsel stipulating  
2 some interrogatory answers into the record, and we  
3 have reached an agreement on that, but I have one  
4 question that we just need to look at briefly.

5 It's been reproduced for you in our binder as  
6 Joint Applicants Cross-Examination (sic)  
7 preliminarily marked 100. So it's at tab 100.

8 MR. DeCUSATIS: And we would ask that it  
9 be marked for identification as Joint Applicants  
10 Exhibit 61.

11 BY MR. DeCUSATIS:

12 Q And I'll give you a moment to get to that  
13 tab. And I think, if you take a look at the  
14 question and your answer, you'll see why I can't  
15 just stipulate it in the way it is.

16 A Yes. You're referring to -- yep -- at  
17 the bottom of the page, where it says, as a  
18 heading, response to question number 34-B, there  
19 should be, after the words "I have," the word  
20 "no."

21 "I have no data, analysis or work  
22 papers."

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1 Q Okay. And you could agree that was just  
2 a typo and the word "no" should have been in  
3 there?

4 A Yes, sir. My apologies.

5 Q No problem. Thank you.

6 MR. DeCUSATIS: I have no further  
7 questions for Mr. Hempling. And at the  
8 appropriate time we will be moving our cross  
9 exhibits, including -- and perhaps I should do  
10 this now. We have some stipulated interrogatory  
11 responses. Would you like us to identify those?

12 CHAIRMAN KANE: Related to Mr. Hempling?

13 MR. DeCUSATIS: Yes. They are  
14 Mr. Hempling's --

15 CHAIRMAN KANE: If you would identify  
16 those, please.

17 MR. DeCUSATIS: Yes, I was -- they appear  
18 in the binder as preliminarily marked  
19 Cross-Examination -- Joint Applicants'  
20 Cross-Examination Exhibits 101 through 105, and we  
21 are asking that they be marked for the record as  
22 Joint Applicants' Exhibits 62 through 66. And as

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1 I indicated, and I believe Mr. Rories alluded to  
2 this when he did the introduction of Mr. Hempling,  
3 that these were the document we had agreed could  
4 be stipulated into the record without further  
5 questioning, and we would ask to do so.

6 CHAIRMAN KANE: There being no  
7 objection --

8 MR. RORIES: No objection.

9 CHAIRMAN KANE: Thank you.

10 MR. RORIES: For the completeness in  
11 record, I'd like to ask Mr. Hempling --

12 REDIRECT EXAMINATION

13 BY MR. RORIES:

14 Q -- with regard to your prefled direct  
15 testimony labeled GRID (2A) (sic) and the exhibits  
16 labeled (A)-1 through (A)-57, filed with  
17 corrections on February 4th, did you prepare this  
18 testimony yourself?

19 A Yes, sir.

20 MR. RORIES: Your Honor, we stipulate  
21 Mr. Hempling's direct testimony and exhibits filed  
22 on February 4th, 2015 for entry into the record.

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1 CHAIRMAN KANE: We will move those all  
2 into the record when we finish with this witness.

3 MR. RORIES: Thank you.

4 CHAIRMAN KANE: Thank you.

5 People's Counsel?

6 MR. DANIELS: OPC has no questions.

7 MS. FRANCIS: AOBA has no questions.

8 MR. COYLE: District government has no  
9 questions.

10 MR. SPECK: DC SUN has no questions.

11 MS. WHITE: D.C. Water has no questions.

12 MS. WEIN: NCLC has no questions.

13 CHAIRMAN KANE: The Commission has no  
14 questions. But -- I actually do. I have a  
15 question. Page 28 of your testimony. If you look  
16 there in the first full paragraph which starts  
17 with the numeral 1, and if you look down to line 9  
18 starting there where the sentence that -- says,  
19 But price, not performance was the deciding factor  
20 because price, not performance, was the factor PHI  
21 used to induce the bidders to compete with each  
22 other. PHI could have done the opposite. It

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1 could have established a price that was the  
2 minimum satisfactory to its shareholder, then  
3 required bidders to compete based on how much they  
4 could offer the customers.

5 Can you cite any examples where a company  
6 has actually done that, what you're recommending?

7 THE WITNESS: No. I cannot. May I  
8 clarify?

9 CHAIRMAN KANE: Certainly.

10 THE WITNESS: Thank you. I think as I  
11 explained elsewhere in the testimony, Madam Chair,  
12 what PHI did was its legal obligation in light of  
13 its fiduciary duties as a corporation. It did so  
14 because it was unconstrained by any Commission  
15 policy that said otherwise. And that is the case  
16 with respect to any merger I've ever been involved  
17 in, and that is the problem that I'm recommending  
18 the Commission solve.

19 I was asked in Maryland by one of the  
20 commissioners, well, wasn't Mr. Rigby just  
21 pursuing his fiduciary obligation? What's wrong  
22 with that? And I said, as I pointed out in my

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1 testimony, there's nothing wrong with that. I'm a  
2 stockholder too. I plan to retire some day. I  
3 expect executives to do that. But they then have  
4 to comply with whatever laws they're subject to.

5           And so if a commission had a policy that  
6 said when you go out for bid to change control of  
7 your company, put consumers first; then  
8 shareholders are on notice. It won't be a good  
9 hair day for them. They won't make as much money  
10 when they sell. The price will have to reflect  
11 the value that compensates for their investment in  
12 public utility assets.

13           My point is that it's the absence of a  
14 commission policy that puts boundaries on the  
15 fiduciary duty that leads to the situation we have  
16 here where the acquisition premium to the PHI  
17 shareholders is -- pardon me; the numbers change  
18 from time to time, but at least ten times the  
19 amount in the CIF that's being offered to  
20 ratepayers.

21           CHAIRMAN KANE: Don't commissioners also  
22 have an obligation to consider shareholders?

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1                   THE WITNESS: Yes, ma'am, in the  
2 following respect -- and I want to be as precise  
3 as I can because, for me, this is the key issue in  
4 this whole proceeding. The obligation to  
5 shareholders is to honor their legal entitlement.  
6 Their legal entitlement is a reasonable return on  
7 the investment made by the utility in the assets  
8 that are used for public service. That is a  
9 different base than the base represented by the  
10 dollars the shareholder pays to buy his or her  
11 stock.

12                   And so the difference here is that when I  
13 agree with you that it is for sure a statutory and  
14 constitutional obligation to take into account  
15 shareholder interests, it's not shareholder  
16 interests generically; it's shareholder interests  
17 that are protected by law, which is the  
18 shareholder interest in a return on the investment  
19 in the assets.

20                   What goes on in the stock market is the  
21 stock market's business. And that's the  
22 essentially difference of opinion that I'm having



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1 with the company, and it's the issue that I ask  
2 that you consider.

3 CHAIRMAN KANE: Thank you for that  
4 clarification.

5 THE WITNESS: Yes, ma'am. And thank you  
6 for having me.

7 CHAIRMAN KANE: Now I have a follow-up  
8 question from Commissioner Fort. Thank you. You  
9 always provoke good thought, Mr. Hempling.

10 COMMISSIONER FORT: It wasn't really a  
11 follow-up question. It's one that I had just  
12 debated whether or not to ask, you know, because  
13 you talked about it in your testimony, you know,  
14 so I see your answer.

15 But you keep mentioning that it should  
16 be -- if it was in a statute, folks would know  
17 next time around what to do and not to do. But  
18 we're here now today, with orders that we have  
19 issued in this proceeding and in prior proceedings  
20 that outline how the Commission approaches the  
21 public interest. Why would it be fair for us to  
22 substitute a new set of rules in the middle of the

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1 proceeding to be used for this particular joint  
2 applicant?

3 THE WITNESS: Thank you, ma'am. It's a  
4 very fair question. I want to give you a two-part  
5 answer. First of all, I would respectfully  
6 disagree that what I'm asking -- what I'm  
7 recommending the Commission do is change rules. I  
8 tried, I hope successfully, to present my criteria  
9 for consideration as being criteria that fall  
10 within the seven factors that the Commission has  
11 addressed before.

12 I did not in any way intend to act as if  
13 either the statute or the Commission precedent on  
14 those seven factors did not exist. That's number  
15 one.

16 But number two, let's assume for a moment  
17 that you find that what I recommended as a way to  
18 approach this case is in conflict with the seven  
19 factors that you've said before -- set out before.  
20 Again, I would hope it's not the case, but let's  
21 assume that it is. Then you're faced with two  
22 choices. One is to irk the shareholder community

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1 and the applicants for, as we'll both put it,  
2 changing the rules in the middle of the game. The  
3 second is to approve a merger that I've argued,  
4 and others have argued, is not in public interest.

5 And, for me, the choice between those two  
6 unhappy outcomes is clear. You take the hit,  
7 reputationally, for changing your policies  
8 midstream. Again, I would not agree with that  
9 characterization, but I'll assume it. You take  
10 the reputational hit for that and you solve the  
11 problem for the future. And this is not an answer  
12 I made up today; I've thought about. I work for  
13 commissions. I know that it's difficult. And  
14 that is my answer. And I appreciate the question.

15 COMMISSIONER FORT: Thank you.

16 CHAIRMAN KANE: Thank you. All right.

17 Redirect? Do you have any redirect for  
18 this witness?

19 MR. RORIES: No.

20 CHAIRMAN KANE: Please put your mic on.

21 MR. RORIES: I'm sorry.

22 CHAIRMAN KANE: That's all right. And we

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1 need to speak up loudly because the air  
2 conditioning where you're sitting, the noise from  
3 that machinery makes it hard to hear.

4 MR. RORIES: Thank you for your time  
5 today. We respectfully ask that Mr. Hempling's  
6 direct testimony and exhibits and his responses to  
7 the questions of the joint applicants' DR 1 be  
8 moved into the record.

9 CHAIRMAN KANE: They are moved into the  
10 record.

11 (GRID Exhibit Numbers (A) and (A)-1  
12 through (A)-57 were received into evidence.)

13 MR. DeCUSATIS: Chairman Kane, we would  
14 ask for the admission of joint applicants'  
15 exhibits that have been marked for the record as  
16 Numbers 58 through 66, inclusive.

17 CHAIRMAN KANE: They are moved in, marked  
18 and moved in.

19 (Joint Applicants Cross Exhibit Numbers  
20 58 through 66 were marked for identification and  
21 received into evidence.)

22 MR. DeCUSATIS: Thank you.

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1 CHAIRMAN KANE: Thank you, Mr. Hempling.

2 THE WITNESS: Thank you.

3 (Witness excused.)

4 CHAIRMAN KANE: DC SUN has a witness.

5 MR. SPECK: Yes, Your Honor. Thank you.

6 We call Anya Schoolman.

7 WHEREUPON,

8 ANYA SCHOOLMAN,

9 called as a witness, and after having been first  
10 sworn by the secretary, was examined and testified  
11 as follows:

12 DIRECT EXAMINATION

13 BY MR. SPECK:

14 Q Good afternoon, Ms. Schoolman.

15 A Hi.

16 Q You have the honor of being the very last  
17 witness in this long hearing, and thank you very  
18 much for your patience.

19 CHAIRMAN KANE: Last, but not least.

20 THE WITNESS: Thanks.

21 MR. SPECK: Not at all.

22 BY MR. SPECK:

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1 Q Please state your name and spell your  
2 last name for the record, please.

3 A My name is Anya Schoolman, and the last  
4 name is spelled S-C-H-O-O-L-M-A-N.

5 Q And do you have before you what has been  
6 marked as DC SUN Exhibit (A) and DC SUN  
7 Exhibits (A)-1 through (A)-21, your conformed  
8 testimony?

9 A Is this it? I have no idea.

10 Q We'll get it for you.

11 A Soon I'll have it before me.

12 CHAIRMAN KANE: If you would approach and  
13 help the witness.

14 THE WITNESS: Yes, I do.

15 BY MR. SPECK:

16 Q And do you have any corrections you would  
17 like to make to that testimony?

18 A Yes. There's two small typos.

19 Q Could you state those for the record,  
20 please?

21 A Yes. Page 25, line 13. It says \$3 per  
22 kilowatt, or KW, and it should say \$3 per watt.

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1           Page 49, line 11, there's a number there  
2   that begins with 1 and it's followed (sic) by a  
3   percent, but it should be preceded by a dollar  
4   sign.

5           Q     Thank you. And if I asked you the same  
6   questions that are in your testimony, would your  
7   answers be the same today?

8           A     Yes, they would.

9           MR. SPECK: Ms. Schoolman is available  
10   for cross-examination.

11           CHAIRMAN KANE: Joint applicants.

12           MR. KULAK: Thank you, Your Honor.

13                   CROSS-EXAMINATION

14   BY MR. KULAK:

15           Q     Good afternoon, Ms. Schoolman.

16           A     Hi.

17           Q     My name is Ken Kulak. I'm counsel for  
18   the joint applicants. Nice to meet you.

19           A     Nice to meet you too. I've been watching  
20   you on closed-circuit TV for many days now.

21           Q     And I've been reading your testimony for  
22   many months.

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1           Ms. Schoolman, you discussed various  
2 activities of Exelon and Baltimore Gas and  
3 Electric, or BGE, in Maryland as part of your  
4 testimony, right?

5           A     Yes.

6           Q     And based in part on those activities,  
7 Ms. Schoolman, you have testified that you think  
8 Exelon could, and I'm quoting your words, quote,  
9 roll back, unquote, the District's progress in  
10 interconnecting distributed solar, right?

11          A     Yes.

12          Q     And you have particular concern regarding  
13 potential increases in delay in the  
14 interconnection of solar systems, right?

15          A     That's one among many.

16          Q     Did you watch or review D.C. government  
17 Witness Chambers' testimony yesterday regarding  
18 Exelon and PEPCO Maryland's comparative compliance  
19 with Maryland interconnection regulations?

20          A     Yes, I did.

21               MR. KULAK: I'd like to now introduce  
22 Joint Applicants' Cross Exhibits Number 107 and



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1 108, and we'd like to have them respectively  
2 marked as Applicants' Cross Exhibits Numbers 67  
3 and 68, please. Your Honor?

4 CHAIRMAN KANE: Yes. That's fine. Thank  
5 you.

6 (Joint Applicants Cross Exhibit Numbers  
7 67 and 68 were marked for identification.)

8 BY MR. KULAK:

9 Q Ms. Schoolman, do you have those  
10 documents there?

11 A I do.

12 Q Ms. Schoolman, I want to make sure  
13 they're numbered 107 and 108.

14 A I have 107. I don't see 108.

15 Q 107 is the document that's on BGE  
16 stationery dated April 1, 2015 addressed  
17 Mr. Collins of the Public Service Commission of  
18 Maryland. And 108 is a document on PEPCO  
19 stationery, also addressed to Mr. Collins, dated  
20 April 1st, 2015.

21 A Got it.

22 Q Great. So with Mr. Chambers we looked at

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1 some filings in 2014 with respect to  
2 interconnection data of both BGE and PEPCO in  
3 2013. And I have provided you with the most  
4 recent reports for the year 2014 which were filed  
5 on April 1st, 2015 with respect to interconnection  
6 data of those companies.

7 I'd like you to take a look at the first  
8 one, which is the exhibit labeled 107, now labeled  
9 Cross Exhibit Number 67, the BGE report.

10 A Got it.

11 Q Okay. And particularly the page -- the  
12 second page of the document, the first -- it's got  
13 three tables. The first one is captioned 2014 BGE  
14 interconnection requests.

15 A BGE, yep.

16 Q Ms. Schoolman, this report shows in 2014  
17 that Exelon utility BGE processed 4,251  
18 interconnection requests and approved virtually  
19 all of them, right?

20 A It looks like it says that -- the paper  
21 says that there was 4,251 received and 4,237  
22 approved.

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1 Q And with respect to net metered solar,  
2 BGE also approved 4,232 interconnection requests  
3 with a combined nameplate capacity of over  
4 40 megawatts, right?

5 A Where is that on the thing? I don't see  
6 what line you're talking about.

7 Q Sure. It's in the next table down.

8 A Oh, I see down here. Got it.

9 Q And that's what that table reports,  
10 right?

11 A Yes.

12 Q And out of those thousands -- those 4,000  
13 interconnections requests processed by BGE, only  
14 four were outside Maryland's regulated time  
15 periods for processing last year, right?

16 A I'd like to explain how my concerns about  
17 interconnection are not linked necessarily to the  
18 numbers, but the timeline, and why these documents  
19 don't really help allay my concerns --

20 Q Well, let's --

21 A -- based on my own experience helping  
22 people interconnect. So what I do --

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1 Q Wait a second, Ms. --

2 A Can I just explain?

3 Q Actually, if you could just answer my  
4 question first.

5 A Okay. I see it on the paper, but I'm  
6 questioning whether this is saying what you seem  
7 to be implying.

8 Q Well, I'm simply asking, the public  
9 document filed with the Commission indicates that  
10 out of the 4,251 applications, only four were  
11 processed outside of the Commission's regulations,  
12 right? That's what it reports here, correct?

13 A You're reading a piece of paper, yeah.

14 Q All right. Well, I'm asking you also to  
15 read it. I'm sure you're familiar with  
16 interconnection reports, right?

17 A So one of the problems we're having right  
18 now with interconnection is -- I think it's in  
19 things being turned down for incompleteness. And  
20 it's a new problem that we're having with  
21 interconnection in both BGE and PEPCO territory,  
22 where it used to be if someone mis-filled out a

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1 form, then the person from the green connection  
2 team would call them and say, oh, you forgot to  
3 cross a T or there's a missing letter. And now  
4 what we're finding is it's rejected, sent back and  
5 the process starts over again.

6 So a process that used to take a couple  
7 of weeks goes on months and month. But that's not  
8 captured by these documents.

9 Q Well, actually, I think it is. Isn't it  
10 your understanding that processing also requires  
11 getting back to the customer under the connection  
12 regulations for Maryland?

13 A Yeah, there's these completeness -- and  
14 so it talks about how they get completed and then  
15 sent back. And then when people try to call the  
16 utility, no one answers the phone or returns the  
17 e-mails. So these things that could take two or  
18 three weeks or two or three months right now are  
19 often dragging on three, six months.

20 Q Ms. Schoolman, would you please --

21 A So all I'm trying to explain is that the  
22 reality out in the world where I operate, as

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1 opposed to the legal construct in here, it doesn't  
2 quite match up. That's all I'm trying to say.

3 Q That's your experience, right,  
4 Ms. Schoolman?

5 A That's my experience in the world.

6 Q Ms. Schoolman, you didn't introduce any  
7 testimony suggesting that PEPCO either in the  
8 District or Maryland has improperly refused to  
9 consider a complete application, improperly  
10 incomplete, did you?

11 A I think what I suggested in my testimony  
12 is that within the construct of the law, the  
13 utility has a lot of discretion as to how they  
14 implement the law, and that that matters a lot to  
15 real people, real projects and the economics of  
16 distributed generation.

17 Q Let me ask my question again,  
18 Ms. Schoolman. Did you offer any testimony to  
19 show that PEPCO improperly concluded that an  
20 application was incomplete when it wasn't?

21 A I do not believe that that's ever -- that  
22 I put it in my testimony, no; that's not what I

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1 was saying today either.

2 Q Let's take a look at Joint Applicants'  
3 Exhibit Number 68.

4 A What number?

5 Q Number 68, the one that was originally  
6 marked as Exhibit Number 108, the PEPCO report,  
7 also from Maryland.

8 A 108, yeah.

9 Are you waiting on me?

10 Q I'm just making sure you have the  
11 document, yes.

12 A 108, right?

13 Q Right. Ms. Schoolman, this document is  
14 similar to the one we just looked at, and this  
15 shows that PEPCO processed approximately 2,000 --  
16 or about 2500 applications, right, for the year  
17 2014 for interconnection?

18 A I was confused by this document when I  
19 was reading it for the first time this morning  
20 because it says, application received after 2011,  
21 but then on the top, it says 2014. So I was a  
22 little bit confused about what year it was

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1 referring to.

2 Q I think it's the year-end 2014. These  
3 are annual reports.

4 A So does that mean that they're cumulative  
5 numbers, since it says 2011?

6 Q They're annual reports.

7 A Okay.

8 Q So that does indicate that Maryland  
9 received 2,000 applications a year or you're just  
10 not sure?

11 A Well, I'm taking your word for it. I  
12 have no way to assess it because the -- the  
13 document is very confusing.

14 Q Okay. Well as reported to the  
15 Commission, however, PEPCO's processing of  
16 location requests were not -- there were  
17 approximately 200 that were not within the  
18 Commission's time frames, right?

19 A Can you tell me where on the document it  
20 says that?

21 Q Sure. This is section 3.

22 A So that's the 142 plus the 36? Is



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1 that --

2 Q You know what a level 1 interconnection  
3 is, right, Ms. Schoolman?

4 A Yeah, it's the small ones.

5 Q Okay. All right. So that's indicating  
6 that --

7 A So that's the 142?

8 Q Yes. Ms. Schoolman, you're not --  
9 Ms. Schoolman, did you look at the performance of  
10 PEPCO and Exelon in Maryland with respect to  
11 interconnection requests in preparing your  
12 testimony?

13 A I did not look at these reports.

14 Q Did you look at the reports for any year  
15 by Exelon and PEPCO in Maryland?

16 A I can't remember. We reviewed so many  
17 documents, so -- we poured through a lot, and I'm  
18 not sure if we did or not.

19 Q Did you look at the performance of any  
20 Exelon utility with respect to interconnection in  
21 Pennsylvania or in Illinois?

22 A I certainly looked at the amount of

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1 interconnection in both and was really surprised  
2 by the low amount of net metered systems in  
3 Illinois where there seems to be only 300 in the  
4 entire state with a very large population.

5 Q You didn't try and figure out why that  
6 was the case, did you, Ms. Schoolman?

7 A I did. I mean, I looked a lot and  
8 concluded that there is not a strong policy  
9 environment for renewable energy in Illinois. It  
10 doesn't have to do with -- I didn't draw a  
11 conclusion that it had to do with interconnection  
12 performance, if that's what you're saying.

13 Q And you did discover, per Mr. Gould's  
14 testimony, that Exelon has interconnected over  
15 50 megawatts in Pennsylvania, right?

16 A Yeah, again, linked to -- what I'm trying  
17 to say is that my concern is not the metrics of  
18 interconnection performance. It's the entire  
19 process.

20 Q Thank you, Ms. Schoolman?

21 A And that that's what I was trying to say  
22 in the testimony.

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1 Q Okay. On page 54 of your testimony -- do  
2 you want to take a look at that?

3 A Yeah. What page did you say?

4 Q Page 54. Are you there? And I want to  
5 particularly ask you about one of the conditions  
6 you propose. I think it's number 7. You propose  
7 a condition on the merger that Exelon commit to  
8 support the full -- quote, the full community  
9 renewable energy facility, or CREF, credit rating,  
10 right?

11 A That's correct.

12 Q What do you mean by the full CREF credit  
13 rating?

14 A The -- what essentially would be, like,  
15 net metering. So generation, transmission,  
16 distribution and ancillary services.

17 Q And in your proposal with respect to the  
18 full retail credit rate, what would the  
19 distribution component be?

20 A I don't understand the question.

21 Q Well, you said you want to include  
22 distribution in that full rate. What would the

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1 distribution component -- how would it be  
2 calculated?

3 A The same way that the -- it is calculated  
4 for other retail customers.

5 Q And that's different than the current  
6 CREF credit rate where customers are paid for  
7 generation at the standard offer rate and not  
8 distribution, right?

9 A We don't have a credit rate determined  
10 yet. We're still awaiting final rules from the  
11 Public Service Commission.

12 Q Do you know whether distribution is going  
13 to be included in that rate?

14 A I wish I did.

15 Q So it's -- your proposal here is that  
16 Exelon would take a position to advocate for the  
17 full rate, including distribution, right?

18 A Yes. And when this was written, I was  
19 also under the impression that PEPCO had supported  
20 throughout our one-year technical working group  
21 that concept. We worked on the idea of one-to-one  
22 net metering and how to translate that into our

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1 current competitive market.

2 And PEPCO had suggested the CREF credit  
3 rate and had indicated at that time to us that  
4 that would be experienced just the same as  
5 one-to-one net metering, including all the  
6 different components. So I was making a  
7 distinction that Exelon should do as well as PEPCO  
8 in terms of the supported policy.

9 Now, I realize a lot has happened since  
10 then and there's lots of he said/she said, but  
11 that was my understanding when we were working on  
12 the technical working group.

13 Q If I understand your testimony, you're  
14 saying that's not the current understanding,  
15 right?

16 A The current understanding is in flux is  
17 my -- you don't have final rules. There's been  
18 lots of back and forth.

19 And I was particularly concerned because  
20 of Exelon's stated opposition to community solar  
21 in their internal documents, and that's what got  
22 us to put this condition on the books.

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1 Q And you're aware -- and that's with  
2 respect particularly to Maryland, right?

3 A And strategic documents supplied by  
4 Exelon, internal documents, et cetera. I believe  
5 in testimony it was laid out that it's a corporate  
6 guiding principle to oppose full net metering for  
7 community solar by Exelon. And that was one a big  
8 red flag for us.

9 Q Did you happen to listen to Mr. Gould's  
10 testimony with respect to net metering?

11 A I did.

12 Q Didn't he say --

13 A It's all a mush to me, I'll honestly say,  
14 because I listened to everybody. And so I'm not  
15 going to -- I did my best.

16 Q Do you happen to recall him saying that  
17 he thinks the District got it pretty right around  
18 net metering?

19 A Around net metering or around community  
20 solar?

21 Q Around net metering.

22 A I actually don't remember that, but

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1 that's good to know.

2 Q Ms. Schoolman, do you happen to know the  
3 operating capacity of PJM in megawatts?

4 A No. I'm bad at remembering numbers. I  
5 apologize.

6 Q Well, subject to check, would you accept  
7 that it's around 180,000 megawatts of capacity?

8 A Sure, subject to check.

9 Q And I know you said you did hear the  
10 testimony of Chris Gould, and this was another  
11 aspect of his testimony; you can let me know  
12 whether you recall it. Did you hear him testify  
13 about PJM's projections that the Obama  
14 administration's clean power plan could lead to  
15 about 49,000 megawatts of retirements of  
16 generation capacity in PJM?

17 A I don't remember it, but I'll take your  
18 word for it.

19 Q Now, on page 43 of your testimony, you  
20 state that, quote, distributed solar generation  
21 reduces peak demand for electricity, thereby  
22 lowering the prevailing market price, right?

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1           A       What page did you say?

2           Q       Page 43.

3           A       Page 43?

4           Q       Uh-huh. It's line 9 through 11.

5           A       I found it. Yes.

6           Q       Ms. Schoolman, you understand that the  
7 solar carve-out of D.C.'s renewable portfolio  
8 standard is expected to require approximately 250  
9 megawatts of solar in the District, right?

10          A       That depends on how much efficiency we  
11 achieve, because it's expressed as a percentage of  
12 the total. But it's -- so the most recent numbers  
13 I had heard are actually quite a bit less because  
14 of the assumption that the SEU would achieve its  
15 targeted 1 percent a year. So I had heard under  
16 200.

17          Q       Somewhere under 200 or 150?

18          A       I head -- I mean, again, I'm terrible at  
19 numbers, so I apologize, and I would have to check  
20 this, but the last number I had heard was around  
21 180.

22          Q       And that's to be achieved by 2023, right?



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1           A       2023.

2           Q       Okay. And you have no -- as part of your  
3 testimony, you didn't make any calculation with  
4 respect to establish that, whether it's  
5 250 megawatts of solar in the District or  
6 180 megawatts of solar in the District, whether  
7 that would have any material effect on wholesale  
8 prices for electricity in PJM, did you?

9           A       I did not calculate -- I think you're  
10 asking me if -- whether we calculated how D.C.'s  
11 RPS would impact wholesale prices in the PJM; is  
12 that correct?

13          Q       That's the question, yes.

14          A       I did not do that calculation.

15          Q       And you didn't do any calculation as to  
16 how D.C.'s RPS could affect or would have any  
17 effect, if at all, on the portion of Exelon's  
18 generation assets in PJM, did you?

19          A       No. But I'd like to explain that Exelon,  
20 in their comments, for example, on the REV  
21 proceedings, repeatedly mentioned their concerns  
22 that distributed generation and other efforts to

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1 reduce peak demand may have a negative or downward  
2 pressure on wholesale prices that would threaten  
3 merchant generation and have an impact for future  
4 prices.

5           So I was looking to the Exelon record  
6 where Exelon had made those, and then  
7 extrapolating that in other proceedings and other  
8 policies, the company opposed these measures  
9 because of their potential impact on wholesale  
10 prices and, therefore, the same could be true here  
11 and that they would have and bring those same  
12 concerns to our market; in other words, the  
13 conflict of interest that Exelon holds between  
14 what's good for D.C., lowering rates, versus  
15 what's good for Exelon, which is keeping wholesale  
16 rates up to protect their nuclear fleet.

17       Q     Let me just be very clear, Ms. Schoolman.  
18 So that's your interpretation of Exelon comments  
19 and your extrapolation to the District without any  
20 quantification, right?

21       A     Yeah. I come at it -- I'm not a  
22 mathematician or an economist, so I'm coming at it

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1 from a policy -- that's what I do is policy and  
2 politics. So I'm looking at motivations, past  
3 history, precedent, positions taken. Used to work  
4 for the government. And so it's on that basis,  
5 not as a mathematician or economist.

6 MR. KULAK: We have nothing further, Your  
7 Honor.

8 Thank you, Ms. Schoolman.

9 THE WITNESS: Thank you.

10 CHAIRMAN KANE: Any of the parties have  
11 questions for Ms. Schoolman?

12 MR. DANIELS: OPC has no questions.

13 MR. COYLE: No questions from the  
14 District government.

15 MS. FRANCIS: No questions, Your Honor.

16 MS. WHITE: No questions.

17 MR. RORIES: Grid 2 has no questions.

18 MS. WEIN: No questions.

19 CHAIRMAN KANE: Commissioner Fort?

20 COMMISSIONER FORT: Good afternoon,  
21 getting close to good evening. The  
22 D.C. government suggested that the joint

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1 applicants fund the Public Service Commission for  
2 the purpose of doing mediations for  
3 interconnection problems that occur. Has it been  
4 your experience that there's a need for some type  
5 of mediation here in the District?

6 THE WITNESS: We've had a very good  
7 experience with the Public Service Commission a  
8 few years ago when we filed -- and our members in  
9 D.C. filed complaints about interconnection, and  
10 the Commission held a hearing.

11 We have been under the impression over  
12 the years that the Commission in general is  
13 understaffed in their ability to do research,  
14 especially proactive research and assessments.  
15 And so while the way they posited it in the DGS  
16 position may believe a little bit narrow, I think  
17 that the idea that the Commission could use more  
18 resources for regulatory oversight investigation  
19 to support this market is probably well founded.

20 COMMISSIONER FORT: Do you have a sense  
21 of what the Commission's current budget is?

22 THE WITNESS: I don't know. I remember a

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1 while ago I think there was a staff number, but I  
2 don't remember the budget.

3 COMMISSIONER FORT: Or its staffing  
4 numbers?

5 THE WITNESS: I remember it was over 60.  
6 Is that right? Like I said, numbers is not my big  
7 strong suit.

8 COMMISSIONER FORT: You reviewed with the  
9 counsel for the joint applicants the  
10 interconnection reports that were filed in  
11 Maryland by BG&E and PEPCO. Have you seen the  
12 ones that are filed here in the District of  
13 Columbia? Are you aware of the fact that a  
14 similar report is filed in the District?

15 THE WITNESS: Yeah. One of the ones they  
16 had me just looking at was the PEPCO one. But I  
17 find them very hard to understand. What I was  
18 trying to articulate -- I wasn't trying to be  
19 difficult -- is that our experience is that asking  
20 utilities to self-report is not necessarily an  
21 effective way to determine compliance, and that  
22 the only way for the Commission to find out what's

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1 really going on is if our members complain.

2 And so we spend a lot of time teaching  
3 people both in Maryland and D.C. -- and,  
4 admittedly, we've done a lot more of this in D.C.  
5 than Maryland, which may impact the reported  
6 outcomes -- how to file a complaint at the PSC.

7 So I get calls almost -- or e-mails more  
8 than calls -- almost weekly about interconnection  
9 troubles. We work in Maryland as Maryland SUN and  
10 in D.C. as DC SUN. So we get many complaints.

11 And I hear, you know, nobody is calling me back,  
12 nobody is e-mailing, it's been months, I can't get  
13 my SRAGs (phonetic), so I've spent all this money.

14 And so what we teach people is how to  
15 file a complaint with PSC. But we don't have a  
16 lot of capacity ourselves. And so my experience  
17 is that probably -- of every complaints I get,  
18 maybe 1 in 10 or 1 in 20 actually file -- go to  
19 the trouble to file the complaints. Usually they  
20 just want to complain and they get frustrated.

21 And so I have some real doubt as to  
22 whether those complaints and/or real numbers and

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1 problems are being captured either by the way the  
2 statistics are presented in these data or captured  
3 at all.

4 And especially I was trying to explain  
5 there's this issue where -- it's a new issue where  
6 people keep getting turned down for, like,  
7 incompleteness. And I notice in D.C. there's a  
8 category for incompleteness. And so it seems to  
9 be like a perpetual punting exercise that -- and  
10 it's really started about when this merger  
11 proceeding started. And I'm not saying it's  
12 causal, but it's about the last six months or so.

13 It's like this: You know, your signature  
14 is missing; go back and start over again. Oh,  
15 this date is in the wrong location; go back and  
16 start. Instead of the people being positively  
17 engaged and saying, oh, look, you forget this --  
18 you know, should I change 2014 to 2015? You  
19 forgot January happened? Instead it's this, send  
20 it back and then start over again.

21 And so, again, I don't feel as though  
22 these data necessarily are capturing the real

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1 picture, although -- you know.

2 COMMISSIONER FORT: Are you are aware  
3 that part of the reason you see that column in the  
4 D.C. reports is so that we can have the data and  
5 know why applications are being turned down?

6 THE WITNESS: Maybe you have to put  
7 another column which is the number of  
8 incompleteness rejections or something, and then  
9 that would capture that send it back, send it  
10 back, send it back scenario that we're seeing  
11 right now in the market.

12 COMMISSIONER FORT: Do you know what  
13 percentage of energy in the District comes from  
14 solar?

15 THE WITNESS: Teensy, weensy, weensy bit.

16 COMMISSIONER FORT: So with the teensy,  
17 weensy, weensy bit -- you know, my question, you  
18 know, is, how can we keep the tail from wagging  
19 the dog in the context of how we review this  
20 merger? I understand what factor 7 says.

21 What would you say to -- you say that  
22 teensy, weensy, weensy bit, even when it grows to



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1 2.5 percent, won't allow us to meet the energy  
2 needs of the District of Columbia.

3 THE WITNESS: Feel as though solar is  
4 sort of the tactile piece, the part you can  
5 visualize of the larger set of issues at stake  
6 that affect everybody. And so I feel very opposed  
7 to the characterization of the tail wagging the  
8 dog.

9 I think what's -- the fundamental issue  
10 is the difference between PEPCO and Exelon is the  
11 conflict of interest that Exelon has with its  
12 merchant power. And I think that the -- their  
13 answers in the New York REV case really, really  
14 illuminate this.

15 We did a detailed analysis, but they had  
16 offered it up for cross, so I was reading it again  
17 this morning, and there's a series of reactions.  
18 It's to demand side management. It's to energy  
19 efficiency. It's to microgrids. It's really to  
20 the entire constellation where they keep repeating  
21 the concern that if we do this stuff, it will  
22 lower prices, and that could threaten baseload

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1 nuclear generation.

2 Now, they have a legitimate policy  
3 concern. I'm not saying there's something wrong  
4 with that. I'm saying that that interest is not  
5 in alignment with the interests of D.C. They're  
6 worried about long-term capacity and all sorts of  
7 other things.

8 But solar is kind of the visual piece  
9 where we have a vocal constituency, we have  
10 something you can see. You can't see demand side  
11 management programs. But it's really all  
12 connected. It's about the grid to the future and  
13 whether D.C. is going to get a utility partner  
14 that could come in and work with us to get us the  
15 grid that we want in terms of price, reliability,  
16 safety and responsive local government.

17 I have one more, like, tiny example about  
18 solar that illustrates this. Peak demand is  
19 expensive for everybody. You know, we have these  
20 peak prices middle of the summer. If you look at  
21 Exelon's response in the REV case, they're  
22 basically, you know, saying, this is a problem,

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1 this might not work, et cetera. There's a series  
2 of -- it's not a reaction of, this is an  
3 opportunity. Right? All of their reactions about  
4 anything having to do with integration distributed  
5 generation is why it's difficult or why it may  
6 have a negative impact on the merchant power  
7 market, or why it may cost more.

8           And in the implementation of solar, we  
9 have a choice. We could have a utility that works  
10 with us, helps us align incentives, align tariffs  
11 so that solar is actually better aligned with peak  
12 usage. We just tilt westward a little bit; that  
13 might be all it takes. Get a better alignment  
14 with peak usage. It would bring down rates for  
15 everybody in D.C. Same with -- for everybody,  
16 because we're shaving peak demand for everybody.

17           Right now, they -- utilities love to say,  
18 well, it's not exactly aligned, et cetera,  
19 et cetera. We could make it aligned if we had a  
20 utility that worked as a partner with us.

21           And the same with storage. So there's  
22 all these ways that, if we had a utility partner

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1 that would work with us, it wouldn't be the tail  
2 wagging the dog; it would be all ratepayers.  
3 There would be resiliency, reliability, backup  
4 power during storages (sic), and many of it paid  
5 for with the private dollars of the citizens who  
6 are committed to seeing a just climate equitable  
7 energy future.

8 COMMISSIONER FORT: In your understanding  
9 of the New York REV proceeding, is it your  
10 understanding that it's in two phases?

11 THE WITNESS: That New York REV  
12 proceeding is beyond my full comprehension. I've  
13 just been reading bits and pieces of it and trying  
14 to understand all the different parts.

15 COMMISSIONER FORT: So if I were to tell  
16 you that the first part of the proceeding is to  
17 look at the design of the new distribution system,  
18 the evolving grid, you know, the grid as kind of  
19 plug and play, and tell you that the second phase  
20 of the proceeding is the "how to pay for it"  
21 proceeding, so that the people who are looking at  
22 the first part are going to have to look at the

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1 second part, how to pay for it and how to regulate  
2 it, would that change your opinion of the comments  
3 that you're hearing?

4 THE WITNESS: I don't think so. I really  
5 care about how to pay for it. And I grew up in  
6 D.C. My kids went to public school. I went to  
7 public school. We have members in every ward in  
8 D.C. All members care as much as about rates as  
9 they care about solar.

10 And these things have real costs and  
11 we're not Pollyanna-ish about the costs. What  
12 we're looking for is a utility partner that would  
13 work with us to embrace the complexities of the  
14 system and work through a process, not a utility  
15 partner that has a conflict of interest and  
16 another agenda and that they're basically using us  
17 to get to other -- other goals.

18 COMMISSIONER FORT: Do you understand  
19 that we do our procurement, our energy procurement  
20 here, through the SOS program?

21 THE WITNESS: Absolutely.

22 COMMISSIONER FORT: And it's competitive?

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1           THE WITNESS: Absolutely. But things  
2 that happen in the retail market can have an  
3 impact in the wholesale market.

4           So, for example, if we shaved down demand  
5 a lot, if we start doing things with storage, if  
6 we impact peak pricing, that will leak over into  
7 not the auction of particular electrons, but into  
8 the prices into the wholesale market. And Exelon  
9 is very aware of that. You can see it in their  
10 comments in the REV proceedings and elsewhere.  
11 They're playing both sides of the border, whereas  
12 in D.C. we're limited to playing within the retail  
13 market. And they're able to go in and out.

14           And a great example is -- the other thing  
15 they said they were going to show me today on  
16 cross is this microgrid project. They brought it  
17 up yesterday. Right? So they got -- the company  
18 that hates subsidies got over a million of dollars  
19 from the Department of Energy, because they're a  
20 utility, to do a pilot microgrid project in  
21 Chicago. So that was supposed to prove, I guess,  
22 that they weren't against microgrids.

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1 But meanwhile, in New York, they're  
2 making a major play for microgrid work on the  
3 merchant side. So it's an example where they're  
4 taking a very complex system and they're  
5 optimizing the opportunities as they're a giant  
6 company that's playing on all places on the  
7 chessboard, and we're supposed to look just inside  
8 D.C. just at the retail rate and pretend that  
9 that's the only thing going on.

10 And what we're saying is there a much  
11 bigger play here, it's a play at the level of the  
12 PJM, and there are multiple interactions between  
13 the wholesale market and the retail rate, whether  
14 it's regulation, whether it's renewables  
15 requirements, the EPA plan, storage, et cetera,  
16 et cetera, et cetera, that they're connected.

17 COMMISSIONER FORT: I'll leave it there.

18 THE WITNESS: Thank you for the  
19 opportunity.

20 CHAIRMAN KANE: Thank you, Ms. Schoolman.  
21 You said that the desire of DC SUN and the other  
22 folks that you represent was to have a utility

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1 partner working with us. Do we have that -- do  
2 you believe we have that now?

3 THE WITNESS: I do. It's been a process  
4 with PEPCO. It's been a long process. And  
5 there's been ups and downs. But we have a very  
6 strong relationship. We have access to the  
7 company.

8 I think, for us, the best -- I hope it  
9 will end up, you know, in retrospect being so --  
10 the experience of working on the community solar  
11 legislation where we spent almost a year locked  
12 into a little tiny room with, you know, key  
13 personnel, technical personnel from PEPCO, and  
14 with commitments at the highest level from PEPCO.

15 A good example is when we started that  
16 negotiation on the community solar, things were  
17 really not very good with PEPCO. We had actually  
18 enacted a shareholder resolution against PEPCO  
19 that was likely to succeed onto their ballot.  
20 Then we had a meeting with CEO Rigby, and he said,  
21 what do you really want? And we said, we want a  
22 good-faith negotiation on community solar. We



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1 said, we're sick and tired of you saying nothing  
2 and then, the day before the vote, you go in to  
3 the council members and tell them the sky will  
4 fall, and we don't have a chance to debate it.

5           So he said, okay. And that's basically  
6 the deal we got, was they don't have to agree with  
7 us. They have legitimate complex positions and  
8 concerns, and we're fine with that. But what we  
9 asked for was the opportunity to sit in the same  
10 room and work through the technical details and,  
11 you know, we did that with that bill and we gave  
12 them an award at the end of it.

13           CHAIRMAN KANE: Two other questions,  
14 quickly. You said that you're not good with  
15 numbers. But I want to ask you, have you looked  
16 at the interconnection reports that PEPCO is  
17 annually required to file with this Commission,  
18 including the one that was just filed about a  
19 month ago?

20           THE WITNESS: I think that's the one that  
21 we were just looking at. And I was a little  
22 confused by it but -- yeah, and it's not -- so I'm

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1 learning.

2 CHAIRMAN KANE: The 2014 --

3 THE WITNESS: Yeah, the 2014, the 2011.

4 CHAIRMAN KANE: Okay. You raised the  
5 issue of completeness. Do you see on that -- I  
6 just have an abstract of it. Would you agree,  
7 subject to check, that one of the things that it  
8 shows -- we have deadlines in our rules for  
9 approving an application, an interconnection  
10 application. We have deadlines in our rules for  
11 reviewing the completeness of an application. And  
12 would you agree, subject to check -- it may be in  
13 a different format than what you have there --  
14 that in 2012 -- oh, this is the Maryland one  
15 you're looking at.

16 THE WITNESS: This is Maryland.

17 CHAIRMAN KANE: Yeah. Maryland. Okay.  
18 Then let me just --

19 THE WITNESS: Okay. I'll just listen.

20 CHAIRMAN KANE: In 2012, there was one  
21 instance of missing a completeness deadline  
22 review. In 2013, there were five. And in 2014,

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1 there were 60.

2 THE WITNESS: That -- yeah, that sounds  
3 about right.

4 CHAIRMAN KANE: Does that comport with  
5 your experience?

6 THE WITNESS: Yeah. And I think, if you  
7 went back earlier than '12, it would have been  
8 worse. So it was worse, then it got a lot better,  
9 and then for some reason this year things didn't  
10 go so well.

11 CHAIRMAN KANE: This is calendar 2014,  
12 right?

13 THE WITNESS: So does that report to  
14 2013?

15 CHAIRMAN KANE: No, it's from December --  
16 January 1st, 2014 to December 31st, 2014.

17 THE WITNESS: Yeah, so in our experience,  
18 things started going bad around the middle of  
19 2014. So those numbers seem to represent -- but  
20 if you went back earlier, before 2012 -- because  
21 we started this in 2009 -- things were horrible  
22 then. And there was a massive -- marked

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1 improvement. I want to give PEPCO, you know, real  
2 recognition for stepping up and changing and  
3 improving during that time. And they seem to be  
4 having this blip in 2014.

5 CHAIRMAN KANE: Thank you. Final  
6 question. Did you hear or listen to at all when  
7 Mr. Chambers, from the District government's  
8 Department of General Services, which purchases  
9 the power, electricity as well as other energy for  
10 the District government, was testifying yesterday?

11 THE WITNESS: Yeah.

12 CHAIRMAN KANE: And did you specifically  
13 hear the discussion of the commitment that  
14 District government is asking for that the joint  
15 applicants would invest in 50 megawatts of solar  
16 to be built in the District? And did you hear --  
17 you have to say yes or no.

18 THE WITNESS: Oh, yes. Sorry. Sorry. I  
19 got lost.

20 CHAIRMAN KANE: The court reporter can't  
21 record a nod.

22 THE WITNESS: Yes.

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1           CHAIRMAN KANE:   Okay.   Thank you.   And  
2   you're saying yes.   Did you hear the discussion  
3   with him about having Exelon build that at a  
4   merchant basis for use by the District government?

5           THE WITNESS:   I did.

6           CHAIRMAN KANE:   And can I ask you, is  
7   that something that DC SUN would support?

8           THE WITNESS:   I think it's a terrible  
9   idea.   I don't -- again, we're dedicated to an  
10   open, transparent and competitive market for  
11   solar.   We think that's what's best for solar.   We  
12   also think that's what's best for energy and  
13   ratepayers.

14           And, you know, Mr. Chambers did agree  
15   that -- you know, which is fine -- that, you know,  
16   Exelon would get paid somehow for doing this; they  
17   weren't supposed to do it for free.   If they were  
18   doing it out of the money that they're paying  
19   their shareholders, I might be open to it, you  
20   know, one time, grab us an extra 40 million off  
21   the shareholder side and spend it on some solar to  
22   bring down D.C. government building.   Fine.

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1           But in general, just like the example I  
2 was giving with microgrids, we think that the  
3 utility should be in the business of facilitating  
4 a competitive private market, not in providing  
5 these services.

6           And that when -- you really get into  
7 trouble when the utility is the provider of the  
8 microgrids or the -- which is -- in Illinois, by  
9 the way, they're trying to pass legislation to be  
10 the only provider and to prevent -- not to be the  
11 only provider, but to prevent retail microgrids.  
12 So utilities could do it, but people couldn't get  
13 together and make their own microgrids. That's  
14 the local Exelon supported -- or the local  
15 utility -- Exelon's local utility supported.

16           Same thing with solar. So anything  
17 that's putting them in the position of  
18 monopolizing solar or giving them a dominant  
19 market entry on solar is not really what we're  
20 interested in. We want them to facilitate a  
21 competitive market for solar and all the other  
22 components. We think that's what's best for all

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1 ratepayers.

2 CHAIRMAN KANE: Finally, you did mention  
3 the New York REV proceeding that is a rather  
4 complicated, long, two-phase proceeding. I just  
5 wanted to ask you if you were aware that in its  
6 order on the approval of the Southwest substation,  
7 that this Commission has included the fact that it  
8 will be opening a new docket to investigate and to  
9 work on issues such as microgrid storage, grid  
10 modernization, et cetera?

11 THE WITNESS: I was aware and delighted  
12 to see that order.

13 CHAIRMAN KANE: Thank you. I have no  
14 further questions.

15 MR. SPECK: I have no redirect.

16 CHAIRMAN KANE: No redirect? Okay.  
17 Thank you. Then you may move your...

18 MR. SPECK: I would move the admission of  
19 DC SUN Exhibit (A) and DC SUN Exhibits (A)-1  
20 through (A)-21, inclusive.

21 CHAIRMAN KANE: Thank you.

22 (DC SUN Exhibit Numbers (A) and (A)-1

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1 through (A)-21 were received into evidence.)

2 CHAIRMAN KANE: Joint applicants?

3 MR. KULAK: Your Honor, we would move  
4 Joint Applicants' Cross Exhibit Numbers 67 and 68.

5 CHAIRMAN KANE: They are moved into  
6 evidence.

7 (Joint Applicants Cross Exhibit Numbers  
8 67 and 68 were received into evidence.)

9 MR. KULAK: Thank you, Your Honor.

10 CHAIRMAN KANE: Thank you.

11 You may be excused, Ms. Schoolman.

12 (Witness excused.)

13 CHAIRMAN KANE: I do want to thank  
14 everyone, but we do have some closing matters.  
15 First of all, if there are any outstanding bench  
16 requests, we want the responses. They must be  
17 submitted by close of business Wednesday,  
18 April 29th.

19 MR. LORENZO: Your Honor, I don't think  
20 there are any bench requests.

21 CHAIRMAN KANE: Well, if there are.

22 Additionally, any motions to correct the



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1 transcript as well as the final corrected list of  
2 cross-examination exhibits are also due a week  
3 from today, on Wednesday, April 29th.

4           And Mr. Caldwell, this may be what you're  
5 going to bring up -- but the District government  
6 initially represented it would seek admittance of  
7 all its preliminarily marked cross-examination  
8 exhibits and, therefore, it requested that we  
9 diverge from our customary procedure and that we  
10 would have the preliminary numbers that were  
11 assigned to the exhibits be used as the final  
12 cross-examination exhibit number as well.

13           In reviewing the record so far with the  
14 office of secretary, we don't believe that all of  
15 the D.C. government exhibits have been admitted  
16 into evidence. And as such, the final  
17 cross-examination numbers are not sequential.  
18 There are gaps.

19           Leaving the final cross-examination  
20 numbers as it is we believe would lead the  
21 parties, the public and any reviewing agencies,  
22 courts, et cetera, somewhat confused as to what

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1 happened to the numbers that weren't there.

2 So let me first ask counsel for  
3 D.C. government whether you intend to offer those  
4 remaining exhibits into evidence at this time.

5 MR. COYLE: We do not, Your Honor.

6 CHAIRMAN KANE: You do not. Okay.

7 Then we will have to ask you to renumber  
8 wherever the gap stops. In other words, if you  
9 did 1 through 45 and then you're skipping 46, 47,  
10 and you've got 48 in, they're going to have to be  
11 renumbered so that they are sequential and  
12 consecutive and there are no gaps.

13 MR. COYLE: Your Honor, if I could  
14 inquire further, just as a matter of guidance.  
15 Since we've examined throughout the transcript on  
16 the basis of the numbers by which the exhibits  
17 were identified, doing what you have instructed us  
18 to do will also require us to comb every page of  
19 the transcript and change the exhibit references  
20 in the transcript. And if that's what you want us  
21 to do, I guess we can do it. It just seems a  
22 pretty complicated process.

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1 CHAIRMAN KANE: Well, you -- we agreed to  
2 diverge from the regular procedure in which  
3 exhibits were numbered as they were used upon the  
4 representation of the government that all of the  
5 exhibits would be put in and that, therefore, all  
6 the numbers would be used and there would be no  
7 gaps.

8 So the problem has been created because,  
9 for whatever reason, all of the exhibits were  
10 not -- now are not being planned to be put in.

11 MR. COYLE: I do accept responsibility  
12 for it. I get that I wrote a check I wasn't able  
13 to cash. Fair enough.

14 The problem with -- and if it's the  
15 Commission's wish that we do this, then of course  
16 it will be done. I just wanted to clarify on the  
17 record that what you are asking, renumbering  
18 probably 100 exhibits sequentially, will also  
19 require massive transcript revisions.

20 CHAIRMAN KANE: Yes, it will.

21 MR. COYLE: I wanted to make sure that  
22 that is what the Commission -- the way that the

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1 Commission wants us to proceed.

2 CHAIRMAN KANE: The Commission --

3 MR. COYLE: We'll do whatever the --

4 CHAIRMAN KANE: The Commission did not  
5 want to be in this position. And having made that  
6 one concession to the D.C. government, it does  
7 create a problem whichever way we do it.

8 There is an alternative, and that is to  
9 just leave the exhibit numbers as they are with a  
10 note on the record that the numbering of the  
11 D.C. government's cross-examination exhibits are  
12 not sequential and that there are gaps between the  
13 exhibit numbers. That is an option, and we will  
14 have to take that into consideration.

15 MR. COYLE: I'd be happy to do that. I  
16 think that's a lot easier.

17 CHAIRMAN KANE: Well, we would do that,  
18 put that note in the record. We would do that.

19 Do I hear any objection from the parties  
20 to the Commission doing that?

21 MS. FRANCIS: Actually, I have no  
22 objection to what Your Honor just suggested,

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1 because that would make it easier for the parties  
2 and everybody concerned. Perhaps -- and I'm just  
3 going to suggest a statement by counsel or a  
4 filing of a letter that says such-and-such  
5 exhibits were intentionally omitted or  
6 inadvertently omitted, and that would clarify the  
7 record if they were just filed that way.

8 CHAIRMAN KANE: Thank you, Ms. Francis.

9 MR. DANIELS: OPC concurs with AOBA's  
10 recommendation.

11 MR. CALDWELL: Would it be helpful for  
12 the District of Columbia to file, in its final  
13 cross-examination list -- be very clear that  
14 certain -- what exhibits were -- identify the  
15 exhibits as they exist right here, but then  
16 clearly state that not admitted and --

17 COMMISSIONER FORT: In some cases, not  
18 introduced or admitted.

19 MR. CALDWELL: Exactly.

20 CHAIRMAN KANE: Not introduced or  
21 admitted.

22 MR. CALDWELL: Not introduced, not

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1 identified, not admitted and blank for --

2 CHAIRMAN KANE: A list of that.

3 MR. CALDWELL: Yes.

4 COMMISSIONER FORT: Hopefully Mr. Coyle  
5 will now see the wisdom of my earlier objection.

6 MR. COYLE: I am duly chastened,  
7 Commissioner. Thank you.

8 MR. LORENZO: Your Honor, I think that  
9 probably is the best solution to a bad situation.

10 CHAIRMAN KANE: Thank you. All right.

11 Second item. Grid 2.0 sent an e-mail  
12 request this afternoon to admit the testimony of  
13 your two witnesses who did not appear for  
14 cross-examination.

15 MR. RORIES: Yes.

16 CHAIRMAN KANE: Yes. Could you make that  
17 request now on the record? Put your microphone on  
18 and make that request on the record.

19 MR. RORIES: Yes. Grid 2 respectfully  
20 requests that the direct testimony of Witness  
21 Larry Martin and Witness Jerome Paige that was  
22 filed in corrected form on February 4th, I

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1 believe, be -- we stipulate to that and request  
2 that it be entered into the record.

3 CHAIRMAN KANE: Any objection from any of  
4 the parties?

5 MR. LORENZO: No objection, Your Honor.

6 MR. DANIELS: No objection.

7 CHAIRMAN KANE: Very good. That will be  
8 done.

9 (GRID Exhibit Numbers (B), (C) and (C)-1  
10 were received into evidence.)

11 CHAIRMAN KANE: Thank you.

12 Finally, in establishing briefing  
13 dates -- Mr. Lorenzo?

14 MR. LORENZO: Yes. The parties have  
15 discussed that, unless the Commission wants to  
16 preempt that, but we have discussed and, I think,  
17 agreed on briefing dates. That's the convenience  
18 of the Commission. It's up to --

19 MR. COYLE: We still have testimony we  
20 need to get admitted as well.

21 CHAIRMAN KANE: Excuse me? You have  
22 testimony -- you have -- D.C. government has

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1 testimony from witnesses who also did not appear,  
2 correct?

3 MR. COYLE: That's correct, yes.

4 CHAIRMAN KANE: Before we get to  
5 briefing, we'll deal with that. Go ahead,  
6 Mr. Caldwell.

7 MR. CALDWELL: Yes, Your Honor. The  
8 parties -- District government would like to move  
9 into evidence the testimony of District government  
10 Witness Subodh Mathur, and his testimony was  
11 identified as DCG (D), along with four exhibits,  
12 DCG (D)-1 through DCG (D)-4. And the parties have  
13 stipulated to that admission.

14 As well as the testimonies of DCG Witness  
15 Dr. Wilson. He submitted testimony that was  
16 identified as DCG (F), with accompanying Exhibits  
17 DCG (F)-1 through DCG (F)-2. And those were --  
18 there was a public and a confidential version of  
19 those testimonies. He also submitted answering  
20 testimony which was identified as DCG (2F) and it  
21 had one exhibit, DCG (2F)-1. And that was public.

22 And there's finally the testimony of DCG



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1 Witness Tyler Comings. His testimony was  
2 designated DCG (C), with Exhibits DCG (C)-1  
3 through DCG (C)-2. There were also public and  
4 confidential versions of that testimony. And then  
5 he submitted answering testimony that was  
6 designated DCG (2C) and DCG (2C)-1 through  
7 DCG (2C)-3.

8 CHAIRMAN KANE: Thank you. They will be  
9 admitted without any objection from the parties.

10 (DCG Exhibit Numbers (D), (D)-1 through  
11 (D)-4, (F), (F)-1 through (F)-2, (2F), (2F)-1,  
12 (C), (C)-1, (C)-2, (2C) and (2C)-1 through (2C)-3  
13 were received into evidence.)

14 MR. DUVER: No objection.

15 Your Honor, and one other note. With  
16 respect to Dr. Wilson's testimony, we had worked  
17 out with District of Columbia government to admit  
18 or stipulate the admission of five data request  
19 responses that Dr. Wilson had sponsored. We --  
20 because this was worked out in advance and we were  
21 not going to be crossing Dr. Wilson, we had not  
22 filed a pre-marked version, but we will be filing

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1 with the Commission the actual versions with the  
2 final numbers that we would seek admission of.  
3 And I would identify those five for the record  
4 right now and ask that they be marked and  
5 admitted.

6 CHAIRMAN KANE: Yes.

7 MR. DUVER: So at this time, joint  
8 applicants ask that DCG's response to joint  
9 applicants DR 1-3 be marked as Joint Applicants'  
10 Exhibit 69. And then mark -- DCG's response to  
11 joint applicants' DR 1-72 and 1-73 be marked as  
12 Joint Applicants' Exhibit 70 and 71, respectively.  
13 And then DCG's response to joint applicants' DR  
14 1-75 be marked as Joint Applicants' Exhibit 72.  
15 And, finally, DCG's response to joint applicants'  
16 DR 3-5 be marked as Joint Applicants' Exhibit 73.  
17 And those are the ones that we had agreed to have  
18 stipulate into the record.

19 CHAIRMAN KANE: Thank you. They will be  
20 admitted.

21 (Joint Applicants Cross Exhibit Numbers  
22 69 through 73 were marked for identification and

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1 received into evidence.)

2 CHAIRMAN KANE: Ms. Francis?

3 MS. FRANCIS: Just as a final matter, can  
4 we leave our things in the hearing room until  
5 tomorrow?

6 CHAIRMAN KANE: They will have to be out  
7 by 9:00 a.m. We have a visiting delegation from  
8 Uganda that we are doing a presentation for. So  
9 if you want to come first thing in the morning and  
10 take them --

11 MS. FRANCIS: I will be here at 7:00.

12 CHAIRMAN KANE: And Commission secretary  
13 Brenda Westbrook who, with her staff, has been  
14 tirelessly, around the clock, working on this,  
15 will be here at 7:00 a.m.

16 MS. FRANCIS: Thank you.

17 MR. LORENZO: Your Honor, I want to, just  
18 on that point, want to speak for all the parties  
19 to compliment the Commission staff, especially the  
20 office of the secretary, for their professionalism  
21 and courtesy and knowledge and especially patience  
22 with all that's gone on.

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1 (Applause.)

2 COMMISSIONER FORT: We also compliment  
3 our wonderful court reporter Denise --

4 (Applause.)

5 CHAIRMAN KANE: Denise Brunet. Thank you  
6 very much.

7 COMMISSIONER FORT: I'd also like to  
8 thank the parties for being able to put the whole  
9 case on without us having to go into confidential  
10 session. We know that there was a lot of  
11 information that was marked confidential and, you  
12 know, I want to thank the joint applicants  
13 because, for the most part, it was you waiving  
14 confidentiality and coming up with a procedure  
15 that did not require us to go on and off the  
16 record.

17 You know -- I think there's a lot of  
18 interest in these proceedings. It would have been  
19 very difficult for us to have to close down and  
20 have conversations on such an important case that  
21 so many people are interested in off the record.  
22 So we realize that that was you all working out

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1 things between you, and we're very grateful for  
2 that.

3 CHAIRMAN KANE: It makes a much better  
4 movie when you put all 11 days together without --  
5 a whole video now that has no interruptions.

6 And speaking of video, I also want to  
7 give a special thanks to -- we had an outside  
8 audio-visual company working with us, keeping  
9 microphones working, keeping everything working,  
10 working with our staff, and I want to compliment  
11 them very much for their work.

12 (Applause.)

13 CHAIRMAN KANE: The next hearing we have,  
14 at least the next one we're aware of, will be in  
15 our new space in our new hearing room. And as  
16 we've learned over the years in this hearing room,  
17 I think we'll see quite a few improvements there.

18 MR. LORENZO: We look forward to that.

19 CHAIRMAN KANE: Don't look forked too  
20 quickly. You promise no rate hearing -- rate  
21 cases.

22 Finally, briefing dates. We, at the

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1 Commission, have looked at briefing dates. We're  
2 proposing -- we want to use the same time periods  
3 that were established in our last revised  
4 procedural schedule. And so, under that schedule,  
5 the filing of the initial post-hearing briefs,  
6 with proposed findings of fact and conclusions of  
7 law, pursuant to 15 DCMR 138, would be due by  
8 May 13th. Reply briefs are due by May 27th. And  
9 parties are also directed to structure their  
10 briefs by submitting their arguments according to  
11 the factor number that it is addressing.

12 In addition to the copies required to be  
13 filed, we need, as usual, an electronic Word copy  
14 of each brief. And that should be sent to the  
15 lead attorney, in this case, Mr. Rick Herskovitz.

16 And pursuant to that, the record in this  
17 case would then close on May 27th, 2015. That  
18 would be the last day for the public or anyone  
19 else who wants to submit comments in the  
20 proceeding would be by the close of record date on  
21 May 27th, 2015.

22 Do the parties have any further matters

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1 they wish to raise at this time?

2 MR. LORENZO: And the motions to correct  
3 the transcript are due April 27th?

4 CHAIRMAN KANE: 29th.

5 MR. LORENZO: 29th.

6 CHAIRMAN KANE: 29th. One week from  
7 today, April 29th. Motions to correct the  
8 transcript and all of the bench questions,  
9 renumbered exhibits, everything --

10 MR. LORENZO: Very good.

11 CHAIRMAN KANE: -- by the 29th.

12 And that being said, thank you all,  
13 again, for 11 days of hearings, for a very  
14 substantial record which the Commission will  
15 seriously take into consideration as we move  
16 forward with the decision in this case. And we  
17 are adjourned.

18 (Whereupon, at 6:40 p.m., the above  
19 proceedings were concluded.)

20

21

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



Denise M. Brunet  
Certified Court Reporter



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