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PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA
1325 G STREET, N.W., SUITE 800
WASHINGTON, D.C. 20005

OPINION AND ORDER

February 26, 2016

FORMAL CASE NO. 1119, IN THE MATTER OF THE JOINT APPLICATION OF EXELON CORPORATION, PEPCO HOLDINGS, INC., POTOMAC ELECTRIC POWER COMPANY, EXELON ENERGY DELIVERY COMPANY, LLC AND NEW SPECIAL PURPOSE ENTITY, LLC FOR AUTHORIZATION AND APPROVAL OF PROPOSED MERGER TRANSACTION, Order No. 18109

Before the Commission:

Betty Ann Kane, Chairman
Joanne Doddy Fort, Commissioner
Willie L. Phillips, Commissioner

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I. INTRODUCTION

1. By this Order, pursuant to Commission Rule 130.16, a majority of the Public Service Commission of the District of Columbia ("Commission"), composed of Chairman Kane and Commissioner Fort, rejects as not in the public interest the Nonunanimous Full Settlement Agreement and Stipulation ("NSA")[1] as filed related to the Application for Commission approval of a change of control of the Potomac Electric Power Company ("Pepco") to be effected by the Proposed Merger of Pepco Holdings, Inc. ("PHI") with Purple Acquisition Corp. ("Merger Sub"), a wholly-owned subsidiary of Exelon Corporation ("Exelon") ("Joint Application") filed by Exelon, PHI, Pepco, Exelon Energy Delivery Company, LLC ("EEDC"), and New Special Purpose Entity, LLC ("SPE") (collectively, the "Joint Applicants"). Commissioner Phillips dissents from that decision concluding, instead, that the NSA is in the public interest as filed and should be approved as submitted.

2. The majority having rejected the NSA under Commission Rule 130.16, Commissioner Fort and Commissioner Phillips, as a procedural matter, vote to proceed pursuant to Commission Rule 130.17(b). Specifically, Commissioner Fort has proposed alternative terms, as reflected in the Revised NSA at Attachment A and explained in Paragraphs 140-161 of her concurrence that would make the NSA as amended in the public interest and votes to approve the Revised NSA. Although Commissioner Phillips believes that the NSA as submitted is in the public interest, and has had no hand in drafting the alternative terms, he votes to proceed under rule 130.17(b) and will accept Commissioner Fort's conditions for the sole purpose of giving the Settling Parties, who he believes negotiated a Settlement that should be approved, an avenue to consummate their agreement, instead of resulting in an outright denial. While Commissioner Phillips reserves his judgment on the substance of the alternative terms proposed by Commissioner Fort, he does not believe those conditions alter his determination that the settlement agreement is in the public interest, and he approves the Revised NSA if the alternative terms are accepted by all the Settling Parties. Chairman Kane does not agree that acceptance of the alternative terms by the Settling Parties would be sufficient to find the NSA is in the public interest and votes against the motion to proceed under Commission Rule 130.17(b).

3. The Settling Parties are directed to file a Notice with the Commission Secretary, no later than fourteen (14) days from the date of this order, indicating whether they accept the

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[1] *Formal Case No. 1119, In the Matter of the Joint Application of Exelon Corporation, Pepco Holdings, Inc., Potomac Electric Power Company, Exelon Energy Delivery Company, LLC and New Special Purpose Entity, LLC for Authorization and Approval of Proposed Merger Transaction* ("*Formal Case No. 1119*"), The Nonunanimous Full Settlement Agreement and Stipulation ("NSA") submitted by Potomac Electric Power Company ("Pepco"), Exelon Corporation ("Exelon"), Pepco Holdings, Inc. ("PHI"), Exelon Energy Delivery Company, LLC, and New Special Purpose Entity, LLC (the "Joint Applicants"); the Office of People's Counsel of the District of Columbia ("OPC"); Apartment and Office Building Association of Metropolitan Washington ("AOBA"); the District of Columbia Government ("District Government"); the District of Columbia Water and Sewer Authority ("DC Water"); and the National Consumer Law Center; National Housing Trust; the National Housing Trust-Enterprise Preservation Corporation ("NCLC/NHT"). The NSA was admitted on to the record of this case as Joint Applicants Exhibit NSA-1 on December 2, 2015.

Revised NSA at Attachment A or request further relief under Commission Rule 130.17(b).[2] If all the Settling Parties accept the Revised NSA at Attachment A, then the Joint Application as amended by the Revised NSA is approved as in the public interest by the Commission without further Commission action.

4. If the Settling Parties propose other relief under Commission Rule 130.17(b), the Nonsettling Parties may file comments on the request for other relief, within seven (7) days from the date the Settling Parties' file for other relief.

II. BACKGROUND

A. Procedural Background

5. On April 30, 2014, Exelon Corporation announced Exelon's purchase of PHI. On June 18, 2014, the Joint Applicants filed a Joint Application for approval by the Commission, pursuant to D.C. Code §§ 34-504 and 34-1001, for a change of control of Pepco (the "Proposed Merger"). Upon completion of the Proposed Merger, Exelon would become the sole owner of PHI and PHI's subsidiaries, including Pepco, and Pepco would be controlled in the future by Exelon under a management structure that was previously described and discussed in Commission Order No. 17947.[3]

6. The Commission incorporates by reference several paragraphs of the Background section in Order No. 17947, specifically, the description of the Joint Applicants in Paragraphs 13-17; the description of the Proposed Merger in Paragraphs 18-24; and the procedural history of *Formal Case No. 1119* up to the issuance of Order No. 17947 in Paragraphs 25-37. The Background section in this Order provides a summary of the procedural history of *Formal Case No. 1119* since the issuance of Order No. 17947 and a brief overview of the NSA filed in this case.[4]

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[2] The Commission is keenly aware of the Settling Parties' request for a decision on the NSA within 150 days from the date the NSA was filed, which translates to a March 4, 2016 deadline. We realize the 14 days provided to accept the Revised NSA or request alternative relief will go beyond March 4, 2016. However, we believe that 14 days is a reasonable length of time for the parties to fully consider the alternative terms as proposed in the Revised NSA and note that the Settling Parties are free to respond before the 14 days has elapsed.

[3] *Formal Case No. 1119,* Order No. 17947, ¶¶ 22-24, rel. August 27, 2015.

[4] In the appendix to this Order, the Commission provides as Attachment A the NSA as revised by Commissioner Fort's proposed alternative terms. Attachment B contains summaries of: (1) community comments; (2) the prior order on the merits of the Application (Order No. 17947); (3) the NSA as filed; and (4) the arguments of the parties on the NSA set forth by each of the public interest factors. The complete NSA as filed is reproduced in Attachment C, and a redline version of the NSA showing Commissioner Fort's revisions is reproduced in Attachment D.

7. Following four days of Community hearings and 11 days of evidentiary hearings, the Commission, on August 27, 2015, issued Order No. 17947, which denied the Joint Application and found that the proposed merger as filed was not in the public interest.[5]

8. On September 28, 2015, the Joint Applicants filed an Application for Reconsideration of Order No. 17947.[6] On September 30, 2015, the District Government and Joint Applicants filed a Joint Motion for a Stay or, in the Alternative, for an Extension of Time to Respond to the Application for Reconsideration.[7] On October 2, 2015, the Commission issued Order No. 17993, in which it stated, among other things, that responses to the Application for Reconsideration would be due no earlier than October 9, 2015.[8]

9. On October 6, 2015, the Joint Applicants, Office of the People's Counsel ("OPC"), the District of Columbia Government ("DCG"), the District of Columbia Water and Sewer Authority ("DC Water"), the National Consumer Law Center ("NCLC"), National Housing Trust ("NHT"), the National Housing Trust-Enterprise Preservation Corporation ("NHT-E"), and the Apartment and Office Building Association of Metropolitan Washington ("AOBA") (collectively, the "Settling Parties") filed a Motion to Reopen the Record in *Formal Case No. 1119* to Allow for Consideration of a Nonunanimous Full Settlement Agreement and Stipulation ("NSA"), which was submitted as Attachment A in that Motion.[9]

10. On October 26, 2015, the Commission issued Order No. 18009 in which it held that the "deadline for action on the merits of the Application for Reconsideration and the filing of responses to the Joint Applicants' Application for Reconsideration is tolled until the Commission renders a decision on the Nonunanimous Settlement Agreement, or until the Commission determines otherwise."[10]

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5 *Formal Case No. 1119*, Order No. 17947, rel. August 27, 2015.

6 *Formal Case No. 1119*, Application of the Joint Applicants for Reconsideration of Order No. 17947, filed September 28, 2015 ("Reconsideration Application").

7 *Formal Case No. 1119*, Joint Motion of the District of Columbia Government and Joint Applicants for a Stay or, in the Alternative, for an Extension of Time to Respond to the Application for Reconsideration of Order No. 17947, filed September 30, 2015 ("Joint Motion").

8 *Formal Case No. 1119*, Order No. 17993, ¶¶ 1, 12, rel. October 2, 2015.

9 *Formal Case No. 1119*, Motion of the Joint Applicants to Reopen the Record in Formal Case No. 1119 to Allow for Consideration of Nonunanimous Full Settlement Agreement and Stipulation, or for Other Alternative Relief, filed October 6, 2015 ("Motion to Reopen").

10 *Formal Case No. 1119*, Order No. 18009, ¶ 3, rel. October 26, 2015 (emphasis in original).

11. On October 28, 2015, the Commission issued an order granting the Joint Applicants' Motion to Reopen the Record.[11] The Joint Applicants then filed its Motion for Approval of the NSA on October 30, 2015.[12]

12. On November 17, 2015 and November 18, 2015, the Commission held a community hearing to allow public comment on the NSA. The Commission also left the record open until December 23, 2015, to receive public comment on the NSA.

13. On December 2-4, 2015, the Commission held an evidentiary hearing to allow the parties to submit evidence as to whether or not the NSA is in the public interest ("Public Interest Hearing" or "evidentiary hearing").[13] Briefs[14] and Reply Briefs[15] were filed by the parties on December 16, 2015 and December 23, 2015, respectively.

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[11] *Formal Case No. 1119*, Order No. 18011, rel. October 28, 2015. The Public Interest Hearing convened December 2-4, 2015. Transcripts of the Commission's Evidentiary Hearings concerning the NSA are cited as "NSA Tr. at".

[12] *Formal Case No. 1119*, Motion for Approval of Nonunanimous Full Settlement Agreement and Stipulation, filed October 30, 2015 ("Motion for Approval of NSA").

[13] Transcripts of the Commission's Evidentiary Hearings concerning the NSA are cited as "NSA Tr. at"

[14] *Formal Case No. 1119*, Initial Post-Hearing Brief of the Joint Applicants in Support of the Non-unanimous Full Settlement Agreement and Stipulation in Formal Case No. 1119, filed December 16, 2015 ("Joint Applicants' Br."); *Formal Case No. 1119*, Initial Post-Hearing Brief of the Office of the People's Counsel for the District of Columbia, filed December 16, 2015 ("OPC's Br."); *Formal Case No. 1119*, Initial Post-Hearing Brief of the Apartment and Office Building Association of Metropolitan Washington ("AOBA") in Support of the Proposed Settlement Agreement, filed December 16, 2015 ("AOBA's Br."); *Formal Case No. 1119*, Initial Post-Hearing Brief of District of Columbia Government in Support of the Non-unanimous Settlement Agreement, filed December 16, 2015 ("District Government's Br."); *Formal Case No. 1119*, Brief of DC Solar United Neighborhoods (DC SUN) and Maryland District Virginia Solar Energy Industries Association (MDV-SEIA), filed, December 16, 2015 ("DC SUN/MDV-SEIA's Br."); *Formal Case No. 1119*, Initial Post-Hearing Brief of the District of Columbia Water and Sewer Authority (DC Water) in Support of the Non-unanimous Full Settlement Agreement and Stipulation, filed December 16, 2015 ("DC Water's Br."); *Formal Case No. 1119*, Brief of the United States General Services Administration ("GSA"), filed, December 16, 2015 ("GSA's Br."); *Formal Case No. 1119*, Brief of GRID2.0, filed, December 16, 2015 ("GRID2.0's Br."); *Formal Case No. 1119*, Brief of Mid-Atlantic Renewable Energy Coalition (MAREC), filed, December 16, 2015 ("MAREC's Br."); *Formal Case No. 1119*, Brief of the Independent Market Monitor for PJM (IMM), filed, December 11, 2015 ("PJM Market Monitor's Br."); *Formal Case No. 1119*, The National Consumer Law Center, National Housing Trust and the National Housing Trust-Enterprise Preservation Corporation's ("NCLC") Initial Brief Regarding the Non-unanimous Settlement Agreement and Stipulation, filed December 16, 2015 ("NCLC/NHT's Br."); and *Formal Case No. 1119*, Brief of WGL Energy Services, Inc. and WGL Energy Systems, Inc. (together "WGL Energy"), filed, December 16, 2015 ("WGL Energy's Br.").

[15] *Formal Case No. 1119*, Reply Brief of the Joint Applicants in Support of the Non-unanimous Full Settlement Agreement and Stipulation in Formal Case No. 1119, filed December 23, 2015 ("Joint Applicants' R. Br."); *Formal Case No. 1119*, Reply Brief of the Office of the People's Counsel for the District of Columbia, filed December 23, 2015 ("OPC's R. Br."); *Formal Case No. 1119*, Reply Brief of District of Columbia Government in Support of the Non-unanimous Settlement Agreement, filed December 23, 2015 ("District Government's R. Br."); *Formal Case No. 1119*, Reply Brief of DC Solar United Neighborhoods (DC SUN) and Maryland District Virginia Solar Energy Industries Association (MDV-SEIA), filed, December 23, 2015 ("DC SUN/MDV-SEIA's R. Br."); *Formal Case No. 1119*, Reply Brief of the District of Columbia Water and Sewer Authority (DC Water) in Support of the Non-unanimous Full Settlement Agreement and Stipulation, filed

B. Nonunanimous Settlement Agreement

14. On October 6, 2015, the Settling Parties submitted the NSA that they assert meets the "statutory criteria for approval of a merger application under D.C. Code Sections 34-504 and 34-1001," adopts the record in *Formal Case No. 1119*, and sets forth conditions which support a finding by the Commission that the "Merger, taken as a whole, is in the public interest and fully satisfies the Commission's seven factor test."[16]

15. The NSA is a 43-page document that contains 142 numbered paragraphs which, among other things, describe commitments that modify the original Merger Application. The NSA replaces the Joint Applicants' Exhibit 4A-(2) that was admitted in the evidentiary hearing on the Merger Application and that contained an earlier set of commitments that modified the Merger Application as originally filed with the Commission on June 18, 2014. The commitments in the NSA are set out on a factor-by-factor basis using the seven public interest factors that the Commission considered when reviewing the Merger Application to determine whether the Merger Application when "taken as a whole" is in the public interest.[17]

III. APPLICABLE RULE

16. Commission Rules 130.16 and 130.17 set out the Commission's options when reviewing a settlement. Specifically, Commission Rule 130.16 states:

> Given the negotiated nature of a settlement, the Commission shall either accept or reject a settlement in its entirety, unless the parties have specifically stated that the provisions of the settlement are severable;[18]

In the case at hand, the NSA includes language that makes its terms non-severable.[19]

December 23, 2015 ("DC Water's R. Br."); *Formal Case No. 1119*, Reply Brief of the United States General Services Administration ("GSA"), filed, December 23, 2015 ("GSA's R. Br."); *Formal Case No. 1119*, Reply Brief of GRID2.0, filed, December 23, 2015 ("GRID2.0's R. Br."); *Formal Case No. 1119*, Reply Brief of Mid-Atlantic Renewable Energy Coalition (MAREC), filed, December 23, 2015 ("MAREC R. Br."); and *Formal Case No. 1119*, The National Consumer Law Center, National Housing Trust and the National Housing Trust-Enterprise Preservation Corporation's ("NCLC") Reply Brief Regarding the Non-unanimous Settlement Agreement and Stipulation, filed December 23, 2015 ("NCLC/NHT's R. Br.").

[16] NSA, ¶ 1.

[17] The Commission has summarized the key new or revised provisions that are offered under each of the seven factors discussed herein in Attachment B to this Order and has attached the NSA in its entirety to this Order as Attachment C. To the extent that the Commission references details in the NSA that are not provided in the summary under each Public Interest Factor in Attachment B, a citation to the paragraph containing the provision in the NSA has been provided.

[18] 15 DCMR § 130.16. The parties have specifically stated that the provisions of the subject Non-unanimous Settlement Agreement are not severable. NSA, ¶ 137.

[19] NSA, ¶ 137.

17. Commission Rule 130.17 further provides that if the settlement is rejected, the Commission may take various steps, including the following:

> (a) Allow the parties time to renegotiate a settlement;
>
> (b) Propose alternative terms to the parties and allow the parties a reasonable time within which to elect to accept such terms or request other relief; or
>
> (c) Proceed with litigation of the case.[20]

This rule makes clear that, if a settlement is rejected, the Commission may take various steps; however, further action is discretionary rather than mandatory and requires the support of a majority of the Commission. The Commission votes to proceed under Rule 130.17(b) and approve a Revised NSA with alternative terms if accepted by all of the Settling Parties.

IV. STANDARD OF REVIEW

A. Jurisdiction to Review a Settlement Agreement

18. The Commission has jurisdiction over the NSA under Section 130 of the Commission's rules that governs settlement agreements.[21] Section 130.11 of the Commission's rules provides:

> A full settlement presented in a base rate change application or other contested case, which should have an impact on a utility's customers, competitors, or the public, shall only be accepted after a hearing on whether the settlement is in the public interest.[22]

19. The NSA concerns a change of control of Pepco, which is under the Commission's jurisdiction pursuant to D.C. Code §§ 34-504 and 34-1001. The Commission has jurisdiction over the Proposed Merger under D.C. Code §§ 34-504 and 34-1001.[23] D.C. Code § 34-504 provides in pertinent part that:

> No public utility . . . shall purchase the property of any other public utility for the purpose of effecting a consolidation until the Commission shall have determined and set forth in writing that said consolidation will be in the public interest, nor until the

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[20] 15 DCMR § 130.17.

[21] 15 DCMR § 130 (1995).

[22] 15 DCMR § 130.11.

[23] *See also, Formal Case No. 1002, In the Matter of the Joint Application of PEPCO and New RC Inc. for Authorization and Approval of Merger Transaction* ("*Formal Case No. 1002*"), Order No. 12189, ¶¶ 3-7, rel. September 19, 2001.

> Commission shall have approved in writing the terms upon which said consolidation shall be made.[24]

D.C. Code § 34-1001 provides in pertinent part that:

> No franchise nor any right to or under any franchise to own or operate any public utility as defined in this subtitle . . . shall be assigned, transferred, or leased, nor shall any contract or agreement with reference to or affecting any such franchise or right be valid or of any force or effect whatsoever unless the assignment, transfer, lease, contract, or agreement shall have been approved by the Commission in writing . . .[25]

In reviewing the Proposed Merger that includes a change of control over Pepco, the company that holds the electric distribution franchise for the District of Columbia, the Commission must determine if the transaction is in the public interest and issue our decision in writing.[26] If the Commission finds that the Proposed Merger is in the public interest, we must also "approve in writing the terms upon which said consolidation shall be made."[27]

B. Assessing the Nonunanimous Settlement Agreement

20. Section 130 of the Commission's rules governs settlement agreements.[28] Section 130.10 requires that all settlement agreements: (1) be in writing; (2) contain all of the terms and conditions agreed upon by the signatories; (3) be clearly and accurately labeled unanimous or nonunanimous; (4) be clearly and accurately labeled partial or full; (5) state whether non-signatory parties oppose the settlement; (6) indicate whether the provisions are severable; and (7) stipulate the admission into evidence of the testimony and exhibits filed in this proceeding.[29]

21. The Nonunanimous Settlement Agreement submitted by the Settling Parties:[30] (1) is in writing;[31] (2) contains all of the terms and conditions to which the Settling Parties have

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[24] D.C. Code § 34-504 (2001) (Emphasis added).

[25] D.C. Code § 34-1001 (2001).

[26] *See* D.C. Code § 34-1001 (2001) as applied in *Formal Case No. 1002*, Order No. 12395, ¶ 16, rel. May 1, 2002; *Formal Case No. 951, In the Matter of the Joint Application of Baltimore Gas and Electric Company, Potomac Electric Power Company and Constellation Energy Corporation for Authorization and Approval of Merger and for a Certificate Authorizing the Issuance of Securities* ("*Formal Case No. 951*"), Order No. 11075, p. 14, rel. October 20, 1997.

[27] D.C. Code § 34-504 (2001).

[28] 15 DCMR § 130 (1995).

[29] 15 DCMR § 130.10 (1995).

[30] The Settling Parties are: Exelon Corporation ("Exelon"), Pepco Holdings, Inc. ("PHI"), Potomac Electric Power Company ("Pepco"), Exelon Energy Delivery Company, LLC ("EEDC") and New Special Purpose Entity, LLC ("SPE") (collectively "Joint Applicants"); the Office of the People's Counsel ("OPC"); the Apartment and

agreed;[32] (3) is clearly labeled nonunanimous (*i.e.*, the signatories, while representing a broad cross-section of the parties in this case and many different stakeholders, are less than all of the parties);[33] (4) is clearly labeled a full settlement (i.e., according to its terms it would resolve all issues in this case);[34] (5) indicates that "the parties to Formal Case No. 1119 that have not signed the Settlement Agreement are expected to either oppose or be neutral with respect to the acceptance of the Settlement Agreement;"[35] (6) states that the terms of the NSA are interdependent and, therefore, non-severable,[36] and (7) states that "the Settling Parties have stipulated, or will stipulate, the admission into evidence of the testimony and exhibits filed by the Settling Parties in support of this Settlement Agreement."[37] More specifically with respect to item (6), the NSA provides that it is "submitted to the Commission for approval as a whole," that "its provisions are not severable,"[38] and that it "shall terminate, and shall be deemed null and void and of no force or effect" if the Commission does not approve the Merger on the terms set forth in the NSA "as filed without condition or modification."[39] Based on our review of the elements of the document that has been submitted, the Commission concludes that the Nonunanimous Settlement Agreement has complied with all of the provisions of Section 130.10.

22. Section 130.11 of the Commission's rules provides:

> A full settlement presented in a base rate change application or other contested case, which should have an impact on a utility's customers, competitors, or the public, shall only be accepted after a hearing on whether the settlement is in the public interest.[40]

Office Building Association of Metropolitan Washington ("AOBA"); the District of Columbia Government ("District Government"); the District of Columbia Water and Sewer Authority ("DC Water"); National Consumer Law Center, National Housing Trust, and National Housing Trust Enterprise Preservation Corporation ("NCLC/NHT").

[31] *Formal Case No. 1119*, Motion for Approval of Non-unanimous Full Settlement Agreement and Stipulation ("Motion for Approval"), with attached Non-unanimous Full Settlement Agreement and Stipulation, filed October 30, 2015.

[32] NSA, ¶¶ 1-142; *see also* NSA, ¶ 133 ("The Settling Parties agree that this Settlement Agreement represents the entirety of the agreement among the Settling Parties concerning the subject matter hereof and does not limit or otherwise affect rights and obligations any Settling Party may have under any other agreement.").

[33] NSA, p. 1.

[34] NSA, pp. 1-3.

[35] NSA, ¶ 142.

[36] NSA, ¶ 135.

[37] NSA, ¶ 142.

[38] NSA, ¶ 137.

[39] NSA, ¶ 136(c).

[40] 15 DCMR § 130.11.

A Public Interest Hearing was held on December 2-4, 2015, during which the Settling and Nonsettling parties to the case were given an opportunity to present evidence concerning whether or not the NSA was in the public interest. Prior to that, on November 17-18, 2015, the Commission held a Community Hearing in which interested persons who are not parties to the proceeding (for example individual ratepayers and representatives of organizations) were given the opportunity to comment on the proposed NSA. Thus, the requisite hearings on the settlement have been held. In addition, the Commission has accepted written comments on the Nonunanimous Settlement Agreement from interested persons.

23. In this case, the Commission must determine whether a settlement agreement that has not been adopted by all of the parties in this contested case is in the "public interest" under Commission Rule 130.11.[41] The Commission has held "[i]f there is less than complete agreement among the parties, a settlement agreement no longer may operate of its own force. The Commission may adopt the terms of a contested settlement, however, if it undertakes an independent inquiry to determine the proposal's compliance with the public interest."[42] The Commission went on to quote from *Mobil Oil Corp v. FPC*, a case in which the Supreme Court approved the Fifth Circuit's analysis of federal APA provisions governing offers of settlement and found that where a settlement lacks unanimity, "it may be adopted as a resolution *on the merits*, if the Commission makes an independent finding supported by 'substantial evidence on the record as a whole' that the proposal" is in the public interest. [43] In reviewing the application for reconsideration by the intervenor, GSA, the Commission found "there remain no material issues of fact as to whether adoption of the terms of the proposed settlement is in the public interest."[44] That is clearly not the case in this proceeding. The D.C. Court of Appeals reviewed

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[41] To date, the Commission has only considered one unanimous settlement when determining whether an electric utility merger was in the public interest. In *Formal Case No. 1002*, Order No. 12395, the Commission designated 15 specific issues for consideration in determining if the merger was in the public interest. Those issues incorporated some, but not all, of the six public interest factors the Commission was using at the time. In reviewing the settlement, the Commission stated:

> As a result of the Settlement Agreement, those issues are no longer contested by the parties to the proceeding. Given that an agency is under no obligation to address matters no longer in dispute, there is no imperative for the Commission to address each of the 15 issues identified in Order No. 12189. Nonetheless, to ensure that all the issues are fully addressed, the Commission will analyze all 15 of the issues designated in this proceeding. Our analysis reinforces our conclusion that it is in the public interest to approve the proposed Merger subject to the terms set forth in the Settlement Agreement. *Formal Case No. 1002*, Order No. 12395, ¶ 46 (footnotes omitted).

[42] *Formal Case No. 777*, *In the Matter of the Application of the Chesapeake and Potomac Telephone Company for Authority to Increase and Restructure the Schedule of Rates and Charges for Telephone Service* ("*Formal Case No. 777*"), Order No. 7603 at 6, rel. July 16, 1982 ("Order No. 7603).

[43] *Formal Case No. 777*, Order No. 7603 at 7 (emphasis in original) citing *Mobil Oil C. v. Federal Power Commission*, 417 U.S. 283, 314 (1974), citing *Placid Oil Co. v. Federal Power Commission*, 483 F2d 880,893 (5th Cir. 1973).

[44] *Formal Case No. 777*, Order No. 7603 at 16.

the Commission's decision on appeal and concluded that the Commission has the authority to act on a nonunanimous decision and set out the appropriate procedural requirements, citing the same language from *Mobil Oil.* [45] Furthermore, other regulators, when considering nonunanimous settlement agreements, have found that the "objectivity of the settlement proposal comes not only from its advocates but also from its opponents"[46] and that consideration of "valid objections to [a] settlement proposal . . . may merit modification or total rejection of the proposal."[47]

24. Finally, the Commission's rules require the Commission to find a full settlement "in a base rate change application or other contested case," such as this case, to be in the "public interest."[48] In the past twenty years, the Commission has approved unanimous and nonunanimous settlement agreements for base rate cases,[49] accelerated infrastructure remediation projects,[50] price cap plans,[51] mergers[52] as well as consumer protection violations,[53] and in each case defined public interest in relation to the goals of those cases.[54]

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45 *U.S. v. Public Service Comm'n of the District of Columbia*, 465 A.2d 829, 832-33 (D.C. 1983) (internal citations omitted) emphasis in original). Commissioner Phillips objects to the use of the standards cited from *Placid Oil Co.* and *Michigan Consolidated Gas Co.* as the standard of review for considering settlement agreements before this Commission. Instead, Commissioner Phillips believes that the appropriate standard of review that should be applied to the Commission's consideration of the NSA is the standard that is provided at Paragraph 174 of his dissenting opinion.

46 *Placid Oil Co v Federal Power Comm'n*, 483 F.2d880, 893 (5th Cir. 1973).

47 *Michigan Consolidated Gas Company v Federal Power Comm'n*, 283 F.2d 204, 224 (D.C. Cir. 1960).

48 15 DCMR § 130.11 (1995).

49 *See Formal Case No. 1087, In the Matter of the Application of Potomac Electric Power Company for Authority to Increase Existing Retail Rates and Charges for Electric Distribution Service*, Order No. 16790, rel. May 25, 2012; *Formal Case No. 1054, In the Matter of the Application of Washington Gas Light Company for Authority to Increase Existing Rates and Charges for Gas Service*, Order No. 14694, rel. December 28, 2007; *Formal Case No. 1032, In the Matter of the Investigation into the Potomac Electric Power Company's Distribution Service Rates*, Order No. 13554, rel. April 7, 2005; *Formal Case No. 922, In the Matter of the Application of Washington Gas Light Company, District of Columbia, Division, for Authority to Increase Existing Rates and Charges for Gas Service* ("*Formal Case No. 922*"), Order No. 12434, rel. August 6, 2002; *Formal Case No. 945, In the Matter of the Investigation Into Electric Service Market Competition and Regulatory Practices* ("*Formal Case No. 945*"), Order No. 11845, rel. December 5, 2000; *Formal Case No. 921, In the Matter of the Application of Washington Gas Light Company, District of Columbia Division, for Approval of Its Fourth Least Cost Plan*, Order No. 11268, rel. December 21, 1998; *Formal Case No. 922*, Order No. 11246, rel. September 30, 1998; *Formal Case No. 922*, Order No. 10864, rel. October 24, 1996; *Formal Case No. 922*, Order No. 10704, rel. September 29, 1995; *Formal Case No. 917, In the Matter of the Application of Potomac Electric Power Company for the Approval of its Second Least Cost Plan*, Order No. 10650, rel. June 30, 1995; *Formal Case No. 934, In the Matter of the Application of Washington Gas Light Company, District of Columbia Division, for Authority to Increase Existing Rates and Charges for Gas Service*, Order No. 10464, rel. August 1, 1994.

50 *See Gas Tariff 97-3, In the Matter of the Application of Washington Gas Light Company for Authority to Amend its Rate Schedule No. 6* ("*Gas Tariff 97-3*"), *Gas Tariff 06-1, In the Matter of the Application of Washington Gas Light Company for Authority to Amend General Service Provision No. 23* ("*Gas Tariff 06-1*"), *Formal Case No. 1027, In the Matter of the Emergency Petition of the Office of People's Counsel for an Expedited Investigation into the Distribution System of Washington Gas Light Company* ("*Formal Case No. 1027*"), Order No. 15627, ¶ 17, rel. December 16, 2009.

V. MAJORITY OPINION REGARDING RULE 130.16

25. The record reflects no evidence of bad faith, lack of an arm's length transaction, fraud or collusion with respect to the NSA that has been presented.[55] However, the NSA as filed is not in the public interest, when considered as a whole, for the following reasons: (1) the evidentiary record failed to provide a persuasive rationale for excluding non-residential ratepayers from sharing in the proposed $25.6 million allocation of the Customer Investment Fund ("CIF") for Customer Base Rate Credit relief and fails to clearly establish that the proposal in its present form would not undermine the Commission's ability to continue to implement its expressed policy of addressing the negative class rate of return that currently exists for residential ratepayers and the resulting subsidies that are placed on non-residential customers; (2) the NSA assigns roles to Exelon and Pepco that undermine competition and grid neutrality and are inconsistent with the District's restructured market; (3) the proposed uses of the CIF for sustainability projects and LIHEAP do not improve Pepco's distribution system nor advance the Commission's objective to modernize the District's energy systems and distribution grid as set out in *Formal Case No. 1130*, our Modernizing the Energy Delivery System for Increased Sustainability ("MEDSIS") docket; and (4) the proposed method of allocating the CIF funds to District Government agencies deprives the Commission of the ability to enforce compliance with the terms of the NSA and to ensure that all of the funds are being used to further the objectives of enhancing the distribution system and benefiting District ratepayers. Each of these grounds for rejection are discussed in further detail below.

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[51] *See Formal Case No. 1004, In the Matter of Verizon Washington, DC, Inc.'s Price Cap Plan 2004 for the Provision of Local Telecommunications Services in the District of Columbia*, Order No. 13263, rel. August 4, 2004; *Formal Case No. 1005, In the Matter of Verizon Washington, DC, Inc.'s Price Cap Plan 2002 for the Provision of Local Telecommunications Services in the District of Columbia*, Order No. 12338, rel. February 28, 2002; Formal Case No. 962, *In the Matter of the Implementation of the District of Columbia Telecommunications Act of 1996 and the Implementation of the Telecommunications Act of 1996*, Order No. 11979, rel. April 20, 2001; *Formal Case No. 814, In the Matter of the Investigation into the Impact of AT&T Divestiture and Decisions of the Federal Communications Commission on Bell Atlantic – Washington, D.C. Inc.'s Jurisdictional Rates*, Order No. 11545, rel. November 17, 1999.

[52] *See Formal Case No. 1002*, Order No. 12395, rel. May 1, 2002.

[53] *See Formal Case No. 1105, Investigation into the Business and Solicitation Practices of Starion Energy in the District* ("*Formal Case No. 1105*"), Order No. 17369, ¶ 45, rel. February 6, 2014.

[54] *Formal Case No. 1115, Application of Washington Gas Light Company for Approval of a Revised Accelerated Pipe Replacement Program* ("*Formal Case No. 1115*"), Order No. 17789, ¶¶ 61-62, rel. January 29, 2015. To that list can be added a surcharge mechanism for accelerated gas pipeline replacement projects, the subject matter of the Settlement Agreement in *Formal Case No. 1115*, wherein the Commission stated, "[i]n this case, having previously concluded that the safety of the public in accelerating replacement of gas pipelines that are leak prone or of such age to be subject to increased risk of leaks and/or failure is of paramount importance, a determination must be made whether approving a surcharge mechanism that obligates ratepayers to pay an additional amount upfront for the projects in the Revised APRP is in the public interest." *Formal Case No. 1115*, Order No. 17789, ¶ 63, rel. January 29, 2015.

[55] DC SUN/MDV-SEIA in their brief alleges that there is a connection between the NSA and the $25 million paid by Pepco for naming rights for the proposed soccer stadium; however, it did not present any evidence to support its allegation.

A. The Settling Parties have not established that the proposed $25.6 million Customer Base Rate Credit Proposal is fair and consistent with Commission policy

1. Exclusion of Nonresidential Ratepayers

26. Nonsettling Parties GSA and DC SUN/MDV-SEIA criticize the proposal to use $25.6 million of the CIF for a Customer Base Rate Credit that is only available to residential customers and residential master metered apartment customers. In relation to Factor 1, GSA concludes that because nonresidential customers do not share in the CIF, there is no "guaranteed, direct and tangible benefits under the Settlement Agreement" for that class under the Merger.[56] GSA points out that federal customers represent 25-30% of Pepco's annual distribution load; however, GSA asserts that no explanation has been proffered as to why the NSA excludes nonresidential customers from directly sharing in fund allocation from the CIF.[57] DC SUN/MDV-SEIA shares GSA's concern that only residential customers will receive any benefit from the CIF commitment and the largest nonresidential customers will receive no direct or assured rate relief.

27. GSA adds that in addition to receiving no direct benefit from the CIF, nonresidential ratepayers will also continue to carry the burden of subsidizing residential ratepayers as shown by the negative class rate of return ("ROR") in recent base rate proceeding.[58] GSA asserts that approving the NSA will make it more difficult for the Commission to correct the negative ROR in future rate cases. To address its concerns, GSA asserts on brief that the Commission should condition approval of the NSA on the implementation of a two-year rate freeze for all ratepayers.[59] GSA asserts that a decision by the Commission to allow the commercial class to share in the CIF, similar to what was agreed upon in New Jersey, would not solve the subsidy problem; instead GSA maintains that the imposition of a two year rate freeze for commercial customers would be similar to providing all customers with a rate credit, effectively giving the commercial class direct and guaranteed benefits without harming residential customers, exacerbating the negative ROR issue, and resulting in future rate shock.[60]

28. The Joint Applicants rebut GSA's assertion that the NSA provides no direct benefits to nonresidential customers because it does not guarantee rate reductions. The Joint Applicants disagree with GSA's arguments in six (6) points: (1) they assert that Order No. 17947 does not require a guaranteed rate reduction, but only that any savings be shared among

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[56] GSA's Br. at 12, citing AOBA (B) at 5:14-15 (Bowden), NSA Tr. at 486:8-22 (Commission questioning Oliver) (Emphasis omitted).

[57] GSA's Br. at 14.

[58] GSA's Br. at 13-14.

[59] GSA's Br. at 17.

[60] GSA's Br. at 18.

ratepayers; (2) nonresidential customers will realize direct and tangible benefits through synergy savings projected at $51.2 million; (3) the Commission does not have authority to unilaterally impose a rate freeze; (4) GSA's proposal was never presented on the record, therefore, the proposal was never tested through discovery, cross-examination, or the submission of testimony; (5) GSA should not get a "second bite at the apple" to present on brief its untested proposal, which is outside the four corners of the NSA, when it made a deliberate decision not to submit testimony while claiming it wanted to remain neutral; and (6) GSA will be better off if the Merger is approved because it will receive the benefits of the synergy savings and increased reliability.[61]

29. DC Water echoes the Joint Applicants' assertion that the commercial class will receive benefits under the NSA, contending that several commercial class representatives are party to the NSA and that "[i]f what GSA is arguing is that there are no direct and immediate financial benefits to the federal government, GSA has no one but itself to blame, given GSA's decision not to actively participate in this case."[62] DC Water further asserts that GSA's criticisms of the NSA are untimely and should be given no weight. DC Water argues that GSA is a regular participant in Commission proceedings who here "made a deliberate decision not to participate in the case," filing no testimony and failing to participate in the evidentiary hearings.[63] DC Water asserts that "[i]t would be prejudicial and fundamentally unfair to the parties . . . to give any weight to GSA's [brief on the merits and] views on the Settlement."[64] Furthermore, DC Water contends that DC SUN/MDV-SEIA "lack standing" to oppose the CIF enhancements and commercial class benefits under Factor 1, particularly when the District Government, DC Water, and AOBA, as the parties who have actively been advancing the commercial customers' interests in the proceeding from the outset, have all concluded that the Settlement provides significant benefits to commercial customers.[65]

30. The record supports the Settling Parties' position that GSA has failed to proactively litigate this case and that GSA deprived all parties of the opportunity to vet GSA's proposal for a two-year rate freeze, which was first articulated on brief and did not provide the value of the proposed two-year rate freeze to ratepayers. Therefore, there is no record evidence that allows the Commission to assess the merits of GSA's proposal for a two-year rate freeze; therefore we reject the GSA proposal.

31. However, GSA is not the only Nonsettling Party to raise the issue of the Settling Parties' failure to include non-residential customers in the Customer Base Rate Credit proposal; DC SUN/MDV-SEIA expressed a similar concern that the NSA unfairly excludes the

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61 Joint Applicants' R. Br. at 28-30.

62 DC Water's R. Br. at 2-3.

63 DC Water's R. Br. at 1-2.

64 DC Water's R. Br. at 2.

65 DC Water's R. Br. at 4-5.

commercial class from sharing in the CIF. DC Water's unsubstantiated assertion that DC SUN/MDV-SEIA lacks standing to assert that the commercial class should receive a portion of the CIF is clearly incorrect. DC SUN/MDV-SEIA is a party to this proceeding and its participation was not limited to particular issues. Therefore, DC SUN/MDV-SEIA is permitted to question the fairness of excluding commercial class customers from sharing in the CIF. Even if DC SUN/MDV-SEIA had no standing to raise the issue and despite GSA's lack of active participation in the evidentiary hearing, the fact that nonresidential ratepayers are not receiving a portion of the CIF is evident from the text of the NSA and not a fact that GSA needed to establish in the evidentiary hearings.[66] Even without GSA, the lack of commercial customer participation in the Customer Base Rate Credit proposal was established by questions asked by the Commission during the Public Interest Hearing. Joint Applicant witness Khouzami confirmed that only residential and Master Metered Apartment ("MMA") customers would receive a share of the $25.6 million Customer Base Rate Credit from the CIF.[67]

32. The Commission further notes, as pointed out by GSA, that the NSA provides for a CIF "with a value totaling $72.8 million,"[68] over half of which ($39.6 million) is allocated for the exclusive benefit of lowering the rates of residential customers ($25.6 million rate increase offsets for residential and MMA customers and $14 million in immediate bill credits for residential customers).[69] However, the only rationale provided by the Settling Parties for excluding nonresidential customers from sharing in the Customer Base Rate Credit is that: (1) some major commercial class customers signed onto the NSA and agreed to the proposed allocations of the CIF; and (2) nonresidential class customers will receive other benefits from the NSA such as increased reliability and synergy savings. The Commission is not persuaded by either of these responses. First, it is insufficient to assert that the Settlement Agreement is *ipso facto* beneficial for all commercial class customers merely because some commercial class customers like the District Government, DC Water, and AOBA are parties to the settlement. It appears that the Settling Parties negotiated terms that provided direct benefits for their constituents or served their agendas; however, there is no evidence to explain why other commercial customers (both large and small) were omitted or evidence to quantify the impact that the exclusion of non-residential ratepayers from the Customer Base Rate Credit would have on parties that did not sign onto the agreement or to other non-residential ratepayers. Second, the Nonsettling Parties provide persuasive evidence that there is a difference in the benefits received by the residential versus the nonresidential class of ratepayers and that no rational explanation is given for the difference. There is no dispute that there are no guaranteed benefits that the non-residential customers will share. Synergy savings, which are benefits for residential and non-residential ratepayers alike, are not "guaranteed" savings whereas the $25.6 million Customer Base Rate Credit constitutes a known and quantified benefit. Based on the foregoing, the Commission finds merit in DC SUN/MDV-SEIA and GSA's assertions that excluding the

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66 NSA, ¶¶ 4-5.

67 NSA Tr. at 183:13-20 (Commissioner Fort questioning Khouzami).

68 NSA, ¶ 3.

69 NSA, ¶¶ 4-5.

commercial class from receiving benefits under the CIF is unfair and unjustified on the evidentiary record of this proceeding.

2. Settling Parties Failed to Establish that the NSA will not Constrain the Commission's Ability to Address Negative Class Rates of Return in Future Base Rate Case Proceedings

33. GSA expresses concern that the Commission's ability to address negative class RORs will be further inhibited under this proposal because in order to address the inevitable rate shock that the expiration of the credit will cause, the Commission will have to constrain the rate in which the negative class ROR is reduced during the period ratepayers receive the Customer Base Rate Credit. DC SUN/MDV-SEIA also argues that there is discord among the Settling Parties, specifically the Joint Applicants, AOBA, and OPC, as to the meaning of Paragraph 48 and its effect on future rate cases.[70] NSA Paragraph 48 states that nothing in the NSA shall be construed as changing the Commission's stated goal of ending negative class RORs over a series of Pepco rate cases. DC SUN/MDV-SEIA points to a discrepancy between Commission Exhibit 5, submitted by the Joint Applicants, and AOBA NSA-1 (AOBA Work Papers), noting that AOBA expects paragraph 48 to cause an increase in the distribution portion of residential rates of 45%, not 30% as presented in the Joint Applicants' work papers.[71]

34. The Settling Parties respond arguing that the language of paragraph 48 is not ambiguous; that DC SUN/MDV-SEIA misinterprets the AOBA work papers, and that, in fact, there is no disagreement between the Settling Parties as to the meaning of Paragraph 48. The Joint Applicants further assert that AOBA, the proponent of Paragraph 48, has not expressed any concern over the meaning or effect of the provision.[72] OPC asserts that the language in NSA Paragraph 48 does not restrict the Commission's discretion in future rate cases concerning rate design issues, stating that the "Settling Parties are in agreement that the Settlement Agreement should not be deemed to change the Commission's previously stated goal regarding putting an end to negative class RORs."[73] OPC asserts that the Settling Parties are in agreement that Paragraph 48 should not be construed as putting "any Settling Party on record as supporting that goal" of eliminating negative class RORs. OPC also states that "nothing in this provision would constrain the Commission to its past determinations," and that there is nothing in the NSA that presumes or states any particular rate design in the future. OPC also asserts that the NSA "in no way limits or otherwise constrains the ability and authority of the Commission to establish 'just and reasonable rates'" as well as the Commission's "authority to employ principles of gradualism when setting higher rates or considering other rate designs to protect against and temper 'rate shock' to consumers" – points which were confirmed by AOBA witness Oliver.[74]

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70 DC SUN/MDV-SEIA's Br. at 12.

71 DC SUN/MDV-SEIA's Br. at 12, n.34.

72 Joint Applicants' R. Br. at 20.

73 OPC's Br. at 38.

74 OPC's Br. at 33, OPC's R. Br. at 16.

DC Water adds that Paragraph 48, in conjunction with the residential rate credits provided in paragraph 4 of the NSA, provide a benefit to residential customers and master-metered apartment customers. DC Water also asserts, with no evidentiary proof, that this benefit does not come at the expense of commercial customers, nor will the Settlement's rate credit "stand in the way of continued movement toward equitable class RORs."[75]

35. The District Government also disagrees with DC SUN/MDV-SEIA's assertions arguing that there is no disagreement among the Settling Parties as to the interpretation of Paragraph 48, further asserting that DC SUN/MDV-SEIA's argument that the Commission will be constrained in its ability to implement its policy to reduce the negative rate of return is unfounded. The District Government argues that the Commission's ability to address the negative ROR issue will not be impacted by the NSA and any "rate shock" will be mitigated for three reasons: (1) estimated rate increases will only appear on the distribution portion of customers' bills; therefore, the rate increase estimates provided by the Joint Applicants and AOBA will be far less dramatic on a total bill basis; (2) the Customer Base Rate Credit will appear as a line item on customers' bills so they will know how much their bills will increase before the expiration of the credit; and (3) the most vulnerable ratepayers (*i.e.*, RAD customers) will not experience rate shock because any increases in their bills will be fully offset by the RAD discount as a result of Commission Order No. 18059.[76]

36. During the Public Interest Hearing, the Settling Parties were questioned on the mechanics of the Customer Base Rate Credit. Chairman Kane asked OPC witness Dr. Dismukes: "Do you know what kind of a rate increase . . . would be required to move the residential, let's just start with the R class that is now at . . . minus 2.54 to a unitized, to 1?" and "Do you know whether the illustrative rate increases that I discussed with Mr. Velaquez yesterday, which was $3.75 in the first case and 2 something in the second case, where that would move us – would move the rate design in terms of being less negative?" and "[C]an I interpret [OPC agreeing to Paragraph 48] to mean that the People's Counsel supports putting an end to negative RORs?"[77] OPC witness Dismukes did not know, or could not definitively answer, any of the Chair's questions. The Commission then turned its attention to work papers submitted by the parties. Those work papers provided further evidence of discord among the Settling Parties regarding how negative rates of return will be addressed in future rate cases. Joint Applicants assumed a 22% allocation of revenue requirement to residential classes and AOBA assumed a 47% allocation of revenue requirement to the residential classes.[78] The Joint Applicants also could not answer how this proposal would work with or impact the current Bill

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[75] DC Water's Br. at 10.

[76] District Government's R. Br. at 8-10.

[77] NSA Tr. at 429:2-430:3 (Questions by Chairman Kane).

[78] Commission Exhibit 5, submitted by the Joint Applicants for a cost allocation for the next three base rate cases all based on a cost allocation of 22% to residential class customers. *See also,* AOBA NSA-1; AOBA allocates 47% of the projected RR to the residential classes.

Stabilization Adjustment, and taxes on customers' bills.[79] For these reasons, the Commission finds that the Settling Parties have failed to clearly establish on the record how the Customer Base Rate Credit as applied to different revenue increase assumptions would work.

37. There was no evidence presented that showed the Settling Parties had taken into account the Commission's policy concern about correcting the commercial class' long history of subsidizing the residential class through the negative ROR, and developed a proposal that would not undermine the policy goal. Nor could the Settling Parties adequately demonstrate that the proposed Customer Base Rate Credit for residential customers would not result in further "subsidizations" because it provides immediate rate relief for the residential class while excluding the nonresidential class. For these reasons, the Commission finds that the Settling Parties have failed to clearly establish on the record how the Customer Base Rate Credit would impact the Commission's ability to continue to implement its expressed policy of addressing the negative class rate of return that currently exists for residential ratepayers and the resulting subsidies that are placed on non-residential customers. Therefore, the Commission cannot find that the exclusion of the nonresidential class from sharing in the immediate rate relief that a portion of the CIF could provide is reasonable or justified.

B. The NSA Contains Provisions that Undermine Competition and Grid Neutrality

38. Under NSA Paragraph 118, Exelon must "by December 31, 2018 develop or assist in the development of 10 MW of solar generation in the District and will enter into good-faith negotiations of a commercially acceptable arrangement for 5 MW of such generation to be constructed at the DC Water Blue Plains Advanced Wastewater Treatment Plant ('Blue Plains') and operational by December 31, 2018."[80] However, in the case that "a commercially acceptable arrangement cannot be negotiated for 5 MW," the "10 MW of solar generation to be developed under this paragraph shall be reduced to 7 MW."[81] Exelon commits that the "construction and installation shall be competitively bid with a preference for qualified local businesses."[82] Furthermore, in NSA Paragraph 119, Exelon commits to providing "$5 million of capital to creditworthy governmental entities at market rates for the development of renewable energy projects in the District;" thus Pepco will "coordinate with the District Government to facilitate planning for and interconnection of renewable generation to be developed."[83]

39. Additionally under the NSA, the Joint Applicants agreed that Pepco will "coordinat[e] with the District to interconnect and develop at least four (4) microgrids. The

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79 NSA Tr. at 197:12-20 (Questions by Commissioner Fort to witness Khouzami), NSA Tr. at 288:15-289:2 (Redirect of witness Khouzami).

80 NSA, ¶ 118.

81 NSA, ¶ 118.

82 NSA, ¶ 118.

83 NSA, ¶ 120.

objectives of Pepco and the District with respect to these microgrids will include the following: '(i) to encourage on-site generation, including generation developed by competitive suppliers, (ii) to promote electrical interconnection that enhances the reliability of the electric grid, (iii) to continue universal service and consumer protections for all District electric consumers, and (iv) to identify projects that are cost effective and that leverage private investment, as well as public funding.'"[84] These microgrids are to be installed "within five (5) years after receiving approval from the Commission of the microgrid projects and of Pepco's cost recovery" but "an interim progress report on the legal, financial and practical issues associated with the planning and development of the microgrid project proposals" should be submitted to the Commission not later than twelve (12) months after the close of the Merger.[85]

40. The Nonsettling Parties have raised concerns about both of these post-merger actions. DC SUN/MDV-SEIA question "the ability of an Exelon-owned Pepco to fairly operate the distribution system," further stating that "the Settlement Agreement is a step backward because it gives Exelon a favored position vis-à-vis its District-based competitors in developing emerging technologies."[86] WGL Energy "seeks assurance that Exelon's competitive energy market commitments in the NSA to develop, build, own and operate solar generation and micro-grid facilities will not adversely impact competitive energy markets in the District."[87]

41. Regarding solar development, WGL Energy asserts "[c]ompetitive energy markets will best flourish if solar generation is provided to District agencies through competitive bid processes and if the regulated electric utility only owns non-commercial generation that is essential to the reliability and stability of the electric distribution grid."[88] DC SUN/MDV-SEIA asserts that "the Settlement Agreement gives Exelon a preferred position in developing up to 10 MW of solar generation and four microgrids in the District"[89] and that "granting Exelon the sole right to negotiate a contract for 5 MW of solar generation at the Blue Plains Advanced Waste Water Treatment Plant clearly allows Exelon to misuse its controlling position [over Pepco]," going into detail about how prior negotiations with Washington Gas Energy Services ("WGES") broke down over uncertainty about obtaining the necessary interconnection agreement from Pepco.[90] DC SUN/MDV-SEIA contends that through the NSA a "competitive process" was replaced by "a sole-source procurement" to the benefit of a Pepco affiliate.[91] Beyond the Blue Plains development, DC SUN/MDV-SEIA states that "Exelon's participation in the solar market

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84 NSA, ¶ 128.

85 NSA, ¶ 128.

86 DC SUN/MDV-SEIA's Br. at 43.

87 WGL Energy's Br. at 3.

88 WGL Energy's Br. at 3.

89 DC SUN/MDV-SEIA's Br. at 44, citing NSA, ¶¶ 118, 128.

90 DC SUN/MDV-SEIA's Br. at 44-45.

91 DC SUN/MDV-SEIA's Br. at 45-46.

will [ ] displace other competitors while giving Exelon another opportunity to earn a profit."[92] Further, GRID2.0 explains that the development of 10 MW of solar generation, 5 MW of which would be at DC Water Blue Plains, takes credit for an "eminient[ly] feasible" project and "contort[s] an already healthy market dynamic."[93] During the evidentiary hearing, GRID2.0 witness Hempling explained that the NSA was giving Exelon a "first mover" advantage.[94]

42. Based on the foregoing arguments, the Commission is persuaded that with respect to the solar project at DC Water, the NSA assigns a role to Exelon that undermines competition and grid neutrality as mandated in D.C. Code §§ 34-1506 and 34-1512. Section 34-1506 provides that "[t]he electric company shall provide distribution services to all customers and electricity suppliers on rates, terms of access, and conditions that are comparable to the electric company's own use of its distribution system. The electric company shall not operate its distribution system in a manner that favors the electricity supply of the electric company's affiliates."[95] Section 34-1512 provides that "[t]he Commission and the Office of the People's Counsel shall monitor the District of Columbia retail markets for electricity supply and services declared by the Commission to be potentially competitive services to ensure that the markets are not being adversely affected by anticompetitive conduct and anticompetitive conditions."[96] There is no question that the District of Columbia retail market for solar electricity supply is a competitive one. Exelon or its affiliates are not precluded from being one of the competitive suppliers of solar electricity in the District. Consequently, the Commission has no objection to the portion of NSA Paragraph 118 that contains Exelon's commitment to develop or assist in the development of 7 MW of solar generation in the District outside of Blue Plains by December 31, 2018. However, accepting a NSA with a provision that awards to Exelon the exclusive right to develop 5 MW at DC Water without competition or without going through DC Water's procurement process and with no definite terms is inconsistent with the Commission's responsibilities under D.C. Code § 34-1512.

43. Furthermore, during the Public Interest Hearing, the Commission discussed with witnesses the circumstances surrounding a previous attempt to develop 5 MW of solar generation at DC Water using a different vendor that was cancelled because of a business issue related to whether the interconnection could be made before the federal investment tax credit would expire. With the recent extension of that tax credit, it is unclear whether the NSA provision is actually offering DC Water the most competitive deal. Additionally, there was some question raised with respect to whether Exelon had actually made an offer to assume all of the costs for the project in question. For all of these reasons, the Commission concludes that NSA Paragraph 118 as written is not proper and should not be included in the NSA in its present form.

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92 DC SUN/MDV-SEIA's Br. at 54.

93 GRID2.0's Br. at 26.

94 NSA Tr. at 662:6-14 (Joint Applicants' Cross of Hempling); 713: 17-22 (Chairman Kane questioning Hempling); 721:6-9 (Commissioner Fort questioning Hempling)

95 D.C. Code § 34-1506.

96 D.C. Code § 34-1512 (a).

44. Regarding NSA Paragraph 128 and microgrid development, GRID2.0 asserts that "[r]ather than demonstrating a particular willingness to embrace microgrid strategies, this proffering instead positions Exelon to shape and determine the options explored by DC" as well as "grants the monopoly distribution utility an unearned, insider role in defining how microgrid strategy will be explored and developed."[97] Additionally, GSA asserts that "a microgrid project developed by Pepco and [the District Government] should not be given preferential consideration or rate-making treatment relative to a competing non-[District Government] microgrid project that is as cost-effective and socially beneficial."[98] GSA contends that the Settlement Agreement suggests "preferential consideration and rate-making treatment, since the agreement's multiple microgrid requirement will almost certainly limit Pepco's consideration of competing microgrid projects that may be developed by other parties."[99]

45. For the same reasons that the Commission finds that the solar development provisions of the NSA undermine competition and grid neutrality, we also find that NSA Paragraph 128 undermines competition for the creation of the four microgrid pilot projects. However, additionally, the Commission takes issues with respect to the role that is described for Pepco to work with the District on four public purpose microgrids. Specifically, the role that Pepco should play in the development of private and public microgrids in the District is a subject currently being considered by the Commission in *Formal Case No. 1130*. The NSA prematurely attempts to resolve the issues being considered in *Formal Case No. 1130* by assigning roles to Pepco in the development of microgrids that the Commission has yet to determine are reasonable or appropriate in the context of modernizing the District's energy system. Therefore, the Commission finds NSA Paragraph 128 is objectionable on that basis as well.

C. The proposed uses of the Customer Investment Fund for sustainability projects and LIHEAP do not improve Pepco's distribution system nor advance the Commission's objective to modernize the District's energy systems and distribution grid as set out in *Formal Case No. 1130*

46. DC SUN/MDV-SEIA and GRID2.0 raise questions about the uses of some of the CIF funding. Specifically, the NSA provides: $3.5 million to the Renewable Energy Development Fund ("REDF"), $3.5 million to the Sustainable Energy Trust Fund ("SETF"), $10.05 million to the Green Building Fund ("GBF"), and $9 million to the Low-Income Home Energy Assistance Program ("LIHEAP").[100] SETF and REDF are special purpose funds that are protected from being reprogrammed to the District's General Fund under the D.C. Code.[101]

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97 GRID2.0's Br. at 28.

98 GSA's Br. at 18-19.

99 GSA's Br. at 19.

100 NSA, ¶¶ 6-9.

101 *See* D.C. Code § 6-1451.07(a) (2013 Repl.) (amounts deposited in the **Green Building Fund** "shall not be transferred or revert to the General Fund of the District of Columbia . . . but shall be continually available for the uses and purposes set forth in this section. . . ."); D.C. Code § 34-1436(a) (2013 Repl.) (amounts deposited in the **Renewable Energy Development Fund** "shall not any time be transferred to, or lapse into, or be commingled with

Nevertheless, funds have historically been transferred from these funds and reprogrammed for other uses. DC SUN/MDV-SEIA and GRID2.0, as well as this Commission, raised concerns regarding the potential reprogramming or reallocation of the funds that are not protected by law during the District's budgetary process. Commission Exhibit NSA-2 documents the history of the Mayor and District Council reprogramming funds from the REDF and SETF. That document shows that a total of more than $34 million has been transferred from the SETF. These are monies that have been paid by District ratepayers through the statutory SETF surcharge on their energy bills. This surcharge generates about $20 million each year.

47. As quoted by DC SUN/MDV-SEIA, District Council Members Cheh, Grasso, Silverman, and Allen expressed concern in a letter to the Commission that "mayors frequently sweep or reprogram special purpose funds into the District's General Fund when budget pressures arise" and "[t]here is nothing in the agreement that requires the settlement funds to supplement rather than supplant the special purpose funds' regularly allocated annual budgets."[102] Chairman Kane, during her questioning of Director Wells, asked whether "the money gets transferred out [to the General Fund] by request of the mayor, approval of the council in a Budget Support Act or on the initiative of council and a Budget Support Act?" Director Wells explained that "[i]f [the funds are] transferred into the general fund, it had to – the law has to be changed . . . for the period of the budget."[103] With respect to the most recent transfer of $3.5 million from the SETF and $500,000 from the EATF to the General Fund, it occurred as part of the Fiscal Year 2016 Budget Support Act of 2015 and was approved unanimously by all District Council Members[104] Director Wells testified that such transfers, which he recommended when the District faced a $200 million deficit as the new administration took over, "was in error" and he testified he had discussions with the City Administrator to "put those funds back."[105] Additionally, Director Wells testified that the transfer of such funds is "bad policy" and "[t]he administration no longer supports" such actions.[106] OPC asserts "that such concerns are beyond the scope of this proceeding, as they are not in any way caused by or related

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the General Fund of the District of Columbia or any other fund or account of the District of Columbia, except as delineated in this section," and "[t]he Fund shall be continually available for the uses and purposes set forth in subsection (c) of this section"); D.C. Code § 8-1774.10(a)(2) (2013 Repl.) ("[a]ll funds deposited into the **Sustainable Energy Trust Fund**, and any interest earned on the funds, shall not revert to the unrestricted fund balance of the General Fund of the District of Columbia at the end of a fiscal year, or at any other time, but shall be continually available for the uses and purposes set forth in subsection (a) of this section without regard to fiscal year limitation"); and D.C. Code § 8-1774.11 (2013 Repl.) ("[a]ll funds deposited into the **Energy Assistance Trust Fund**, and any interest earned on the funds, shall not revert to the unrestricted fund balance of the General Fund of the District of Columbia at the end of a fiscal year, or at any other time, but shall be continually available for the uses and purposes set forth in subsection (a) of this section without regard to fiscal year limitation").

[102] DC SUN/MDV-SEIA'S Br. at 16 n.47.

[103] NSA Tr. at 119:3-22 (Commission questioning Wells).

[104] DC SUN/MDV-SEIA's Br. at 16 n.47, and Voting Information for the Final Reading on June 30, 2015 as reported on the Council's Website in the Legislation Information Management System.

[105] NSA Tr. at 123:17-124:20.

[106] NSA Tr. at 130:12-20, 131:14-20.

to the proposed merger, and in fact are concerns that long pre-date this proceeding" and that "[q]uestions as to how the District Government will ultimately allocate these funds are more suited for a legislative, as opposed to a regulatory forum such as the instant proceeding."[107] The Joint Applicants contend that DC SUN/MDV-SEIA and GRID2.0's concerns about funds to the District Government are based on "unsupported assertions" and they quote the D.C. Court of Appeals decision in *District of Columbia v. Kora & Williams Corp.*, for the proposition that, "'[G]overnment officials are presumed to act in good faith,' and when litigants like DC Sun and GRID2.0 allege that officials will not do so, they must 'prove bad faith by the District by well-nigh irrefragable proof.'"[108]

48. Furthermore, the proposed use of the $9 million for LIHEAP funding does nothing to impact the underlying issue of high electric bills in the long-term or the ability of RAD customers to access lower cost energy in the short-term. The Commission notes that in *Formal Case No. 1120* we have already started addressing some of these issues in relation to the RAD Program and through *Formal Case No. 1130* the Commission has begun considering ways to modernize the grid to realize long-term benefits for District ratepayers. However, in this proceeding, when questioned about the impact the proposed allocation of the CIF would have on RAD customers, witness Wells was not sure what, if any, impact it would have on existing programs. Chairman Kane questioned: "Will the availability of these funds reduce the amount of funding the District ratepayer is going to need to pay for residential aid discounts, the RAD program, to support energy costs for low income taxpayers?" Witness Wells responded, "I don't know what impact this would have on existing programs."[109] Additionally, witness Wells was questioned about the impact of NSA Paragraph 26, which deals with the arrearage management program, on low-income customers who qualified for the LIHEAP and RAD programs and again, he could not provide the Commission with a response as to how the CIF funding allocations would impact District customers[110]. It is this type of lack of specific details on how the NSA would be implemented and its effects on existing programs and low-income customers that cause the Commission to question the appropriateness of the allocations negotiated by the Settling Parties.

49. With respect to the Green Building Fund, D.C. Code § 1-204.93 provides the statutory framework for the Commission's core objectives. Specifically, the provision states that the Commission's "function shall be to insure that every public utility doing business in the District of Columbia is required to furnish *services and facilities reasonably safe and adequate*

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107 OPC's Br. at 30.

108 Joint Applicants' R. Br. at 14-15, quoting *District of Columbia v. Kora & Williams Corp.*, 743 A.2d 682, 695 (D.C. 1999).

109 NSA Tr. at 204:20-205:5 (Commissioner Fort questioning Wells).

110 NSA Tr. at 535:10-20 (Commissioner Fort questioning Nedwick). ("Currently RAD customers receive a bill credit and could also receive LIHEAP benefits if they're deemed qualified by [DOEE]. Is it your understanding that the credit discussed here in paragraph 26 would be in addition to those . . . sources that are already provided to low income customers?" "I don't know. I think that's a detail that's to be worked out as the program is developed, is my understanding.")

and in all respects just and reasonable."[111] To that end, the goals and responsibilities of the Commission revolve around ensuring a safe and reliable grid and maintaining the reliability of the District's electric distribution system. Yet, NSA Paragraph 8 seeks to designate money to the District of Columbia Department of Consumer and Regulatory Affairs' ("DCRA") Green Building Fund to promote undefined sustainability projects pursuant to D.C. Code § 6-1451.07. That provision of the D.C. Code establishes the Green Building Fund and makes the Mayor the administrator of the fund. Furthermore, D.C. Code § 6-1451.07(c)(2) delineates the specific uses of the fund stating:

> The fund shall be used for the following: (a) costs for at least 3 full-time employees at DCRA, or elsewhere as assigned by the Mayor, whose primary job duties are devoted to technical assistance, plan review, and inspections and monitoring of green buildings; (b) Additional staff and operating costs to provide training, technical assistance, plan review, inspections and monitoring of green buildings, and green codes development; research and development of green building practices; (d) education, training, outreach, and other market transformation initiatives; and (e) seed support for demonstration projects, their evaluation, and when successful, their institutionalization.[112]

50. Not only is NSA Paragraph 8 devoid of details as to how the $10.05 million designated for DCRA's Green Building Fund will be used, but also the code provision that establishes the fund cites purposes that are either wholly inappropriate uses for the money given the Commission's core mission (*i.e.*, funding DCRA employee salaries), or it lacks any specificity as to what types of programs the money will be used for (*i.e.*, seed support for demonstration projects). Additionally, the Settling Parties were unable to provide concrete details as to how the $10.05 million dollars would be used when questioned by Chairman Kane during the Public Interest Hearing. Chairman Kane specifically questioned District Government's witness Wells about how the money would be used and he could provide no definitive answer, ultimately conceding "I mean these negotiations were done to the last minute."[113] Furthermore, the NSA gives the Commission no oversight over the $10.05 million. When asked by Chairman Kane, "who will make the ultimate decisions on how the money in the Green Building Fund, this $10.05 million, . . . would be disbursed and for what purposes?" Witness Wells responded, "Well, clearly the mayor."[114] Therefore, the NSA designates this substantial sum of money to a fund that the Commission cannot determine, due to the lack of details provided on the record, whether it supports our core mission and it also fails to give the Commission any oversight or approval authority to make sure that the funds are used for projects

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111 D.C. Code § 1-204.93 (emphasis added).

112 D.C. Code § 6-1451.07 (c)(2).

113 NSA Tr. at 156:5-8. *See generally,* NSA Tr. at 152:1-160:13.

114 NSA Tr. at 157: 1-8.

and purposes that further our goal of maintaining the reliability of the District's electric distribution system. For these reasons, the Commission cannot find that the $10.05 million designated to DCRA's Green Building Fund in Paragraph 8 of the NSA is an appropriate use of the funds.

D. The proposed method of allocating the CIF funds to District Government agencies deprives the Commission of the ability to enforce compliance with the terms of the NSA and to ensure that all of the funds are being used to further the objectives of enhancing the distribution system and benefiting District ratepayers

51. DC SUN/MDV-SEIA state, "the Settling Parties offer no antidote for the lack of enforceability that would ensure that the contributed funds will actually be used for the identified purposes."[115] DC SUN/MDV-SEIA point out that the CIF provisions lack "an effective Commission enforcement mechanism" because the parties did not "include[ ] provisions in the Settlement Agreement giving the Commission jurisdiction over the District Government to enforce these grant provisions."[116] The District Government rebuts DC SUN's contention that the NSA's provisions are unenforceable as to the District, arguing that the District signed onto the NSA and expressly agreed to act in good faith to effectuate the terms of the NSA. The District Government asserts that, once approved the NSA will become a part of a Commission order that is enforceable by any party as well as the Commission. The District Government contends that it "routinely complies with Commission Orders in numerous proceedings based on its status as a party before the Commission.[117] OPC concurs with the District Government on this issue, also arguing that the terms of the NSA are "readily enforceable," stating that claims to the contrary "ignore not only the explicit provisions of the [NSA], but also the sworn written and oral testimony in this proceeding, the force of law backing every Commission order, and penalties provided in current law."[118]

52. The Commission finds that overall the evidentiary record clearly shows that there is a question about whether the CIF funds can and will be used by the recipient agencies for the purposes designated in the NSA. The DOEE and the SEU have not been able to use the funds that are already designated for the SETF and the REDF and they offered no concrete plans for the additional money provided for under the NSA. With respect to the Green Building Fund, the primary use identified on the record is for its use as a Green Bank, but testimony was given that there is an issue as to whether that can be done under the District's charter. With respect to the LIHEAP, the District already is receiving $9.33 million for this purpose from the federal

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115 DC SUN/MDV-SEIA's R. Br. at 10.

116 DC SUN/MDV-SEIA's R. Br. at 11.

117 District Government's R. Br. at 7-8, referencing *Formal Case No. 1127, In the Matter of the Commission's Establishment of a Discount Program for Low-Income Natural Gas Customers in the District of Columbia*, Order No. 17681, ¶ 26, rel. October 24, 2014 (directing the District to provide monthly reports on the use of LIHEAP funds for RES customers and the number of RES customers receiving LIHEAP funds).

118 OPC's R. Br. at 7-8.

government. While the Commission recognizes that more funds can always be used by the District's low income community to help with the payment of energy bills, this is a short term use of funds that does not directly advance the mission of the Commission nor address the underlying problems that lead to increased energy bills by low income residents. The funding from the CIF comes at a time when there is considerable focus both locally and nationally on the need to modernize our distribution grid to accommodate the growing use of distributed energy resources and to accommodate new technologies to improve our grid's operation and resiliency. Nonsettling parties DC SUN/MDV-SEIA and GRID2.0 argues, correctly we believe, that these are better uses of the CIF funding.

53. While we do not doubt that all of the District officials have acted in good faith in negotiating the NSA and would make an effort to prevent any funds from being diverted from the SETF and the REDF as represented, the Commission believes it has a responsibility to ensure that the CIF funds that are received under this settlement are used for purposes related to the Commission's mission and to the improvement of the distribution system and the services that it provides to ratepayers.[119] Additionally, the Commission is charged with making certain that the Joint Applicants are fulfilling their obligations to cooperate with fund recipients and the programs that the CIF is funding. To best perform that function, the CIF funds need to be within the regulatory control of the Commission. That is not the case under the NSA as proposed.

VI. OPINION OF CHAIRMAN KANE, CONCURRING IN JUDGMENT ON COMMISSION RULE 130.16 AND DISSENTING ON COMMISSION RULE 130.17(B).

54. I concur with the Majority Opinion in the Order that the Nonunanimous Full Settlement Agreement, as filed, is not in the public interest and is denied.

55. In evaluating the NSA's proffered benefits there are two questions. The first question is an initial determination of the relevance and quality of the proffered benefit: Are the proffered benefits in the public interest *per se* — do they support or advance the central legal obligation of the distribution company to provide safe, reliable and affordable distribution service to customers on a fair, nondiscriminatory basis, consistent with environmental sustainability and in a manner that is beneficial to the economy of the District? In other words, does the NSA create a local distribution company ("LDC") that distributes electricity more efficiently and more reliably than the current LDC? It is my opinion that it does not, and it is also my opinion that the flaws of the NSA are so fundamental that even with Commissioner Fort's welcome mitigation, the NSA remains not in the public interest. This flaw has to do with the nature of the acquisition itself. As witness Hempling explained:

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[119] On February 18, 2016, the Commission was notified that the Executive is preparing to take unused funds from the SETF, REDF, the Green Building Fund, the Commission and OPC (among other sources) to address the District's ongoing budget issues and will, where necessary, change the local laws to enable such actions to be done. Although this notice came after the close of the record and therefore is not technically evidence in this proceeding, it is illustrative of our continuing concern.

> When a benefit arises not because two companies have combined, but because the acquirer offers money in return for support, the merger market is distorted. Treating these offers as "merger benefits" favors acquirers with spare dollars over acquirers with unique merits. *The public interest in mergers requires us to distinguish couplings that are economically efficient (in terms of the relationship of quality of service to cost of service) from those that are not.*[120]

56. The second question is a determination of the actuality of proffered benefits occurring: Is the mechanism for carrying the benefits out structured in a way that the Commission is able to monitor, hold parties accountable, and if necessary enforce compliance with the proffer? A benefit that is offered but cannot be sustained or enforced is unfortunately just a promise and has little or no value as a benefit to ratepayers.

57. In addition to the reasons cited in the Order that the NSA is not in the public interest, I strongly believe there are other "benefits" in the NSA that are not in the public interest. One example is the proposal to gift $14 million to provide roughly a $50 credit for every residential customer, regardless of income level.[121] Residential customers' rates are already highly subsidized. Limiting the proposed credit would further exacerbate the disparity between residential and non-residential customers and move in the opposite direction of the stated intention of the settling parties to support the Commission's policy to continue to reduce the negative rate of return of this class of customers. Customers in master metered buildings, that are primarily renters and which are more likely to be low income, would not get a credit. The credit also discriminates against commercial customers, who pay the bulk of Pepco's charges.[122] Finally, by setting the amount at a lump sum of $50 the proposal further blurs the legally required distinction between ratepayers as customers of Pepco, the LDC, and as customers of energy supply, of which Exelon is a major provider. By comparison, Pepco's average monthly distribution charge for a single meter residential customer is about $23.

58. Several of the offered benefits, while they may be worthy undertakings in and of themselves, have little or no *nexus* with the operation of a distribution company and its legal obligation to provide reliable delivery service and, thus, provides no value in the scale used to evaluate the proposed acquisition. None of the job training funds, for example, are pledged for training linemen and other workers who would be hired by the company. Other proffers are vague for example, some of the funds might "possibly be used" to establish a Green Infrastructure ("GI") division within DC Water — (but, not for Pepco).

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120 GRID2.0 (2A) at 47:18-23 (Hempling) (emphasis added).

121 NSA Tr. at 199.

122 GSA's Br. at 13. ("Nothing in the Settlement Agreement or the record before the Commission explains or justifies excluding nonresidential customers from any guaranteed, direct, and tangible benefits under the Settlement Agreement.")

59. On the second matter, of accountability and actuality, I strongly concur with the Majority Opinion that the placement of the funds as proposed in the NSA is definitely not in the public interest, and that any funds proposed to support environmental, low income, microgrids, and other programs must be placed in a space that allows for oversight by and accountability to the Commission and absolutely protects them from diversion to other uses. Unfortunately, the record is replete with evidence that the mechanisms proposed in the NSA for funding and carrying out the proffered benefits — placing the NSA gifts into certain District special purpose funds and agencies — cannot be relied on to guarantee that the benefits will actually occur and that the funding will be protected and available for the prescribed purposes when needed. Language in statutes that authorize energy, environmental and low income assistance programs and which prescribe that a fund dedicated to that purpose "shall not revert to the unrestricted fund balance of the General Fund" or "shall not any time be transferred to, or into, or be comingled with the General Fund" have repeatedly proven to be useless.[123] These so-called protections have been routinely overridden, year after year by successive Mayors and supported by unanimous actions of many successive Councils.[124]

60. This is not a personal criticism of any particular executive or legislature. It is in the nature of government. Funds that remain unspent at the end of a particular fiscal year, even if the purpose for which the funds were accumulated remain unfinished, are too tempting to ignore, particularly, if there are other unfunded needs within that government. However, the Commission has a different obligation. In determining that an acquisition proposal is so much in the public interest that it helps justify the change of control of the District's critical electric distribution system, we must also be able to ensure accountability for the actual realization of the proffered benefits, which may continue from fiscal year to fiscal year and the bulk of which may be many years in the future. We cannot expose the implementation of these benefits to the risk of being swept away for other, unrelated current budgetary needs or accounting practices; however worthy those other needs or practices may be.

61. The Commission has no jurisdiction over other city agencies except as specifically provided by law (for example, the Commission has specific authority to approve requests for formal case funding assessments of parties to a case by the Office of People's Counsel, and to issue financing orders for bonds to be issued by the District Government to fund portions of the power line undergrounding projects.) The Commission has repeatedly opposed the sweep of dedicated ratepayer funds.[125]

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123 D.C. Code § 8-1774.10 (a) (1) and (2); § 34-1436 (a).

124 *See* NSA Tr. at 104-132:13. (Testimony of Tommy Wells, Director, D.C. Department of Energy and the Environment, regarding D.C. Government repeatedly diverting balances from the REDF and the SETF into the General Fund: FY 2009 to 2015, totaling more than $34 million).

125 *See* Letters from Betty Ann Kane, Joanne Doddy Fort, and Willie L. Phillips, Commissioners, District of Columbia Public Service Commission, to Jack Evans, David Grosso, LaRuby May, Kenyan McDuffe, Brianne Nadeau, Elissa Silverman, Brandon T. Todd, Mary Cheh, Anita Bonds, Charles Allen, Yvette Alexander, Vincenty Orange, and Phil Mendelson, Councilmembers, Council of the District of Columbia (June 9, 2015) (on file with the Commission).

62. That this will recur in the future and in regard to the proffered funds in the NSA is not a theoretical or speculative concern. Roughly two months after the close of the record in this proceeding, the Commission received a letter following from the current administration vowing not to divert any of the funds pledged to government agencies and programs in the NSA.[126] On February 18, 2016, I and other agency heads received a directive from the Executive Office of the Mayor ("EOM") identifying a long list of special purpose funds whose fiscal year 2015 balances will be swept into the General Fund.[127] Among the special purpose funds with balances that are to be swept away are some of the very funds the NSA gifts would be placed into, including: the Green Building Fund ($2,862,677), the Sustainable Energy Trust Fund ($7,650,780), and the Renewable Energy Development Fund ($6,307,941) (Totaling $16,821,398).[128] In giving agency heads six business days to provide an "extreme justification" for not taking the funds, the EOM directive cautioned: "One justification we will NOT accept is that these funds have legal restrictions (based on local law) on them. This is the case for every single fund on this list and for those we choose to sweep, we will make a legislative change to avoid running afoul of any existing law."[129] Or, any settlement agreement?

63. Benefits however are only part of the issue.

64. The proposal before the Commission is not a merger settlement, but rather an acquisition settlement. Exelon is not merging with Pepco, rather, it is acquiring it. The result is a structure by which Pepco would be owned and controlled in a manner that does not advance the public policy and law of the District of Columbia as stated in the Retail Electric Competition and Consumer Protection Act of 1999.

65. In 1999, the Council requested the Commission to defer a decision in a proceeding regarding a request by Pepco to divest itself of power plants and other generation assets, to allow time for the Council to establish by legislation the framework for restructuring the distribution and sale of electricity in the District.[130]

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126 *Formal Case No. 1119*, Comment of the Government of the District of Columbia consisting of a Letter by Rashad M. Young, City Administrator to Tommy Wells, Director of the Department of Energy and Environment, dated December 18, 2015, filed December 18, 2015.

127 Email with Attachment ("Dedicated Fund Balance – Overview") from Justin Constantino, Deputy Director and General Counsel, Office of Budget and Finance, Executive Office of the Mayor, to Betty Ann Kane, Chairman, District of Columbia Public Service Commission; and other D.C. Department and Agency Directors; February 18, 2016 ("February 18, 2016 Email from Justin Constantino"). Although the directive came after the close of the record and, therefore, is not technically evidence in this proceeding, it is illustrative of my continuing concern.

128 February 18, 2016 Email from Justin Constantino at Attachment. The directive also includes sweeping away $414,705 from the Energy Assistance Trust Fund which is used to finance low-income customers' bills during the winter and summer seasons and almost $12 million from the two 911 special funds that are financed from surcharges paid by District wireline, wireless and Voice over Internet Protocol telecommunications service customers which is used to support the District's emergency response services.

129 February 18, 2016 Email from Justin Constantino.

130 *Formal Case No. 945*, Order No. 11576, pg. 3, rel. December 30, 1999.

66. Subsequently, the Council enacted the Retail Competition and Consumer Protection Act of 1999 (D.C. Code § 34-1501 et seq.) Both Council intent and the legislative language are clear that "the primary purpose of the Retail Electric Competition and Consumer Protection Act is to remove Pepco's generation franchise" and to limit its role to being a distribution company.[131]

67. In Order No. 17947 the Commission stated that: "[t]he proposed change in ownership and control of Pepco must also be decided in the context of the public policy contained in District law that requires the electric distribution company to be focused on distribution only, and to operate in a safe and reliable manner on a nondiscriminatory basis for all customers and suppliers."[132]

68. The role of the LDC in the District is prescribed by D.C. Code § 34-1506 - Duties of the electric company:

> (a)(1) The electric company shall provide distribution services to all customers and electric suppliers on rates, terms of access, and conditions that are comparable to the electric company's own use of its distribution system. The electric company shall not operate its distribution system in a manner that favors the electric supply of the company's affiliates.
>
> (2) To the extent this provision is not preempted by federal law or regulation, the electric company shall provide transmission services to all customers and electricity suppliers on rates, terms, and conditions that are comparable to the electric companies own use of its transmission system.
>
> (b) The electric company shall maintain the reliability of its distribution system in accordance with applicable orders, tariffs, and regulations of the Commission.

This paragraph is the sole statutory basis for the traditionally regulated activities of Pepco within the District. This paragraph clearly prescribes that Pepco's role in the District is as an electric distribution utility and only a distribution utility. The responsibility of the LDC is to deliver electricity from the Federal Energy Regulatory Commission ("FERC") regulated bulk transmission system to the ultimate consumer. Except for limited and defined exceptions, the LDC's role ends at the customer's meter.

69. While the Retail Electric Competition and Consumer Protection Act ("Act") contemplate that the electric company might have affiliates, Pepco was prohibited from selling

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131 Council of the District of Columbia, Committee on Consumer and Regulatory Affairs, "Report on Bill 13-284, the 'Retail Competition and Consumer Protection Act of 1999'", page 6; December 2, 1999.

132 *Formal Case No. 1119*, Order No. 17947, ¶ 3, rel. August 27, 2015.

its power plants to an affiliate. Pepco was prohibited from engaging in the sale of electricity.[133] An exception was made for the potential that the Commission would designate Pepco to be the default provider for customers who did not choose a competitive supplier[134] — a role that was intended to be transitional and temporary, as evidenced by the Council Committee report which, when considering the Act, anticipated that the default service would be put out to competitive bid.[135] The Act required that any relationship with an affiliate be totally arm's-length: No shared employees.[136] No shared office space.[137] No discrimination in favor of an affiliate.[138] Open access to the distribution system for all customers and suppliers.[139]

70. While most of the jurisdictions that have to approve the PHI/Exelon merger are considered restructured states with retail choice (Virginia being the lone non-restructured state) there is considerable variation in the way that restructuring has developed the role of the local distribution utility. There is also considerable variation in the roles of LDCs across the various jurisdictions. Unfortunately, the Joint Applicants have not taken this variation into account. The LDC that emerges from the NSA bares little semblance to the LDC described in the District's restructuring statute.

71. The fundamental flaw in the change of control of Pepco is not mitigated by the NSA. The basic structure of the Proposed PHI/Exelon Merger and the place of Pepco in the resulting holding company would remain essentially the same. Indeed, in some ways the proposals in the NSA would make the situation worse. The NSA has provisions that would frustrate, undermine, or directly contravene the requirements or intentions of the Act and the policy direction envisioned by the Council for the provision of electric service to District residents, businesses and institutions. While Commissioner Fort's mitigation requirements go a long way to correct some of the more egregious assaults on the regulatory structure of the District, they cannot overcome the basic philosophy of the NSA and placement of Exelon and its affiliates at the head of the line, thwarting competition in areas beyond the direct provision of distribution services.

72. The inclusion of the CEO of Pepco as a member of the Exelon Executive Committee, for example, will obligate the Pepco CEO to make decisions on behalf of all of the parts of Exelon, and on behalf of Exelon shareholders, decisions in which the needs and interests of affiliates may conflict with or diverge from with the interests of Pepco as a distribution

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133 D.C. Code § 34-1513 (a).

134 D.C. Code § 34-1509.

135 Council of the District of Columbia, Committee on Consumer and Regulatory Affairs, "Report on Bill 13-284, the 'Retail Competition and Consumer Protection Act of 1999,'" p. 78, December 2, 1999.

136 D.C. Code § 34-1513 (c) (3).

137 D.C. Code § 34-1513 (c) (2).

138 D.C. Code § 34-1513 (c).

139 D.C. Code § 34-1506 (a).

company. The "enhanced" ring fencing proposals in the NSA do not cure this. Ring fencing is a mechanism to protect against the most severe kinds of events — bankruptcy or costly nuclear generation facility failures. It does nothing to protect against the day-to-day and year-to-year management and executive decision making.

73. Again, this is not a speculative concern. In the written and hearing testimony of witnesses we already see examples of the erosion of the focus on being a distribution system and the criteria for decisions in which the Pepco CEO would be involved as a member of the Executive Committee. For example, the proffer to purchase 100 MW of wind would be carried out if it is in "the best interests of Exelon"[140] — the solar installation at DC Water would be carried out if it is "commercially feasible" for Exelon.[141] Most alarming is that Exelon proposes to conduct a "legal assessment of the ability of an investor-owned utility to own either or both of the distribution *and generation assets*" in the District (in this instance referring to a microgrid, but indicative of a viewpoint not limited thereto).[142] The slippery slope of reintegration is apparent.

74. The solar proposal for DC Water is also an indication of another structural problem.

> Exelon…will enter into good-faith negotiations of a commercially acceptable arrangement for 5 MW of such generation to be constructed at the DC Water Blue Plains Advanced Wastewater Treatment Plant ("Blue Plains") and operational by December 31, 2018. . . . Exelon shall sell the output of solar generation constructed in fulfillment of this commitment in the market . . . Exelon shall retain the solar renewable energy certificates and tax attributes for the solar projects.[143]

Prior to this proffer, DC Water had negotiated a competitive contract with WGL Energy Services, Inc. and Standard Solar, Inc. during 2014 and early 2015.[144] However, the deal fell through "Due to the difficulty of receiving an interconnection agreement with Pepco prior to the end of 2016."[145] As can be seen as part of NSA Commitment No. 118, Exelon was able to proffer a sole source deal that resurrected DC Water's solar energy project. To recap:

- DC Water successfully negotiated for a competitive bid solar facility to be built at Blue Plains during 2014 and early 2015, but it determined that it had to abandon

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140 NSA, ¶ 130 (b).

141 NSA, ¶ 118.

142 NSA, ¶ 128.

143 NSA, ¶ 118

144 NSA Tr. at 609:9-610:3 (Chairman Kane questioning Hawkins).

145 NSA Tr. at 611:12–14.

the project when Pepco claimed it couldn't guarantee an interconnection for the facility within almost two years (early 2015 to the end of 2016).[146]

- Late fall 2015, Exelon is able through the NSA commitments to resurrect the DC Water solar project as a sole source Exelon project and commit to remove the Pepco interconnection delays.

This is a prime example of an LDC, in this case a potentially Exelon-owned Pepco, leveraging its monopoly position to favor itself. This is exactly what is prohibited in D.C. Code § 34-1506. This action in the NSA can be mitigated in the specific, but the underlying philosophy will remain to be anti-competitive going forward, thereby, reducing the Commission to playing whack-a-mole to try and assure a level playing field for developers of microgrids or other distributed resources.[147] It is this immitigable philosophy of anti-competitive behavior, as evidenced in the NSA, which is at the heart of my opposition to the NSA.

75. Exelon wants to own regulated distribution utilities with steady, predictable income as a balance to its wholesale generation assets whose income is not only volatile from year to year, but are also facing increasing challenges to its basic financial viability. While the acquisition of PHI would increase the regulated LDC portion of Exelon's assets, the bulk of the Exelon's assets and income will still be from its wholesale power generation and that portion of the company will continue to drive Exelon's basic corporate outlook.

76. The alternative NSA commitments that Commissioner Fort is proposing make a more appropriate use of the CIF in ways that have a *nexus* with the operation of the distribution system and provide for accountability and enforceability by the Commission. If accepted by the Settling Parties to the NSA, the alternatives would be a substantial improvement over the deficiencies that support a finding of not being in the public interest, although they may in some cases apply only for the specific instances given in the NSA.

77. However, there is no evidence in the record that Pepco could not continue to perform, and perform adequately and reliably as required by law, absent the alternative NSA commitments and, thus, approval of Pepco's sale to Exelon. Indeed, as the Commission found in Order No. 17947, "PHI is financially healthy as a standalone company and would continue to be so if the merger is not consummated."[148]

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146 Note that by delaying interconnection of the solar facility until after December 31, 2016, Pepco was able to eliminate the opportunity for DC Water's contractors from availing themselves of the soon-to-expire Federal Investment Tax Credit for solar facilities, thereby, eliminating a significant element of the financing for the project.

147 *See* Oxford Dictionary – Def. 1 (also trademark Whac-a-Mole) An arcade game in which players use a mallet to hit toy moles, which appear at random, back into their holes: "next time you are near a kiddie amusement park, go in and play a round of whack-a-mole" 1.1 - Used with reference to a situation in which attempts to solve a problem are piecemeal or superficial, resulting only in temporary or minor improvement: "the site's security team has an ongoing battle against spammers, but it's a game of whack-a-mole."

148 *Formal Case No. 1119*, Order No. 17947, ¶ 354 (TT), rel. August, 27, 2015.

78. The philosophy of LDC privilege will not be mitigated by the NSA or the alternative NSA commitments. The Commission will have to continually monitor and chase the subtle, and not so subtle, diversions of focus, conflicts of interest, and anti-competitive behavior of the LDC. The return of Pepco to an ownership structure that includes energy generation, supply, marketing, and sales will result in an entanglement of the management, financial health, and decision-making which will adversely affect Pepco and its customers and create a diversion of focus that I believe carries it in the opposite direction from District law and policy.

79. There is no alternative that will address the fundamental structural problem of Exelon's acquisition of Pepco. The only alternative is not to approve the acquisition and change of control.

80. Thus, I dissent from the conclusion that if the Settling Parties accept the alternative NSA commitments proposed under Commission Rule 130.17(b) the merger will be in the public interest and should be deemed approved.

VII. OPINION OF COMMISSIONER FORT, CONCURRING IN JUDGMENT ON COMMISSION RULE 130.16 AND 130.17(B)

81. In this concurrence, I address my votes on the two issues before the Commission: my vote on Commission Rule 130.16 to reject the NSA as submitted and my vote on Commission Rule 130.17(b) to accept a Revised NSA if the alternative terms that I propose are accepted by the Settling Parties. First, I set out my concurrence with the Majority Opinion on the Commission Rule 130.16 vote. Because case law allows a regulatory body to make a decision on the merits when presented with a nonunanimous settlement agreement if there is substantial record evidence to support the merits of the underlying decision, I reviewed the NSA in light of the critiques made by the Nonsettling Parties. I find that some of the objections do not challenge specific provisions of the NSA or speak to whether the NSA is in the public interest; rather they reassert general arguments that were raised and considered by the Commission in Order No. 17947 or they present arguments for why the Commission's conclusion as set out in Order No. 17947 should not be changed.[149] Given that this is a proceeding to determine whether the NSA is in the public interest, arguments that do not address the merits of the NSA and the Joint Applicants' commitments contained in the NSA and arguments that address the underlying merits of the change of control application separate from the NSA are not properly before the Commission at this phase of the proceeding; therefore, they are not persuasive. Also, I find the issue raised by DC SUN/MDV-SEIA concerning Pepco's $25 million contribution for the District's soccer stadium to be unsupported by evidence on this record and outside of the scope of this review of the NSA.

82. In addition, I note that no specific comments were raised in response to the majority of the paragraphs or the commitments contained in the NSA. In the absence of objections, there is no basis to find that they are not in the public interest. I set out my

[149] Arguments raised by MAREC and GRID2.0 reasserting Exelon's opposition to the Investment Tax Credit for renewable wind projects and Exelon's ownership of nuclear plants as a reason to reject the NSA. *See generally*, GRID2.0's Br. at 22, MAREC's Br. at 7, 10-11.

concurrence with the Majority Opinion on the Commission Rule 130.16 vote. That concurrence includes my review of the remaining contested issues and provides some additional reasons why I have voted to reject the NSA as submitted. There were, however, about two dozen specific paragraphs of the NSA that were contested by the Nonsettling Parties, including the seven paragraphs addressed in the Majority Opinion.

83. First, in this concurrence I address the four concerns addressed in the Majority Opinion. Next I address five general topics which were the subject of the remaining contested issues that have been raised by the Nonsettling Parties: (1) whether the NSA provides a benefit for the economy of the District; (2) whether the NSA positively impacts the management and administrative issues that were of concern to the Commission; (3) whether the NSA addresses the Commission's concerns with respect to reliability; (4) whether the ring-fencing and divestiture provisions of the NSA are reasonable; and (5) whether the conflict of interest issue with respect to Exelon as a generator and a dominant player in the PJM wholesale market and Pepco's role as the local distribution company can be resolved. Based on this review of the record in this proceeding, I conclude that the NSA as submitted is not in the public interest when the record is considered as a whole because of the four concerns outlined in the Majority Opinion. However, I conclude further that the NSA is not fatally flawed and can be revised with alternative provisions pursuant to Commission Rule 130.17(b).

84. Then, I set out my concurrence on the vote to consider the NSA under Commission Rule 130.17(b). That concurrence includes a description of the alternative terms that I think need to be incorporated into the NSA as submitted to address the four concerns identified in the Majority Opinion on the Commission Rule 130.16 vote, and my conclusion of why a Revised NSA as modified by the alternative terms that I propose, when taken as a whole, is in the public interest.

A. Concurrence on Vote to Reject the NSA as submitted Pursuant to Commission Rule 130.16

85. The Majority Opinion identifies four criticisms of the NSA that establish what I consider to be concerns of sufficient merit as to persuade me to reject the NSA as submitted. In the identified areas, the NSA includes terms and conditions that would in one way or another curtail the ability of the Commission to fully exercise its regulatory authority and authorize actions that are inconsistent with the District's restructured retail electric market as set out in the D.C. Code. These four concerns address nine specific paragraphs in the NSA.[150] For the reasons set out in the Majority Opinion as well as for the additional reasons set out below, I conclude that the NSA with the identified paragraphs is not in the public interest and, therefore, I have voted to reject the NSA as submitted pursuant to Commission Rule 130.16.

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[150] In my concurrence, I identify five areas of concern because unlike the Majority Opinion, I treat the concerns about Exelon's role at DC Water under NSA Paragraph 118 and Pepco's role in microgrids under NSA Paragraph 128 as separate concerns. I also include a change to NSA Paragraphs 56 and 58 because they reference funding for the SETF.

1. Rejection of NSA Paragraph 4: Customer Base Rate Credit for Residential Ratepayers

86. As attractive as the proposal for base rate credit for residential ratepayers appears at first blush, I am not persuaded by the evidentiary record in this proceeding that the proposal is in the public interest. The proposal in NSA Paragraph 4 uses $25.6 million of the CIF to defer rate increases for residential ratepayers until after March 31, 2019. The Majority Opinion sets out in greater detail the challenges raised by Nonsettling Parties GSA and DC SUN/MDV-SEIA and the responses of the Settling Parties. I agree with the conclusions as set out in the Majority Opinion.

87. During the evidentiary hearing, the Chair and I posed a number of questions to the Settling Parties to better understand the operational mechanics of the proposal that is described in NSA Paragraph 4 and how it would impact rate design decisions when it is combined with NSA Paragraph 48.[151] I also asked questions about the rate shock that District ratepayers would allegedly experience if the proposal is left unchanged.[152] The responses to these questions, along with the pre-filed testimony, persuade me of six things. First, there is not a complete understanding about the details of the proposals. For example, the parties were unclear whether the deferral would apply to related increases on all elements of the distribution bill (*e.g.*, to fixed and variable charges as well as related taxes, fees and surcharges that are volumetrically based) and whether it would impact the operation of the Bill Stabilization Adjustment and if so, how.[153] Second, the parties acknowledged that the operational impact of the proposal over the covered time period (*i.e.*, through March 2019) is largely dependent upon the size and the number of revenue increase applications to be filed by Pepco over the next two years – two factors that were not established with certainty on the evidentiary record.[154] Third, without knowledge of the size of a revenue requirement increase being sought in a rate application, there is insufficient information to credibly determine whether residential ratepayers would experience rate shock under the proposal in NSA Paragraph 4.

88. Fourth, the evidentiary record is void of a credible rationale that justifies excluding commercial customers, both small and large, from the proposed $25.6 million residential customer base rate credit. Fifth, the record does not clearly establish that the described allocation of the residential customer base rate credit would not undermine the Commission's policy to address the residential class' current negative rate of return.[155] Sixth and foremost, the NSA's requirement that the $25.6 million residential customer base rate credit be allocated between residential customers and residential customers in master metered apartments in specific amounts on an evidentiary record with such a paucity of details unwisely

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151 NSA Tr. at 183-199, 263-281.

152 NSA Tr. at 430:16-432:13; 466:18-470:4.

153 NSA Tr. at 190:9-191:17 (Taxes); 197:12-20; 288:15-289:2 (BSA).

154 NSA Tr. at 467:7-468:10.

155 NSA Tr. at 422:5-425:17.

and inappropriately ties the hands of the Commission in future rate cases and usurps its regulatory obligation and authority to set rates that are fair, just and reasonable.[156] For all of these reasons, I cannot accept NSA Paragraph 4 as submitted.

2. Rejection of NSA Paragraph 118: Anti-Competitive Provisions for Solar System Development at DC Water

89. For the reasons set out in the Majority Opinion, I cannot accept the provision in NSA Paragraph 118 that requires Exelon to develop or assist in the development of 10 megawatts of solar generation in the District of Columbia and enter into good-faith negotiations of a "commercially acceptable" arrangement for 5 megawatts of solar generation at DC Water's Blue Plains facility.[157] As that opinion correctly notes, the Commission is statutorily obligated to monitor the District of Columbia's electric retail markets and services that we have declared to be potentially competitive "to ensure that the markets are not adversely affected by anticompetitive conduct and anticompetitive conditions."[158] In the District, where there is a growing competitive market for solar generation, a commitment that gives Exelon the exclusive right to develop solar generation at Blue Plains on vague terms rather than allowing for the development of the solar system through a competitive procurement process is clearly not consistent with fostering the competitive electric retail markets and service that the Commission is obligated to monitor and promote.[159]

90. Moreover, the evidentiary record shows that DC Water had previously arranged to obtain a solar system from a third party vendor; however, its efforts were thwarted when an issue arose as to which entity would bear the risk of the project not being interconnected if it was not completed before the federal Investment Tax Credit ("ITC") expired in 2017.[160] Given that the ITC has now been extended, it is not clear whether the NSA arrangement is more or less favorable to DC Water and by extension to District ratepayers who use and will pay for those services. In addition, the record makes it clear that the financial details for the construction of the 5 MW solar facility have not yet been finalized and that either party can void the transaction if "commercially acceptable" terms are not reached.[161] The record is not clear whether the concern about the delay with the interconnection resulted from specific concerns related to actions taken by Pepco or to actions related to other aspects of the project's development; the record only tells us that the concern was a more general business risk concern related to which

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156 NSA Tr. at 268:21-275:11; 472:18-474:3.

157 NSA, ¶ 118.

158 D.C. Code § 34-1512(a).

159 GRID2.0 witness Hempling argues that "to use this merger case as an opportunity to give Exelon a first-mover advantage in the solar business seems to be inconsistent with the public policy of the District which is to let merits prevail." NSA Tr. at 662:10-14.

160 NSA Tr. at 611-616; 623-625, 632-633.

161 NSA Tr. at 619-623.

entity would bear the financial risk and the added project costs if the ITC expired before the completion of the project.

91. GRID2.0 witness Hempling argues that if we accept NSA Paragraph 118 as submitted, the Commission would be "sending a signal that people who want to compete for the opportunity to build solar energy in Blue Plains are out, because they were not part of this case and they were not proposing a merger."[162] That is not the message that I want to send. To be consistent with our statutory and regulatory structure and its mandate for retail competition, NSA Paragraph 118 should not include the requirement that Exelon be the developer of DC Water's solar generation facility on commercial terms that are not yet decided. It should be noted, however, that there is nothing in our statutes that would preclude Exelon or one of its subsidiaries from being the developer of a solar generation system for DC Water if it is so selected through DC Water's procurement process. If so selected, and to the extent that an interaction with Pepco as the local distribution company is required (which it would be for the interconnection process), Exelon or its affiliate would need to operate consistent with Commission's rules for affiliated transactions.

92. Within the context of this change of control transaction, an ongoing concern has been whether Exelon's control of the local distribution system will result in an environment that is anti-competitive or will pose a conflict of interest that the Commission cannot resolve using its regulatory authority. Critics have argued that if Exelon "owns Pepco and its distribution system, it will be in a position to affect which distributed generation gets priorities and how the distribution grid develops to accommodate new technologies."[163] This could be a concern if Exelon or an affiliate is not selected as the developer of the DC Water facility; however, this is a concern that the Commission has previously said can be addressed by the Commission's existing rules for affiliated transactions and Commission action. Within the context of this immediate proceeding, the Commission can resolve the anti-competitive concern that is posed by NSA Paragraph 118 by using its regulatory authority to reject the NSA as submitted. For these reasons, I am persuaded that NSA Paragraph 118 as written is not consistent with our restructured market and its notions of competition.

3. Rejection of NSA Paragraph 128: Public Purpose Microgrids

93. For the reasons outlined in the Majority Opinion, I cannot accept NSA Paragraph 128 as submitted. This provision designates Pepco to work with the District to develop and interconnect at least four microgrids within five years after receiving the Commission's approval of the microgrid projects that will be competitively sourced and after receiving the Commission's approval of Pepco's recovery of its associated cost.[164] Public and private microgrids in general and the role of the local distribution company with respect to microgrids in particular are currently being discussed as part of *Formal Case No. 1130*, the Commission's

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162 NSA Tr. at 661:16-20.

163 DC SUN/MDV-SEIA's Br. at 44.

164 NSA, ¶ 128.

docket related to the modernization of the District's energy distribution system.[165] To date, no decisions have been made about the role of the local distribution company in the development, promotion or operation of microgrids; about the distribution system's ability to accommodate microgrids in general and the number that could be accommodated specifically; about the number or type of public purpose microgrids that are needed for the District and how they can best be provided; about the costs associated with incorporating microgrids into the current distribution system in general; or how costs related to any private or public purpose microgrids will be recovered.[166] We have no basis to determine whether NSA Paragraph 128 as proposed is reasonable or in the public interest based on the sparse evidentiary record on this issue in this proceeding. Furthermore, this provision seeks to have the Commission approve a provision that would prematurely resolve open issues in *Formal Case No. 1130*. For these reasons, I have not been persuaded that the inclusion of NSA Paragraph 128 as written is appropriate.

4. Rejection of NSA Paragraphs 6, 7, 8, 9, 56 and 58(c) Because of the Use and the Administration of the Customer Investment Funds and Escrow Penalty Funds

94. I cannot accept NSA Paragraphs 6, 7, 8, 9, 56 and 58(c) as submitted. In general, I find persuasive the following criticisms that have been raised about these proposed uses of the CIF under NSA Paragraphs 6, 7, 8, and 9: (1) the proposed uses do not support or advance the electric distribution grid and result in little or no long term benefits related to the local distribution system or District ratepayers;[167] (2) the CIF contributions would be placed in funds that are outside of the regulatory control of the Commission where they can be diverted to other uses; [168] (3) some of the proposed uses are not well defined;[169] and (4) the proposed use is for programs that are currently funded by the District tax payer revenue or other funding sources and will merely replace those dollars.[170] My concerns about some of these issues are addressed in the Majority Opinion. In addition to the points made there, I have additional concerns about the proposed expenditures discussed in the following NSA Paragraphs:

95. **NSA Paragraph 6.** Specifically, I cannot support the proposal in NSA Paragraph 6 to send $3.5 million from the CIF to the Renewable Energy Development Fund ("REDF") to

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165 *Formal Case No. 1130, In the Matter of the Investigation into Modernizing the Energy Delivery Structure for Increased Sustainability*, Order No. 17912, rel. June 12, 2015.

166 DC Water witness Hawkins acknowledged that DC Water wants to be considered as a candidate for a public purpose microgrid to fulfill an "ultimate goal which is to be able to run the core facilities of our program if there was some catastrophic problem with power." NSA Tr. at 627-628. Witness Hawkins estimated that 20 to 22 MW of power is needed to run DC Water's core facilities. NSA Tr. at 631.

167 NSA Tr. at 236-240. GRID2.0 witness Hempling captures a part of my concern when he said the funds do not "flow from an integrated process where the Commission is thinking about what do we need where." NSA Tr. at 713.

168 NSA Tr. at 32, 54.

169 NSA Tr. at 152:1-153:4.

170 NSA Tr. at 535:10-20.

support solar projects in the District.[171] The REDF is otherwise funded by the compliance fees paid by competitive energy suppliers that fail to satisfy their Renewable Portfolio Standard requirements.[172] Although there is a requirement for the REDF to report its uses on an annual basis to the Council of the District of Columbia, the annual reports do not contain any detailed explanation of how the funds were used. During the evidentiary hearing, however, the District witness could not report in detail how these funds had been used for their statutory purposes of supporting solar projects in the District in the past nor how they would be used in the future.[173] The reports do show that roughly $1 million of the REDF monies were diverted from the REDF and transferred to the General Fund between 2009 and 2012 despite a statutory provision that prohibits such a transfer.[174] The amount of funding for the REDF has increased in recent years. In 2014, the REDF received $699,290 while in 2015 the REDF received $6,313,210.[175] I recognize and respect the commitment that has been made by the Executive to refrain from diverting the funds in the future; however, I am not persuaded that such a diversion will not happen again if there is a budget crisis in the District. Based on the record in this proceeding, the proposal in NSA Paragraph 6 to increase funding for the REDF is an appropriate use of the CIF.

96. **NSA Paragraph 7.** I cannot support NSA Paragraph 7's plan to provide $3.5 million of the CIF to the Sustainable Energy Trust Fund ("SETF") for energy efficiency projects for businesses and residences for the reasons set out in the Majority Opinion.[176] As a Commissioner, I am especially sensitive to the expenditures from the SETF because it is funded by District ratepayers, albeit from a statutory surcharge that is not under the Commission's control or oversight. The SETF already receives $20 million a year for energy efficiency projects and will continue to be so funded in the future. As noted in the Majority Opinion, the evidentiary record is clear that roughly $34 million of these funds have been transferred to the General Fund and not been used for the purposes that they were collected in the past. The Commission has a history of objecting to the transfer of the funds from the SETF to the General Fund and their reallocation to support other programs.[177] Although I do not support the placement of the funds in the SETF, I support the NSA's proposal to use some of the CIF for energy efficiency and energy conservation programs, especially in multifamily buildings and in housing for low and limited income District residents. The evidentiary record makes it clear that

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171 *See* NSA, ¶ 6.

172 *See* D.C. Code § 34-1436.

173 NSA Tr. at 127.

174 Commission Exhibit NSA-1 at 6. NSA Tr. at 110-132.

175 Commission Exhibit NSA-1 at 4.

176 *See* NSA, ¶ 7.

177 *See* Letters from Betty Ann Kane, Joanne Doddy Fort, and Willie L. Phillips, Commissioners, District of Columbia Public Service Commission, to Jack Evans, David Grosso, LaRuby May, Kenyan McDuffe, Brianne Nadeau, Elissa Silverman, Brandon T. Todd, Mary Cheh, Anita Bonds, Charles Allen, Yvette Alexander, Vincenty Orange, and Phil Mendelson, Councilmembers, Council of the District of Columbia (June 9, 2015) (on file with the Commission).

these measures are the most cost effective means of reducing energy usage (and by extension energy bills) for this target population. While some of the activities may mirror the weatherization activities currently being undertaken by the Sustainable Energy Utility, there are other potential programs that reduce energy usage through programs that take place in coordination with the utility company or behind the customer's meter. Placing these funds outside of the SEU allows for a wider range of activities to occur without burdening an already overburdened SEU.

97. **NSA Paragraph 8.** I cannot support the proposal in NSA Paragraph 8 to place $10.05 million with the District of Columbia Department of Consumer and Regulatory Affairs for the Department of Consumer Affairs' Green Building Fund for the reasons set out in the Majority Opinion. While I don't question whether the proposed uses are for valid District projects, they are not directly related to the Commission's statutory responsibility of ensuring that "every public utility doing business within the District of Columbia is required to furnish service and facilities reasonably safe and adequate and in all respects just and reasonable".[178] Therefore, I am not persuaded that the funding of the Green Building Fund as set out in NSA Paragraph 8 is the most appropriate use of the CIF.

98. **NSA Paragraph 9(b).** I cannot support the proposed allocation of $9 million to be used for Low Income Housing Energy Assistance Program ("LIHEAP") for the reasons set out in the Majority Opinion. The Settling Parties are correct that there are issues that need to be addressed concerning the payment of energy bills for low-income District residents. There is also no question that there are District ratepayers who could benefit from more LIHEAP funds, but this proposed use of the CIF does nothing to impact the underlying and ongoing issue of high electric bills in the long term or the ability of participants in the Residential Aid Discount ("RAD") program to access lower cost energy from all competitive electricity suppliers in the short term. These are issues that have been the focus of the Commission, in part, because all District ratepayers except RAD customers are assessed to help pay the energy bills of RAD customers. The Commission has already started to address some of those issues for RAD customers. The Commission recently announced a program that will eliminate distribution charges for RAD participants.[179] This change provides rate relief for the regulated portion of the bills for RAD customers. As noted above in my comments on NSA Paragraph 7, supporting innovative programs related to energy efficiency and energy conservation for these target populations is a more productive use of CIF funding to address the energy bills of this target population.

99. Even if this were a good use of the CIF (which I do not believe it is), I am not persuaded by the evidentiary record that there is a $9 million shortfall in assistance to electricity customers that is going unmet.[180] The testimony used outdated FY 2014 numbers to justify the need and ignores the fact that in FY 2016, the federal government has appropriated $9,329,650

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178 D.C. Code § 1-204.93.

179 *Formal Case No. 1120,* Order No. 18059, ¶ 36, rel. December 15, 2015.

180 DCG (H) at 20:20-21:2.

for LIHEAP funding for the District.[181] These funds are in addition to other sources of funding which support LIHEAP.[182] Consequently, on this record, I am not persuaded that using $9 million of the CIF for supplemental funding for eligible LIHEAP recipients to correct any underestimation of need by the District is an appropriate use of CIF funds.[183]

100. **NSA Paragraphs 56 and 58(c).** I cannot accept the provision of NSA Paragraphs 56 and 58(c) that would direct the non-compliance payment Pepco places in escrow for failing to obtain reliability performance goals in 2018, 2019, or 2020 within the reliability-related-capital budget set forth in NSA Paragraph 57 to the SETF if they are not returned to Pepco.[184] It is important that Pepco meet the reliability spending and performance levels that are established in NSA Paragraph 56 and 57. However, if those goals are not met, it is District ratepayers who suffer from reduced reliability. If the Commission decides the escrowed funds should not be returned to Pepco, the non-compliance escrowed funds should be used to further enhance the distribution system and its reliability. For that reason, the funds should not be placed in the SETF.

101. **Placement of the CIF.** Finally, as set out in the Majority Opinion, I cannot accept the provisions of the NSA that place the CIF funding beyond the regulatory power of the Commission. The CIF provides a source of non-ratepayer revenue that can be used to address

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[181] *See* http://www.liheapch.acf.hhs.gov/profiles/DC.htm (accessed January 29, 2016). According to the LIHEAP FY 2016 State Plan prepared by DOEE, DOE agreed to use the LIHEAP funds to:

> (A) conduct outreach activities and provide assistance to low income households in meeting their home energy costs, particularly those with the lowest incomes that pay a high proportion of household income for home energy;
>
> (B) intervene in energy crisis situations;
>
> (C) provide low-cost residential weatherization and other cost-effective energy-related home repair; and
>
> (D) plan, develop, and administer the State's program under this title including leveraging programs. *See* http://doee.dc.gov/sites/default/files/dc/sites/ddoe/service_content/attachments/0%20FY16%20LIHEAP%20State%20Plan%20FINAL.pdf (accessed January 29, 2016).

[182] *Council of the District of Columbia Government Committee on Transportation & the Environment Fiscal Year 2016 Committee Budget Report* from May 14, 2015 at 83-84. "LIHEAP funding in the District comes from 3 sources: a federal grant that is typically between $6 - 8 million each year, a special purpose fund called the Energy Assistance Trust Fund (EATF) that typically provides about $1.4 - $1.9 million per year in benefits, and local funds. The Mayor's proposed budget reduces the amount of local funds dedicated to LIHEAP by $1.5 million in FY 2016 from the FY 2015 program funding level. The Mayor anticipates allocating $1.5 million from the Sustainable Energy Trust Fund (SETF) balance to make up this shortfall." Page 84 of this report also states that "[t]he Energy Assistance Trust Fund (EATF) established by the Clean and Affordable Energy Act of 2008 collects about $2.4 million each year for LIHEAP from a small fee on utility bills." Given these two statements, there appears to be some inconsistency about the exact amount of funding for LIHEAP that comes from the EATF. I note that Commission Exhibit NSA-1, a response from District Government witness Wells, confirms that "DOEE plans to use $1.5 million of SETF funds for LIHEAP in 2016."

[183] NSA, ¶ 9(b).

[184] *See* NSA, ¶¶ 56 and 58(c).

issues that have been the focus of stakeholder concerns about our distribution grid during these changing times in the field of electricity regulation in our restructured market. This includes the challenges engendered by the need to change our centralized grid to a model that can fairly and efficiently accommodate a growing mix of distributed energy resources and by the need for a more resilient grid in a world where cyber-attacks and physical attacks on utilities are a constant threat. These activities require coordination with, and oversight by, the Commission to be effective. Furthermore, having additional funding available for pilot projects to advance this work ensures that it can move forward. We cannot afford to have the CIF subject to the vagaries of the District Government's budgetary pressures and risk that it may be reallocated, even from dedicated funds, when District funds are needed for other purposes.

5. Review of Remaining Contested NSA Provisions

102. In addition to the issues addressed in the Majority Opinion, there were five additional issues that were contested during the review of the NSA: (a) whether the NSA provides a benefit for the economy of the District; (b) whether the NSA positively impacts the management and administrative issues that were of concern to the Commission; (c) whether the NSA addresses the Commission's concerns with respect to reliability; (d) whether the ring-fencing and divestiture provisions of the NSA are reasonable; and (e) whether the conflict of interest issue with respect to Exelon as a generator and a dominant player in the PJM wholesale market and Pepco's role as the local distribution company can be resolved. I have reviewed the arguments raised with respect to each of these issues and have reached the following conclusions:

a. Whether the NSA provides a benefit for the economy of the District

103. The Settling Parties represented that the NSA contains several new benefits that were intended to benefit the economy of the District. These included a corporate presence in the District of Columbia with a colocation of the Exelon Corporate Strategy and Utilities headquarters to the District; a commitment to maintain the headquarters of Pepco and PHI in the District for at least ten years; a new reporting commitment regarding employee levels at Pepco; the movement of 100 positions to the District as part of the colocation of the Exelon Corporate Strategy and Exelon Utilities headquarters; and $5.2 million to be given to the District for workforce development. The NSA also acknowledged that 100 positions may be involuntarily reduced as a result of combining the two service companies.

104. DC SUN/MDV-SEIA asserts, "[t]he Settlement Agreement does not change the thrust of the Commission's conclusions in Order No. 17947 with respect to the impact of this change of control on the District's economy."[185] DC SUN/MDV-SEIA argues that the jobs promises in the NSA offer no long-term economic benefits for the District.[186] In its criticism of the workforce development commitment in NSA Paragraph 24, DC SUN/MDV-SEIA contends, "[t]he prospect of workforce development funds that the District Government will 'direct' in

[185] DC SUN/MDV-SEIA's Br. at 22.

[186] DC SUN/MDV-SEIA's Br. at 23.

unspecified ways is too vague to be tallied as a tangible benefit that will not be available absent the merger."[187]

105. GRID2.0 witness Hempling asserts that the only benefits that should be considered when reviewing the public interest impacts of the NSA are consolidation benefits, not benefits related to political decisions such as preserving and boosting employment.[188] In his supplemental testimony related to NSA Paragraph 24, Mr. Hempling asserts that it is the responsibility of the District Council and the Mayor to preserve and boost employment and not the responsibility of the utility or its regulator. When questioned about this testimony at the public interest hearing, Mr. Hempling maintained that the inclusion of the economy of the District in Factor 1 does not afford "an opportunity for the Commission to act as a full employment agency and add jobs or preserve jobs that are unrelated to the efficient operation of the company."[189]

106. The evidentiary record clearly shows that the NSA contains additional employment commitments beyond those the Commission considered in Joint Applicants' Exhibit (4A)-2 when it rendered its decision in Order No. 17947. We noted in Order No. 17947, for example, that there was no explicit commitment to retain current employees beyond the initial two-year, post-merger, no-net-reduction period.[190] NSA Paragraph 20 now addresses this concern with an explicit commitment by the Joint Applicants to not become net job-negative through involuntary attrition as a result of the merger integration process through December 31, 2019. NSA Paragraph 15 commits to bring 100 additional personnel to the District in connection with the colocation of the Exelon Utilities headquarters although it notes that these jobs are different from the 100 jobs that may be lost because the work of the two service companies is being combined. Exelon has also committed to keep its office in the District for at least 10 years so I find DC SUN/MDV-SEIA's assertion that there is no long-term economic benefit for the District's economy to be contrary to the record evidence.

107. I do not find persuasive the argument of GRID2.0 witness Hempling that a more limited view of what constitutes a benefit for the economy of the District should be used. Joint Applicants witness Tierney described it as "an inappropriately narrow and rigid standard for commissions to use" and concluded "[i]f commissions were to have applied his standard of review in mergers around the country, I just don't think we would have seen the many mergers approved that we have seen over the past few decades."[191] I find Dr. Tierney's argument to be more persuasive and more in keeping with how our District leaders have viewed impacts on the District economy.

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187 DC SUN/MDV-SEIA's Br. at 8.

188 NSA Tr. at 650:16-651:19.

189 NSA Tr. at 652:16:20.

190 *Formal Case No. 1119,* Order No. 17947, ¶ 164, rel. August 27, 2015.

191 NSA Tr. at 358.

108. Mr. Hempling is also critical of the $5.2 million that the NSA contains for a contribution to workforce development and suggests that it is inappropriate for the Commission "to act as a full employment agency and add jobs or preserve jobs that are unrelated to the efficient operation of the company."[192] The Commission made it clear in Order No. 17947 that we would review the costs for any additional employees in base rate proceedings and determine, as we always do, whether these costs are prudent ones to recover from District ratepayers. However, the Commission did not discuss workforce development in Order No. 17947 and so I do not accept the criticism that the Commission has been engaged in preserving or boosting employment in the District. We have, however, as commissioners, said on a number of occasions that we want District residents to be included in the workforce of our utilities and within the energy field in general. For that reason, I commend the Settling Parties for including the additional workforce funding in NSA Paragraph 24 "[i]n order to promote local employment and the local economy in the District" and consider it to be a direct benefit to the District and its residents.[193]

109. Additionally, while Pepco or PHI could have made a contribution to the District for workforce development absent this proposed merger, that is not something that they have done in the past. So the fact that Exelon will make that contribution is a benefit, especially in light of the testimony of Joint Applicant witness Tierney that the District economy can realize some benefit from this commitment.[194] DC Water witness Hawkins goes further to describe how his agency will use workforce development funds to train District employees for green jobs that are becoming more prevalent in our local economy.[195] Joint Applicant witness Velaquez testified further about how these workforce development training funds can be used to train District residents to prepare to work with jobs that come about at Pepco and with other contractors as a result of grid modernization,[196] while conceding that Pepco has not undertaken this type of targeted workforce development efforts in the District of Columbia prior to making this commitment.[197] Based on this evidence in the record, I do not find the arguments of either DC SUN/MDV-SEIA or GRID2.0 to be persuasive.

b. Whether the NSA positively impacts the management and administrative issues that were of concern to the Commission

110. GRID2.0 witness Hempling provides testimony that challenges the NSA provisions related to issues involving local control and the management of Pepco under the Merger Application and the NSA. In addressing the PHI board structure commitment in NSA Paragraph 55, which states that a majority of the PHI will be independent, GRID2.0 witness

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192 NSA Tr. at 652:1620.

193 Joint Applicants (5F) at 32:15-33:2.

194 *See* Joint Applicants (5G)-1.

195 NSA Tr. at 635:17-22.

196 NSA Tr. at 303:4-12.

197 NSA Tr. at 303:19-304:7.

Hempling asserts that the change is meaningless and provides little public benefit or protection to District ratepayers because all directors, even those who meet the "independent" definition, are selected by, and responsive to, PHI's shareholders, which, in this case, is Exelon.[198] He states, "director independence does nothing to remove the risks that Exelon's control imposes on District ratepayers. Even if all of PHI's board members were 'independent,' their role would be to serve PHI's shareholder—which is, ultimately, Exelon."[199] He also asserts that the colocation of Exelon headquarters in the District of Columbia for Exelon Corporate Strategy and Exelon Utilities set forth in NSA Paragraph 10 is a commitment that is a symbol without substance because "local location does not mean local control [and] . . . does not change the governance rules and hierarchical relationships, which vest ultimate control over Pepco's decisions in Exelon's CEO."[200]

111. In its Initial Brief, DC SUN/MDV-SEIA asserts that nothing in the NSA changes the Commission's determination in Order No. 17947 with respect to the District's utility having less local control over its management and administrative operations.[201] More specifically, DC SUN/MDV-SEIA states nothing in the NSA restricts Exelon's management or Board from overriding any local decision; limits Exelon's ability to set corporate policies that promote its generation business at the expense of local distributed generation policies; restrains the Exelon Utilities CEO's direct role in the management of Pepco or limits his review of rate cases before they are filed in the District; or modifies Exelon's executives' fiduciary interest and obligation to protect Exelon's generation business above PHI and Pepco.[202]

112. The Chair raises a concern that the result of the merger transaction would be that Pepco would be owned and controlled in a manner that does not advance the District's public policy as set forth in the Retail Electric Competition and Consumer Protection Act of 1999 ("Retail Electric Act") given that the Committee Report for the Retail Electric Act states that the primary purpose of the Retail Electric Act is "to do away with Pepco's franchise with respect to generation, and thus to open the electricity supply market in the District of Columbia to competing electricity suppliers."[203]

113. I am not persuaded by these arguments for six reasons. First, while the Retail Electric Act does prescribe the duties of Pepco in D.C. Code § 34-1506 with a requirement that it provide distribution services, there is nothing in the Retail Electric Act that precludes a company that is engaged in energy supply from acquiring Pepco. Indeed, D.C. Code §§ 34-1506(a)(1) and 34-1513(a) contemplate that Pepco may have affiliates that would engage in the business of

198 GRID2.0 (2A) at 13:10-27.

199 GRID2.0 (2A) at 14:11-14.

200 GRID2.0 (2A) at 54:1-8.

201 DC SUN/MDV-SEIA's Br. at 27.

202 DC SUN/MDV-SEIA's Br. at 29.

203 *See* Report on Bill 13-284, the "Retail Electric Competition and Consumer Protection Act of 1999" at 6 (December 2, 1999).

electric supply.[204] D.C. Code § 34-1513 charges the Commission with the responsibility to develop a code of conduct between Pepco and its affiliates. Pursuant to that statutory charge, the Commission initiated *Formal Case 1009* to consider affiliated transactions and standards of conduct for all companies providing energy-related services in the District of Columbia.[205]

114. Second, in Order No. 17947, we were concerned that much of this control will be exercised by persons outside of, and unfamiliar with, the District of Columbia.[206] The changes made in the commitments in NSA Paragraphs 10-13, which, except for a portion of NSA Paragraph 10 that was contained in Joint Applicants Exhibit (4A)-2, are new and are responsive to this concern.[207] While GRID2.0 believes this is a commitment without substance, I believe the preservation of PHI's presence in the District of Columbia is significant for not only the Commission, but also for District ratepayers. Just as the Commission stated in Order No. 11075 approving the Pepco and BGE merger application, the focus here should be on requiring the Joint Applicants to maintain "an adequate management and administrative base in the District of Columbia."[208] NSA Paragraphs 10-13 provide assurances of an adequate management and administrative base in the District of Columbia.

115. Third, we were concerned in Order No. 17947 that the management structure the Joint Applicants proposed would not benefit District ratepayers because the changes would place Pepco on unequal footing with the other Exelon distribution utilities whose CEOs sit on the Exelon Executive Committee. Pepco's CEO would not have the opportunity to share in the discussions and ensure that the needs of Pepco are presented. The new NSA Paragraphs 51 through 54 address these concerns and move Pepco from the second-tier position in which it was previously placed. NSA Paragraph 51 creates the Pepco CEO role and NSA Paragraph 52 describes the authority of the Pepco CEO as well as the role of the Pepco Regional President. The Chair raises a valid concern about the impact of having Pepco's CEO participating in

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204 D.C. Code § 34-1506(a)(1) reads: "The electric company shall provide distribution services to all customers and electricity suppliers on rates, terms of access, and conditions that are comparable to the electric company's own use of its distribution system. The electric company shall not operate its distribution system in a manner that favors the electricity supply of the electric company's affiliates;" D.C. Code § 34-1513(a) reads: "Other than its provision of standard offer service, the electric company shall not engage in the business of an electricity supplier in the District of Columbia except through an affiliate." D.C. Code § 34-1513(a) reads: "Other than its provision of standard offer service, the electric company shall not engage in the business of an electricity supplier in the District of Columbia except through an affiliate."

205 *Formal Case No. 1009, In the Matter of the Investigation into Affiliated Activities, Promotional Practices and Codes of Conduct of Regulated Gas and Electric Companies*, Order No. 12376, rel. April 15, 2002. The Commission adopted an interim Code of Conduct on May 17, 2002 (see *Formal Case No. 1009*, Order No. 12405). The current rules regarding Affiliates Code of Conduct were adopted on February 1, 2011(*Formal Case No. 1009*, Order No. 16166) and are codified as 15 D.C.M.R. § 3900, *et seq*.

206 *Formal Case No. 1119*, Order No. 17947, ¶ 192, rel. August 27, 2015.

207 *See Formal Case No. 1119*, Order No. 17947, ¶¶ 160-167, rel. August 27, 2015.

208 *Formal Case No. 951, In the Matter of the Joint Application of Baltimore Gas and Electric Company, Potomac Electric Power Company and Constellation Energy Corporation for Authorization and Approval of Merger and for a Certificate Authorizing the Issuance of Securities*, Order No. 11075, at 82, rel. October 20, 1997.

meetings with Exelon on generation, given Exelon Generation's active role in the District's Standard Offer Service procurement. If Pepco continues to be the SOS Administrator, the Commission will need to consider whether, and if so how, our SOS procurement and affiliates code of conduct rules should be adjusted to address this issue. As the Chair notes, Pepco has been the SOS Administrator since the advent of restructuring. It was meant to be a temporary position. It is time for that decision to be revisited. Further to the Chair's concern, the Settling Parties recognize that a separation of functions regarding generation is both necessary and appropriate. A new NSA Paragraph 114 requires Exelon to use separate legal and government affairs personnel, support personnel, and separate law firms and consultants to advocate before the Commission on behalf of Exelon Generation and/or Constellation Energy Resources on the one hand and Pepco and any affiliated transmission company on the other hand.

116. Fourth, when we addressed the arguments of the parties on the effects of the transaction on utility management and administrative operations in Order No. 17947, we acknowledged that another change in the management structure under the proposed merger is the change to the boards of directors of Pepco and PHI but expressed a concern about its makeup.[209] The Settling Parties have added a commitment in NSA Paragraph 55 that makes the majority of the board of PHI independent. GRID2.0 witness Hempling claims that an independent board member is only independent from management; but the member is still beholden to the shareholders which, in this case is only Exelon; therefore, the member is not truly independent.[210] He recommended that the Commission adopt a condition that the company executives at the holding company level legally commit not to overrule decisions by Pepco.[211] When questioned during the public interest hearing, Mr. Hempling could not identify any state that used a different definition of independent nor any company that had adopted the condition that he recommended.[212] Indeed, he concedes, "Nobody would acquire — nobody I think would rationally acquire another company if they didn't have control over that company."[213] In the absence of any credible record evidence that would support this suggestion, I am not persuaded that any more is needed in NSA Paragraph 55.

117. Fifth, the Joint Applicants have agreed to merge EBCS and PHI Service Company, the two service companies, within six months of the close of the merger. By adding NSA Paragraph 90, the cost for these services will be largely directly allocated and easier to track and administer. Sixth and finally, the Joint Applicants have, by way of NSA Paragraphs 108 and 109, ensured that the Commission will have jurisdiction over Exelon and its affiliates and have access to Pepco and Exelon's books and records in accordance with D.C. Code § 34-

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209 *Formal Case No. 1119*, Order No. 17947, ¶ 193, rel. August 27, 2015.

210 NSA Tr. at 680-681.

211 NSA Tr. at 682.

212 NSA Tr. at 682.

213 NSA Tr. at 682:18-21.

904.[214] For all of these reasons, I am persuaded that the NSA has greatly reduced the management and administrative issues that were of concern to the Commission.

c. Whether the NSA addresses the Commission's concerns with respect to reliability and safety

118. Two parties raised questions about three specific provisions related to the additional reliability commitments. Regarding NSA Paragraph 56, DC SUN/MDV-SEIA contends these commitments "do not rectify the key deficiencies that drove the Commission to conclude that the reliability provisions in the prior Application provided no direct, tangible benefit for customers or the District."[215] DC SUN/MDV-SEIA asserts the NSA does not mend the flaws the Commission identified in Order No. 17947.[216] In fact, DC SUN/MDV-SEIA argues, there is still nothing in the record that would imply that Pepco would not be able to meet the EQSS for SAIDI and SAIFI if the Proposed Merger is not approved.[217] Regarding the reliability-related capital expenditure commitment set forth in NSA Paragraph 57, DC SUN/MDV-SEIA argues, "None of the Settling Parties have attempted to explain why the Settlement Agreement commitments use a budget that is still extravagant compared with Pepco's recent experience."[218] DC SUN/MDV-SEIA further argues, "[T]he Settlement Agreement's reliability cost budget does not necessarily limit Pepco's recovery from ratepayers."[219] DC SUN/MDV-SEIA notes that the Settling Parties have offered no evidence regarding best practices that Exelon is offering to Pepco and the Settling Parties have not explained how Pepco will improve safety performance or how that goal meshes with other objectives.[220] Finally, regarding the reliability penalty commitment set forth in NSA Paragraph 58, and addressing Joint Applicant witness Velazquez's testimony on the commitment, GRID2.0 witness Hempling states that the Commission or the District Council "can fill this gap without a merger."[221]

119. It is important to note at the outset that the Commission determined that the reliability commitments made in Joint Applicants Exhibit (4A)-2 that included DC PLUG were not connected with the merger transaction and are not an additional benefit beyond what Pepco is providing on a stand-alone basis.[222] While the Joint Applicants proposed a return on equity penalty after January 1, 2021 if Pepco did not achieve the SAIFI and SAIDI levels in Joint

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214 NSA, ¶ 109; NSA Tr. at 233:21-234:10.

215 DC SUN/MDV-SEIA's Br. at 30.

216 DC SUN/MDV-SEIA's Br. at 30.

217 DC SUN/MDV-SEIA's Br. at 31.

218 DC SUN/MDV-SEIA's Br. at 32.

219 DC SUN/MDV-SEIA's Br. at 33.

220 DC SUN/MDV-SEIA's Br. at 34-35.

221 GRID2.0 (2A) at 57:10-13.

222 *Formal Case No. 1119*, Order No. 17497, ¶ ¶ 223, 224, rel. August 27, 2015.

Applicants Exhibit (4A)-2, NSA Paragraphs 56 and 58 provide for enhanced non-compliance penalty provisions for Pepco's failure to obtain reliability performance goals in 2018, 2019, or 2020 within the reliability-related capital budgets for those same years. Additionally, the Joint Applicants have committed that if Pepco fails to meet reliability-related O&M budget levels for these years, Pepco will automatically forgo seeking recovery in customer rates of any amounts spent in excess of the reliability-related O&M budget level for the year.[223] Moreover, Pepco has committed to not seeking a reevaluation of the current EQSS reliability performance standards between 2016 and 2020.[224] In response to the concerns expressed by the Commission in Order No. 17947 regarding the lack of meaningful details regarding the best practices that Exelon is offering[225] and the effects those best practices would have on public safety and the reliability of services if they were deployed, the Joint Applicants have proposed commitment in NSA Paragraphs 61 and 62.[226] Joint Applicant witness Velaquez indicated that Pepco and Exelon would undertake a process after the merger is concluded to share best practices that would lead to system design changes or improvements;[227] and improvements to the interconnection procedures.[228] Mr. Velazquez also addressed the safety performance commitments in NSA Paragraph 62 during the public interest hearing.[229]

120. The record is clear that the Joint Applicants have committed to better reliability provisions in the NSA than they had previously submitted. DC SUN/MDV-SEIA argues that the record does not show that Pepco cannot perform adequately without the merger. GRID2.0 Witness Hempling argues that "we don't know if those are [reliability] commitments that could have been made by Pepco alone or not" and that all companies acting prudently should be able to perform similarly.[230] These are not, in my opinion, the appropriate tests to use to determine whether the change of control brings a benefit to the reliability of our distribution system. Rather, the record evidence before me provides a commitment backed by a penalty of more enhanced reliability and accompanying budget commitments that exceed what was presented in Joint Applicants Exhibit (4A)-2 with a greater level of accountability by the Joint Applicants to District ratepayers and the Commission should Pepco not reach the performance levels to which it is now committing. The NSA commits to specific improvements in reliability performance that will occur even without DC PLUG as well as to improvements in Pepco's safety metrics and

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223 *See* NSA, ¶ 58(f).

224 *See* NSA, ¶ 59.

225 *Formal Case No. 1119*, Order No. 17497, ¶ 231, rel. August 27, 2015.

226 *See Formal Case No. 1119*, Order No. 17497, ¶ 231, rel. August 27, 2015; NSA, ¶¶ 61, 62.

227 NSA Tr. at 297:5-18.

228 NSA Tr. at 334:14-335:16 (Commissioner Fort questioning Velazquez); *see also* NSA Tr. at 235:19-236:4-16 (Commissioner Fort questioning Khouzami).

229 NSA Tr. at 304:8-307:13.

230 NSA Tr. at 729:13-15.

customer satisfaction. I am persuaded that the Settling Parties have made a showing that these commitments will benefit the District.

d. Whether the ring-fencing and divestiture provisions of the NSA are reasonable

121. In this proceeding, Nonsettling Parties DC SUN/MDV-SEIA and GRID2.0 continue to question whether District ratepayers are adequately protected from the risks associated with Exelon's current and future non-jurisdictional businesses by the ring-fencing provisions that are included in the NSA. DC SUN/MDV-SEIA asserts that "[t]he Commission must weigh whether short-term bill reductions provide adequate compensation to customers for the loss of local control and their assumption of risks that will persist forever."[231] DC SUN/MDV-SEIA argues further that the new divestiture conditions are too extreme and describe a process that is too slow and unwieldy to avoid damage to Pepco if it needs to be implemented and argues that the Application should be denied because no effective, timely remedy is proposed to handle the serious risks of damage associated with Exelon's generation business. DC SUN/MDV-SEIA also argues that additional protections are needed and urges the Commission to consider adopting provisions similar to those that were imposed by the Public Utility Commission of Texas in recent developments in the Energy Future Holdings bankruptcy.[232]

122. There were four new ring-fencing commitments added to the NSA and five commitments in Joint Applicants Exhibit (4A)-2 that were modified. Of these new provisions, the one that received the most attention is the new divestiture provision in NSA Paragraph 107. It authorizes the Commission to order Exelon to divest Pepco after taking specific due process steps under four specific conditions: (1) a nuclear accident that "produces a material loss to Exelon that is not covered by insurance or indemnity or . . . the permanent closure of a material number of Exelon nuclear plants"; (2) the bankruptcy filing of Exelon or an affiliate that meets a certain financial threshold; (3) if Exelon's senior unsecured long-term debt is downgraded by at least two major agencies to a rating indicating "substantial risk" and the condition continues for more than six month; or (4) after Exelon and/or PHI have committed a pattern of materials violations of D.C. statutes or Commission regulations or order. GRID2.0 specifically criticizes the new NSA Paragraph 107 that provides for the divestiture of Pepco under four specific scenarios. According to GRID2.0, the divestiture provisions are not meaningful because they cannot be triggered until after the event occurs.[233]

123. In Order No. 17947, the Commission did not address whether additional ring-fencing commitments were necessary to further protect District ratepayer because we voted to reject the Merger Application. Given the improvements to the Merger Application that are presented by the NSA, it is necessary to revisit this question. GRID2.0 witness Hempling has

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231 DC SUN/MDV-SEIA's Br. at 14-15.

232 DC SUN/MDV-SEIA's Br. at 36-38.

233 GRID2.0's Br. at 13-14.

urged the Commission to add a condition to the NSA that would require the Commission to review and approve all future acquisitions of Exelon, a condition that even he thinks would be "highly impractical."[234] Based on the evidence in this proceeding, I am not persuaded that the ring-fencing commitments as modified by the NSA place District ratepayers in a position of unreasonable risk. We previously found the ring-fencing commitments that were offered to be robust. The NSA adds several additional features, including NSA Paragraph 104 which is Exelon's commitment to perform an analysis of its operational and financial risk to determine the adequacy of the existing ring-fencing commitments, to be filed with the Commission no later than the end of 2017.

124. Having looked at the Energy Future Holdings ("EFH") bankruptcy and the actions taken by the Public Utilities Commission of Texas, I am not persuaded that this Commission should take similar action. That case is distinguishable because the purchasers were private equity/hedge funds who were conducting a leveraged buyout of the utility Oncor.[235] I find merit in the Joint Applicants' conclusion that such buyers might lead a regulatory commission to find "valid reasons . . . to impose conditions to try to insulate some of the financial decision-making directly impacting EFH's electric distribution utility from any potential cash-extracting corporate policies."[236]

125. Based on the evidentiary record in this proceeding, I have concluded that the measures in the NSA provide a significant amount of protection to ensure that District ratepayers will not be harmed financially or with respect to service reliability by Exelon's ownership of other non-regulated businesses. While there is a valid concern that the divestiture provision does not provide protection until a calamity has occurred, the opponents ignore the fact that the Commission retains its regulatory powers to monitor the health of Pepco and any impacts that Exelon's actions are having on its operations and take measures in the event that there is a problem appearing on the horizon. While I recognize that with respect to the ring fencing commitments — as is the case with all financial and business issues, especially in today's rapidly changing world — they cannot eliminate all possible risks, I am not persuaded that the amount of future uncovered risk alone is sufficient reason to deny the Merger.

e. Whether the conflict of interest issue with respect to Exelon as a generator and a dominant player in the PJM wholesale market and Pepco's role as a local distribution company can be resolved;

126. Nonsettling Parties GRID2.0, and DC SUN/MDV-SEIA assert that the NSA does nothing to mitigate Exelon's inherent conflict of interest as the owner of generation and as a company that does not share the same energy vision as the District. GRID2.0 reasserts many of

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234 NSA Tr. at 684-687 (Commissioner Fort questioning Hempling).

235 David Carey and Richard Bravo, *Biggest LBO Failure Is Energy Future Purgatory for KKR*, Bloomberg Business (February 25, 2013).

236 Joint Applicants' R. Br. at 44, citing *Application of Penn Estates Util., Inc.*, Docket No. A-210072F0003, *et al.* (October 2, 2006) (Establishing ten specific criteria that must be evaluated to determine if the acquisition or change of control of a Pennsylvania public utility by a private equity investor is in the public interest.)

the same arguments it made about the conflicts inherent in Exelon being a generator with 63% of its revenues coming from generation and Pepco being a buyer that were addressed in our previous order. Additionally, with respect to the NSA, GRID2.0 argues that its provisions improperly place Exelon or its affiliates in the developer role for solar generation at DC Water and Pepco in the role of developer or facilitator for the District's public purpose microgrids.[237]

127. DC SUN/MDV-SEIA describes the NSA as "a step backwards because it gives Exelon a favored position vis-à-vis its District-based competitors in developing emerging technologies." DC SUN/MDV-SEIA argues further that Exelon will stifle competition in developing new technologies on the distribution grid, but provides no evidence of its assertion. Further they argue that the NSA does nothing to stop Exelon from stifling competition with Pepco or with Exelon and its affiliates, especially with respect to the new and developing technologies on the distribution grid and related to the incorporation of distributed energy resources.[238]

128. The Chair in her dissent notes that potential conflicts will occur in "day to day and year to year management and executive decision making;" determines that "[t]he philosophy of LDC privilege will not be mitigated and the Commission will have to continually be monitoring and chasing the subtle and not so subtle diversion of focus, conflict of interest, and anti-competitive behavior of the LDC" and concludes "[t]here is no alternative that will address the fundamental structural problem of the merger. The only alternative is not to approve the acquisition and change of control."[239]

129. The Joint Applicants, while maintaining that no such "conflict of interest currently exists or will arise, nevertheless highlight the many provisions in the NSA that have been added to address these concerns. Specifically, in various arguments, the Joint Applicants note the following list of new provisions: (1) the provisions that ensure competitive neutrality in the preparation of transmission level interconnections studies within PJM; (2) the commitment to allow the PJM Market Monitor to review demand response bids in the energy, reserves and capacity markets; (3) commitments to continue to support energy efficiency and demand response within the energy resource mix, to advocate that demand response be reflected in markets that serve the District and to maintain and promote the demand response programs at PHI and Pepco; (4) a contribution to support the Consumer Advocates of PJM States, Inc.; (5) the inclusion of an independent PHI board of directors; (6) a commitment to use separate legal and government affairs personnel, support personnel and law firms and consultants to advocate before the Commission on behalf of Exelon Generation and/or Constellation Energy Resources on one hand and Pepco and any transmission company on the other hand; (7) commitment for Exelon and its affiliates to abide by the Commission's rules and the inclusion of the new divestiture provisions in NSA Paragraph 107 that would give the Commission authorization to force the separation of Exelon and Pepco for Exelon's repeated violations of Commission Rules

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237 GRID2.0's Br. at 22, quoting *Formal Case No. 1119*, Order No. 17947, ¶¶ 9, 10, rel. August 27, 2015.

238 DC SUN/MDV-SEIA's Br. at 43-48.

239 Chairman Kane's opinion, ¶¶ 78-79.

after reasonable due process; and (8) commitments for Exelon to stay in PJM for at least ten years and a limitation on the circumstances under which Pepco or any other Exelon utility would leave PJM. Furthermore, Joint Applicant witness Tierney testified that it was possible for a generation company to operate without conflict, citing to the 17.5 million retail customers in the PJM footprint and another 8.5 million retail customers in New York and New England who were served as a result of the Conectiv merger with the regulatory agencies in those states reporting no difficulty dealing with conflicts of interest.[240] She also testified that a company, like PHI, which only has distribution is more risky today that a diversified company like Exelon given the advent of distributed generation that is leading distribution customers to reduce their use of the distribution system.

130. OPC witness Dismukes testified that "OPC recognizes that Exelon's business strategy and emphasis on competitive generation is not likely to change any time soon, if ever;" but then goes on to say that "OPC does believe, however, that the Agreement includes a number of very strong and meaningful conditions that mitigate Exelon's ability to act on those generation-preferencing incentives in ways that will harm the District's ratepayers" citing specifically the enhanced independence on the governing board, the ability of the Commission and OPC to reach the books and records of Exelon's affiliates to ensure no abuses arising from any Exelon generation-based preference; Pepco's retention of considerable local control and meaningful input in defining its own corporate strategy and planning; and the divestiture provisions. OPC also cites the fact that these provisions are more enforceable because under NSA Paragraph 139, Exelon and its affiliates submit to the Commission's jurisdictions to enforce the terms of the NSA. Moreover, OPC notes that during the evidentiary hearing, Exelon witness Khouzami explained that the Joint Applicants would also follow any new rules or orders crafted by the Commission that are different from the provisions of the NSA.[241]

131. The District Government also cited the new NSA provisions as the reasons that caused it to change its position and support the settlement. Specifically it pointed to the transmission interconnection studies that would be performed on a competitive basis; the contribution to the CAPS of which OPC is a member; and the firewall that has been added between Exelon's generation interests and Pepco's distribution and affiliated transmission interest.

132. One major issue raised by the Nonsettling Parties as well as the Chair in support of their position that conflicts of interest have already begun to occur focused on NSA Paragraph 118 that placed Exelon in the developer role at DC Water. GRID2.0 cited it as an example of Exelon using its power to obtain a first-mover advantage while the Chair said "[t]his is a prime example of an LDC, in this case a potentially Exelon-owned Pepco, leveraging its monopoly position to favor itself. This is exactly what is prohibited in § 34-1506."[242] While they are

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240 Joint Applicants' Br. at 52, citing OPC (3A) at 42:1-21 (Dismukes).

241 NSA Tr. at 182:6-14, 440:13-22 (Questions by Commissioner Fort). The Commission will shortly be issuing an order on interconnection procedures in *Formal Case No. 1050* that will supersede some of the NSA Paragraphs.

242 Chairman Kane's opinion, ¶ 74.

correct that NSA Paragraph 118 places Exelon in a position that is inconsistent with our regulatory framework, there was no testimony or evidence presented on this record that supports their position that Exelon took any action or directed Pepco to take an action to cause DC Water to terminate its procurement with the previous vendor of a solar generation system at DC Water or to substitute itself as the new vendor going forward. The record only tells us, through testimony from DC Water witness Hawkins, that the business transaction fell through as a result of not reaching an agreement over who would bear the risk of incurring additional financial costs if the interconnection with Pepco was not completed before the ITC expired at the end of 2016[243] and through the testimony of DCG witness Wells that he saw the NSA as an opportunity to revive the solar generation facility at Blue Plains.[244]

133. Our Commission rules prohibit an inquiry into the details of settlement negotiations; so it was not an issue about which we could seek any further clarification. Based on the record evidence, however, I do not find support for the argument that the NSA is an example of how Exelon will act if the change of control is approved. An equally plausible (and I think a more plausible) explanation based on this evidentiary record, is that the Settling Parties in this high stakes litigation were attempting in good faith to address the Commission's concern about the Joint Applicants' lack of support for distributed generation in its Merger Application. They did so by proposing projects and commitments that were intended to demonstrate a benefit for the District and its ratepayers and that would also further promote the District's Sustainable Energy Goal of having 50% of its energy produced from renewable sources by 2032. There is evidence in the record that the lead for this effort was the District Government. At the hearing, for example, Joint Applicant witness Velazquez testified that the District Government requested the inclusion of the provisions about microgrids that appears in NSA Paragraph 128.

134. This proceeding has challenged all parties to articulate how the Commission should address the statutory mandate as set out in D.C. Code § 34-808.02 for the Commission to include a consideration of, among other things, "the conservation of natural resources and the preservation of environmental quality" in supervising and regulating utility or energy companies. In its consideration, the Commission has attempted to ensure that this statutory provision is carried out in a manner that is consistent with the regulatory framework in which we operate – a regulatory framework that is unfamiliar to some stakeholders. If the roles that the Majority Opinion concludes are improper were suggested by the District Government itself, it is unfair, in my opinion, to use that fact as evidence to show an anti-competitive motive on behalf of the Joint Applicants.

135. This proceeding shows that there is a continuing need to educate all stakeholders about how our restructured market currently operates. Additionally, the Chair and the Nonsettling Parties are correct that the Commission and its stakeholders will need to be vigilant going forward to ensure that there are no abuses that are intentional or unintentional. That should include an immediate review of the Commission's affiliated transaction rules to make sure that they are up to date and responsive to our current operating environment. It should also

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243 NSA Tr. at 612:16-21.

244 NSA Tr. at 92-93.

be noted that one of the issues that will be addressed in *Formal Case No. 1130* is our current regulatory framework and whether it needs to be changed to accommodate a modern more decentralized distribution system. As the Chair notes, different regulatory models have emerged in other jurisdictions. Under some of those models, the distribution company or its affiliates are allowed to participate in solar generation and energy storage and other activities that serve the needs of the distribution system.

136. Finally, concerns have been raised with respect to Exelon's role and impact on the wholesale market under the terms of the NSA. DC SUN/MDV-SEIA, MAREC and the Market Monitor all argue that the change of control will facilitate Exelon's dominance in the wholesale markets with a potentially harmful impact on District ratepayers because Pepco's buyer-side voice, independent of any generator influence, will be silenced. While DC SUN/MDV-SEIA and MAREC argue that the appropriate response is to deny the change of control application, the IMM argues that the appropriate response for the Commission is to impose on Exelon six mitigating measures if the Commission elects to approve the merger. The IMM notes that the New Jersey Board of Public Utilities and the Maryland Public Service Commission each incorporated a version of one of the provisions that the IMM is advocating.[245] The Settling Parties respond that the measures are not necessary and have not been required or accepted by FERC or by the other state commissions in PJM. While acknowledging that these provisions have not been applied to any other transmission owners in PJM, the IMM maintains that it can and will seek to ensure that similar provisions, no less stringent, will apply to all PJM transmission owners, none of whom have a merger currently pending.

137. In Order No. 17947, the Commission indicated that it did not find any evidence of harm to the wholesale market and its impact on District ratepayers on the evidentiary record of that proceeding.[246] That finding is not changed by anything on the evidentiary record of this proceeding. Nor is there anything in the record before us to support the adoption of the measures that the Market Monitor has put forth, the majority of which have not been accepted in the settlements reached by our sister state commissions in PJM. FERC, which oversee PJM and Exelon's participation in PJM, approved the Joint Applicants' proposed change of control transaction without requiring the mitigating measures that the Market Monitor has requested. In NSA Paragraph 116(d), Exelon has committed to stay in PJM for at least ten years; while the Market Monitor is seeking an indefinite commitment. The commitment to remain at least ten years, along with the FERC's silence on the issues raised by the Market Monitor, are sufficient to assure me that the interest of District ratepayers are protected without the additional mitigating measures being sought by the Market Monitor.

6. Rejection of the NSA as submitted

138. I realize that the NSA as submitted has the support of the Settling Parties who represent most of the major parties to this proceeding, the Mayor, and a majority of the members

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245 The BPU and the Maryland PSC included a version of the provision on interconnection studies to be performed by independent third parties.

246 *Formal Case No. 1119*, Order No. 17947, ¶ 298.

of the Council of the District of Columbia. Proponents of the NSA and the underlying change of control application urge the Commission to accept the NSA as submitted, given the negotiated nature of a settlement. However, it is my job, as one of the three final decision makers, to weigh all of the arguments as well as the evidentiary record that underlies the extensive advocacy that this proceeding has generated. Having considered the evidentiary record of this proceeding, having reviewed the NSA as a whole and its impact on the underlying Merger Application, and following the guidance from applicable statutory and case law, I cannot conclude that the NSA as submitted when taken as a whole is in the public interest because of the four concerns that are noted in this concurrence and the Majority Opinion. That said, I agree with the NSA's supporters that the changes made by the NSA to the Merger Application, other than those that I have identified in this concurrence, have removed the reservations that I had with the original Merger Application. Moreover, I do not believe that the NSA is fatally flawed because each of the four concerns addressed in the Majority Opinion can be corrected in a revised NSA with alternative terms. For that reason, and as explained in more detail below, I have crafted alternative terms for the NSA and asked my fellow commissioners to approve sharing them with the Settling Parties for their consideration under Commission Rule 130.17(b).

B. Concurrence on Commission Rule 130.17(b) Vote

139. I have set out in this concurrence alternative terms that I am proposing to address the four concerns identified in the Majority Opinion and my concurrence with respect to our vote on Commission Rule 130.16. Further, I set out the basis of my conclusion that if the NSA is revised to include the alternative terms as set out in Attachment A and accepted by all of the Settling Parties, it will result in a Merger Application which is, taken as a whole, in the public interest. Then I can join Commissioner Phillips and approve the Revised NSA without further action by the Commission.

1. Alternative Terms for the NSA

140. The four concerns outlined in my concurrence and the Majority Opinion form the basis for my vote to reject the NSA as submitted; however, as stated earlier, Commission Rule 130.17(b) allows alternative terms to be sent for the consideration of the Settling Parties if those terms would result in a settlement agreement that would be in the public interest. Adding alternative or clarifying terms is not new for this Commission. In *Formal Case No. 945*, for example, this Commission determined that the Nonunanimous Agreement of Stipulation and Full Settlement could be approved as being in the public interest with clarifications.[247] The Commission then proceeded to clarify that the rate cap established by the settlement agreement in that proceeding would commence after rate reductions provided for in the settlement agreement had been taken;[248] Pepco's transmission and distribution assets would not be sold, and signatory parties would be involved in the selection of the entity that would conduct the independent market power study of the Benning Road, Buzzard Point, and Potomac River

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247 *See Formal Case No. 945*, Order No. 11576, rel. December 30, 1999.

248 *Formal Case No. 945*, Order No. 11576 at p. 28.

generating plants.[249] Those changes were made by the Commission by way of clarification and without sending the settlement back to the Settling Parties. I do not advocate for following that procedures here when there is a Commission rule that provides specific guidance on how to proceed. Against that backdrop, the following are the alternative terms that address the four concerns identified in the Majority Opinion and my concurrence.

a. Revision of NSA Paragraph 4

141. First, revise NSA Paragraph 4 to reflect that a decision on the allocation of the $25.6 million Customer Base Rate Credit among Pepco's customers will be deferred until the next base rate case proceeding.[250]

142. The alternative terms accepts the funding level of $25.6 million to be used for a Customer Base Rate Credit but defers the decision on how the funds will be allocated and for what period of time until the next base rate proceeding. As responses to our questioning at the evidentiary hearing demonstrated, even the Settling Parties are less than clear about how this proposal would work and what its impact would be on the Commission's stated policy to correct the historical inequity on class negative rates of return that was created in the aftermath of restructuring and the rate freezes associated with those proceedings.[251] The alternative term delays the decisions on how these funds will be allocated because the record of the public interest hearing on the NSA does not provide us with sufficient information to determine how this proposal, as made, will operate and the rate design impact of its application.

143. That said, I commend the Settling Parties for having the forethought to suggest that this amount of the CIF be used as a tool to help address the negative class rate of return issue that can only be corrected by shifting a higher portion of any revenue increase to residential ratepayers if a showing is made during a base rate case that their class rate of return remains negative. Consequently, the details of the Customer Base Rate Credit proposal are being rejected without prejudice. Parties are welcome to reassert the same proposal during the next base rate proceeding. It may be that within the context of a base rate proceeding, the Settling Parties can provide sufficient evidence to demonstrate that the allocations of the funds for the customer base rate credit as proposed in the NSA are fair and can be applied consistent with the Commission's expressed policy to address negative class rates of return. That showing has not been made on the evidentiary record of this proceeding. Therefore, NSA Paragraph 4 needs to be revised.

b. Revisions of NSA Paragraph 118

144. Second, I revise NSA Paragraph 118 to remove the provision that calls for Exelon to develop 5 MWs of solar generation at DC Water's Blue Plains facility under "commercially acceptable" terms; retain the commitment for Exelon to develop 7 MWs of solar generation in

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249 *Formal Case No. 945*, Order No. 11576 at pp. 31-32.

250 The revised paragraph is set out in Paragraph 4 in the Revised NSA in Attachment A.

251 *See* NSA Tr. at 186:6-197:11, 471:12-474:3 (questions by Commissioner Fort to Joint Applicants witness Khouzami and AOBA witness Oliver on how the rate credit will be applied).

the District outside of Blue Plains by December 31, 2018, and add a commitment by Pepco to facilitate and expedite the interconnection of a solar project at DC Water's Blue Plains facility of up to 5 MWs with the developer of DC Water's choice.[252]

145. The alternative term revises NSA Paragraph 118 to be consistent with the District's restructured competitive market by removing the provision that gives Exelon the role of developer of the 5 MW solar facility at DC Water's Blue Plains facility and adding a commitment by Pepco to facilitate and expedite the interconnection with the developer of DC Water's choice. I recognize that DC Water's facilities are part of the District's critical infrastructure. It is Pepco's largest customer; and District ratepayers pay its bills. Having adequate clean water and treated sewage, especially when electric service is interrupted, is clearly in the public interest. For those reasons, it is understandable that the Settling Parties included in the NSA a provision for the development of 5 MWs of solar generation at DC Water's Blue Plains facility. The solar facility would help bring the District closer to its renewable energy goals; and lower DC Water's electricity bill (the cost of which is paid for by District water ratepayers). These are objectives that are clearly in the public interest and that would benefit all District water and electric ratepayers. But the designation of Exelon as the developer is clearly inconsistent with our regulatory structure for all of the cited reasons and therefore is removed.

146. No change is being made at this time to the provision that restricts Exelon from using the Solar Renewable Energy Credits ("SREC") from these projects for District of Columbia Renewable Portfolio Standard compliance prior to specific dates. At the evidentiary hearing, the Chair questioned this provision and was told that the provision came from the Maryland settlement where the rationale was to prevent the SRECs from flooding the market and changing SREC prices.[253] As the Chair noted at the hearing, SREC prices impact the amount of compliance payments that competitive energy suppliers pay to the REDF. Competitive energy suppliers can recover these payments from customers in their energy prices after giving notice to the Commission. To date, no such notice has been given. The Commission reserves the right to revisit this provision in NSA Paragraph 118 if future evidence shows that it is adversely impacting the energy market.

147. The alternative term also recognizes that one of the concerns about the change of control transaction is that there is an area of potential conflict when Pepco must work with a generator other than Exelon or one of its affiliates. To ensure that the interconnection process will run smoothly and expeditiously, a sentence has been added to commit Pepco to facilitate and expedite the interconnection with the developer of DC Water's choice. None of the changes to NSA Paragraph 118 would preclude Exelon or one of its affiliates from being selected by DC Water to develop the solar facility at Blue Plains through a procurement process led by DC Water.

c. Revision of NSA Paragraphs 6, 7, 8, 9, 56 and 58(c)

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252 The revised paragraph is set out in Paragraph 118 in the Revised NSA in Attachment A.

253 NSA Tr.at 141:6-142:8.

148. Third, revise NSA Paragraphs 6, 7, 8, 9, 56 and 58(c) in four ways as explained in greater detail below.[254]

149. Enforceability and accountability for the expenditure of funds were two criticisms of the NSA. It is a concern that the Chair and I share about the NSA as submitted. As explained in the Majority Opinion and this concurrence, the Commission wants to ensure that the CIF and any penalty funds remain under the Commission's regulatory authority; is available for projects that support the mission of the Commission and is not subject to being diminished or reallocated based on budgetary concerns within the District Government. These four changes will provide that assurance to the Commission. First, the alternative terms change how funds from the CIF as set out in NSA Paragraphs 6, 7, 8 and 9 will be transferred from the Joint Applicants. Specifically, funds from the CIF that are described in NSA Paragraphs 6, 7, 8, and 9 will not transfer directly from the Joint Applicants to the SETF, the REDF, DOEE and the District Department of Consumer and Regulatory Affairs ("DCRA") or to any other District agency upon approval of the Merger as set out in the NSA as submitted. Instead, as explained below, Exelon will transfer the funds to a new *Formal Case No. 1119* Escrow Fund to be established by Pepco with two subaccounts. This change ensures that the Commission can monitor, track, protect, and, when necessary, enforce the uses of the CIF for the improvement of the distribution grid and for the benefit of District ratepayers. This change will not prohibit the District Government from having access to CIF funds to use for purposes consistent with the terms of the revised NSA provisions pursuant to a Memorandum of Understanding with the Commission.

150. Second, the alternative terms provide that the sums designated for the CIF under NSA Paragraphs 6, 7 and 8 and half of the funds designated for Paragraph 9(b) will be combined in the amount of $21.55 million that will form the MEDSIS Pilot Project Fund Subaccount within the *Formal Case No. 1119* Escrow Fund to be used to support pilot projects related to grid modernization that emerge from *Formal Case No. 1130*. Third, the alternative terms provide that half of the funds designated for the CIF under NSA 9(b) and all of the sums designated under NSA Paragraph 9(c) and will be combined into a single amount equal to $11.25 million and form the Energy Efficiency and Energy Conservation Initiatives Subaccount for the purpose of supporting energy efficiency and energy conservation programs and for innovative pilot programs related to reducing the amount of electricity usage, especially in multi-family buildings for District residents of low and moderate means. Fourth, the alternative term provides that any non-compliance payments funds paid under Paragraphs 56 and 58(c) for failure to obtain reliability performance goals in 2018, 2019, or 2020 within the reliability-related capital budget in NSA Paragraph 57 would not be transferred to the SETF but would, instead, be placed in the MEDSIS Pilot Project Fund Subaccount within the *Formal Case No. 1119* Escrow Fund. The new escrow account and the two subaccounts would work as follows:

The Formal Case No. 1119 Escrow Account

151. The alternative term requires that within sixty (60) days of the close of the Merger, Pepco will create the *Formal Case No. 1119* Escrow Fund with two subaccounts and

[254] The revised paragraphs are set out in Paragraphs 6, 7, and 9 in the Revised NSA in Attachment A.

Exelon will transfer the following portions of the District's CIF to the subaccounts.[255] The escrowed funds shall be placed in an interest-bearing account or invested in instruments issued or guaranteed as to principle and interest. The funds shall be administered by a third party administrator under the approval of the Commission.

1. $21.55 million Subaccount MEDSIS Pilot Project Fund to support Formal Case No. 1130

152. The alternative term requires Exelon to transfer $21.55 million of the CIF into the MEDSIS Pilot Project Fund Subaccount that will support the work being done in *Formal Case No. 1130*. Across the country, commissions and the electric distribution companies that they regulate are beginning to explore various aspects of grid modernization and the host of new developments that are fundamentally changing how electricity is being generated and delivered. Following the lead of the New York Public Service Commission and its Reforming the Energy Vision ("REV") proceeding and work being done in a number of other jurisdictions to incorporate the use of more distributed energy resources, such as renewable generation, and district energy systems into the distribution network, our Commission opened *Formal Case No. 1130* in 2015. This case allows stakeholders in the District to explore, among other things, the operational and regulatory changes that need to occur with respect to the District's distribution system to satisfy the visions of our District leaders to lower our city's carbon footprint and use more distributed resources while ensuring that our local distribution company can still provide safe, reliable and quality services to District ratepayers at a fair and reasonable price while earning a fair rate of return. The case has generated wide interest and received wide support, including from Pepco, which was a presenter at our kick-off workshop.

153. Other state public service commissions that are looking at similar issues related to the modernization of the electric grid have reported that constructive and progressive changes that promote the development of a more modern grid are emerging from the use of a collaborative process that includes pilot projects. The pilot projects that are selected through a competitive process or that are created in conjunction with state or local governmental entities allow all parties to thoughtfully and critically test the new technologies that will modernize our current grid and make it more accommodating to distributed resources and new technologies.[256]

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[255] In two previous Commission settlements where smaller amounts of funds were part of a settlement agreement, new non-profit organizations were created to hold and administer the funds. They required the establishment of governing boards and generated separate financial reporting requirements for tax purposes for the new entities. The Commission monitored the activity but had no direct regulatory authority with respect to the funds and their use.

[256] In particular we are following the Reforming the Energy Vision (14-M-001) underway at the New York Public Service Commission, the e21 Initiative and Distribution Planning Investigation (15-556) in Minnesota, the Energy Storage Framework & Procurement (R1503011) and the Distribution Resources Plan (R1408013) in California, the Investigation into Distributed Energy Resources Policies (2014-0192) in Hawaii, the Microgrid Pilot Program in ComEd's service territory (Illinois Energy Infrastructure Modernization Act (EIMA)) in Illinois, the Green Mountain Power and Tesla Behind the Meter Storage Pilot in Vermont, the Demonstration Projects for Grid-Side System Enhancements to Integrate Distributed Energy Resources in Connecticut, and the Value of Distributed Energy Resources for Georgia Power 2016 Integrated Resource Plan (39732) in Georgia.

154. The MEDSIS Pilot Project Fund will also provide an opportunity for the local distribution company to work with third parties in a collaborative and productive fashion, with oversight by the Commission, to plan for and test new technologies (such as energy storage systems, new voltage regulators, and different types of microgrids) that will modernize and improve the distribution grid that will serve the District. The MEDSIS Pilot Project Fund will be available for pilot projects that address planning or operational issues related to accommodating the changing resource mix being experienced in the District on the District's distribution grid or such other uses as the Commission decides based on the *Formal Case No. 1130* proceeding. The Commission will award these funds through competitive procurement or through a memorandum of understanding with the District Government.

2. $11.25 million Subaccount for Energy Efficiency and Energy Conservation Programs for Low and Limited Income Customers.

155. The alternative term requires Exelon to transfer $11.25 million of the CIF into The Energy Efficiency and Energy Conservation Initiatives Subaccount to fund energy efficiency, energy conservation and energy usage programs, with a primary focus on District ratepayers of low and limited means. The evidentiary hearing confirms that there is a need to use the CIF to support funding for energy efficiency programs for multi-family buildings that house RAD customers and other low and limited income District residents. In the District, 78% of households with incomes less than $50,000 per year are renters and the District has an unusually high percentage of housing units in multifamily buildings, particularly large multifamily buildings. Moreover, 94% of the housing stock of multifamily buildings is more than 15 years old.[257] Consequently, using a portion of the CIF to promote energy efficiency and help to lower the energy usage in the places where RAD and other customers of low and moderate means reside provides an ongoing and systemic solution to this challenge. As noted earlier, all District ratepayers support the distribution portion of the electric bills of low income ratepayers in the RAD program through the RAD surcharge and SOS customers support the energy supply portion of RAD ratepayers through the discounted SOS program. Although additional work is currently underway at the Commission to address how to further reduce the energy portion of the bills for RAD customers, there remains a need to target energy usage through innovative programs and tools, including programs behind the meter, to ensure that the District residents of low and moderate means, the majority of whom reside in multi-family buildings, are provided with systemic assistance.

156. The funds in this subaccount can also be used for innovative pilot programs that focus on addressing energy usage from the utility side through utility demand side management programs, or from the customer side through behavioral energy efficiency programs. Programs of this nature were largely suspended after the creation of the SETF and the SEU. The Commission will award these funds through competitive procurement or through a memorandum of understanding with the District Government.

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[257] NCLC/NHT (A) at 4-6 (Bodaken), *see also* NCLC Br. at 7.

The Remainder of the NSA Direct Funding Commitments

157. To avoid any confusion, I note that there will be additional funds that flow to the District and to other beneficiaries under the NSA that would transfer outside of the *Formal Case No. 1119* Escrow Fund. First, there will be three additional items funded by the CIF that will not be included in the escrow fund. According to the NSA and as confirmed during the evidentiary hearings, the $14 million that will be used for an immediate Residential Customer Credit will be credited directly to residential ratepayers on their bills.[258] Additionally, with respect to the $25.6 million for the Customer Base Rate Credit, the credits will be applied to customer bills and Pepco will receive a reimbursement from Exelon. Pepco will provide the Commission with an accounting that confirms these expenditures upon request. Finally, the $400,000 that will be used as credits for customers whose bills are in excess of two years old will transfer outside of the escrow fund. None of the CIF funds will be recovered from ratepayers.

158. Exelon has also made four additional direct funding commitments totaling $29.55 million that would occur outside of the CIF and will not be recovered from District ratepayers. The first is a $5.2 million contribution to the District's workforce development program pursuant to NSA Paragraph 24. That contribution will be paid directly to the District within sixty (60) days of the Merger closing. During the evidentiary hearing it was established that the City Administrator would decide how the funds would be allocated to UDC Community College, the Department of Employment Services, and DC Water.[259] In its Reply Brief, the District Government states that $2 million of the Workforce Development Fund will be given to DC Water for its Green Infrastructure job training program.[260] The second is the $5.0 million that Exelon will provide at market rates to creditworthy governmental entities for the deployment of renewable energy projects in the District pursuant to NSA Paragraph 119. The third funding commitment is the $350,000 to be paid to the Consumer Advocates of PJM States, Inc. pursuant to NSA Paragraph 117. The fourth funding commitment is the ten-year funding for District of Columbia charitable contributions equal to $1.9 million annually (calculated on a three-year rolling basis) or $19 million over ten years pursuant to NSA Paragraph 27.

d. Removal of NSA Paragraph 128 and revision of NSA Paragraph 129

159. Fourth, remove NSA Paragraph 128 and revise NSA Paragraph 129 to add a commitment to support and facilitate the pilot projects approved by the Commission that emerge from the proceeding.[261]

160. As noted earlier, issues concerning the development, regulation and operation of microgrids, both public purpose and private ones, are among the many topics being reviewed in

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258 NSA Tr. at 199.

259 NSA Tr. at 161-162.

260 DCG R. Br. at App. A, Item 19.

261 The revised paragraph is set out in Paragraph 129 in the Revised NSA in Attachment A.

the Commission's *Formal Case No. 1130* docket. There has been great interest in the case and its proceedings. Accepting NSA Paragraph 128, as submitted, especially with language that appears to approve the recovery of Pepco's costs for four public purpose microgrids of unknown size and use at this early stage of *Formal Case No. 1130* prejudges the outcome of that proceeding and would possibly limit both the options for the Commission and the interest of other entities who seek to work in this space. The alternative term removes NSA Paragraph 128 in its entirety.

161. Additionally, NSA Paragraph 129, which currently details the support of Pepco and Exelon for *Formal Case No. 1130*, is revised to include a specific commitment to support and facilitate the pilot projects that emerge from that proceeding. Such projects may include District Government public purpose microgrid projects. The two changes in this alternative term further commit the Joint Applicants to work with stakeholders through a period of industry change to ensure that our distribution grid can support new markets and services and remain safe, reliable, resilient and consistent with the laws and policies of the District, including those with respect to the use of distributed energy resources.

3. Conclusion

162. Before reaching my final conclusion on the NSA, I have also considered the numerous written comments that the Commission has received from the general public, the comments received in our community public interest hearing, and arguments that have been made by both sides. Where appropriate based on the evidentiary record in this proceeding, I have reflected the concerns that I have found to be persuasive in my two concurrences and in the alternative terms that have been crafted for the Revised NSA.

163. Looking at the Revised NSA and the evidentiary record, I conclude that the Revised NSA and the amended Merger Application, when taken as a whole, is now in the public interest. The Revised NSA contains a more generous CIF in the amount of $72.8 million which will be used for a number of beneficial purposes including direct rate credits to residential customers, and funds to mitigate some of the immediate cost impacts of future rate increases that implement Commission policy to correct for negative class rates of return. Through the Formal Case No. 1119 Escrow Fund that remains under the oversight authority of the Commission, the Joint Applicants will be supporting additional programs for energy conservation and energy efficiency, especially for low and moderate income ratepayers as well as facilitating and supporting the work that emerges from *Formal Case No. 1130* to modernize our energy delivery system and prepare our distribution grid for a future that contains more distributed energy resources. Additionally, if Exelon, as one of the Settling Parties, accepts the alternative terms of the Revised NSA, it is committing to facilitate and support the pilot projects that the Commission will select under the Formal Case No. 1130 Pilot Project Fund that will set in motion a mechanism for beginning to modernize our distribution system. Exelon, as an affiliate of Pepco acting consistent with our rules for affiliated transactions, will also become a more active participant in the development of solar and wind energy for the benefit of District ratepayers in a manner that is consistent with our regulatory structure. These terms allow Exelon to further demonstrate to District ratepayers and stakeholders that it is willing to support the energy vision of the District.

164. The Revised NSA commits the Joint Applicants to achieving better reliability and safety performance and increased customer satisfaction. The Revised NSA also contains support for the District's economy through its commitment to retain the headquarters of Pepco and to locate the co-headquarters of Exelon Corporate Strategy and Exelon Utilities in the District for the next decade along with specific commitments for job retention and new hires for union employees. The Revised NSA also contains a commitment to merge the two systems for shared costs with the use of more direct cost allocations that will simplify the work of the Commission and interested parties that review those costs.

165. The Revised NSA adequately resolves, for me, what were two major issues in the Joint Applicants' initial filing. First, under the Revised NSA, Exelon has increased its local presence with its commitment to co-locate its Exelon Utilities unit in the District and keep it here for at least ten years. More importantly, Exelon has given the Pepco CEO a seat at the Exelon Executive Committee table with the CEOs of the other distribution companies owned by Exelon. This change ensures that the leader of our distribution company will be able to participate in the forum where decisions impacting the District and local distribution company operations are being made.

166. Second, the NSA contains numerous new provisions to address the concerns of the Commission and other parties about potential conflicts of interest that could arise between Exelon as a generator and Pepco as a distribution company in the retail market and with Exelon as a dominant player in the PJM wholesale market. These new provisions demonstrate that Exelon, while denying that a conflict does or will exist, is aware of the concerns of others and has been willing to commit to a variety of measures that will allow more transparency in its action and a means of enforcement if persons have a legitimate concern about the impact of actions that it is undertaking.

167. I accept the Revised NSA knowing that it does not provide for a rate freeze and acknowledging that a rate increase filing will be coming in the near future. Pepco informed the Commission in 2014 that it would shortly be filing another rate case, in part to recover the costs of the reliability improvements that it had been making -- improvements that kept our system working during the recent record snowstorm. The Joint Applicants have promised that the synergy savings will be reflected in its filings. The Commission will be looking to them to keep that promise and will be using the tracking and reporting provisions in the NSA to review these savings and compare them against the costs to achieve this change of control transaction.

168. I also accept the Revised NSA knowing that Exelon's ownership of nuclear plants adds a risk factor that the Commission has not previously had to consider under our restructured market. I do not agree with the opponents of this transaction that it should be dead in the water simply because Exelon owns nuclear generation. That point of view, which has no support in District or federal law, also ignores the fact that the District, both historically and currently, has been served by a fuel mix that contains a substantial amount of nuclear energy, procured competitively through our SOS auction for our SOS customers and procured by choice by many other customers. As a "clean" fuel, nuclear energy will continue to have a future under the Clean Power Plans being developed across the country. As a Commissioner, it is my job to ensure that District ratepayers are not adversely impacted by Exelon's ownership of nuclear generation. That has been done in two ways. First, in Order No. 17947, the Commission explained that our

regulatory framework prohibits the costs related to Exelon's nuclear plants from being imposed on, or collected from, District ratepayers in their distribution rates. The base rate proceeding before the Commission will be the vehicle by which this provision is enforced. Second, robust ring-fencing provisions are included in the Revised NSA. A less robust version of these provisions has already been accepted by three other state commissions that have reviewed this transaction. Based on my review of the evidentiary record, I have concluded that these measures, which include a divestiture provision, provide District ratepayers with a substantial amount of protection that District ratepayers will not be harmed financially or with respect to service reliability in the event of an incident with one of Exelon's nuclear plants or an Exelon bankruptcy. But like all financial and business issues, especially in today's rapidly changing world, some element of risk still remains. I am not persuaded that the amount of future uncovered risk alone is sufficient reason to deny the Merger Application and the Revised NSA.

169. Before concluding, I note as a final comment that some of the advocacy surrounding this proceeding is not based on facts in our evidentiary record or on a complete understanding of how our restructured market operates. One task for the Commission following the final resolution of this proceeding should be a concerted effort to clarify or correct some of the misinformation that has been advanced with respect to this hotly contested application. It is my hope that with the conclusion of this proceeding, District ratepayers will shift some of their focus to the issues that we are exploring in *Formal Case No. 1130* and work with the Commission to make certain that we emerge with a modern distribution system that is safe, reliable, and resilient; that operates in a manner that is consistent with the sustainability goals of the District; that serves as a platform to provide more competitive services to consumers in the future and that provides its services at fair, just and reasonable prices.

170. With that said, I approve the Revised NSA as set out in Attachment A to this order. Further, if the Revised NSA is timely accepted by the Settling Parties, the Revised NSA and the underlying Merger Application is approved with no further action by the Commission.

VIII. DISSENTING OPINION OF COMMISSIONER PHILLIPS

171. I applaud the parties for their time and effort in negotiating a settlement agreement ("NSA") that I believe is in the public interest.[262] Because I believe the NSA is in the public interest, and alternative terms are unnecessary, I must respectfully dissent from the majority's decision to reject the NSA. Paradoxically, if I adhere to what I believe is the correct approach in this settlement proceeding, the NSA will be rejected outright for lack of a quorum to approve it. For that reason, and that reason alone, I do not object to Commissioner Fort circulating alternative terms to the Settling Parties. If the Settling Parties accept Commissioner Fort's alternative terms, then so will I.

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262 *See Formal Case No. 1119*, Motion to Reopen, Attachment A, filed October 6, 2015, and NSA admitted into the record as Joint Applicants Exhibit NSA-1, on December 2, 2015. The Joint Applicants filed their initial merger application on June 18, 2014. The Joint Applicants, OPC, AOBA, District Government, DC Water, and NCLC/NHT are the signatories to the NSA.

172. The settlement in this case is unusual because it follows a Commission decision to reject the initial merger proposal.[263] In rejecting the initial merger, the majority explained in great detail why the merger was deficient and essentially laid out how the Joint Applicants could correct it. Yet, when the Joint Applicants worked to address those deficiencies, and got most of the parties to agree to a settlement, the majority effectively moved the goal post in order to reject the settlement.[264] In my view, once the Joint Applicants submitted a settlement that corrected the deficiencies identified by the Commission, then the settlement should have been deemed in the public interest, absent a substantial reason to reject it.

173. While I reserve my judgment on the substance of the alternative terms proposed by Commissioner Fort, I do not believe her terms alter my determination that the settlement agreement is in the public interest. Even so, I do not take lightly the impact of my decision today. Rather, as I stated in the initial proceeding, I continue to believe that the merger will provide substantial benefits to District ratepayers, and ratepayers across the Region, which will help advance innovation, technology, and the environment.

A. Discussion

174. In reviewing both contested and uncontested settlement agreements, the Commission has looked for guidance to the standards adopted by federal courts:[265]

> Federal courts have recognized that a settlement should be approved if it is fair, adequate, reasonable, and free of fraud or collusion.[266] Courts have noted that settlements conserve judicial resources by avoiding the expense of a complicated and protracted litigation process and are highly favored by the law.[267] In evaluating settlements, courts are mindful of the fact that

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263 *See Formal Case No. 1119*, Order No. 17947, rel. August 27, 2015.

264 The Settling Parties ultimately struck a merger deal that, among other things, doubles the CIF from $33.75 to $72.8 million, provides an additional $5.2 million for workforce development programs, elevates Pepco from second tier status, and relocates the headquarters of Exelon Corporate Strategy and Exelon Utilities to the District of Columbia for at least ten years.

265 *See Formal Case No. 1115*, Order No. 17789, ¶ 61, rel. January 29, 2015. *See also Formal Case No. 1057, In the Matter of Verizon Washington, D.C. Inc.'s Price Cap Plan 2007 for the Provision of Local Telecommunications Service* ("*Formal Case No. 1057*"), *Order No. 15056*, ¶ 17, rel. September 8, 2008. ("CWA opposes the quality of service provisions in the Settlement Agreement . . . Instead of approving the Settlement Agreement CWA argues, the Commission should create a plan establishing financial accountability for failing quality of service standards." *Formal Case No. 1057, Order No. 15056*, ¶¶ 81-84, rel. September 8, 2008).

266 *Bennett v. Behring Corp.*, 737 F.2d 982, 986 (11th Cir. 1984).

267 *See In re Gen. Motors Corp. Pick–Up Truck Fuel Tank Prod. Liab. Litig.*, 55 F.3d 768, 784 (3d Cir.1995)("The law favors settlement, particularly in class actions and other complex cases where substantial judicial resources can be conserved by avoiding formal litigation. The parties may also gain significantly from avoiding the costs and risks of a lengthy and complex trial." (citations omitted)). *Cotton v. Hinton*, 559 F.2d 1326, 1330 (5th Cir. 1977) ("the trial judge, absent fraud, collusion, or the like, should be hesitant to substitute its own judgment for that of counsel.") cited by *Knight v. Alabama*, 469 F. Supp.2d 1016, 1032 (N.D. Al. 2006).

> compromise is the essence of settlement and are hesitant to substitute their judgment for that of the parties.[268] Additionally, approval of a settlement is appropriate if the Commission is satisfied that it was reached pursuant to arm's length negotiation between the parties and is otherwise consistent with the law.[269]

175. The Majority today announces a new standard of review without providing an explanation for why it is departing from the standard used by this Commission in prior contested and uncontested settlements in order to reject the NSA on the grounds that the settlement terms could have been better. However, under the court standard and Commission Rule 130.11, the Commission's role in a settlement proceeding is simply to determine whether the NSA is in the public interest.[270] Where the Commission has considered settlement agreements over the past two decades, each case has defined public interest in relation to the goals of those cases.[271] The Commission reopened the record in this case, "for the very limited purpose of considering whether the NSA filed by the Settling Parties is in the public interest."[272] Under the circumstances, our review could end after determining whether the NSA addresses deficiencies identified in the initial merger proposal.[273]

1. New Settlement Commitments Correct Deficiencies

176. In the initial merger proceeding, I identified two principal deficiencies in the Joint Applicant's commitments: 1) the allocation of the CIF; and 2) local control and regulatory oversight of Pepco post-merger.[274] According to the Settling Parties, these deficiencies are addressed by new commitments. I agree.

177. For instance, the NSA provisions include:[275]

- A $72.8 million CIF, equaling $215.94 per Pepco distribution customer, more than any other recently approved electric utility merger in the United States.

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268 *Bennett v. Behring Corp.*, 737 F.2d 982, 986 (11th Cir. 1984).

269 *See In re Motorsports Merchandise Antitrust Litigation*, 112 F.Supp.2d 1329, 1333 (N.D. Ga. 2000).

270 15 DCMR § 130.11 (1995).

271 *See, e.g., Formal Case No. 1115*, Order No. 17789, ¶ 62, rel. January 29, 2015.

272 *Formal Case No. 1119*, Order No. 18011, ¶ 58, rel. October 28, 2015.

273 Merger benefits need not be profound. *See Formal Case No. 1119*, Order No. 17947, ¶ 49, citing *Formal Case No. 1002*, Order No. 12395, ¶ 24, rel. May 1, 2002, and *Formal Case No. 951*, Order No. 11075, p. 18. rel. October 20, 1997.

274 *See Formal Case No. 1119*, Order No. 17947, (*Opinion of Willie L. Phillips, Concurring, in part, and Dissenting, in part*), rel. August 27, 2015.

275 *See* Joint Applicants' Br., at 12, citing Joint Applicants (5G) at 4:1-5, 8:15-17 (Tierney); NSA, ¶¶ 3, 10, 24, 51, and 55.

- Exelon will contribute an additional $5.2 million to workforce development programs, including green infrastructure training programs for underserved communities, as directed by the District Government.

- Exelon will co-locate headquarters of Exelon Corporate Strategy and Exelon Utilities to the District of Columbia for at least ten years.

- PHI board will have a majority of independent members, including the Pepco CEO, who also will serve on Exelon's Executive Committee.

178. Also, on the record before the Commission, we have new commitments that provide: a negotiated CIF allocation, enhanced reliability penalties, increased ring-fencing protections, development of renewable energy projects, no net job reductions for five years, District headquarters for PHI and Pepco, and other concessions by the Joint Applicants in order to get all of the major litigants to sign onto the NSA.[276]

179. Indeed, while almost all parties opposed the initial merger deal, the merger now has broad support among District stakeholders,[277] including the Mayor, a majority of the City Council, Attorney General, DC Water, AOBA, NCLC/NHT, and OPC, which is an independent agency that, by law, represents District ratepayers in all utility-related proceedings.[278] In representing District ratepayers, OPC must, "consider the public safety, the economy of the District of Columbia, the conservation of natural resources, and the preservation of environmental quality."[279]

180. With the exception of GRID2.0, MAREC, DC SUN and MDV-SEIA,[280] who still oppose the merger, the new settlement commitments satisfy the public interest standard in the eyes of all other major litigants.[281] Moreover, there is nothing in the NSA that will reduce our statutory authority to ensure that Pepco complies with rulings and policies of this Commission.

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[276] The CIF allocates $25.6 million to offset distribution rate increases for residential consumers, $14 million direct credit to residential consumers, $400,000 to forgive low-income accounts with debts more than two years old, and $9 million to the Low Income Energy Assistance Program (LIHEAP) and $6.75 million Energy Efficiency programs for low-income multi-family residents.

[277] Joint Applicants' Br. at 15-17.

[278] NSA, pp. 1-2.

[279] It is through this lens that OPC had to review the NSA before signing it and there is nothing on the record that leads me to second guess OPC's decision to become a signatory.

[280] Only GRID2.0 and MAREC filed testimony on the NSA.

[281] NSA, ¶ 1 ("[T]he Settling Parties agree that the statutory criteria for approval of a merger application under D.C. Code Sections 34-504 and 34-1001 have been satisfied. More specifically, the Settling Parties agree that the record in Formal Case No. 1119, coupled with the conditions set forth in this NSA, support findings and conclusions by the Commission that the Merger, taken as a whole, is in the public interest and fully satisfies the Commission's seven factor test.").

181. Based on the record evidence, and testimony presented at the Public Interest Hearing, I find that the NSA taken as a whole is beneficial to ratepayers as filed, and that the benefits offered in the NSA (*e.g.*, the CIF alone) would be difficult or impossible to obtain absent the merger.[282]

2. Approval of the settlement is in the public interest

182. Although the Joint Applicants corrected the deficiencies set out in Order No. 17947, my colleagues object to the merger for four "common" reasons that essentially move the goal post to reject the NSA. Specifically, the majority objects to settlement provisions concerning: (1) $25.6 million for residential Customer Base Rate Credits, (2) development of renewable and distributed generation projects, (3) Exelon and Pepco roles in project development, and (4) administration of CIF funds by the District Government.[283]

183. It should be noted that the Commission previously considered the effect of the merger proposal on seven factors to determine if the merger was in the public interest.[284] Even though the initial merger proposal included no specific commitments to address factor seven ("conservation of natural resources and the preservation of environmental quality") the Commission found that the merger had a "neutral" effect and declined to reject the merger on those grounds.[285] The NSA now provides specific, negotiated commitments to address factor seven. Yet, two of the four "common" reasons that compel the majority to reject the NSA concern only factor seven.[286] The majority appears to have penalized the Settling Parties for essentially doing what the Commission asked them to do in Order No. 17947.[287]

184. The majority does not claim, and cannot claim, that the $25.6 million residential customer rate credits will harm residential customers. Instead, the majority claims that the proposed rate credits unfairly exclude non-residential customers and could potentially undermine Commission policy to address negative rate of return for residential customers.[288]

185. The majority relies on the General Services Administration ("GSA") who represents the federal government and generally objects to the NSA because the NSA excludes

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282 *See Formal Case No. 922*, Order No. 12434, rel. August 6, 2002; *see also Formal Case No. 1105*, Order No. 17369, rel. February 6, 2014.

283 Majority Opinion, ¶ 25.

284 *Formal Case No. 1119*, Order No. 17947, ¶ 7, rel. August 27, 2015.

285 *Formal Case No. 1119*, Order No. 17947, ¶ 342, rel. August 27, 2015.

286 Common reasons two, three, and four concern public interest factor seven. *See* Joint Applicants R. Br. at 6, filed December 23, 2015, citing *Formal Case No. 1119*, Order No. 17947, ¶ 342, rel. August 27, 2015.

287 Joint Applicants' R. Br. at 58-65.

288 Majority Opinion, ¶¶ 26-37.

nonresidential customers from sharing in the allocation of the CIF funds.[289] The GSA also asserts that the NSA will make it more difficult for the Commission to correct the negative rate of return.[290] However, prior to the settlement hearing, GSA filed a letter with the Commission stating that it would not participate in the hearing.[291] Then, after failing to put on any case, GSA filed a post-hearing brief demanding that all ratepayers, including commercial class customers receive a "two year rate freeze."[292]

186. As with past settlements, I turn to court precedent for guidance on this issue. Courts have found that, "[t]here is no rule that settlements benefit all class members equally… as long as the settlement terms are rationally based on legitimate considerations."[293] Courts also note that, "[g]eneral objections [to a settlement] without factual or legal substantiation do not carry weight" and that "[t]o allow objectors to disrupt the settlement on the basis of nothing more than their unsupported suppositions would completely thwart the settlement process."[294] While GSA is not receiving CIF funds in the NSA, the commercial class will receive other merger benefits that inure to all ratepayers, including reliability commitments, colocation of personnel, increased penalties, and synergy savings. Thus, GSA's last-minute argument that the NSA should be rejected despite any other benefit to the commercial class is contrary to court precedent holding that settlements do not have to benefit all class members equally.

187. The majority also discounts the fact that the residential rate credits are supported by AOBA, who has served as a representative for commercial class customers in Commission proceedings.[295] With approximately 91 million square feet of commercial office space in the District of Columbia that will be affected by this proceeding, AOBA takes the opposite view of the Majority Opinion and maintains that the Settling Parties are in agreement that the Settlement Agreement should not be deemed to change the Commission's previously stated goal regarding

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289 GSA's Br. at 12. GSA also asserts that the Commission determined in Order No. 11075 (Formal Case No. 951) that "any savings from a proposed merger must be shared with the ratepayers, without distinction." GSA's Br. at 12. However, the Commission has made no such finding in Order No. 17947 that settlement benefits must be shared equally among all rate classes, nor did the Commission indicate in Order No. 17947 that all rate classes should receive part of the CIF.

290 GSA's Br. at 14.

291 *Formal Case No. 1119*, U.S. General Services Administration's request to the Commission for permission to be excused from attending the Public Interest Hearing, filed December 1, 2015. (GSA states that it "does not anticipate presenting evidence or cross examining witnesses at the Hearing related to the Settlement Agreement.")

292 *Formal Case No. 1119*, GSA's Br. at 17. DC SUN/MDV-SEIA raises a similar concern, but does not request a remedy.

293 *See, e.g.*, *Dehoyos v. Allstate Corp.*, 240 F.R.D. 269, 316 (W.D. Tex. 2007), citing *UAW v. General Motors Corp.*, No. 05-CV-73991-DT, 2006 WL 891151, at *28 (E.D. Mich. Mar. 31, 2006); *see also Whitford v. First Nationwide Bank*, 147 F.R.D. 135, 138-39 (W.D.Ky. 1992) (noting, "a heavy burden of demonstrating that the settlement is unreasonable.")).

294 *See Dehoyos v. Allstate Corp.*, at 294.

295 *See* AOBA's Br. at 9-11.

putting an end to negative class rate of return.[296] DC Water, Pepco's largest commercial customer, also supports the residential rate credits.[297] And the NSA expressly provides that nothing in the NSA shall be construed as changing the Commission's stated goal of ending negative rate of return over a series of Pepco rate cases.[298]

188. As the majority acknowledges, the record evidence simply does not support a finding consistent with GSA's request for a rate freeze.[299] So, given that no other commercial customer requested relief, other than a rate freeze, the majority has decided *sua sponte* to reallocate the proposed rate credit to provide additional benefits to commercial customers. The Majority Opinion is also internally inconsistent, because it objects to the residential rate credit, but not the $14 million direct bill credit for residential customers included in the CIF. If the direct bill credit can be left undisturbed, so can the residential rate credit. As such, I am not convinced that the record supports reallocating the proposed rate credit to benefit commercial customers, a condition that no commercial customer requested.

189. I am also concerned about the majority's objection to the Joint Applicants new commitments that obligate Exelon and Pepco to assist in the development of renewables and distributed generation in the District.[300] In the NSA, the Joint Applicants commit that "construction and installation shall be competitively bid with a preference for qualified local businesses."[301] Additionally, the Joint Applicants will coordinate with the District on at least four microgrid pilot projects, which "shall be competitively sourced" and "the District is free to pursue microgrid development independent of Pepco."[302] I am not persuaded by the record that these projects, as asserted by the majority, will not improve Pepco's distribution system, and that Exelon/Pepco post-merger project development roles are anti-competitive.

190. In Order No. 17947, the Commission noted that a concern had, "been expressed about the ability of an Exelon owned Pepco to fairly operate the distribution system in a manner that would not discourage distributed generation, especially for solar systems." Even so, the Commission concluded that, "We do not share that concern. In any event, D.C. Code § 34-1506 mandates that Pepco 'not operate its distribution system in a manner that favors the electricity

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296 *See* AOBA's Br. at 2, 7-11.

297 DC Water's R. Br. at 4-5.

298 NSA, ¶ 48.

299 Majority Opinion at 30.

300 Joint Applicants' R. Br. at 6. (Joint Applicants commit to "develop or assist in the development of 10 MW of solar generation in the District" and to negotiate in good-faith for 5 MW "to be constructed at the DC Water Blue Plains Advanced Wastewater Treatment Plant" by December 31, 2018).

301 NSA, ¶ 128.

302 NSA, ¶ 128.

supply of the electric company's affiliates;' and the Commission stands ready to enforce these mandates if there is a problem."[303]

191. After settlement was reached, a majority of the City Council (a total of seven out of 13 members) submitted comments requesting that the Commission approve the NSA allocation because it will advance District sustainability goals. Specifically, those Councilmembers state:

> The settlement agreement contemplates a substantial commitment to support the District's green, alternative, renewable and sustainable energy goals. Seven million dollars will be allocated to the Sustainable Energy and the Renewable Energy Trust Funds to help the District achieve its goal to become a more sustainable city. Another $10 million will be contributed to the District's Green Building Fund to support and to expand the use of green energy and clean water. Exelon has agreed to purchase 100 megawatts of wind power commencing within five years of the merger closing date, and, to build up to 10 MW of solar in the District – nearly doubling policy objectives advanced by the Mayor and the Council of the District of Columbia, and will help accelerate the District's progress in reaching its sustainability goals.[304]

192. I agree with the majority of the District Council, the legislative branch of the District Government, who sets the public policy the Commission implements, that the new settlement commitments advance the policy agendas and sustainability goals of the District.

193. There is also no evidence that *Formal Case No. 1130*[305] (energy system modernization initiative), as asserted by the majority, is at odds with the NSA. In fact, that the Commission's energy system modernization investigation is still in the early stages, and Pepco commits to be an active participant, belies the notion that proposed sustainability projects will not advance the Commission's objective in *Formal Case No. 1130*. Also, in Order No. 17947, the Commission concluded, "the Proposed Merger would bring to the District a company that is knowledgeable and involved in renewable energy generation and that has at least one subsidiary, BGE, that is experienced in interconnecting renewable generating facilities to the distribution

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303 *Formal Case No. 1119*, Order No. 17947, ¶ 300, rel. August 27, 2015. The Commission also noted a "lack of any commitments by the Joint Applicants for the advancement of the statutory and policy agendas that have been set in the District for the incorporation of a growing amount of renewables and distributed generation within our local distribution system." *Formal Case No. 1119*, Order No. 17947, ¶ 341, rel. August, 27, 2015.

304 *Formal Case No. 1119*, Comments from the Council of the District of Columbia Councilmembers Jack Evans, Brianne Nadeau, Kenyan McDuffie, Anita Bonds, Yvette Alexander, Brandon Todd and LaRuby May, regarding *Formal Case No. 1119*, filed October 16, 2015.

305 *See Formal Case No. 1130, In the Matter of Investigation into Modernizing the Energy Delivery Structure for Increased Sustainability - MEDSIS* ("*Formal Case No. 1130*").

system which are benefits."[306] Nothing in the NSA changes the Commission's conclusion that ratepayers will benefit from Exelon's knowledge and experience when it comes to developing renewable projects, including those that may result from *Formal Case No. 1130*.

194. I also do not agree with the majority's objection to the administration of CIF funds by the District Government because the majority dismisses critical evidence in the record. Specifically, the District Government has pledged that the NSA is, "a commitment to use these funds for the purposes set forth in the Settlement Agreement," and that the District Government, "will actively oppose any effort by any entity to sweep or otherwise divert the funds from these purposes."[307] OPC also asserts that, "such concerns are beyond the scope of this proceeding, as they are not in any way caused by or related to the proposed merger, and in fact are concerns that long pre-date this proceeding" and that questions "as to how the District Government will ultimately allocate these funds are more suited for a legislative, as opposed to a regulatory forum such as the instant proceeding."[308] I agree.

195. In my view, the majority has "stepped into the shoes" of the parties in a way that is simply unwarranted in order to justify their rejection of the NSA. Under our standard of review, the Commission is not tasked with fashioning the *best* or even a *better* settlement, which is what the proposed alternative terms aim to do.

3. Alternative terms and conditions are unnecessary

196. It is settled law that the Commission has the authority to conditionally approve transactions.[309] That was my opinion in the initial merger proceeding and it remains. In a settlement context, however, the Commission's authority to impose conditions is codified in the Commission's rules with certain limitations.[310] For example, Commission Rule 130.16 states that, "[g]iven the negotiated nature of a settlement, the Commission shall either accept or reject a settlement in its entirety, unless the parties have specifically stated that the provisions of the settlement are severable."[311] Paragraphs 137 and 142 of the NSA provide that the provisions of

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306 *Formal Case No. 1119*, Order No 17947, ¶ 342, rel. August 27, 2015. The majority decision also acknowledges testimony on behalf of the Joint Applicants stating that any future Commission decision regarding interconnection procedures will supersede the NSA.

307 *Formal Case No. 1119*, Comment of the Government of the District of Columbia consisting of a Letter by Rashad M. Young, City Administrator to Tommy Wells, Director of the Department of Energy and Environment, dated December 18, 2015, filed December 18, 2015.

308 OPC's Br. at 30.

309 *See Formal Case No. 951*.

310 Commission Rule 130 governs settlement agreements; s*ee also Davis v. J.P. Morgan Chase & Co.*, 827 F.Supp.2d 172 (2011) ("In deciding whether a settlement should be approved, the court must also keep in mind that its role is circumscribed. The Court may approve or reject the settlement, but it "does not have the authority to 'delete, modify or substitute certain provisions.'") (citing *Evans v. Jeff D., 475 U.S. 717*, 726, 106 S.Ct. 1531; *In re Agent Orange Product Liability Litigation*, 821 F.2d 139, 144 (2d Cir.1987).

311 15 DCMR § 130.16 (1995).

the settlement are *not* severable.[312] Therefore, the Commission must either reject or accept the NSA in its entirety.

197. Additionally, Commission Rule 130.17 provides, in part, that, "[i]f a settlement is rejected, the Commission may take various steps, including . . . [p]ropose alternative terms to the parties and allow the parties a reasonable time within which to elect to accept such terms or request other relief."[313] Thus, if the NSA is rejected, Rule 130.17 allows the Commission to propose alternative terms.

198. When weighing alternative terms or conditions under Section 130.17, it is important to note that the Joint Applicants invited the Commission to allocate the CIF in the initial merger proposal. The majority declined that invitation, citing OPC's strong objection, and opined that it was inappropriate for the Commission to even consider conditions that could shore up a proposed transaction:

> It is not our obligation to craft conditions to make a proposed transaction that does not satisfy our public interest standard into one that meets that statutory test.
>
> * * *
>
> For the Commission to be obligated to establish conditions that would modify a merger application to make the resulting proposed transaction in the public interest, we would create a situation where every merger application would be found to be in the public interest merely because the Commission would be adding conditions that will make it so. That is not our obligation; nor is it in the best interest of the public for such a scenario to occur. The burden of persuasion to demonstrate that the proposed transaction is in the public interest and will benefit the public rather than merely leave them unharmed falls on the proponent seeking approval of the transaction. Until that threshold is met, the Commission is not required by our statute to determine and record the terms and conditions for the proposed transaction.
>
> **Indeed, from a policy perspective, if the Commission were to take on the task of shoring up every proposal that it received, we would run the risk of undermining the public's confidence in the fairness of this review process. As OPC posits, "[i]n effect, it would allow the Joint Applicants in this case, and other applicants in the future, the ability (if not incentive) to present a flawed and deficient application for the Commission to fix and approve."** The Commission has long expected

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312 NSA, ¶¶ 137, 142.

313 15 DCMR § 130.17 (1995).

> applicants in the proceedings before it to meet the applicable legal standard by putting forward their best proposal and relying on the merits of that proposal. It is a tradition and a practice that is worth keeping."[314]

199. Now, that OPC and the Settling Parties have negotiated the allocation of the CIF funds, my colleague seeks to impose alternative terms and conditions – to reallocate the CIF – presumably to shore up the transaction.[315] To require alternative terms and conditions at this phase would not only be incongruent with the Commission's settlement standard, it would also be inconsistent with the policy announcements in our prior decision in this case.[316] Also, unlike the initial merger proceeding, where conditional approval would have been supported by an overwhelming majority of merger cases from across the nation, for a Commission to unilaterally redraft a settlement agreement is rare or even unprecedented.[317]

200. Ultimately, the legal standard is not whether the Commission can make a good deal better. As stated, the standard is whether the NSA is in the public interest. A principle that is so important that it is embedded in our mission, which is to serve the public interest by ensuring that financially healthy utilities provide safe, reliable and quality services at reasonable rates. The Commission does not serve its mission by seeking to author a better settlement than what the parties have negotiated simply because we believe there are terms or conditions that could have been included. In fact, this practice discourages parties from entering into meaningful settlement negotiations because all they achieve can be negated by a Commission that rewrites the agreement without being privy to the give-and-take that led to compromise. Rather, I believe that the Commission should continue its practice of making its settlement review process predictable, so that parties can know what is expected. This decision does the opposite.

201. Given that OPC, District Government, AOBA, NCLC/NHT, and DC Water negotiated the terms of the NSA in good faith, and the Commission was not at the bargaining

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314 *Formal Case No. 1119*, Order No. 17947, ¶¶ 350–353, rel. August 27, 2015.

315 The Commission has approved past settlements subject to minor conditions, in order to satisfy the public interest standard. *See, e.g., Formal Case No. 951*, Order No. 11075, rel. October 20, 1997.

316 The majority attempts to distinguish its prior policy announcements in Order No. 17947 by relying on the Commission's settlement rules. However, if the Commission did not have authority to impose conditions outside of a settlement, the Commission could not grant itself such authority by rule.

317 I have found no authority that supports the Majority Opinion. My colleague misreads *Placid Oil Co. v. FPC*, 483 F.2d 880 (5th Cir. 1973) as requiring a review similar to a litigated case in a contested settlement. This Commission, citing *Placid Oil Co. v. FPC*, rejected a similar argument when the GSA previously challenged approval of a contested settlement. *See Formal Case No. 777, In the Matter of Application of the Chesapeake and Potomac Telephone Co. for Authority to Increase and Restructure its Schedule of Rates and Tariffs*, Order No. 7603, rel. July 16, 1982 *aff'd sub nom United States v. Pub. Serv. Com'n of Dist. of Columbia* 465 A.2d 829 (1983) ("Courts have not required this kind of dissection of elements in a settlement proposal. In [*Placid Oil Co. v. FPC*], the New York Public Service Commission objected to the FPC's 'all or nothing' approach toward a settlement proposal, but the Court held that the proposal fell with[in] the zone of reasonableness that circumscribes adequate decision-making. 483 F.2d at 894").

table,[318] to reshuffle the CIF substitutes the Commission's judgment for that of the Settling Parties, which is counter to our standard of review and a plethora of case law.[319] And any benefit derived from reshuffling the CIF now, even with the best of intentions, is outweighed by the potential to unravel the deal struck by the Settling Parties and erode confidence in the Commission.[320]

202. On a final note, as I have already stated, the NSA addresses all of the deficiencies identified by the Commission in the underlying order that discussed in detail the basis for rejecting the initial merger proposal and, in fact, the NSA adds many additional commitments. On that basis alone, and without the need to review every provision of the merger application again, I believe the settlement is in the public interest. However, it is abundantly clear from the record before the Commission, as summarized in Attachment C to this Order and reflected in the record developed during the Public Interest Hearing in this proceeding, that there is substantial evidence to support my finding that the NSA, as filed, is in the public interest.

B. Conclusion

203. As discussed herein, I accept and approve the NSA as filed. While I question the need for alternative terms, because the NSA is already in the public interest, I believe that we should allow the Settling Parties an opportunity to accept Commissioner Fort's proposed alternative terms or to request other relief. Therefore, I do not oppose allowing the Settling Parties that option under Commission Rule 130.17(b). If the Settling Parties accept Commissioner Fort's alternative terms, then the revised NSA will be approved and no further Commission action will be required.

204. For the aforementioned reasons, I must respectfully dissent from the Majority Opinion.

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318 15 DCMR § 109 (1995).

319 *See Davis v. J.P. Morgan Chase & Co.*, 827 F.Supp.2d 172 (2011)("[i]n deciding whether a settlement should be approved, the court must also keep in mind that its role is circumscribed. The Court may approve or reject the settlement, but it 'does not have the authority to 'delete, modify or substitute certain provisions.'")(citing *Evans v. Jeff D., 475 U.S. 717*, 726, 106 S.Ct. 1531; *In re Agent Orange Product Liability Litigation*, 821 F.2d 139, 144 (2d Cir.1987), *see also Cotton v. Hinton*, 559 F.2d 1326 (1977) ("It cannot be overemphasized that neither the trial court in approving the settlement nor this Court in reviewing that approval have the right or the duty to reach any ultimate conclusions on the issues of fact and law which underlie the merits of the dispute. *City of Detroit v. Grinnell Corporation*, 495 F.2d 448, 456 (2d Cir. 1974), *Grunin v. International House of Pancakes*, 513 F.2d 114, 123 (8th Cir. 1975). Neither should it be forgotten that compromise is the essence of a settlement. The trial court should not make a proponent of a proposed settlement 'justify each term of settlement against a hypothetical or speculative measure of what concessions might have been gained; inherent in compromise is a yielding of absolutes and an abandoning of highest hopes.' *Milstein v. Werner*, 57 F.R.D. 515, 524-25 (S.D.N.Y.1972). In performing this balancing task, the trial court is entitled to rely upon the judgment of experienced counsel for the parties. *Flinn v. FMC Corporation*, 528 F.2d 1169 (4th Cir. 1975). Indeed, the trial judge, absent fraud, collusion, or the like, should be hesitant to substitute its own judgment for that of counsel.").

320 A rejection by the majority, at a minimum, will send the Settling Parties back to the negotiating table.

THEREFORE IT IS ORDERED THAT:[321]

205. The Nonunanimous Full Settlement Agreement and Stipulation related to the Application for Commission approval of a change of control of the Potomac Electric Power Company to be effected by the Proposed Merger of Pepco Holdings, Inc. with Purple Acquisition Corp., a wholly-owned subsidiary of Exelon Corporation filed by Exelon, PHI, Pepco, Exelon Energy Delivery Company, LLC, and New Special Purpose Entity, LLC is **REJECTED** pursuant to Rule 130.16;

206. Pursuant to Rule 130.17(b), all of the Settling Parties are directed to review the alternative terms set forth in Paragraphs 140-161 of Commissioner Fort's concurrence as captured in the Revised NSA at Attachment A and file a Notice with the Commission Secretary no later than fourteen (14) days from the date of this Order, either accepting the Revised NSA, or requesting other relief;

207. If all the Settling Parties accept the Revised NSA at Attachment A, then the Joint Application for approval of a change of control of Pepco submitted on June 18, 2014, as amended by the Revised Nonunanimous Settlement Agreement, is deemed **APPROVED** as being in the public interest pursuant to D.C. Code §§ 34-504 and 34-1001; and the Joint Applicants' Application for Reconsideration of the August 27, 2015 Order is **DEEMED DENIED** as moot, both matters decided without the necessity of any further Commission action; and

208. If the Settling Parties request other relief under Rule 130.17, then the Nonsettling Parties may file comments on the Settling Parties' filing or make a filing requesting other relief with the Commission Secretary, within seven (7) days of the date of the Settling Parties' filing of requesting alternative relief.[322]

A TRUE COPY: **BY DIRECTION OF THE COMMISSION:**

CHIEF CLERK:

COMMISSION SECRETARY

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[321] There are no findings of fact or conclusions of law separate from those included in the ordering paragraphs.

[322] Following issuance of this Order, two issues will remain outstanding for Commission consideration in order to conclude the litigation in *Formal Case No. 1119*: (1) the Joint Applicants' Application for Reconsideration of the August 27, 2015 Order; and (2) a ruling on the DC Solar United Neighborhoods ("DC SUN") Motion for Notice of Public Documents. *Formal Case No. 1119*, DC Solar United Neighborhoods' Motion for Notice of Public Documents, filed January 15, 2016 ("DC SUN's Motion"). However, if the Settling Parties accept the proposed alternative settlement provisions, then both of these issues become moot as a result of this Order. In the event such approval does not occur, the Commission will deal with these two matters in a subsequent Order.

ATTACHMENT A:
REVISED NONUNANIMOUS FULL SETTLEMENT AGREEMENT AND STIPULATION

WHEREAS, on April 29, 2014, Exelon Corporation ("Exelon") and Pepco Holdings, Inc. ("PHI") executed an Agreement and Plan of Merger, and on July 18, 2014 executed an Amended and Restated Agreement and Plan of Merger (the "Merger");

WHEREAS, on June 18, 2014, Exelon, PHI, Potomac Electric Power Company ("Pepco"), Exelon Energy Delivery Company, LLC ("EEDC") and New Special Purpose Entity, LLC ("SPE") (collectively, the "Joint Applicants") filed an application with the Public Service Commission of the District of Columbia (the "Commission") seeking approval of the proposed merger of Exelon and PHI and the resulting change in control of Pepco pursuant to Sections 34-504 and 34-1001 of the District of Columbia Official Code (the "Application");

WHEREAS, on June 27, 2014, by Order No. 17530, the Commission commenced a proceeding to examine and investigate the Application under Formal Case No. 1119;

WHEREAS, the Office of People's Counsel ("OPC") is a statutory party of right in all utility-related proceedings before the Commission, and by Order No. 17597 the Commission also granted the petitions to intervene in Formal Case No. 1119 of: the Apartment and Office Building Association of Metropolitan Washington ("AOBA"); DC Solar United Neighborhoods ("DC SUN"); the District of Columbia Government ("District Government"); the District of Columbia Water and Sewer Authority ("DC Water"); the United States General Services Administration ("General Services Administration"); GRID2.0 Working Group ("GRID2.0"); the Maryland DC Virginia Solar Energy Industries Association ("MDV-SEIA"); the Mid-Atlantic Renewable Energy Coalition ("MAREC"); Monitoring Analytics, Inc., acting as the Independent Market Monitor for PJM ("IMM"); the National Consumer Law Center ("NCLC"); National Housing Trust ("NHT"); the National Housing Trust-Enterprise Preservation Corporation ("NHT-E"); and NRG Energy, Inc. ("NRG") (collectively, the "Parties");

WHEREAS, in assessing the Application, the Commission established a seven factor public interest test in Order No. 17597 for consideration of the effects of the transaction on:

> (1) ratepayers, shareholders, the financial health of the utilities standing alone and as merged, and the economy of the District; (2) utility management and administrative operations; (3) public safety and the safety and reliability of services; (4) risks associated with all of the Joint Applicants' affiliated non-jurisdictional business operations, including nuclear operations; (5) the Commission's ability to regulate the new utility effectively; (6) competition in the local retail, and wholesale markets that impacts the District and

> District ratepayers; and (7) conservation of natural resources and preservation of environmental quality;[323]

WHEREAS, the Parties took substantial discovery in Formal Case No. 1119 from the Joint Applicants, including hundreds of written discovery requests;

WHEREAS, the Joint Applicants and the Parties submitted pre-filed witness testimony, and the live testimony of witnesses before the Commission over the course of eleven days of evidentiary hearings held on March 30 through April 8, 2015 and April 20 through April 22, 2015;

WHEREAS, witnesses presented by the District Government, OPC, and other Parties presented testimony that the as-filed Merger would:

- Lead to higher rates for customers immediately after the Merger;
- Provide no net economic benefit to the District and inadequate benefits to Pepco customers, particularly low-income customers;
- Result in no improved reliability for District customers;
- Guarantee job loss in the District due to the absence of adequate employment protections;
- Eliminate the benefits of a locally-controlled distribution utility; and
- Fail to advance the District's leadership and progress in renewable energy and distributed generation, conservation of natural resources, and preservation of environmental quality;

WHEREAS, in an Opinion and Order dated August 27, 2015 (the "Opinion and Order"), the Commission, based on its review of the Application and the evidence, agreed with many of the arguments presented by the District Government, OPC, DC Water, NCLC, NHT, NHT-E, and AOBA, and concluded that the Merger as filed was not in the public interest "because it does not benefit District ratepayers and the District rather than merely leave them unharmed";[324]

WHEREAS, the Joint Applicants disputed the testimony presented by many of the Parties and have filed an Application for Reconsideration of the Opinion and Order with the Commission;

WHEREAS, the Joint Applicants, the District Government, OPC, DC Water, NCLC, NHT, NHT-E, and AOBA (the "Settling Parties") wish to resolve their disputes and avoid

[323] *Formal Case No. 1119*, Order No. 17597 (Aug. 22, 2014), ¶ 55.

[324] *Formal Case No. 1119*, Order No. 17947 (Aug. 27, 2015), ¶ 348.

additional lengthy litigation, including a possible appeal of the Opinion and Order by the Joint Applicants;

WHEREAS, the Settling Parties have now agreed to settlement terms and commitments above and beyond those contained in the Application and the commitments previously filed by the Joint Applicants, and believe these terms and commitments establish that the Merger, taken as a whole, is in the public interest as required by D.C. Code § 34-504 and 34-1001, benefits the public, fully satisfies the seven factor test established in Order No. 17597, and addresses in all material respects the deficiencies in the Application identified by the Commission in the Opinion and Order;

WHEREAS, the Commission, pursuant to the District of Columbia Code, Title 34, has plenary authority to review and determine whether the proposed Merger is in the public interest and pursuant to Title 34, § 608 of the District of Columbia Code has the authority any time to "rescind, alter, modify or amend" its orders;

WHEREAS, under 15 D.C.M.R. § 146.1, the Commission may, to the extent required, exercise its discretion to waive any of the provisions of Chapters 1 and 2 of Title 15 of the District of Columbia Municipal Regulations after duly advising the parties of its intention to do so;

NOW, THEREFORE, as of this March ____, 2016, the following terms and conditions are agreed to by the Settling Parties in this Revised Nonunanimous Full Settlement Agreement and Stipulation (the "Revised Settlement Agreement"):

Recommendation of Approval of the Merger

1. Subject to the provisions set forth in this Settlement Agreement, the Settling Parties agree that the statutory criteria for approval of a merger application under D.C. Code Sections 34-504 and 34-1001 have been satisfied. More specifically, the Settling Parties agree that the record in Formal Case No. 1119, coupled with the conditions set forth in this Settlement Agreement, support findings and conclusions by the Commission that the Merger, taken as a whole, is in the public interest and fully satisfies the Commission's seven factor test.[325]

2. Subject to the provisions set forth in this Settlement Agreement, the Settling Parties agree that the Joint Applicants should be authorized to take those actions that are necessary in order for the Merger to be lawfully consummated.

[325] The commitments set forth herein constitute the entirety of the Joint Applicants' commitments. While the commitments are organized in this Settlement Agreement by the seven factors established by the Commission in Order No. 17597, many of the commitments and the associated benefits are applicable to multiple factors.

Settlement Terms Addressing Commission Factor No. 1

Customer Investment Fund

3. Exelon will provide a Customer Investment Fund ("CIF") to the District of Columbia with a value totaling $72.8 million. This represents a benefit of $215.94 per distribution customer (based on a customer count of 337,117 as of December 31, 2013). Pepco will not seek recovery of the CIF in utility rates. The Settling Parties agree that the CIF shall be allocated as set forth in Paragraphs 4 through 9 below:

Customer Base Rate Credit

4. Exelon will provide a Customer Base Rate Credit in the amount of $25.6 million, which will be a credit to offset rate increases for Pepco customers approved by the Commission in any Pepco base rate case filed after the close of the Merger until the Customer Base Rate Credit is fully utilized. The parties in the next Pepco base rate case will be provided an opportunity to propose to the Commission how the Customer Base Rate Credit will be allocated among Pepco customers and over what period of time. No portion of the Customer Base Rate Credit shall be recovered in utility rates.

Residential Customer Bill Credit

5. Exelon will fund a one-time direct bill credit of $14 million to be distributed among Pepco residential customers (including RAD Program customers). The credit shall be provided within sixty (60) days after the Merger closing based on active accounts as of the billing cycle commencing thirty (30) days after the Merger closing.

Creation of Formal Case No. 1119 Escrow Fund

6. Within sixty (60) days after Merger close, Exelon shall provide Pepco with the funds and Pepco shall establish a Formal Case No. 1119 Escrow Fund with two subaccounts: the Formal Case No. 1130 MEDSIS Pilot Project Fund Subaccount and The Energy Efficiency and Energy Conservation Initiatives Fund Subaccount The escrowed funds shall be placed in an interest-bearing account or invested in instruments issued or guaranteed as to principle and interest and shall be administered by a third party administrator to be paid from a portion of the interest proceeds with the approval of the Commission. Any unused interest will be deposited proportionally into the two subaccounts.

Support for Formal Case No. 1130

7. Within sixty (60) days after Merger close, Exelon shall provide funding in the amount of $21.55 million to the Formal Case No. 1130 MEDSIS Pilot Project Fund Subaccount within the Formal Case No. 1119 Escrow Fund. The fund shall be held in escrow until the Commission approves a pilot project and directs that the funds be released.

8. [Text Deleted] [Funds accounted for in paragraph 7]

Support for Energy Efficiency and Energy Conservation Initiatives Fund

9. To support innovative energy efficiency and energy conservation initiatives with a primary focus on assisting low and limited income residents and to help reduce the burden of energy bills and long-standing energy debt on low and limited income residents in the District:

(a) Within sixty (60) days after Merger close, Exelon shall provide funding in the amount of $11.25 million to the Energy Efficiency and Energy Conservation Initiatives Fund Subaccount within the Formal Case No. 1119 Escrow Fund to support innovative energy conservation or energy efficiency programs targeted primarily towards both affordable multifamily units and master metered multifamily buildings which include low and limited income residents that are sponsored or operated by the District or by qualified non-profit entities that support and enable targeted energy-efficiency programs. The funds shall be held in escrow until the Commission directs that the funds be released.

(b) Pepco shall forgive all District of Columbia residential customer accounts receivables over two years old as of the date of the Merger close (which is expected to total approximately $400,000)

Corporate Presence in the District of Columbia

10. Within six (6) months after consummation of the Merger, Exelon will colocate Exelon corporate headquarters in the District of Columbia for Exelon Corporate Strategy and Exelon Utilities ("EU"), the organization that oversees the utility businesses of Exelon. Exelon shall do so by moving the headquarters of Exelon Utilities and Exelon Corporate Strategy to the District of Columbia; and by moving the primary offices of Exelon Utilities' Chief Executive Officer, Exelon's Chief Financial Officer and Exelon's Chief Strategy Officer to the District of Columbia. Exelon's Chief Executive Officer will also have an office in the District of Columbia. Exelon will maintain the above in the District for at least ten (10) years, and will also maintain the PHI and Pepco headquarters in the District for at least ten (10) years. "Primary offices" in this paragraph means the business location where these officers are expected to spend the majority of their office hours each year, recognizing that the duties of these senior officers often require extensive business travel, including to other Exelon business locations.

11. All of the members of Exelon's Executive Committee who are in Exelon's Business Service Company – including the chief officer for each of the Legal, Human Resources, Supply, Risk, Communications, Government Affairs, and Information Technology functions – will have offices within the District (as well as elsewhere in the Exelon system).

12. The Exelon Executive Committee will include the District among the locations of its meetings.

13. Exelon will include the District of Columbia among the locations of Exelon's Board of Directors meetings and Exelon's annual shareholder meetings.

Employment in the District of Columbia

14. Exelon will transfer Pepco Energy Services' ("PES") Arlington, Virginia operations and associated employees into the District within six (6) months after Merger close and will retain such operations in the District for at least ten (10) years from the date of the transfer.

15. As part of its commitment to establish the District of Columbia as Exelon's co-Corporate Headquarters and the Headquarters of EU, and including its transfer of PES, by January 1, 2018, Exelon and PHI will relocate 100 positions to the District of Columbia. By February 1, 2018, Exelon will file a report with the Commission confirming relocation of these positions.

16. In addition to honoring its existing collective bargaining agreements, Pepco will use best efforts to hire, within two (2) years after the Merger closing date, at least 102 union workers in the District of Columbia. The incremental cost of these hires (a) will be included in rates only to the extent that the workers have actually been hired, and (b) in any event will not be included in customer rates until after January 1, 2017.

17. For at least five (5) years after Merger close, Exelon shall not permit a net reduction, due to involuntary attrition as a result of the Merger integration process, in the employment levels at Pepco's utility operations in the District. For purposes of this paragraph, "involuntary attrition" includes transfer-or-quit offers where the employee decides to quit or retire rather than being transferred to a work location outside of the District.

18. Pepco shall, on an annual basis for the first five (5) years after Merger close, file a report with the Commission by April 1 regarding employment levels at Pepco. The reports shall detail all job losses – including whether the attrition was involuntary or voluntary – as well as any job gains, delineated using an industry-accepted categorization method such as by SAIC code.

19. Following the Merger closing date until January 1, 2018, Exelon and PHI shall not permit a net reduction greater than 100 positions, due to involuntary attrition as a result of the merger integration process, in the employment levels in the District for Exelon Business Services Company ("EBSC") and PHI Service Company ("PHISCo"). Eligible PHISCo employees involuntarily terminated as a result of the Merger integration process will receive severance benefits, including a cash payment, which can be used for outplacement services, at the discretion of the employee. The 100 positions moved to the District as part of the co-Headquarters/EU Headquarters relocations and the PES relocations will not be among the 100 EBSC and PHISCo positions that may be involuntarily reduced as a result of the Merger integration prior to January 1, 2018. For purposes of this paragraph, "involuntary attrition" includes transfer-or-quit offers where the employee decides to quit or retire rather than being transferred to a work location outside of the District.

20. As a result of the commitments in Paragraphs 14-19, Exelon, PHI and Pepco commit that the Merger's impact will be net jobs-positive for the District through at least January 1, 2018. Exelon will file a report with the Commission by April 1, 2018, demonstrating satisfaction of this commitment. Exelon, PHI and Pepco also commit that the Merger will not become net job-negative through involuntary attrition as a result of the Merger integration process through

December 31, 2019. Exelon shall file a report with the Commission by April 1, 2020, demonstrating satisfaction of this commitment.

21. For two (2) years after Merger close Exelon shall provide current and former Pepco and PHISCo employees compensation and benefits that are at least as favorable in the aggregate as the compensation and benefits provided to those employees immediately before execution of the Merger Agreement.

22. Exelon shall also assume PHI's obligations, or cause PHI to continue to meet its obligations, to Pepco employees and retirees with respect to pension and retiree health benefits.

23. Pepco shall also continue its commitments to supplier and workforce diversity. Pepco shall, on an annual basis for the first three (3) years following consummation of the Merger, file a report with the Commission by April 1 explaining its efforts to promote supplier and workforce diversity.

Workforce Development

24. In order to promote local employment and the local economy in the District, Exelon will contribute $5.2 million to District workforce development programs including those administered by the Department of Employment Services ("DOES"), the University of the District of Columbia system, DC Water for green infrastructure training programs, and programs targeted to underserved communities, as directed by the District Government. These contributions will be in addition to the CIF, will not count toward meeting the annual charitable contribution commitment described in Paragraph 27, and will not be recovered in utility rates.

Economic Benefits Reporting

25. For each of the first five (5) years after Merger approval, Pepco will submit an annual report, or include as part of its existing reporting requirements, data detailing the economic benefits of the Merger for the District. The report will detail the methodology used to calculate the benefits and the specific description of the benefits.

Development of an Arrearage Management Program

26. Pepco will work with the District Government and other interested stakeholders, including the National Consumer Law Center, to develop in good faith a mutually agreeable Arrearage Management Program ("AMP") for LIHEAP or RAD-qualifying customers in arrears, which would include the provision of credits or matching payments for customers who make timely payments on their current bills, with such discussions to be initiated no later than 60 days after the closing of the Merger, and with the understanding that the parties will seek to reach agreement within six (6) months after the closing of the Merger and that any agreement regarding the adoption of an AMP would be submitted to the Commission for its review and approval.

Charitable Contributions and Community Support

27. Exelon and its subsidiaries shall, during the ten-year period following the Merger, provide at least an annual level of charitable contributions and traditional local community support in the District of Columbia that exceeds the 2014 level of $1.9 million (calculated using a three-year rolling average).

Cost Accounting and Synergy Savings

28. Pepco shall track and account for Merger-related savings, and the cost to achieve those savings, in each of its base rate cases filed within in a three-year period following Merger close. Pepco will flow all synergy savings allocable to the District to customers through the normal ratemaking process.

29. Pepco will amortize the costs to achieve synergy savings ("CTA") over a five-year period of time commencing with the effective date of the first Pepco base rate case filed after Merger close. To the extent CTA are incurred after the first rate case, such CTA will be amortized over a five-year period commencing with the effective date of the first rate case after such costs are incurred. Pepco shall not recover CTA in a Pepco rate case in an amount greater than the synergy savings that Pepco demonstrates for the applicable test year.

30. Exelon shall ensure that merger accounting is rate-neutral for Pepco customers. Exelon shall ensure that any accounting treatments associated with merger accounting do not affect rates charged to Pepco's customers. Pepco will not seek recovery in distribution rates of: (a) the acquisition premium or goodwill associated with the Merger; or (b) the Transaction Costs, as defined below, incurred in connection with the Merger by Exelon, PHI or their subsidiaries. Any acquisition premium or goodwill shall be excluded from the ratemaking capital structure and Exelon will not record any of the impacts of purchase accounting at the PHI utility companies, thereby maintaining historical cost accounting at each of the PHI utility companies. Transaction Costs are defined as: (a) consultant, investment banker, regulatory fees (including the $2 million in regulatory support costs noted in Paragraph 101 of the Opinion and Order) and legal fees associated with the Merger Agreement and regulatory approvals, (b) purchase price, change-in-control payments, retention payments, executive severance payments and the accelerated portion of supplemental executive retirement plan ("SERP") payments, (c) costs associated with the shareholder meetings and proxy statement related to Merger approval by the PHI shareholders, and (d) costs associated with the imposition of conditions or approval of settlement terms in other state jurisdictions.

31. Exelon also commits that the Staff of the Public Service Commission of the District of Columbia ("Commission Staff") and OPC shall have reasonable access upon demand to the accounting records of Exelon's affiliates that are the basis for charges to Pepco pursuant to the Exelon General Services Agreement ("GSA") to determine the reasonableness of allocation factors used by Exelon to assign those costs and the amounts subject to allocation and direct charges.

32. The Joint Applicants agree that PHI and its subsidiaries, including Pepco, will execute the GSA filed as Exhibit No. 7 with the Application. The Joint Applicants agree to allocate costs

to Pepco in a manner that either substantially complies with the current PHI GSA, or results in a lower allocation of costs in the aggregate. The Joint Applicants agree to demonstrate this in the first District of Columbia base rate case filing occurring after the closing of the Merger as compared to Pepco's allocated costs pre-Merger.

33. In each of Pepco's base rate cases filed within five (5) years after closing of the Merger, Pepco shall provide in addition to the information otherwise required to be provided with Pepco's 21-day compliance filing, the following information with respect to charges to Pepco from Exelon, EBSC or any other affiliate that supplies service to Pepco after the Merger:

(a) The Cost Allocation Manual(s) in effect and used to allocate costs to Pepco and Pepco's District of Columbia operations:

(b) The service agreement(s) in effect between Pepco and Exelon, EBSC, and any other affiliate that charges costs to Pepco;

(c) An exhibit separately stating the costs that are directly assigned or allocated to Pepco and Pepco's District of Columbia operations for the test year and for each year post-Merger, by entity charging the costs, including:

(i) Total amount of direct charged costs and total amount of allocated costs to Pepco and to Pepco's District of Columbia operation;

(ii) Total amount of direct charged costs and total amount of allocated costs included in Pepco's rate base and in Pepco's rate base for the District of Columbia; and

(iii) Total amount of direct charged costs and total amount of allocated costs included in Pepco's operating and maintenance expenses and in Pepco's operating and maintenance expenses for the District of Columbia.

34. The Joint Applicants agree they will work together with the Commission Staff and OPC to determine the format of an annual filing of EBSC costs charged to Pepco that will be substantially in the same format as Pepco's current, annual filing. The filing will be made by June 30th of each subsequent year and will include a copy of EBSC's FERC Form 60 as well as detail on the actual EBSC allocations and costs charged to Pepco during the prior year. Pepco shall also make an ongoing commitment to explain any change to allocation factors to Pepco that are more than five percentage points versus the previous year. Pepco shall also make available on request any prior months' variance reports regarding EBSC's billings to Pepco. The Joint Applicants shall provide a side-by-side comparison by function of pre- and post-merger shared-services cost allocations to Pepco for five pre- and post-merger years. The comparisons shall be filed on an annual basis as a separate letter, and the first letter shall be filed no later than the end of the second quarter in 2017. This filing will include additional analysis detailing the reasons for any changes, if any, in allocated costs for Pepco on a year over year basis. In the event that Pepco files a post-merger base rate case prior to receipt of the first side-by-side comparison in 2017, then Pepco shall include as part of its rate increase application a side-by-side comparison, by function, of pre- and post-merger shared-services cost allocations available through the test

year, to the extent applicable. To the extent any other Exelon subsidiary charges costs to Pepco, the same information identified above will be provided with respect to such subsidiary.

35. Controls and procedures will be designed to provide reasonable assurance that PHI's subsidiaries will not bear costs associated with the business activities of any other Exelon affiliate (other than PHI or a PHI subsidiary) other than the reasonable costs of providing materials and services to PHI (or a PHI subsidiary). PHI and its subsidiaries will maintain reasonable pricing protocols for determining transfer prices for transactions involving non-power goods and services between PHI and its subsidiaries and Exelon and any Exelon affiliate consistent with the requirements of the Commission and FERC.

36. EBSC costs shall be directly charged whenever practicable and possible. In its next District of Columbia base rate proceeding, Pepco shall file testimony addressing EBSC charges and the bases for such charges. Pepco's testimony shall also explain any changes in allocation procedures that have been adopted since its last base rate proceeding.

37. Pepco shall also provide copies to Commission Staff and OPC of the portions of any external audit reports performed for EBSC pertaining directly or indirectly to Exelon's determinations of direct billings and cost allocations to Pepco. Such material shall be provided no later than 30 days after the final report is completed.

38. Pepco shall promptly notify the Commission, Commission Staff and OPC when it has received notice that the SEC, the FERC, or the state regulatory commission in any state in which an affiliate utility company operates has initiated an audit of EBSC or PHISCo. Pepco shall provide copies of the portions of all audit reports highlighting the findings and recommendations and ordered changes to the GSA pertaining directly or indirectly to EBSC or PHISCo's determinations of direct billings and cost allocations to its affiliate utility companies, as well as any sections addressing Pepco. If after review of such material, Commission Staff or OPC reasonably determines that review of the remainder of such audit report is warranted, Pepco shall make the complete report available for review in Pepco's District of Columbia office or at the Commission, subject to appropriate conditions to protect confidential or proprietary information.

39. Pepco shall promptly notify the Commission, Commission Staff and OPC when it has received notice that the SEC, the FERC, or any state regulatory commission in which an affiliate utility company operates has issued a specific decision affecting EBSC or PHISCo, including a rulemaking, pertaining directly or indirectly to EBSC or PHISCO's determinations of direct billings and cost allocations to its affiliate utility companies.

40. For assets that EBSC acquires for use by Pepco, the same capitalization/expense policies shall apply to those assets that are applicable under the Commission's standards for assets acquired directly by Pepco.

41. For depreciable assets that EBSC acquires for use by Pepco, the depreciation expense charged to Pepco by EBSC shall reflect the same depreciable lives and methods required by the Commission for similar assets acquired directly by Pepco. In no event shall depreciable lives on plant acquired for Pepco by EBSC be shorter than those approved by the Commission for similar property acquired directly by Pepco.

42. For assets that EBSC acquires for use by Pepco, the rate of return shall be based on Pepco's authorized rate of return, unless EBSC is able to finance the asset at a lower cost than Pepco. In such cases, the lower cost financing will be reflected in EBSC's billings to Pepco, and the resulting benefit will be passed on to ratepayers.

43. The Commission and OPC will be sent copies of any and all "60-day" letters, and supporting documentation, sent by EBSC to the FERC concerning a proposed change in the GSA.

44. Pepco shall file petitions for approval of any modifications to the GSA, including changes in methods or formulae used to allocate costs, with the Commission at the same time it makes a filing with the FERC. Commission Staff and OPC shall have the right to review the GSA and related cost allocations in Pepco's future base rate cases in the District of Columbia, in conjunction with future competitive service audits, in response to any changes in the Commission's affiliate relations standards, and for other good cause shown.

45. With the exception of Corporate Governance Services, Pepco shall have the right to opt out of any EBSC service that it determines can be procured elsewhere in a more economical manner, is not of a desired quality level, or for any other valid reason, including Commission Orders, after having failed to first resolve the issue with EBSC.

46. Pepco agrees that the Commission, under its authority pursuant to 15 D.C.M.R. §§ 3900-3999, may review the allocation of costs in sufficient detail to analyze their reasonableness, the type and scope of services that EBSC provides to Pepco and the basis for inclusion of new participants in EBSC's allocation formula. Pepco and EBSC shall record costs and cost allocation procedures in sufficient detail to allow the Commission to analyze, evaluate, and render a determination as to their reasonableness for ratemaking purposes.

47. The new "SolutionOne" SAP billing system platform will be in use for its expected useful life. If, for any reason, the use of the "SolutionOne" SAP billing system platform is terminated before the end of this expected useful life, ratepayers shall not be responsible for any un-depreciated costs or lease payment obligations remaining after the date upon which use is terminated.

Future Rate Design in Pepco-DC Base Rate Cases

48. Nothing in the Settlement Agreement shall be construed as a change to the Commission's stated goal to move "in a deliberate and reasonable fashion over a series of Pepco rate cases to put an end to negative class RORs" as set forth in Formal Case 1087, Order No. 16930, ¶ 329 and affirmed in Formal Case 1103, Order No. 17424, ¶¶ 437 and 438.

Tax Indemnity and Other Tax Commitments

49. Exelon shall indemnify Pepco for any liability for federal or local income taxes (including interest and penalties related thereto, if any) in excess of Pepco's standalone liability for federal or local income taxes (including interest and penalties related thereto, if any) for any period during which Pepco is included in a consolidated group with Exelon. Under applicable

law, following the Merger, Pepco will have no liability for federal or local income taxes (including interest and penalties related thereto, if any) of Exelon or any other subsidiary of Exelon for any period during which Pepco was not included in a consolidated group with Exelon (i.e. any period before the Merger). Exelon will take no action to cause Pepco to have any liability for federal or local income taxes (including interest and penalties related thereto, if any) of Exelon or any other subsidiary of Exelon for any period during which Pepco was not included in a consolidated group with Exelon for purposes of filing federal or local income tax returns. If Pepco is included in a consolidated group with Exelon for purposes of filing federal or local income tax returns and the rating for Exelon's senior unsecured long term public debt securities, without third-party credit enhancement, is downgraded to a rating that indicates "substantial risks" (below B3 by Moody's or B- by S&P or Fitch) by at least two of the three major credit rating agencies, the Commission may, after investigation and hearing, require Exelon to deliver to Pepco collateral of the type and amount determined by the Commission pursuant to the hearing to secure Exelon's tax indemnity to Pepco if the Commission finds that such collateral is necessary for the protection of Pepco's interests under Exelon's tax indemnity. Pepco shall be required to surrender or release such collateral security to Exelon (1) promptly after the rating of Exelon's senior unsecured long term public debt, without third-party credit enhancement, is restored to a rating above "substantial risks" (at or above B3 by Moody's or B- by S&P or Fitch) by at least two of the three major credit rating agencies, or (2) if and when Pepco is determined by a body of competent jurisdiction no longer to be liable for federal or local income taxes as a member of a consolidated group with Exelon, other than Pepco's standalone liability for federal or local income taxes (including interest and penalties related thereto, if any), or (3) upon a finding by the Commission, after investigation and hearing upon application of Exelon, that the conditions under which such collateral security was originally required no longer exist.

50. Exelon and Pepco shall ensure that the Merger will not affect the accounting and ratemaking treatments of accumulated deferred income taxes ("ADIT"), and accumulated deferred investment tax credits ("ADITC"), such that ADIT and ADITC will continue to be used as rate base deductions and amortization credits in future Pepco rate cases.

Settlement Terms Addressing Commission Factor No. 2

Pepco's Management Structure

51. To address concerns about whether the needs of the District of Columbia will be properly raised and addressed within Exelon, Exelon commits that, following the Merger closing date: (a) Pepco will have a CEO, who may also be the CEO of PHI; (b) the Pepco CEO (David Velazquez) will be a member of the Exelon Executive Committee, will meet with Exelon's CEO at least monthly, and will have direct and frequent access to the Exelon CEO and other members of Exelon's senior management team; (c) the Pepco CEO will attend meetings of Exelon's Board of Directors, (d) Mr. Velazquez will be extended an employment contract for no less than two (2) years; (e) the Pepco CEO will reside in the District; and (f) any officer succeeding Mr. Velazquez as Pepco CEO will be knowledgeable about Pepco's District of Columbia operations. In addition, PHI will continue to have a Chief Financial Officer, Treasurer and a number of other officers, and Pepco will maintain appropriate levels of senior management at its District of Columbia headquarters.

52. The Regional President of Pepco will have the same capacities and similar responsibilities as she has today. Consistent with those capacities and responsibilities, the Regional President of Pepco will have input into decisions related to rate case filings and positions on regulatory and legislative issues that affect Pepco. The Pepco CEO will have the authority to make rate case decisions, including the revenue requirement that will be requested in Pepco's rate cases in the District of Columbia, taking into consideration the input of the Regional President of Pepco.

53. EU's CEO, the PHI CEO, the Pepco CEO, and the Pepco Regional President will annually offer to appear publicly before the Commission to review and provide documentation concerning Pepco's reliability, safety, and customer service performance and to answer questions about Pepco's performance in the District of Columbia. This review shall not be construed as approval of any particular Pepco program or expenditure by the Commission.

54. The Commission and stakeholders in the District of Columbia will enjoy the same access to Pepco and PHI personnel after the Merger. In addition, the Commission's Chair or designee shall have the opportunity annually to present and provide a report to the full PHI board as to the performance of Pepco in the District and other issues of importance to the Commission.

Board Structure

55. PHI will have a board of directors consisting of 7 or more people. A majority of the PHI board (4 directors on a board of 7) will be "independent" (as defined by New York Stock Exchange rules). At least one director shall be selected from each of the service territories of PHI's utility subsidiaries, and at least one of the independent directors will be a resident of the District. The CEO of Pepco will be one of the PHI directors.

Settlement Terms Addressing Commission Factor No. 3

Service Reliability and Quality

56. Pepco commits to improve system reliability in its District of Columbia service territory and specifically shall remain: (a) obligated to achieve the currently effective annual **Electric Quality of Service Standards ("**EQSS") performance levels from 2016 to 2020 pursuant to 15 D.C.M.R. §§ 3600 *et seq.*, and (b) subject to forfeiture pursuant to 15 D.C.M.R. § 3603.13 in the event that it fails to do so. In addition, Pepco is committed to improving system reliability beyond the current DC statutory requirements, and therefore Pepco also commits to achieve the annual reliability performance levels for the District of Columbia set forth in Table 1 as measured using the Commission's current methodology for calculating SAIFI and SAIDI, with exclusion of major service outages:

Table 1

Annual Commitment		2016	2017	2018	2019	2020
EQSS	SAIFI	1.02	0.98	0.95	0.92	0.89
	SAIDI	120	109	99	89	81
Merger Commitment	SAIFI	0.91	0.82	0.74	0.66	0.58
	SAIDI	118	107	97	87	79

Failure to meet these reliability performance levels will result in the compliance measures described herein. If Pepco fails to meet the reliability-performance levels set out above as a Merger Commitment in any of the years 2016-2020, Pepco will file a corrective action plan by April 1 of the following year including an explanation as to why the target was missed, and the Commission can subject the utility to forfeitures as provided under the current EQSS regulations. In addition, if either of the SAIFI or SAIDI reliability-performance levels set out above as Merger Commitments are not met in any of the years 2018, 2019 or 2020, then Pepco will automatically make a non-compliance payment by April 1 of the following year to the MEDSIS Pilot Project Fund Subaccount within the *Formal Case No. 1119* Escrow Fund, as set forth in Table 2 below, which payment will not be recoverable in Pepco customer rates:

Table 2

	2018	2019	2020
Non-Compliance Payment	$2.0M	$3.0M	$6.0M

Pepco shall achieve the reliability standards set out as Merger Commitments in Table 1 above without exceeding certain annual reliability-related capital and O&M spending levels. Specifically, Table 3 sets forth Pepco's 2016 – 2019 Capital Budget and Forecast for the District of Columbia as contained in the Annual Consolidated Report filed with the Commission in 2015 for the identified categories of capital spending. Pepco commits to meeting the reliability standards set forth in Table 1 without exceeding the budget for the category of "Budget Commitment – Total Reliability net of DCPLUG and Emergency Restoration", absent changes

in law or regulations requiring increases in reliability-related spending. Table 4 sets forth Pepco's projected reliability-related operations and maintenance ("O&M") budget as contained in the Annual Consolidated Report filed with the Commission in 2015, and Pepco commits to not exceed those amounts.

57. Pepco acknowledges that the reliability-related capital costs and O&M expenses set forth below must go through the regular ratemaking processes of the Commission before they can be recovered in customers' rates, and Pepco's commitments here do not imply an endorsement by the Settling Parties or any party or the Commission that such costs or expenses are just and reasonable.

Table 3

Reliability Driven Capital Expenditure 2016-2020					
					*Projected
	2016	2017	2018	2019	2020
Total Distribution Reliability Expenditures	$200,979,715	$173,369,005	$219,211,894	$227,914,850	$234,752,296
DCPLUG Expenditures	$ 92,746,708	$ 62,509,008	$ 75,000,000	$ 55,000,000	$ 56,650,000
Distribution Reliability net of DCPLUG Expenditures	$108,233,007	$110,859,997	$144,211,894	$172,914,850	$178,102,296
Distribution Emergency Restoration Expenditures	$ 14,589,928	$ 14,498,357	$ 14,383,143	$ 14,383,143	$ 14,814,637
Budget Commitment -Total reliability net of DCPLUG and Emergency Restoration	$ 93,643,079	$ 96,361,640	$129,828,751	$158,531,707	$163,287,658

* 2020 budget equal to 2019 budget escalated by three percent to reflect inflation.

Table 4

	Pepco O&M Reliability Budget 2016-2020					
		2016	2017	2018	2019	2020
S21200	Distribution System Planned Scheduled Maint DC and MD	$20,271,059	$20,879,190	$21,505,566	$22,150,733	$22,815,255
S21260	Distribution Forestry (Tree Trimming) District of Columbia	$2,394,309	$2,466,138	$2,540,123	$2,616,326	$2,694,816
	2016 - 2020 budget forecast based on 2015 budget increased by 3% per year					
	Planned scheduled maint actual costs are allocated to DC and MD					

58. The consequences for failure to meet the reliability-related budget targets for the "Budget Commitment – Total Reliability net of DCPLUG and Emergency Restoration" and for reliability-related O&M set forth above are:

(a) If Pepco exceeds the reliability-related capital budgets set out above in any of the years, then Pepco shall automatically place into escrow a non-compliance payment in the amount of $63,000 for every $1 million spent in excess of the reliability-related capital budget target for the year.

(b) All non-compliance payments shall be placed in escrow no later than April 1 of the subsequent calendar year during which the capital budget level was exceeded.

(c) By June 30, 2021, Pepco shall file with the Commission a comprehensive report on the reliability performance and prudence of actual spending levels for 2016-2020 to allow the Commission to determine whether the escrowed funds should be returned to the Formal Case No. 1130 MEDSIS Pilot Project Fund Subaccount or returned to the Company.

(d) No later than six (6) months after the close of the Merger, Pepco shall file with the Commission a report which includes a forecast of planned reliability-related work for that calendar year, including at a minimum the general project descriptions, locations, and associated reliability-related capital and O&M spending. The project description should denote the intended improvements to outage duration, frequency, or some other reliability metric. The filed forecast shall serve as a baseline comparison for the June 30, 2021 Company report on actual reliability-related expenditures, but shall not prompt Commission approval, denial, or other action in advance of the report. By April 1 of each subsequent calendar year through 2019, Pepco shall file the same information as part of its Annual Consolidated Report. Receipt of the forecast shall not constitute an endorsement by the Commission of the prudence of the expenditures.

(e) If Pepco asserts that "unplanned" reliability-related work contributed to excess capital spending, then the report should include a narrative as to the prudence of the capital expenditures. Specifically, the report should describe any incremental SAIDI or SAIFI improvement attributable to the "unplanned" work and an assessment of whether the completion of such work during the period resulted in any cost savings, compared to delay of such work to a later date.

(f) If Pepco fails to meet the reliability-related O&M budget levels set out above in any of the years, then Pepco shall automatically forgo seeking recovery in customer rates of any amounts spent in excess of the reliability-related O&M budget level for the year.

(g) Pepco's proposed reliability-related capital spending levels are set forth above, and actual costs shall be reviewed by the Commission in full base rate cases. Pepco shall not file for a tracker or surcharge mechanism to recover such reliability-related capital and O&M expenditures incurred for the period 2016-2020 (other than for the District of Columbia Power Line Undergrounding ("DC PLUG")).

59. Pepco will not seek reevaluation of the current EQSS reliability performance standards for the years 2016 through 2020 pursuant to 15 D.C.M.R. § 3603.

60. Pepco will continue to meet with Staff and OPC as part of the Productivity Improvement Working Group ("PIWG") to discuss reliability and system productivity measures and will continue to file information concerning its capital budget, including but not limited to its budget for reliability-related investments, as part of its Annual Consolidated Report. On an annual basis as part of a PIWG meeting, Pepco will specifically review the reliability performance, actual spend and projected budget for reliability-related capital as filed in the Annual Consolidated Report. Such review with Commission Staff and OPC shall not be construed as pre-approval of

the particular capital expenditures and parties shall remain free to contest capital expenditures in future base rate cases.

Root Cause Analysis to Improve Customer Satisfaction

61. Pepco shall conduct a root-cause analysis of, and develop an action plan to improve, Pepco's customer-satisfaction scores in the District of Columbia. Pepco will file this analysis and action plan with the Commission no later than six (6) months after Merger closing and will also present this information to the PIWG.

Safety

62. Exelon is committed to having all of its utilities achieve and maintain first quartile performance in safety. Consistent therewith, Pepco will file annual reports on its safety performance and safety initiatives with the Commission as part of its Annual Consolidated Report, and will also present this information to the PIWG. Pepco's reporting will include a report by Exelon on its existing safety and cybersecurity policies.

Settlement Terms Addressing Commission Factor No. 4

Ring Fencing Protections

63. Pepco will maintain its separate existence as a separate corporate subsidiary and its separate franchises, obligations and privileges.

64. Pepco will not incur or assume any debt, including the provision of guarantees or collateral support, related to this Merger or any future Exelon acquisition.

65. Pepco shall maintain separate debt so that Pepco will not be responsible for the debts of affiliate companies and preferred stock, if any, and Pepco shall maintain its own corporate and debt credit rating, as well as ratings for long-term debt and preferred stock.

66. Exelon has established the SPE, a limited liability company, as a special purpose entity for the purpose of holding 100% of the equity interest in PHI.

67. The SPE will be a direct subsidiary of EEDC.

68. EEDC will transfer 100% of the equity interest in PHI to the SPE as an absolute conveyance with the intention of removing PHI and its utility subsidiaries from the bankruptcy estate of Exelon and EEDC.

69. The SPE will have no employees and no operational functions other than those related to holding the equity interests in PHI.

70. The SPE shall maintain adequate capital in light of its contemplated business purpose, transactions and liabilities; provided, however, the foregoing shall not require the owners to make any additional capital contributions.

71. The SPE will have four directors appointed by EEDC. One of the four SPE directors will be an independent director, who will be an employee of an administration company in the business of protecting SPEs, and must meet the other independence criteria set forth in the SPE governing documents. One other director will be appointed from among the officers or employees of PHI or a PHI subsidiary. The other two SPE directors may be officers or employees of Exelon or its affiliates, including PHI and its subsidiaries.

72. The SPE will issue a non-economic interest in the SPE (a "Golden Share") to an administration company in the business of protecting SPEs and separate from the administration company retained to provide the person to serve as the independent director for the SPE. The holder of the SPE's Golden Share will have a voting right on matters specified in the SPE governing documents, as described below.

73. A voluntary petition for bankruptcy by the SPE will require the affirmative consent of the holder of the Golden Share and the unanimous vote of the SPE board of directors (including the independent director). A voluntary petition for bankruptcy by PHI will require the affirmative consent of the holder of the Golden Share, the unanimous vote of the SPE board of directors (including the independent director), and the unanimous vote of the PHI board of directors. A voluntary petition for bankruptcy for any of PHI's subsidiaries will require the unanimous vote of the PHI board of directors (including its independent directors) and the unanimous vote of the board of directors of the relevant PHI subsidiary.

74. The SPE will maintain arms-length relationships with each of its affiliates and observe all necessary, appropriate and customary company formalities in its dealings with its affiliates. PHI and PHI's subsidiaries will maintain arms-length relationships with Exelon and its affiliates, including the SPE.

75. PHI's CEO and other senior officers who directly report to the CEO will hold no positions with Exelon or Exelon affiliates other than PHI and PHI's subsidiaries.

76. At all times, the SPE will hold itself out as an entity separate from its affiliates, will conduct business in its own name through its duly authorized directors and officers and comply with all organizational formalities to maintain its separate existence and shall use commercially reasonable efforts to correct any known misunderstanding regarding its separate identity. PHI and its subsidiaries will hold themselves out as separate entities from Exelon and the SPE, conduct business in their own names (provided that PHI and each of PHI's utility subsidiaries may identify itself as an affiliate of Exelon on a basis consistent with other Exelon utility subsidiaries).

77. The SPE shall maintain its own separate books, records, bank accounts and financial statements reflecting its separate assets and liabilities. PHI and each of PHI's subsidiaries will maintain separate books, accounts and financial statements reflecting its separate assets and liabilities.

78. The SPE shall comply with Generally Accepted Accounting Principles in all material respects (subject, in the case of unaudited financial statements, to the absence of footnotes and to normal year-end audit adjustments) in all financial statements and reports required of it and issue

such financial statements and reports separately from any financial statements or reports prepared for its affiliates; provided that such financial statements or reports may be consolidated with those of its affiliates if the separate existence of the SPE and its assets and liabilities are clearly noted therein.

79. The SPE shall account for and manage all of its liabilities separately from any other entity, and pay its own liabilities only out of its own funds.

80. The SPE shall neither guarantee nor become obligated for the debts of any other entity nor hold out its credit or assets as being available to satisfy the obligations of any other entity.

81. Each PHI utility will maintain separate debt and preferred stock, if any, so that none will be responsible for the debts or preferred stock of affiliated companies, and each will maintain its own corporate and debt credit rating as well as ratings for long-term debt and preferred stock, if any. PHI and its subsidiaries will use reasonable efforts to maintain separate credit ratings for their publicly traded securities. PHI will not issue additional long-term debt securities. In particular, PHI shall not rollover or otherwise refinance its currently outstanding long-term debt by issuing new long-term debt. PHI and its utility subsidiaries will use reasonable efforts and prudence to preserve investment grade credit ratings.

82. PHI will not assume liability for the debts of Exelon, the SPE, or any other affiliate of Exelon other than a PHI subsidiary. The PHI subsidiaries will not assume liability for the debts of Exelon, PHI, the SPE, the other PHI subsidiaries, or any other affiliate of Exelon. The SPE shall not acquire, assume or guarantee obligations of any affiliate. PHI will not guarantee the debt or credit instruments of Exelon, the SPE or any other Exelon affiliate other than a PHI subsidiary. The PHI utilities will not guarantee the debt or credit instruments of Exelon, PHI or any other Exelon affiliate including the SPE.

83. The SPE shall not pledge its assets for the benefit of any other entity or make loans to, or purchase or hold any indebtedness of, any other entity. The PHI utilities will not pledge or use as collateral, or grant a mortgage or other lien on any asset or cash flow, or otherwise pledge such assets or cash flow as security for repayment of the principal or interest of any loan or credit instrument of, or otherwise for the benefit of, Exelon, PHI or any other Exelon affiliate including the SPE.

84. Pepco will not include in any of its debt or credit agreements cross-default provisions between Pepco securities and the securities of Exelon or any other Exelon affiliate. Pepco will not include in its debt or credit agreements any financial covenants or rating- agency triggers related to Exelon or any other Exelon affiliate.

85. The SPE will not commingle its funds or other assets with the funds or other assets of any other entity and shall not maintain any funds or other assets in such a manner that it will be costly or difficult to segregate, ascertain or identify its individual funds or other assets from those of its owners or any other person.

86. PHI and its subsidiaries will maintain in its own name all assets and other interests in property used or useful in their respective business and will not transfer its ownership interest in

any such property to Exelon or an Exelon affiliate (other than a PHI subsidiary) without requisite approval of the Commission and any approval required under the Federal Power Act; provided that the foregoing shall not limit the ability of PHI to transfer to Exelon or Exelon affiliates any business or operations of PHI or PHI subsidiaries that are not regulated by state or local utility regulatory authorities.

87. The SPE shall ensure that its funds will not be transferred to its owners or affiliates except with the consent and authority of the SPE board of directors.

88. The SPE shall ensure that title to all real and personal property acquired by it is acquired, held and conveyed in its name.

89. No entities other than PHI and its subsidiaries, including the PHI utilities and PHISCo, will participate in the PHI utilities' money pool. The PHI utilities will not participate in any money pool operated by Exelon, and there will be no commingling of the PHI money pool funds with Exelon. Any deposits into or loans through the PHI money pool by PHI utilities shall be on terms no less favorable than the depositor or lender could obtain through a short-term investment of similar funds with independent parties. Any borrowings from the PHI money pool by a PHI utility shall be on terms no less favorable and cost effective than the PHI utility could obtain through short-term borrowings from (including sales of commercial paper to) independent parties. Exelon will give notice to the Commission within seven (7) days in the event that any participant in the PHI money pool is rated below investment grade by any of the three major credit rating agencies. The documents and instruments creating the PHI money pool (and any modification thereof) will be subject to approval by the Commission.

90. Immediately following the Merger close, PHISCo will remain as a subsidiary of PHI and will continue to perform functions and to maintain related assets currently involved in providing services exclusively to the PHI utilities. Other functions that are currently provided by PHISCo, including those that are provided to PHI utilities and to other current PHI subsidiaries, will be transferred to EBSC or another Exelon affiliate in a phased transition over a period of time following the Merger closing. To address concerns that there would be two service companies under the proposed Merger, Exelon will file a plan within six (6) months after the Merger's close for Commission approval to integrate PHISCo within EBSC and other entities. The plan to integrate PHISCo with EBSC shall not include any net transfer of PHISCo employees located in the District of Columbia pre-Merger to any location outside of the District, subject to the provisions of Paragraph 19.

91. PHI subsidiaries, other than PHISCo and the PHI utilities, that are currently engaged in operations that are not regulated by a state or local utility regulatory authority will be transferred to Exelon or an Exelon affiliate; provided that: (a) PHI may retain ownership of Conectiv LLC ("Conectiv") as a holding company for ACE and Delmarva Power; (b) Conectiv may transfer its 50% ownership interest in Millennium Account Services LLC to PHI; and (c) Conectiv or subsidiaries of Conectiv may retain ownership of real estate and other assets that are used in whole or in part in the business of the PHI utilities. PHI may elect to hold the stock of Delmarva and ACE directly, and cease the use of Conectiv as a holding company.

92. The SPE will maintain a separate name from and will not use the trademarks, service marks or other intellectual property of Exelon, PHI, or PHI's subsidiaries. PHI and its utility subsidiaries will each maintain a separate name from and will not use the trademarks, service marks or other similar intellectual property of Exelon or its other affiliates, except that PHI and each of PHI's utility subsidiaries may identify itself as an affiliate of Exelon on a basis consistent with other Exelon utility subsidiaries.

93. Any amendment to the organizational documents of the SPE that would remove or alter the voting or other ring-fencing requirements described above will require the unanimous vote of the board of directors of the SPE, including the independent director, and the affirmative consent of the holder of the Golden Share.

94. Within 180 days following completion of the Merger, Exelon will obtain a legal opinion in customary form and substance and reasonably satisfactory to the Commission, to the effect that, as a result of the ring-fencing measures it has implemented for PHI and its subsidiaries, a bankruptcy court would not consolidate the assets and liabilities of the SPE with those of Exelon or EEDC, in the event of an Exelon or EEDC bankruptcy, or the assets and liabilities of PHI or its subsidiaries with those of either the SPE, Exelon or EEDC, in the event of a bankruptcy of the SPE, Exelon or EEDC. In the event that such opinion cannot be obtained, Exelon will promptly implement such measures as are required to obtain such opinion.

95. Pepco shall maintain a rolling 12-month average annual equity ratio of at least 48%. Pepco will not pay dividends to its parent company if, immediately after the dividend payment, its common equity level would fall below 48%, as equity levels are calculated under the ratemaking precedents of the Commission.

96. Pepco shall not make any distribution to its parent if Pepco's corporate issuer or senior unsecured credit rating, or its equivalent, is rated by any of the three major credit rating agencies below investment grade.

97. Pepco shall file with the Commission, within five (5) business days after the payment of a dividend, the calculations that it used to determine the equity level at the time the board of directors considered payment of the dividend and the calculations to demonstrate that the common equity ratio immediately after the dividend payment did not fall below 48%, as equity levels are calculated under the ratemaking precedents of the Commission.

98. Pepco will file with the Commission an annual compliance report with respect to the ring-fencing and other requirements.

99. At the time of Merger close and every year thereafter, Pepco shall provide the Commission with a certificate from an officer of Exelon certifying that: (a) Exelon shall maintain the requisite legal separateness in the corporate reorganization structure; (b) the organization structure serves important business purposes for Exelon; and (c) Exelon acknowledges that subsequent creditors of PHI and Pepco may rely upon the separateness of PHI and Pepco and would be significantly harmed in the event separateness is not maintained and a substantive consolidation of PHI or Pepco with Exelon were to occur.

100. Exelon shall not, without prior Commission approval, alter the corporate character of EEDC to become a functioning corporate entity providing common support services for PHI utilities.

101. Exelon shall not engage in an internal corporate reorganization relating to the SPE, PHI or Pepco, or EEDC for which Commission approval is not required without ninety (90) days prior written notification to the Commission. Such notification shall include: (a) an opinion of reputable bankruptcy counsel that the reorganization does not materially impact the effectiveness of PHI's existing ring-fencing; or (b) a letter from reputable bankruptcy counsel describing what changes to the ring-fencing would be required to ensure PHI is at least as effectively ring-fenced following the reorganization and a letter from Exelon committing to obtain a new non-consolidation option following the reorganization and to take any further steps necessary to obtain such an opinion. Exelon will not object if the Commission elects to open an investigation into the matter if the Commission deems it appropriate. Notwithstanding the above language in this paragraph, the Joint Applicants shall not materially alter the ring-fencing plan described in this Settlement Agreement without first obtaining approval in a written order from the Commission.

102. None of the cost of establishing, operating or modifying the SPE will be borne by Pepco or its distribution customers. The cost of obtaining the opinion of legal counsel referred to above (or any future opinion) will not be borne by Pepco or its distribution customers.

103. Upon the effective date of the proposed Merger, PHI and its utility subsidiaries will adopt delegations of authority setting forth the authorizations of officers of PHI and its utility subsidiaries to act on behalf of PHI and its utility subsidiaries without further authorization from Exelon. The proposed delegations of authority for PHI and its utility subsidiaries are set forth on Table 5. The delegations of authority for Pepco adopted by PHI will not be amended to reduce authorization levels of Pepco officers without prior notice to the Commission.

Table 5

Transaction Type (Note 1)	Approval Threshold							
	Exelon Board of Directors	Exelon Board Committees	Exelon President & CEO	Chief Executive Officer, Exelon Utilities	PHI or Utility Board of Directors	President & CEO, PHI or Utility	Sr. Vice Pres., CFO and Treas., PHI or Utility	Sr. Vice Pres., PHI or Utility
Capital and Related O&M	> $200M	≤ $200M	≤ $100M	≤ $50M	> $50M	≤ $25M	≤ $15M	
Mergers, Acquisitions, New Business or Ventures	> $100M		≤ $100M		> $5M	≤ $5M		
Sale of Receivables					> $10M	≤ $10M	≤ $1M	≤ $1M
Sale/Divestiture of Other Assets (including Real Estate)			≤ $100M		> $10M	≤ $10M	≤ $1M	≤ $1M
Customer Account Credits/Bill Adjustments/Charge Offs					> $10M	≤ $10M	≤ $1M	≤ $1M
Natural Gas Contracts (Note 2)	> $200M	≤ $200M			> $100M	≤ $100M		
Other Electric Energy Procurement Contracts (Note 2)	> $100M	≤ $100M		≤ $50M	> $50M	≤ $25M		
Purchases of Services and Non-Capital Materials	> $200M	≤ $200M	≤ $150M	≤ $50M	> $50M	≤ $25M	≤ $5M	≤ $5M
Legal, Regulatory or Income Tax Settlements (Note 3)	> $200M	≤ $200M	≤ $100M	≤ $50M	> $50M	≤ $25M	≤ $5M	≤ $5M
Issue/Redeem Debt	> $300M	≤ $300M	≤ $200M		ALL			
Financial Guarantees	> $150M	≤ $150M	≤ $100M	≤ $50M	≤ $100M			
Employee Benefit Plans and Arrangements			≤ $50M		ALL			
Contribution to Benefit Plans (Note 4)	> $200M	≤ $200M			ALL			
Negotiated Utility Rate Contracts			≤ $75M	≤ $50M	> $50M	≤ $25M	≤ $5M	≤ $5M
Other Contractual Commitments, Leases and Instruments	> $200M	≤ $200M	≤ $100M	≤ $50M	> $50M	≤ $25M	≤ $15M	≤ $5M
Corporate Contributions and Philanthropy	≥ $1M		≤ $1M	< $1M	≥ $1M	< $50K	≤ $10K	≤ $10K

Note 1: Delegations are to the respective officers and agents of Pepco Holdings LLC and its utility subsidiaries (collectively, "PHI"). Authority delegated to officers and agents to approve transactions is limited to transactions having subject matters related to their areas of responsibility. Additional written delegations to officers or employees below the CEO level may be made by the authorized officers generally or for specific purposes.

Note 2: Approval by the PHI or Exelon board of directors is not required for energy procurement contracts that are a direct result of an auction process or procurement plan approved by a state or local utility regulatory commission.

Note 3: The Pepco CEO has the authority to make rate case decisions including the revenue requirement that will be requested in Pepco's rate cases in the District of Columbia, taking into consideration the input of the Regional President of Pepco.

Note 4: Approval is not required for legally required periodic contributions to the pension and employee benefit plans.

104. Exelon shall conduct an analysis of its operational and financial risk to determine the adequacy of existing ring fencing measures. Exelon shall file this analysis with the Commission no later than the end of the third quarter in 2017.

105. The Joint Applicants agree to implement the ring-fencing and corporate governance measures set out in Paragraphs 51-55 and 63-102 within 180 days after Merger closing for the purpose of providing protections to customers. Not earlier than five (5) years after the closing of the Merger, the Joint Applicants shall have the right to review these ring-fencing provisions and to make a filing with the Commission requesting authority to modify or terminate those provisions. Notwithstanding such right, Joint Applicants agree not to proceed with any such modification or termination without first obtaining Commission approval in a written order. In addition, the Joint Applicants recognize that the Commission at any time may initiate its own review or investigation regarding ring-fencing measures (or upon petition by any party) and order modifications that it deems to be appropriate, in the public interest and the best interest of Pepco customers.

Commission Approval of PHI Non-Utility Operations

106. After the Merger, PHI will not initiate or invest in new non-utility operations without first obtaining Commission approval in a written order.

Severance of the Exelon - Pepco Relationship

107. Notwithstanding any other powers that the Commission currently possesses under existing, applicable law, the Joint Applicants agree that the Commission may, after investigation and a hearing, order Exelon to divest its interest in Pepco on terms adequate to protect the interests of utility investors (including Exelon investors) and consumers and the public, if the Commission finds that: (a) one or more of the divestiture conditions described below has occurred, (b) that as a consequence Pepco has failed to meet its obligations as a public utility, and (c) that divestiture is necessary to allow Pepco to meet its obligations and to protect the interests of its customers in a financially healthy utility and in the continued receipt of reasonably adequate utility service at just and reasonable rates. Any divestiture order made pursuant to this commitment shall be applicable to Pepco only to the extent consistent with the application of the criteria in the preceding clauses (a) – (c) and shall be limited to the assets and operations of Pepco in the District of Columbia. The divestiture conditions covered by this commitment are: (i) a nuclear accident or incident at an Exelon nuclear power facility involving the release or threatened release of radioactive isotopes, resulting in (x) a material disruption of operations at such facility and material loss to Exelon that is not covered by insurance or indemnity or (y) the permanent closure of a material number of Exelon nuclear plants as a result of such accident or incident; (ii) a bankruptcy filing by Exelon or any of its subsidiaries constituting 10% or more of Exelon's consolidated assets at the end of its most recent fiscal quarter, or 10% or more of Exelon's consolidated net income for the twelve (12) months ended at the close of its most recent fiscal quarter; (iii) the rating for Exelon's senior unsecured long-term public debt securities, without third-party credit enhancement, are downgraded to a rating that indicates "substantial risks" (i.e., below B3 by Moody's or B- by S&P or Fitch) by at least two of the three major credit rating agencies, and such condition continues for more than six (6)

months; or (iv) Exelon and/or PHI have committed a pattern of material violations of lawful Commission orders or regulations, or applicable provisions of the D.C. Code and, despite notice and opportunity to cure such violations, have continued to commit the violations.

Settlement Terms Addressing Commission Factor No. 5

Consent to the Commission's Jurisdiction

108. Pepco will continue to operate within the District of Columbia as an electric public utility subject to the continuing jurisdiction of the Commission pursuant to the District of Columbia Public Utilities Act, and without any reduction in the Commission's existing oversight or authority over Pepco.

Prompt Access to Pepco's Books and Records

109. Pepco will maintain separate books and records. Upon request by the Commission or the OPC, the Joint Applicants agree to provide access on demand in the District of Columbia to Pepco's original books and records as maintained in the ordinary course of business in accordance with D.C. Code § 34-904. The Joint Applicants also agree to notify the Commission of any material change in the administration, management or condition of Pepco DC's books and records within ten (10) days after the event.

Exelon Utility Performance Comparison Reporting

110. Exelon and PHI shall file annual across-the-fence reports comparing the performance and status of the utilities within the Exelon family. The reports shall address substantive areas as directed by the Commission and may include subject areas such as reliability, customer service, safety, rate and regulatory matters, interconnections, energy-efficiency and demand-response programs, and deployment of new technologies, including smart meters and smart grid, automated technologies, microgrids and utility-of-the future initiatives. The annual reports shall only be filed under separate cover in the event that the across-the-fence comparison is not duplicative of analysis provided in a separate report required by the Commission.

Consent to Jurisdiction

111. Exelon submits to the jurisdiction of the Commission for: (1) all matters related to the Merger and the enforcement of the conditions set forth herein to the extent relevant to operations of Pepco; and (2) matters relating to affiliate transactions between Pepco and Exelon or its affiliates to the extent relevant to operations of Pepco in the District of Columbia. Exelon shall also cause each of its affiliates that supplies goods or services to Pepco to submit to the jurisdiction of the Commission for matters relating to the provision or costs of such goods or services to Pepco.

Settlement Terms Addressing Commission Factor No. 6

Adherence to Code of Conduct and Provision of Standard Offer Service

112. The Joint Applicants agree to comply with the statutes and regulations applicable to Pepco regarding affiliate transactions, including without limitation 15 D.C.M.R. §§ 3900-3999.

113. Pepco will continue to provide SOS ("Standard Offer Service") to its customers in the District consistent with the District of Columbia Code and Affiliate Code of Conduct. The Settling Parties acknowledge that Exelon intends to continue to participate in the SOS auction process following the Merger.

Separate Employees to Engage in Advocacy

114. Exelon shall utilize separate legal and government-affairs personnel, support personnel, and separate law firms and consultants to advocate before the Commission, on behalf of Exelon Generation and/or Constellation Energy Resources, LLC, on the one hand, and Pepco and any Affiliated Transmission Company, on the other.

Advocacy for Energy Efficiency and Demand Response

115. Exelon has supported and will continue to support energy efficiency and demand response playing a role in the energy resource mix, with demand response services being an important tool for customers to manage energy costs. While questions remain about jurisdiction over demand response, the appropriate compensation mechanisms, and how to incorporate demand response in existing markets, Exelon is of the view that any sensible energy policy should reflect the value of all resources, including demand response. To that end, PHI and Pepco will maintain and promote energy efficiency and demand response programs consistent with the direction and approval of the Commission, District and federal law. Exelon will continue to advocate that demand response should be reflected in markets that serve the District of Columbia.

Competition Protections

116. Exelon agrees to the following competition protections. For purposes of this condition, "Affiliated Transmission Companies" are Pepco (in the District of Columbia and Maryland), Delmarva Power, Atlantic City Electric ("ACE"), PECO Energy Company ("PECO"), Baltimore Gas and Electric Company ("BGE") and Commonwealth Edison Company ("ComEd"), and any transmission owning entity that is in the future affiliated with Exelon and is a member of PJM Interconnection, LLC ("PJM"). "Exelon" refers to Exelon and its affiliates and subsidiaries.

(a) Exelon commits that its Affiliated Transmission Companies shall each identify, with PJM's concurrence, at least three independent third-party engineering consulting firms that are qualified to conduct Facilities Studies under the PJM generator interconnection process. Any generation interconnection applicant may propose other independent third- party engineering consulting firms to Exelon for its consideration with respect to adding them to this list of qualified firms. Exelon shall make a decision with respect to whether any proposed independent third-party engineering consulting firm can be included on such list within thirty days after a request to include any such proposed firm. Once approved, Exelon shall not be permitted to remove a third-party engineering consulting firm from such list unless and until it can demonstrate good cause as determined by the PJM Market Monitor or the FERC.

(b) Any generation developer that desires to interconnect to the transmission system of one of Exelon's Affiliated Transmission Companies may, in the developer's discretion and at the developer's expense, direct PJM to utilize one of the identified firms to conduct the Facilities

Study for its generation project for upgrades and interconnection facilities required on the Affiliated Transmission Company's facilities.

(c) For all interconnection studies performed by a listed independent third-party engineering consulting firm, the Exelon Affiliated Transmission Company shall cooperate with and, as requested, provide information to PJM and the independent engineering consulting firm as needed to complete all work within the normal scope and timing of the PJM interconnection process. The Affiliated Transmission Company shall provide to PJM the cost estimate for any facilities for which it has construction responsibility assigned in the PJM Interconnection Services Agreement. If a dispute arises in connection with the Study performed by the independent engineering consulting firm or the Affiliated Transmission Company, then the generation developer or the Affiliated Transmission Company may pursue resolution of the dispute through the process laid out in the PJM Tariff. Affiliates of Exelon that are pursuing the development of generation within the service territories of one of the Affiliated Transmission Companies shall, at their own expense, direct PJM to utilize one of the independent engineering consulting firms to conduct the Facilities Study for upgrades and interconnection facilities required on the Affiliated Transmission Company's facilities and the Feasibility Study and System Impact Study shall be performed by PJM. Nothing in this paragraph precludes an applicant, as part of its project team, from contracting with other contractors to assist it in the PJM interconnection process at its sole discretion.

(d) Exelon commits that Pepco and Pepco Maryland, ACE, Delmarva Power, PECO, and BGE shall remain members of PJM until January 1, 2025; provided, however, that if there are significant changes to the structure of the industry or to PJM, including markets administered by PJM, during that period that have material impacts on Pepco and Pepco Maryland, ACE, Delmarva Power, PECO or BGE, then any of those companies may file with FERC to withdraw from PJM.

(e) Exelon agrees that the PJM Market Monitor may review its Demand Resource bids in PJM energy, reserves, and capacity markets.

117. In order to facilitate consumer advocacy in PJM, Exelon shall make a one-time contribution of $350,000 to fund the expenses of the Consumer Advocates of PJM States Inc. ("CAPS"). This contribution shall be a single contribution made with respect to all of the PHI utilities and service territories and shall not be specific to Pepco. The cost of the contribution shall not be recovered in the rates of any Exelon utility. Exelon shall agree to support reasonable proposals to have PJM members fund CAPS.

Settlement Terms Addressing Commission Factor No. 7

Development of Solar/Renewable Generation

118. Exelon shall, by December 31, 2018, develop or assist in the development of 7 MW of solar generation in the District of Columbia outside of Blue Plains. Exelon shall sell the output of solar generation constructed in fulfillment of this commitment in the market, and shall not seek to recover the costs of this commercial solar development through Pepco District of Columbia distribution or transmission rates. The construction and installation shall be competitively bid with a preference for qualified local businesses. Exelon shall retain the solar

renewable energy certificates and tax attributes for the solar projects; however, the SRECs created by such projects may not be used for District of Columbia Renewable Portfolio Standard compliance prior to December 31, 2018. SRECs created in years prior to 2019 may be banked and then used in 2019 or thereafter, to the extent permitted by law. Additionally, Exelon may apply for, and the Commission may grant, a waiver from prohibition of SREC usage prior to 2019, upon the finding of good cause by the Commission. In addition, Pepco shall support and expedite the interconnection for 5 MW of ground-mounted solar generation at Blue Plains that is developed, constructed and installed by a vendor selected by DC Water.

119. Exelon shall provide $5 million of capital to creditworthy governmental entities at market rates for the development of renewable energy projects in the District of Columbia.

120. Pepco shall coordinate with the District Government to facilitate planning for and interconnection of renewable generation to be developed by the District Government for governmental buildings or public facilities.

Enhancement to the Interconnection Process and Support for Customer-Owned Behind-the-Meter Distributed Generation[326]

121. Pepco shall reflect in its distribution system planning actual and anticipated renewable generation penetration. Beginning not later than six months after closing of the Merger, Pepco's distribution system planning will include an analysis of the long term effects/benefits of the addition of behind-the-meter distributed generation attached to the distribution system within the District of Columbia, including any impacts on reliability and efficiency. Pepco will also work with PJM to evaluate any impacts that the growth in these resources may have on the stability of the distribution system in the District of Columbia.

122. Exelon, PHI and Pepco shall provide a transparent, efficient, and clear process for review and approval of interconnection of proposed energy-generation projects to the Pepco distribution system in the District of Columbia including the following:

(a) Service territory maps of circuits, within ninety (90) days after Merger closing, will be uploaded to the Pepco website, to be updated at least quarterly, that have the following information included: the area where circuits are restricted, and to what size systems the restrictions apply. Three different maps will depict different restriction sizes. Each map will have the circuit areas on the particular map highlighted in a different color. One map will show circuits that are restricted to all sizes. One map will show circuits restricted to systems less than 50kW. One map will show circuits restricted to less than 250kW. The maps will also serve to identify areas that are approaching their operating limits and could become restricted to larger systems in future years. As of September 1, 2015, there were no "restricted" secondary network circuits, but if they occur, a new map or method of depiction may be necessary. A second

[326] Throughout the Public Interest Hearing on the NSA, the Settling Parties' witnesses universally acknowledged that any subsequent Commission orders or rulemakings would supersede provisions of the NSA that were inconsistent or contradictory to any subsequent orders or rules issued by the Commission. NSA Tr. at 176:18 – 177:15 (District Government redirect examination of Witness Wells); NSA Tr. at 182-183 (Khouzami); NSA Tr. at 440 (Dismukes); NSA Tr. at 464-465 (Oliver).

network circuit may become restricted if the active and pending generation would cause utility system operating violations. The categories of size restrictions depicted on the circuit maps will be made available for information purposes only, and will neither yield automatic cost allocation assumptions for resulting upgrades nor supplant the determination of the level of utility review afforded to the interconnection request.

(b) When a utility receives an interconnection request for a behind-the-meter renewable system, there are several factors, or criteria limits, to consider when it determines if upgrades are required at a specific circuit. Pepco shall:

(i) Provide a report to the Commission within ninety (90) days after Merger closing that provides its criteria limits for distributed energy resources that apply for connection to its distribution. This report shall include supporting studies and information that substantiate those limits. The report will describe and discuss how Pepco considers the generation profile of renewable energy relative to load, as well as discuss the approaches utilized in other jurisdictions that have addressed the issue of the impact of on-site renewable resources on the local grid and circuits. Pepco shall make itself available for discussions with the stakeholders on the report and to demonstrate the modeling tools used by Pepco to perform its analysis to accommodate additional distributed energy resources.

(ii) PHI is currently working with the United States Department of Energy in research designed to show how Voltage Regulation strategy, phase balancing, optimal capacitor placement, smart inverters and energy storage may impact Hosting Capacity. PHI will share this research with stakeholders upon completion of the project.

(iii) PHI has provided data to National Renewable Energy Laboratory ("NREL") as part of its in-depth work to review utility interconnection criteria. A report is expected to be issued by the end of 2015. PHI will evaluate its criteria with the criteria outlined in the NREL report to identify any improvements that may be made including treatment of behind-the-meter storage equipment. PHI shall share information, discuss approaches, evaluating interconnection criteria, working with NREL, and providing an opportunity for stakeholders to comment on PHI's proposed recommendations on interconnection criteria prior to public release. PHI will collaborate with stakeholders in good faith but nothing in this Settlement Agreement obligates PHI to accept or be bound by the recommendations of the stakeholders. This collaborative effort will be completed within one (1) year following the approval of the Merger.

(iv) PHI will consider the hourly load shape and the hourly generation of interconnected small generators as a factor to determine the hosting capacity for any given location of a circuit. PHI's hosting capacity determinations shall adopt the minimum daytime load ("MDL") supplemental review screen standards established in FERC Order 792 as well as findings from the collaborative research referenced above that allow for interconnection of distributed generation systems without additional need for study or upgrade investments (*e.g.*, "Fast Track Capacity") as long as aggregate installed nameplate capacity on the circuit, including the proposed system, would not exceed 100% of MDL on the circuit and the proposed system passes a voltage and power quality screen and a safety and reliability screen.

(v) PHI shall provide electronic data interface ("EDI") access to historical electric usage through Pepco's Green Button capability to its customers and to customer representatives (distributed energy companies and others who a customer designates to receive such information).

123. Pepco shall maintain within ninety (90) days after Merger closing an accepted inverter equipment list for small generation projects where once an inverter is reviewed and found to be acceptable for use, it is deemed acceptable for future development. This list shall be easily accessible on the Pepco websites and updated quarterly. Pepco will review its policy for requiring an equipment list to be submitted for panels and switchgear with each application and post on its website any changes in policy.

124. Exelon is committed to maintaining Pepco's existing interconnection and net metering programs.

125. In addition to the current requirements of 15 D.C.M.R. Chapter 40 District of Columbia Small Generator Interconnection Rules, Pepco will adhere to the following requirements with respect to Level 1 interconnections:

(a) Pepco will issue a permission to operate to the interconnection customer, in the form of an email, within twenty (20) business days after the interconnection customer satisfies the requirements of 15 D.C.M.R. § 4004.4 (signed Interconnection Agreement, certificate of completion and the inspection certificate).

(b) In its annual report to be filed with the Commission pursuant to 15 D.C.M.R. § 4008.5, Pepco shall also report its performance with respect to issuance of permission to operate set forth in clause (a) above. If more than 10% of the permissions to operate requested are not issued by Pepco within twenty (20) business days after satisfaction of the applicable requirements, the annual report will also include specific remedial action to be taken by Pepco to resolve the shortfall and the time frame to perform the remedial action.

(c) Within 180 days after the closing of the Merger, Pepco shall file a request for proposed rulemaking to add the requirement with respect to issuance of permission to operate set forth in clause (a) above to 15 D.C.M.R. Chapter 40, and to make adherence to the deadlines contained in 15 D.C.M.R. Chapter 40 at not less than a 90% compliance level subject to the EQSS standards in 15 D.C.M.R. Chapter 36.

(d) Within 180 days after closing of the Merger, Pepco shall file a request with the Commission to eliminate the $100 fee currently charged for a Level 1 interconnection application.

126. In behind-the-meter applications where the battery never exports while in parallel with the grid and both the battery and the solar system share one inverter, no additional metering or monitoring equipment shall be required for a solar plus storage facility than would be required for a solar facility without storage technology. Pepco, through a stakeholder process, shall undertake appropriate further study of the issues regarding the coupling of solar and storage. As a result of such studies, stakeholders may recommend changes to this protocol to the Commission. Pepco, in consultation with Commission Staff and interested stakeholders, shall

determine an appropriate target completion date for this review within one (1) year after Merger closing.

127. Pepco shall develop an enhanced communication plan to proactively promote installation of behind-the-meter solar generation in its District service territory. Included in the plan will be measures to utilize the Pepco web site and bill inserts to provide public service information useful to businesses and individuals that may be interested in installing solar generation as well as informing customers as to the capabilities of Pepco's net energy metering program and advanced metering infrastructure. Pepco will share its enhanced communication plan with the Settling Parties and other interested parties for their comment within six (6) months after Merger closing. Within six months after Merger closing, Pepco will implement an automated online interconnection application process. This process will enable customers to securely complete interconnection applications online and to track online the status of the customer application, including resolution of customer inquiries, issues and complaints.

[Heading Deleted]

128. [Text Deleted]

Support of Formal Case No. 1130
(Investigation into Modernizing the Energy Delivery Structure for Increased Sustainability)

129. The Commission, pursuant to Order No. 17912 issued on June 12, 2015, opened Formal Case No. 1130. Pepco, as the electric distribution utility in the District of Columbia, is an active participant in this proceeding and is subject to assessment to fund costs of the Commission and the OPC incurred in this proceeding in accordance with the laws of the District of Columbia. Exelon commits that it will support, and cause Pepco to continue to support, the Commission's objectives in opening this proceeding to identify technologies and policies that can modernize the District of Columbia energy delivery system for increased sustainability and to make the District of Columbia energy delivery system more reliable, efficient, cost-effective and interactive. Further, Pepco and Exelon shall support and facilitate the implementation of any pilot projects approved by the Commission that emerge from the Formal Case No. 1130 proceeding.

Procurement of 100 Megawatts of Wind Energy
Under Long-Term Contracts

130. Exelon or its non-utility subsidiaries (for purposes of this section, "Exelon") will, within five (5) years after the Merger close, conduct one or more requests for proposals or other competitive process (each an "RFP") to solicit offers to purchase a total of 100 megawatts ("MW") of renewable energy, capacity and ancillary services and all environmental attributes associated therewith, including but not limited to renewable energy credits (collectively, the "Product"), from one or more new or existing wind-generation facilities located within the PJM territory with an anticipated Product delivery date beginning approximately three years following the applicable RFP date. Each RFP and associated documents will include the following provisions:

(a) Bidders will be asked to provide credit assurances satisfactory to Exelon in its reasonable discretion as needed to assist Exelon in evaluating each bidder's existing and continued creditworthiness.

(b) Exelon will evaluate each proposal received in response to each RFP and will select one or more bidders based on the proposal(s) that Exelon determines, in its sole discretion, represent(s) the best value to Exelon. In the event that Exelon receives fewer than three qualifying proposals in connection with an RFP, Exelon reserves the right to make no award in connection therewith and to conduct a replacement RFP at a future date.

(c) Exelon will contract for the purchase of Product through one or more power purchase agreement(s) to be negotiated between Exelon and the winning bidder(s) (the "PPA(s)"). The PPA(s) will have delivery term lengths of ten (10) years and contain commercially reasonable, standard terms and conditions for the purchase and sale of the Product and, for purchases from new wind projects, development milestones and related standard provisions. Product purchased by Exelon pursuant to the PPA(s) may be resold, retired, used for compliance purposes, remarketed, or otherwise used as deemed appropriate by Exelon in its sole discretion.

(d) The commitments made in this paragraph are intended to promote wind within PJM to facilitate meeting state renewable portfolio standard requirements, including each of the service territories in which PHI utilities provide service. This commitment shall be a single commitment made with respect to all the PHI utilities and service territories. Exelon and its non-utility subsidiaries will use commercially reasonable efforts to utilize the environmental attributes purchased through procurements under this paragraph to satisfy any obligations of Exelon and its non-utility subsidiaries under the District of Columbia's renewable portfolio standard.

(e) The costs of implementing this paragraph (including the costs of all procurements and all costs under each PPA) shall not be recovered through Pepco District of Columbia distribution or transmission rates.

Additional Provisions

131. Each of the Settling Parties agrees to use its best efforts to ensure that this Settlement Agreement shall be submitted as soon as possible for approval to the Commission. Exelon and PHI intend to file a Motion of Joint Applicants to Reopen the Record in Formal Case No. 1119 to Allow for Consideration of Nonunanimous Full Settlement Agreement and Stipulation, or for Other Alternative Relief (the "Motion of Joint Applicants to Reopen"). The other Settling Parties shall promptly file a statement either supporting or consenting to a Commission determination to grant the Motion of Joint Applicants to Reopen. If the Commission does not accept the Motion of Joint Applicants to Reopen, the Joint Applicants will file a new application consistent with terms and conditions of this Settlement Agreement (the "New Application"). The other Settling Parties shall promptly file a statement in support of the New Application.

132. Each of the Settling Parties agrees to cooperate in good faith and take all reasonable action to effectuate the terms of this Settlement Agreement.

133. The Settling Parties agree that this Settlement Agreement represents the entirety of the agreement among the Settling Parties concerning the subject matter hereof and does not limit or otherwise affect rights and obligations any Settling Party may have under any other agreement.

134. The Settling Parties agree to support approval of the Merger upon the terms set forth in this Settlement Agreement in any proceedings before the Commission regarding approval of the Merger and/or implementation of commitments or conditions, which shall include filing testimony in support of the Settlement Agreement and the Merger. The Settling Parties further agree to defend this Settlement Agreement in the event of opposition to approval of the Merger from non-signatory parties before the Commission.

135. This Settlement Agreement contains terms and conditions each of which is interdependent with the others and essential in its own right to the signing of this Settlement Agreement. Each term is vital to the Settlement Agreement as a whole, since the Settling Parties expressly and jointly state that they would not have signed the Settlement Agreement had any term been modified in any way. None of the Settling Parties shall be prohibited from or prejudiced in arguing a different policy or position before the Commission in any other proceeding, as such agreements pertain only to this matter and to no other matter.

136. Notwithstanding anything to the contrary set forth in this Settlement Agreement, upon the occurrence of any of the following events, either Exelon or PHI, in its sole discretion, may terminate this Settlement Agreement, and this Settlement Agreement then shall be deemed null and void and of no force or effect:

(a) if the Commission does not, within forty-five (45) days after the date of the initial filing of the Settlement Agreement with the Commission as an attachment to the Motion of the Joint Applicants to Reopen (the "Settlement Filing Date"), set a schedule for action for consideration of this Settlement Agreement which allows for a Final Order for approval of the Merger within 150 days after the Settlement Filing Date;

(b) if the Commission sets a schedule for action on the Motion of the Joint Applicants to Reopen or the New Application (if the Joint Applicants file the New Application), or establishes a revised schedule, which does not allow for a Final Order for approval of the Merger within 150 days after the Settlement Filing Date;

(c) if the Commission fails to adopt a Final Order approving the Merger and this Settlement Agreement as filed with the Commission without condition or modification within 150 days after the Settlement Filing Date;

(d) if the Commission issues a Final Order disapproving the Merger or the Settlement Agreement or adding conditions or making modifications to the Merger or this Settlement Agreement; or

(e) if the Merger Agreement is terminated or the Merger is not consummated for any reason.

137. This Settlement Agreement is submitted to the Commission for approval as a whole and the Settling Parties state that its provisions are not severable, in accordance with 15 D.C.M.R. § 130.10(f).

138. The terms and conditions set forth in this Settlement Agreement in Paragraphs 1 through 130 shall only be binding on the Settling Parties upon approval by the Commission and upon consummation of the Merger, which are express conditions precedent. In the event that the Commission enters a Final Order approving this Merger which is subsequently reversed or vacated, then Exelon shall have the right to void any executory obligations and recover any funds paid consistent with the decision of the District of Columbia Court of Appeals or the Commission's order on remand.

139. Exelon submits to the jurisdiction of the Commission for enforcement of the terms and conditions herein. Nothing in this Settlement Agreement is intended to diminish the jurisdiction of the Commission with respect to the Settling Parties.

140. This Settlement Agreement may only be modified by a further written agreement executed by all the parties to this Settlement Agreement.

141. This Settlement Agreement may be executed in as many counterparts as there are parties to this Settlement Agreement, each of which counterparts shall be an original, but all of which shall constitute one and the same instrument.

142. The Settling Parties are submitting this Settlement Agreement, inter alia, subject to and in accordance with 15 D.C.M.R. Section 130.10. As required by Section 130.10, this Settlement Agreement (a) has been reduced to writing; (b) contains all of the terms and conditions agreed upon by the Settling Parties; (c) has been clearly and accurately labeled as a nonunanimous settlement; (d) has been clearly and accurately labeled as a full settlement; (e) indicates by this clause that the parties to Formal Case 1119 that have not signed the Settlement Agreement are expected to either oppose or be neutral with respect to the acceptance of the Settlement Agreement; (f) states that the provisions of the Settlement Agreement are not severable and that the Settlement Agreement must be accepted or rejected in its entirety by the Commission; and (g) indicates that the Settling Parties have stipulated, or will stipulate, the admission into evidence of the testimony and exhibits filed by the Settling Parties in support of this Settlement Agreement.

[Signature page follows]

EXELON CORPORATION, on behalf of itself, EXELON ENERGY DELIVERY COMPANY, LLC, and NEW SPECIAL PURPOSE ENTITY, LLC

_____

BY: Darryl M. Bradford, Executive Vice President and General Counsel

PEPCO HOLDINGS, INC., and POTOMAC ELECTRIC POWER COMPANY

_____

BY: Kevin C. Fitzgerald, Executive Vice President & General Counsel, Pepco Holdings, Inc.

GOVERNMENT OF THE DISTRICT OF COLUMBIA

_____

BY: Muriel Bowser
Mayor of the District of Columbia

_____

BY: Tommy Wells
Director, Department of Energy and Environment

_____

BY: Karl A. Racine
Attorney General for the District of Columbia

OFFICE OF THE PEOPLE'S COUNSEL OF THE DISTRICT OF COLUMBIA

_____

BY: Sandra Mattavous-Frye
People's Counsel

DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY

_____

BY: George Hawkins
Chief Executive Officer and General Manager

NATIONAL CONSUMER LAW CENTER, NATIONAL HOUSING TRUST, and NATIONAL HOUSING TRUST – ENTERPRISE PRESERVATION CORPORATION

_____

BY: Charles Harak
Senior Attorney

APARTMENT AND OFFICE BUILDING ASSOCIATION OF METROPOLITAN WASHINGTON

_____

BY: Margaret Jeffers, Esq.
Executive Vice President

ATTACHMENT B: COMMUNITY COMMENTS AND SUMMARIES OF PRIOR ORDERS, THE NSA AND PARTIES POSITIONS

I. COMMUNITY COMMENTS

1. The Commission convened two (2) community hearings seeking input from the public on the Nonunanimous Settlement Agreement filed on October 6, 2015. The hearings were held on November 17 and 18, 2016 at the Commission from 10 a.m. to 7 p.m. Due to the great number of persons who pre-registered to speak at the Community Hearing, the Commission highly encouraged the public to submit written statements to the Commission's Secretary's Office in lieu of an oral statement at the Community hearing. During the course of the two (2) Community Hearings, over 250 residents, community groups, non-profits, and businesses pre-registered to submit oral testimony.

2. The Commission Secretary also received written comments from over 53,000 residents, non-profits, and businesses before the close of the record. The written comments were sent by both proponents and opponents of the Nonunanimous Settlement Agreement. Comments in support of both sides came from District of Columbia residents and from non-residents.

A. Proponents of the Nonunanimous Settlement Agreement

3. The Joint Applicants filed a letter of support, stating it was on behalf of the 40,000 District residents who support the Nonunanimous Settlement Agreement. The letter, which contained electronic signatures, states:

> This settlement more than doubles direct benefits to customers by providing $72.8 million for bill credits, low-income assistance, renewable energy and energy efficiency programs in the District. The merger also will improve reliability and mean that Pepco can use Exelon's crews and resources to restore power faster after major storms.
>
> The merger paves the way for a cleaner and greener D.C. by advancing the District's long-term sustainability goals. Exelon will significantly expand solar energy in the District and make it easier and faster for customers to install solar panels. The settlement also provides local residents, businesses and organizations with more economic opportunities.

4. Written comments supporting the Nonunanimous Settlement Agreement were also filed by District residents, small businesses, and non-profits organizations. The Commission also received a letter in support of the merger dated October 16, 2015, that was signed by Councilmembers Evans, Nadeau, McDuffie, Bonds, Alexander, Todd, and May. The letter acknowledged that the Commission would make the final determination of whether the merger is in the public interest. The Councilmembers' letter discussed many of the financial and nonfinancial benefits contained in the settlement agreement.

B. Opponents of the Merger

5. Written comments opposing the Settlement were filed by District residents, civic associations, citizen groups, and tenant associations. Four (4) Advisory Neighborhood Commissions (ANCs) also filed comments opposing the Nonunanimous Settlement Agreement. ANC 3B passed a formal resolution and submitted a letter to the Commission against the Nonunanimous Settlement Agreement. A contingent of District Councilmembers has also voiced opposition to the Nonunanimous Settlement Agreement including Councilmembers Cheh, Gross, Silverman, and Allen.

II. SUMMARIES OF PRIOR ORDER, THE NSA, AND PARTIES' POSITIONS

6. This section consists of summaries of pertinent Orders and party filings in this proceeding by factor, including: (1) a summary of the Commission's determination from Order No. 17947; (2) a summary of the NSA's provisions; (3) a summary of the Settling Parties' position; and (4) a summary the Nonsettling Parties' position. These summaries provide background and evidentiary support for the Commissioner's opinions in Section IV of the Majority Opinion, *supra*.

1. FACTOR 1: The effects of the transaction on ratepayers, shareholders, the financial health of the utilities standing alone and as merged, and the economy of the District[327]

Order No. 17947 - Commission's Findings on Factor 1

7. The Commission considered the impact of the Proposed Merger on Ratepayers under Factor No. 1 in paragraphs 94 through 108 of Order No. 17947. The Commission found the final CIF at the time of the decision, was "$33.75 million for use in the District of Columbia – an amount that the Joint Applicants claim is a direct and traceable financial benefit of approximately $128 per metered customer based on a customer meter count of 264,384."[328] While the Commission challenged the use of customer counts as a proper inter-jurisdictional allocation methodology, the Commission found the number used by the Joint Applicants to be low and "[b]ased on the actual number of meters in the District of Columbia, the direct and traceable financial benefit per metered customer drops from $128 to approximately $120 per metered customer."[329] The Commission also found that "the Proposed Merger offered nothing new for low-income ratepayers."[330] Additionally, the Commission found that the record

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[327] Although we have divided Public Interest Factor No. 1 into four separate sub-factors for purposes of our analysis and discussion, we caution that some matters argued by the parties and the public, and/or discussed by the Commission, may be relevant to, and discussed within, one or more of the sub-factors. Similarly, matters argued by the parties and the public, and/or discussed by the Commission related to a specific public interest factor may be relevant to, and discussed within one or more public interest factor if relevant.

[328] *Formal Case No. 1119*, Order No. 17947, ¶¶ 94, 354 (T), rel. August, 27, 2015.

[329] *Formal Case No. 1119*, Order No. 17947, ¶¶ 97, 354 (W), rel. August, 27, 2015.

[330] *Formal Case No. 1119*, Order No. 17947, ¶¶ 98, 354 (Y), rel. August, 27, 2015.

"contains no commitment by the Joint Applicants to pass on 100% of allocable achieved synergy savings to Pepco-DC, nor does it contain any documentation of the specific allocation factors that will be used to determine the District of Columbia's share of any future synergy savings that might be achieved."[331] Further, the Commission found that the recovery of regulatory support costs included in transition costs would cost ratepayers about $2 million,[332] and that due to that ability to recover costs to achieve, independent of the appearance of synergy savings, "could result in District of Columbia ratepayers paying rates that are higher than they otherwise would have."[333]

8. The Commission considered the impact of the Proposed Merger on shareholders under Factor No. 1 in paragraphs 117 through 119 of Order No. 17947. Specifically, the Commission found that "while the size of the acquisition premium, $1.6 billion, draws headlines, it is not, standing alone, grounds for the Commission to accept or reject the Proposed Merger" as the Joint Applicants have made commitments that "shield ratepayers from bearing the costs of the acquisition premium."[334] The Commission found that "the Proposed Merger will provide very real and substantial benefits to both the existing PHI shareholders whose stock is being acquired and to Exelon as the new shareholder of PHI."[335]

9. The Commission considered the impact of the Proposed Merger on the financial health of the utilities standing alone and as merged under Factor No. 1 in paragraphs 132 through 142 of Order No. 17947. In its specific review of the effect of the Proposed Merger on the Financial Health of Pepco, the Commission found that the record "does not clearly demonstrate that the Proposed Merger will add to Pepco's financial strength, nor does it show an immediate harm either."[336] Additionally, the Commission expressed concern that the "Proposed Merger would result in Pepco competing with a larger pool of companies (i.e., seven regulated distribution companies and Exelon's unregulated generation affiliates as compared to PHI's four regulated utilities) for additional investment dollars."[337] Finally, the Commission found that "both Pepco and PHI, as subsidiaries of Exelon, will be exposed to additional financial risks from the Proposed Merger due to Exelon's unregulated businesses."[338]

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331 *Formal Case No. 1119*, Order No. 17947, ¶¶ 100, 101, 354 (U), rel. August, 27, 2015.

332 *Formal Case No. 1119*, Order No. 17947, ¶¶ 101, 354 (AA), rel. August, 27, 2015.

333 *Formal Case No. 1119*, Order No. 17947, ¶ 103, rel. August, 27, 2015.

334 *Formal Case No. 1119*, Order No. 17947, ¶ 118, rel. August, 27, 2015.

335 *Formal Case No. 1119*, Order No. 17947, ¶ 119, rel. August, 27, 2015.

336 *Formal Case No. 1119*, Order No. 17947, ¶ 354 (DD), rel. August, 27, 2015.

337 *Formal Case No. 1119*, Order No. 17947, ¶¶ 138, 354 (HH), rel. August, 27, 2015.

338 *Formal Case No. 1119*, Order No. 17947, ¶¶ 142, 354 (JJ), rel. August, 27, 2015.

10. The Commission considered the impact of the Proposed Merger on the Economy of the District under Factor No. 1 in paragraphs 160 through 167 of Order No. 17947. The Commission found:

> that the overall effect of the Proposed Merger on the economy of the District appears to be neutral or slightly positive for the immediate term with the addition of the new union jobs and the transfer of the PES employees to the District, but the economic picture is almost certain to trend negative within two or three years as the protections for job retention are lifted at PHI and Pepco. The District would also stand to lose the additional tax revenues that are associated with higher levels of employment and from a larger PHI organization operating in the District.[339]

11. The Commission found that some of the 102 new union workers the Joint Applicants committed to hire for Pepco-DC "may be union workers who are filling vacancies caused by retirements or replacing contractors" and that the "[t]he cost to hire and train new workers at Pepco-DC who will be performing duties for the regulated company will be a ratepayer expense; any such expense is a cost associated with the Proposed Merger."[340] The Commission found that there was a benefit to the transfer of 50 PES employees but "[i]t is not clear whether these PES positions will prove to be long-term jobs in the District."[341] The Commission found that, unlike the New Jersey settlement, the Joint Applicants only committed to "no net reduction in the employment levels at Pepco due to involuntary attrition resulting from the Merger integration process" for two years.[342] The Commission raised concerns that "there is no similar commitment that relates to PHI's 586 employees who work in PHI's District of Columbia headquarters" and that there are 257 positions at "PHISCo that is headquartered in the District [that] are being eliminated as part of the synergy savings produced by the Proposed Merger."[343] Finally, the Commission found that "the dollar amount of the commitment which is made by Exelon and its subsidiaries is lower than the amount of Pepco-DC's 2014 charitable contributions of around $1.9 million -- a figure that does not take into account any donations made separately by PHI."[344]

Summary of Nonunanimous Settlement Agreement
Provisions Pertaining to Factor No. 1

1. *Customer Investment Fund*

339 *Formal Case No. 1119*, Order No. 17947, ¶ 165, rel. August, 27, 2015.

340 *Formal Case No. 1119*, Order No. 17947, ¶¶ 162, 354 (MM), rel. August, 27, 2015.

341 *Formal Case No. 1119*, Order No. 17947, ¶¶ 163, 354 (NN), rel. August, 27, 2015.

342 *Formal Case No. 1119*, Order No. 17947, ¶¶ 164, 354 (PP), rel. August, 27, 2015.

343 *Formal Case No. 1119*, Order No. 17947, ¶¶ 163, 164, 354 (OO), 354 (QQ), rel. August, 27, 2015.

344 *Formal Case No. 1119*, Order No. 17947, ¶¶ 167, 354 (SS), rel. August, 27, 2015.

12. The Joint Applicants have modified and added commitments related to the Customer Investment Fund ("CIF"). The CIF has been increased to "a value totaling $72.8 million" which the Joint Applicants assert "represents a benefit of $215.94 per distribution customer (based on a customer count of 337,117 as of December 31, 2013)."[345] Additionally, the Joint Applicants assert that "Pepco will not seek recovery of the CIF in utility rates."[346] The Settling Parties agree that the $72.8 million CIF commitment should be allocated as follows: (a) $25.6 million provided as a Residential Customer Base Rate Credit that will offset residential rate increases until it is fully utilized, as well as a commitment from Pepco to "defer recovery of any residential rate increase" until after March 31, 2019, and with "no portion of the Residential Customer Base Rate Credit [ ] recovered in utility rates;" (b) a one-time direct bill credit of $14 million to be distributed among Pepco residential customers (including RAD Program customers); (c) a $3.5 million provision to "the Renewable Energy Development Fund . . . or to one or more Community Development Financial Institutions ('CDFI's'), for the expansion of renewable generation in the District;" (d) a $3.5 million provision to the Sustainable Energy Trust Fund; (e) a $10.05 million provision to the District of Columbia Consumer and Regulatory Affairs Green Building Fund to promote sustainability in the District; and (f) a $16.15 million provision for "assistance to low- and limited-income electric customers in the District of Columbia, in addition to maintaining Pepco's low-income customer assistance programs pursuant to current requirements and commitments."[347]

2. *Corporate Presence in the District of Columbia*

13. The Joint Applicants have added commitments that provide for a corporate presence in the District of Columbia. Specifically, the Joint Applicants commit to "[w]ithin six (6) months after the consummation of the Merger, Exelon will colocate Exelon corporate headquarters in the District of Columbia for Exelon Corporate Strategy and Exelon Utilities ('EU')." The Joint Applicants assert that Exelon will accomplish this by "moving the headquarters of Exelon Utilities and Exelon Corporate Strategy to the District of Columbia; and by moving the primary offices of Exelon Utilities Chief Executive Officer," among other Exelon executive positions.[348] The Joint Applicants assert that Exelon will maintain both the colocated-Exelon, PHI, and Pepco headquarters and the "primary offices" of its executive employees "for at least ten (10) years."[349] The Joint Applicants also commit that Exelon will include the District among the locations of its Executive Committee and of its Board of Directors and annual shareholder meetings.[350]

3. *Employment and Workforce Development in the District of Columbia*

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345 NSA, ¶ 3.

346 NSA, ¶ 3.

347 NSA, ¶¶ 4-9.

348 NSA, ¶ 10.

349 NSA, ¶ 11.

350 NSA, ¶¶ 12-13.

14. The Joint Applicants have modified previous commitments to employment and workforce development in the District committing that "Exelon will transfer Pepco Energy Services' ('PES') Arlington, Virginia operations and associated employees to the District within six (6) months after Merger close and will retain such operations . . . for at least ten (10) years from the date of the transfer."[351] Exelon and PHI will relocate 100 positions to the District of Columbia by January 1, 2018 and file a report with the Commission confirming the relocation of the 100 positions. Pepco will honor its existing collective bargaining agreements endeavor to hiring 102 union workers in the District within two (2) years after the Merger closing date.[352] Exelon commits to no net reduction in employment levels at Pepco's utility operations in the District due to involuntary attrition for at least five (5) years after Merger close.[353] For two years after Merger close, Exelon "shall provide current and former Pepco and PHISCo employees compensation and benefits that are at least as favorable in the aggregate as the compensation and benefits provided to those employees immediately before execution of the Merger Agreement;"[354] Exelon shall continue to meet PHI's obligations "to Pepco employees and retirees with respect to pension and retiree health benefits;" and "Pepco shall also continue its commitments to supplier and workforce diversity," filing a report on its efforts annually with the Commission for the first three (3) years following the consummation of the Merger.[355]

4. *Economic Benefits Reporting, Development of an Arrearage Management Program, and Charitable Contributions and Community Support*

15. The Joint Applicants have committed to Pepco submitting an annual report for the first five (5) years following the merger detailing the economic benefits of the Merger for the District. Pepco will also "work with the District Government and other interested stakeholders . . . to develop . . . an Arrearage Management Program ('AMP') for LIHEAP or RAD-qualifying customers in arrears, which would include the provision of credits or matching payments for customers who make timely payments on their current bills."[356] Additionally, Exelon and its subsidiaries commit to provide, for the ten-year period following the Merger, "at least an annual level of charitable contributions and traditional local community support in the District of Columbia that exceeds the 2014 level of $1.9 million (calculated using a three-year rolling average)."[357]

5. *Cost Accounting and Synergy Savings*

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351 NSA, ¶ 14.

352 NSA, ¶ 16.

353 NSA, ¶ 17.

354 NSA, ¶ 21.

355 NSA, ¶¶ 25-26.

356 NSA, ¶ 27.

357 NSA, ¶ 28.

16. The Joint applicants have committed that Pepco will "track and account for Merger-related savings, and the costs to achieve [('CTA')] those savings, in each of its base rate cases filed within in [sic] a three-year period following Merger close."[358] Pepco has also committed to "flow all synergy savings allocable to the District to customers through the normal ratemaking process."[359] The CTA will be amortized by Pepco over a five-year period and Pepco "shall not recover CTA in a Pepco rate case in an amount greater than the synergy savings that Pepco demonstrates for the applicable test year."[360] Exelon commits to ensuring that merger accounting is "rate-neutral for Pepco customers."[361]

17. The Joint Applicants commit that Exelon will provide the Commission and the Office of People's Counsel with "reasonable access upon demand to the account records of Exelon's affiliates that are the basis for charges to Pepco pursuant to the Exelon General Services Agreement ('GSA') to determine the reasonableness of allocation factors used by Exelon to assign those costs and the amounts subject to allocation and direct charges."[362]

6. *Tax Indemnity and Other Tax Commitments*

18. The Joint Applicants commit that "Exelon shall indemnify Pepco for any liability for federal or local income taxes (including interest and penalties related thereto, if any) in excess of Pepco's standalone liability for federal or local income taxes [ ] for any period during which Pepco is included in a consolidated group with Exelon."[363] The Joint Applicants also commit to ensuring "that the Merger will not affect the accounting and ratemaking treatments of accumulated deferred income taxes ('ADIT'), and accumulated deferred investment tax credits ('ADITC'), such that ADIT and ADITC will continue to be used as rate base deductions and amortization credits in future Pepco rate cases."[364]

Summary of Settling Parties' Position
Pertaining to Factor No. 1

1. *The CIF*

19. The NSA provides that Exelon will establish a CIF of $72.8 million, which is more than double the $33.75 million CIF that the Commission determined was a direct and tangible benefit of the Proposed Merger. In addition to this fund being allocated as described

358 NSA, ¶ 28.

359 NSA, ¶ 28.

360 NSA, ¶ 29.

361 NSA, ¶ 30.

362 NSA, ¶¶ 31-32.

363 NSA, ¶ 49.

364 NSA, ¶ 50.

above, the Joint Applicants' witness Mr. Khouzami explained at the public interest hearing that "there is no expiration to the $25.6 million credit. Customers will receive the $25.6 million, we believe that will be [through] about March 31, 2019, but in the event that there are dollars left by March 31, 2019 in the $25.6 million fund, that would be extended and continue to be used until the fund is fully exhausted."[365] The Joint Applicants further assert that "there is no plausible argument to be made that Pepco customers will, in any fashion, be worse off by receiving the $25.6 million credit." Adding that, as testified by Mr. Khouzami, "Pepco will be coming in for rate cases at regular intervals whether or not the Merger occurs," therefore; "[a]bsent the Merger, Pepco customers will have to pay the entire amount of every rate increase prior to March 2019 – without the benefit of the credit that is available only because of the Merger."[366]

20. The Joint Applicants also contend that "any claim that the Residential Customer Base Rate Credit could yield 'rate shock,' or that it works as a 'balloon payment' is deeply misguided" because the "credit simply ensures that customers never pay for the first $25.6 million of any [ ] increases[, u]nlike a balloon payment on a mortgage or loan, where a portion of the amortization of the debt is deferred to its maturity at which time the borrower pays a disproportionately large final payment, no portion of the Residential Customer Base Rate Credit will ever be charged to customers, and customers will not pay a higher rate because they received the benefit of the $25.6 million credit."[367] The Joint Applicants assert that the Commission has previously found rate freezes or moratoria beneficial, citing *Formal Case No. 1002* wherein "the Commission found a further 30 month extension to an already operative rate cap to be a basis to approve the proposed Pepco/Conectiv merger as in the public interest."[368]

21. The Joint Applicants assert that "[i]f the Residential Customer Base Rate Credit is fully utilized before March 31, 2019, Pepco will: (1) defer recovery of any residential rate credit increase that otherwise would become effective before March 31, 2019 that exceeds the [$25.6 million offset]; (2) create a regulatory asset equal to the Incremental offset (the creation of the regulatory asset will be requested in the rate case where the rate increase that gives rise to the Incremental Offset is approved by the Commission); and (3) automatically (*i.e.*, without any further Commission approval required beyond approval of the Settlement Agreement) recover in residential rates the balance of the Incremental Offset regulatory asset, together with a return on the unrecovered balance of 5%, over a two-year period beginning on April 1, 2019; provided, however, that the recovery period will be extended beyond two years in order to ensure that the recovery of the regulatory asset and return does not exceed $1 million per year."[369] The Joint

365 Joint Applicants' Br. at 22, citing NSA Tr. at 192:13-20 (Commission questioning Khouzami).

366 Joint Applicants' Br. at 22-23, referencing NSA Tr. at 276:5-20 (Commission questioning Khouzami).

367 Joint Applicants' Br. at 23.

368 Joint Applicants' Br. at 23.

369 Joint Applicants' Br. at 24.

Applicants assert that "Pepco will not incur any case deficit as a result of the Residential Customer Bill Credit."[370]

22. In addition to the $25.6 million offset, District Government states "$14 million will be dedicated to providing a one-time direct bill credit for residential customers, including low-income customers participating in the Residential Aid Discount ("RAD") program."[371] District Government adds, through its witness Mr. Wells, that almost $40 million of the CIF will be utilized to provide direct and tangible financial benefits to residential ratepayers in the form of bill credits.[372] District Government also notes that a portion of the $25.6 million offset will extend to Master-Metered Apartment customers.[373] AOBA notes that the portion, $4.3 million of $25.6 million, in the distribution of rate credits is viewed "as a necessary condition for its participation in the settlement.[374] AOBA adds that "the need for a more equitable treatment of tenants served through master-metered and individually metered apartment accounts is re-established. [375]

23. The Joint Applicants maintain that $17.05 million of the CIF will "promote renewable generation . . . further the District's energy efficiency efforts, and . . . promote sustainability."[376] The Joint Applicants add that the $16.15 million allocated from the CIF to assist low- and limited-income customers through the LIHEAP and Arrearage Management Program addresses the Commission's "concern that the Merger 'offered nothing new for low-income ratepayers.'"[377] Specifically, according to OPC and District Government, $9 million of the $16.15 million will be provided as supplemental LIHEAP funding, while $6.75 million will be allocated to the District, in consultation with other stakeholders, for the development of new low-income oriented low-income energy efficiency programs.[378] NCLC adds that the $9 million supplement is "an extremely important component of the Settlement for low-income customers."[379] NCLC notes that the $9 million supplement almost exactly equals the full

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370 Joint Applicants' Br. at 28.

371 District Government's Br. at 8, citing NSA at 4, ¶ 5 and District Government (H) at 12:7-9.

372 District Government's Br. at 8, citing District Government (H) at 12:5-9.

373 District Government's Br. at 8.

374 AOBA's Br. at 12, citing NSA at 4, ¶ 4.

375 AOBA's Br. at 13.

376 Joint Applicants' Br. at 28.

377 Joint Applicants' Br. at 29, citing *Formal Case No. 1119*, Order No. 17947, ¶¶ 98-99, rel. August 27, 2105; OPC's Br. at 34, citing NSA at 7, ¶ 26.

378 District Government's Br. at 9, citing District Government (H) at 21:1-6, OPC's Br. at 34, citing NSA at 5, ¶ 9(b) and (c).

379 NCLC's Br. at 10.

amount of funding awarded to the District by the Federal Government for fiscal year 2016, and that it unquestionably offers "a very important benefit for low-income customers."[380]

24. With regard to the $6.75 million funding for low-income energy efficiency programs, NCLC states that it considers the funding a sizable commitment given the size of the District and the need for energy efficiency investments for low-income households. NCLC points out that the District has a disproportionately large percentage of renters as opposed to homeowners. In the District, 58% of the housing units are rentals, as opposed to 35%, the percentage nationwide for housing units.[381] NCLC also asserts that 78% of renters in the District have household income of less than $50,000.[382] To that point, NCLC references the written testimony of its witnesses, Mr. Bodaken and Mr. Nedwick, who deemed the commitment as a "significant benefit for low-income households."[383] Mr. Bodaken's and Mr. Nedwick's testimony also asserts that "many low-income tenants living in multi-family buildings do not get billed directly for electricity because the building is master-metered" and that investments in energy efficiency in their buildings are particularly important to ensure these households do benefit from the CIF.[384] District Government also notes that Pepco pledges to forgive another $400,000 worth of residential customers accounts receivable that are over two (2) years old.[385] It is agreed that these new proposed offerings in the NSA provide direct and tangible benefits to ratepayers in the District in contrast to the prior proposal.[386]

2. *Corporate Presence in the District of Columbia*

25. In the NSA, the Joint Applicants commit to increase its corporate presence and colocate Exelon's corporate strategy in the District.[387] This Commitment was a new one added by the NSA to address a concern raised in Order No. 17947.[388] In response to this Commitment, District Government notes Exelon agrees to move several corporate functions and offices into the District including Exelon Corporate Strategy, the headquarters for Exelon Utilities, Inc., Pepco Energy Services, Inc., and the primary offices of several high-ranking Exelon officers, as well as offices of Exelon Executive Committee members who are in Exelon's Business Service Company.[389] District Government believes that these enhanced Commitments to move Exelon

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380 NCLC's Br. at 10, citing NCLC (B) at 8.

381 NCLC's Br. at 6, citing NCLC (A) at 5.

382 NCLC's Br. at 6, citing NCLC (A) at 5.

383 NCLC's Br. at 7.

384 NCLC's Br. at 8 citing NCLC (B) at 9.

385 District Government's Br. at 9, citing NSA, ¶ 26.

386 District Government's Br. at 9 and OPC's Br. at 34, citing NSA, ¶ 26.

387 NSA at 5, ¶ 10.

388 *See Formal Case No. 1119*, Order No. 17947, ¶ 167, August 27, 2015.

389 District Government's Br. at 9-10, citing NSA, ¶¶ 10, 11, 14.

corporate and affiliate functions into the District should elevate the District's standing within Exelon's corporate structure.[390]

26. In turn, OPC adds that these Commitments respond directly to the concern that Pepco would be owned by a company headquartered in Chicago and will ensure that Exelon will have a significant and visible presence in the District.[391] OPC notes that the Commitment for relocation of the aforementioned offices and executives will span a ten-year period.[392] OPC asserts that a decade-long commitment is highly significant and reduces the likelihood that Exelon "will pack up and move" after investing in the District for 10 years.[393] In that regard, OPC witness Dr. Dismukes stated that Exelon's "future and the future profitability of [its] operations . . . [are] going to be very, very tied to the District."[394] AOBA believes the commitment offering to colocate Exelon Utilities headquarters to the District will result in an increased focus on Pepco's distribution operations and greater sensitivity to the unique circumstances in the District.[395]

3. *Impact on the District's Economy and Workforce Development*

27. The Joint Applicants assert that the NSA provides "a suite of revised commitments that would substantially expand their corporate presence in the District and ensure that the Merger has a strong positive impact on employment levels in the District for the foreseeable future." In response to the Joint Applicants revised District employment provisions, they add, "the Joint Applicants also commit that the Merger's impact will be net jobs-positive for the District through at least January 1, 2018, and the Merger will not become net jobs negative through involuntary attrition as a result of the merger integration process through December 31, 2019 [and that] Exelon will file reports with the Commission by April 1, 2018 and 2020, respectively, demonstrating that each of these commitments has been satisfied."[396] The Joint Applicants reiterate that its $5.2 million contribution to District workforce development and its commitment to finding "existing programs that would help develop the next generation of workers for both Pepco, as well as elsewhere in the District," is a "'bona fide and defined commitment . . . that is a public benefit."'[397]

28. In support of Joint Applicants, District Government notes that the NSA agreed to extend from two years to five years its previous Commitment not to permit any net reduction in

390 District Government's Br. at 11, citing District Government (H) at 23:13-14.

391 OPC's Br. at 41, citing OPC (3A) at 19:7-9.

392 OPC's Br. at 40, citing NSA ¶ 10.

393 OPC's Br. at 41.

394 OPC's Br. at 41, citing NSA Tr. at 394:3-5.

395 AOBA's Br. at 19.

396 Joint Applicants' Br. at 34.

397 Joint Applicants' Br. at 34, citing NSA Tr. at 445:14-17 (Commission questioning Dismukes).

employment levels at Pepco's utility operations.[398] Further, District Government states that the NSA provides that, prior to 2020, District employment levels would not become net negative due to involuntary attrition resulting from the Proposed Merger.[399] OPC points out additional offerings from the NSA which include, among other things: 1) relocation of 100 positions to the District of Columbia; 2) use best efforts to hire at least 102 union workers in the District of Columbia, and not include the costs of these hires in customer rates until after January 1, 2017; and 3) commit that the merger's impact will be net jobs-positive for the District through at least January 1, 2018.[400] OPC asserts that "these are concrete and specific terms that will improve the economy of the District in ways that would not otherwise occur absent the merger."[401] OPC states "the new employment commitments in the Nonunanimous Settlement Agreement provide immediate, direct and tangible benefits to the District and are in the public interest."[402]

29. DC Water, along with District Government, asserts that $2 million of the $5.2 million workforce development funds will be used for DC Water's green infrastructure training program.[403] According to DC Water, its Green Infrastructure is part of its Long Term Control Plan ("LTCP") to control combined sewer overflows ("CSO") in the District.[404] DC Water adds that the Green Infrastructure Program supports improved water quality for the District, and that program provides opportunities for District residents to have living wage jobs in the form of green infrastructure installation, inspection and maintenance services.[405] DC Water witness Mr. Hawkins and District Government witness Mr. Wells both testified that there is a growing need for green Infrastructure-skilled workers in the District and other jurisdictions.[406] DC Water submits that the additional $2 million in Green Infrastructure Program funding, like the Settlement's broader workforce development commitments, is a benefit that did not exist under the Joint Applicants' prior proposals and that, but for the Settlement, would not exist.[407]

4. *Economic Benefits Reporting, Development of an Arrearage Management Program, and Charitable Contributions and Community Support*

398 District Government's Br. at 9, citing NSA, ¶ 17.

399 District Government's Br. at 9, citing NSA, ¶ 20.

400 OPC's Br. at 41-42, citing NSA, ¶¶ 15, 16, and 20.

401 OPC's Br. at 42.

402 OPC's Br. at 42.

403 DC Water's Br. at 6, 7; District Government's Br. at 10.

404 DC Water's Br. at 6.

405 DC Water's Br. at 8.

406 DC Water's Br. at 8, citing NSA Tr. at 605-606.

407 DC Water's Br. at 8, citing NSA Tr. at 303-304.

30. With regard to Economic Benefit Reporting, the means of ensuring economic commitments are met, OPC asserts that the NSA incorporates several additional reporting obligations.[408] The first is the requirement that Pepco file, on an annual basis for five (5) years, a report detailing all job losses as well as job gains.[409] OPC adds that Pepco must file a separate report confirming that the merger's impact will be net jobs-positive for the District through at least January 1, 2018,[410] as well as a report explaining its efforts to promote supplier and workforce diversity.[411] Finally, OPC points out that Pepco must submit a report, annually for the first five years after the Proposed Merger's approval, detailing the economic benefits of the merger for the District.[412]

31. Similar to OPC, AOBA identified paragraph 25 of the NSA as a tool for tracking the economic benefits of the Proposed Merger. However, AOBA specifically references this provision as a means for ensuring that synergy savings are tracked.[413] AOBA submits that synergy savings are only a benefit if the amount of synergy savings can be demonstrated and tracked.[414] AOBA asserts that paragraph 25 of the NSA is important because it ensures that synergy savings will be realized by commercial customers. Thus, AOBA supports language of paragraph 25 that extends the tracking of economic benefits for five (5) years after the merger has closed.[415]

32. As was mentioned previously in this Order, the NSA promises the establishment of an Arrearage Management Program.[416] According to NCLC, an AMP will provide substantial benefits for the most payment-troubled low-income customers: the ones who have fallen furthest into arrears. NCLC points to the Massachusetts AMP as proof that such a program can accomplished with little or no adverse impact on non-participating customers since AMPs can incentivize better payment behavior among those who struggle to pay their bills.[417] OPC joins NCLC by pointing out that the NSA expressly provides that whatever proposed AMP is developed between Pepco, District Government and other stakeholders will be submitted to the Commission for its review and approval.[418] OPC asserts that this will allow interested parties

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408 OPC's Br. at 42.

409 OPC's Br. at 42, citing NSA, ¶ 18.

410 OPC's Br. at 42, citing NSA, ¶ 20.

411 OPC's Br. at 42, citing NSA, ¶ 23.

412 OPC's Br. at 42, citing NSA, ¶ 25.

413 AOBA's Br. at 16.

414 AOBA's Br. at 16.

415 AOBA's Br. at 16, referencing citing NSA, ¶ 25.

416 NCLC's Br. at 8, citing NSA, ¶ 26.

417 NCLC's Br. at 8, citing *Formal Case No. 1119*, Order No. 17947, ¶ 85, rel. August 27, 2015.

418 District Government's Br. at 9 and OPC's Br. at 34, citing NSA, ¶ 26.

"ample opportunity to provide input into the AMP before it goes into effect.[419] OPC notes that NCLC is among the Settling Parties that "find that the Settlement Agreement includes identifiable and substantial benefits for low-income households in the District."[420]

33. Finally, District Government and OPC note that under the Nonunanimous Settlement Agreement Exelon's charitable contributions of $19 million is spread over a ten-year period.[421] District Government points out that the NSA increased this commitment from $16 million to $19 million over the ten-year period.[422] OPC regards this Commitment as a direct and tangible benefit to the economy of the District and its ratepayers.

5. *Cost Accounting and Synergy Savings*

34. OPC asserts that the costs to achieve ("CTA") offered in the Nonunanimous Settlement Agreement provides a stark contrast to the CTA set forth in the original proposal.[423] In the original proposal, ratepayers could have been asked to pay for the CTA that exceeded synergy savings as well as well as any regulatory costs associated with the merger.[424] As was set forth in the Settlement Agreement summary section of this order, the NSA provides that Pepco will: "(1) track and account for Merger-related savings and CTA in each of its base rate cases filed within three years of Merger closing; (2) amortize CTA over a five-year period starting on the effective date of rates established in the first Pepco base rate case filed after the closing of the Merger; and (3) in no event . . . recover CTA in a Pepco distribution base rate case in an amount greater than the synergy savings that Pepco demonstrates for the applicable test year." [425] OPC asserts that the synergy savings, estimated to total $51.2 million over the next ten years, the new provisions offered in the NSA will result in meaningful benefits for ratepayers.[426] OPC adds that three years is "a reasonable and appropriate time frame time to track these costs."[427] In addition, OPC recognizes that the NSA has taken $2 million dollars of regulatory costs, which were previously classified as transition costs, as part of Cost to Achieve and now identified these costs as transaction costs. By identifying the $2 million dollars of regulatory support costs as transactions costs, these costs "will not be recovered in Pepco's distribution rates."[428]

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419 OPC's Br. at 34.

420 OPC's Br. at 34, citing NSA Tr. at 74:9-11.

421 District Government's Br. at 10 and OPC's Br. at 29, citing NSA, ¶ 27.

422 OPC's Br. at 29.

423 OPC's Br. at 36, citing *Formal Case No. 1119*, Order No. 17947, ¶ 103, rel. August 27, 2015.

424 OPC's Br. at 36-37; DC Water's Br. at 9.

425 OPC's Br. at 36, citing Joint Applicants (5A) at 21:8-14, and NSA, ¶¶ 28-29.

426 OPC's Br. at 36.

427 OPC's Br. at 36-37, citing NSA Tr. at 220:22 to 221:3 (Khouzami) and NSA Tr. at 501:3-14 (Smith).

428 OPC's Br. at 37, citing NSA, ¶ 30, and Joint Applicants (SA) at 22:15-18.

35. DC Water's Brief echoes the assertions of OPC and notes that the NSA now "clearly delineates the type of costs that will be considered Transaction Costs (including regulatory support costs)," and that Transaction Costs will not be included in Distribution Rates.[429] Both OPC and DC Water agree that the NSA's treatment of CTA and synergy savings provide a tangible benefit.[430]

6. *Future Rate Design (Negative Class ROR)*

36. In its Brief, OPC asserts that the language in Paragraph 48 of the NSA, referenced in the Settlement Agreement summary section of this Order, does not restrict the Commission's discretion in future rate cases concerning rate design issues.[431] In fact OPC argues that the language in Paragraph 48 is unambiguous in this regard. Concerning Paragraph 48, OPC states "Settling Parties are in agreement that the Settlement Agreement should not be deemed to change the Commission's previously stated goal regarding putting an end to negative class ROR." OPC adds that Paragraph 48 should not be construed as putting "any Settling Party on record as supporting that goal," eliminating negative class rate of return.[432] OPC also states that "nothing in this provision would constrain the Commission to its past determinations," and that there is "nothing in the [Settlement] [A]greement that presumes or states any particular rate design in the future."[433]

37. DC Water agrees with OPC's construction of Paragraph 48 and its effect on the Commission's goal of putting an end to negative class ROR.[434] DC Water asserts that Paragraph 48, in conjunction with the residential rate credits provided in paragraph 4 of the NSA, provide a benefit to residential customers and master-metered apartment customers.[435] DC Water also asserts that this benefit does not come at the expense of commercial customers, nor will the Settlement's rate credit "stand in the way of continued movement toward equitable class RORs."[436]

38. AOBA also provides its support and agreement with OPC and DC Water.[437] AOBA points out that the merger-related rate credits, referenced in paragraph 4 of the NSA, are

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429 DC Water's Br. at 9.

430 OPC's Br. at 37; DC Water's Br. at 9. See also, AOBA's Br. at 17 wherein AOBA states that the integration of the service companies, EBSC and PHISCO will be the largest source of synergy savings and that not having parallel service companies will better enable synergy savings to be realized.

431 OPC's Br. at 37.

432 OPC's Br. at 38.

433 OPC's Br. at 38, citing NSA Tr. at 466:5-12 and NSA Tr. at 425:8-10.

434 DC Water's Br. at 10.

435 DC Water's Br. at 10.

436 DC Water's Br. at 10.

437 AOBA's Br. at 8-11.

distinguished from the rate freeze and rate caps related to Pepco's divestiture of generation assets and subsequent merger with Conectiv.[438] According to AOBA, the current negative rates of return and large disparity in class rates of return was in large part due to Pepco's divestiture of generation assets and subsequent merger with Conectiv.[439] AOBA then discusses in some detail the effect of the rate credits offered in the NSA and the effect of subsequent rate cases on the negative class rate of return, but concludes that the terms of the NSA "will not produce similar results since rates are not frozen."[440] In other words, AOBA seems to imply that the Nonunanimous Settlement Agreement will not have the same impact on negative class rates of return as the Pepco's divestiture of generation assets and subsequent merger with Conectiv. Ultimately, AOBA supports Paragraph 48 of the NSA.[441]

Summary of Nonsettling Parties' Position
Pertaining to Factor No. 1

39. DC SUN/MDV-SEIA asserts that of the $72.8 million CIF "only $40 million (55%) can reasonably be expected to reach customers, and even that temporary assistance comes with a significant downside because it merely masks the inevitable rate shock that will arrive on April 1, 2019."[442] They state that "[t]he remainder of these "customer" investments are actually payments to the District Government that, if history is an accurate indication, (1) are likely never to be spent for the expected purpose but rather will risk being diverted into the General Fund, where they will be treated as fungible with tax revenues or (2) will be used to displace taxpayer funds that would otherwise be used to underwrite these same programs."[443]

40. First, DC SUN/MDV-SEIA state that "[t]he largest customers – e.g., the U.S. government, the District Government, DC Water, and AOBA members – who, with other commercial customers, contribute about 78% of rate revenues."[444] They point to conflicting interpretations between AOBA and the Joint Applicants on how the rate credits will be allocated between residential and master metered apartment customers as well as the possible allocation of any rate increases between residential and commercial customer classes.[445] DC SUN/MDV-SEIA assert that under the Joint Applicants' status quo allocation of rate increases, on April 1,

438 AOBA's Br. at 8, citing *Formal Case No. 945*, Order No. 11576, rel. December 30, 1999 and *Formal Case No. 1002*, Order No. 12395, rel. May 1, 2002; See also, NSA at 4.

439 AOBA's Br. at 8, citing NSA Tr. at 468:15-469:1.

440 AOBA's Br. at 9.

441 AOBA's Br. at 7.

442 DC SUN/MDV-SEIA's Br. at 7-8, citing OPC (3A) at 8, Table 1 and NSA Tr. at 257:17-259:22, 261:1-22 (Khouzami).

443 DC SUN/MDV-SEIA's Br. at 8.

444 DC SUN/MDV-SEIA's Br. at 9.

445 DC SUN/MDV-SEIA's Br. at 9-12.

2019, "the distribution rate for residential customers will jump by about 30%"[446] while under AOBA's allocations "the distribution rate will increase by about 45%."[447] They assert that "[i]n order to realize any benefit from the Settlement Agreement, nonresidential customers have thrown residential customers under the bus, expecting them to bear the lion's share of rate increases for the next three years as the price for AOBA's non-objection."[448] DC SUN/MDV-SEIA conclude that "whatever customer benefits derive from the CIF's rate relief provisions are unequally distributed and will be fleeting, at best" and "[t]he Commission must weigh whether short-term bill reductions provide adequate compensation to customers for the loss of local control and their assumption of risks that will persist forever."[449]

41. Second, DC SUN/MDV-SEIA assert that "[t]he remaining $32.8 million in the CIF is slotted to go into various District Government funds or to be directed by the Department of Energy and Environment at some unspecified time based on unspecified criteria."[450] They argue that "[g]iven the lack of specificity, accountability, or enforceability, the Commission may not find that these components of the CIF will produce any tangible, incremental benefits for customers or the District."[451] DC SUN/MDV-SEIA question "whether the CIF money funneled to District Government trust funds can be relied on to provide the intended benefit" because of the history of the District Government reprograming these funds.[452] They state that "[t]he concern about the possible diversion of this money paid to the District Government transcends any one administration or Council, and any budget support act can repurpose previously committed funds."[453]

42. Third, DC SUN/MDV-SEIA assert "[t]here is no evidence that the Settlement Agreement will produce any tangible net synergy savings that could be reflected in rates."[454] They assert there is a conflict between the Settlement Agreement's new commitments to preserve jobs and realization of synergy savings, which causes "the Settlement Agreement's

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446 DC SUN/MDV-SEIA's Br. at 12, citing NSA Tr. at 276:2-5 (Khouzami); NSA Tr. at 418:11-21 (Dismukes).

447 DC SUN/MDV-SEIA's Br. at 12, citing *Formal Case No. 1119*, Public Comment of the Institute for Energy Economics and Financial Analysis on the October 6, 2015 Settlement Agreement regarding the Exelon-Pepco merger, at 2, filed November 18, 2015.

448 DC SUN/MDV-SEIA's Br. at 13.

449 DC SUN/MDV-SEIA's Br. at 14-15.

450 DC SUN/MDV-SEIA's Br. at 15.

451 DC SUN/MDV-SEIA's Br. at 15.

452 DC SUN/MDV-SEIA's Br. at 17.

453 DC SUN/MDV-SEIA's Br. at 17.

454 DC SUN/MDV-SEIA's Br. at 20.

commitment to 'flow all synergy savings allocable to the District to customers through the normal ratemaking process' [to] ring[ ] hollow."[455]

43. Fourth, DC SUN/MDV-SEIA assert, "[t]he changes in the jobs commitments do nothing to preserve – much less increase – job opportunities in the District."[456] They urge the Commission to "carefully parse" the job commitments "keeping in mind that a primary driver for the hoped-for synergies will be job reductions" before outlining seven such commitments.[457] Additionally, they state "[t]he 'Workforce Development' provision in the Settlement Agreement is as unformed as the CIF provisions that grant funds to the District Government" and point to the inability of witnesses for the District Government, DC Water, or AOBA to provide any clarity regarding this commitment.[458] They assert "[s]uch a nebulous provision can give the Commission no basis for finding that this provision will actually produce direct and tangible benefits for ratepayers or the District."[459] Finally, regarding charitable contributions, DC SUN/MDV-SEIA argue that the commitment to provide contributions of $1.9 million "merely preserves the status quo and provides little, if any incremental benefit."[460]

44. Regarding the CIF, GRID2.0 "estimates that $40 million of that amount will directly be presented to ratepayers as their proceeds from the deal, and the remainder will serve to either replace money from the DC General Fund that is budgeted to existing programs or augment funds for existing or conceptual projects."[461] GRID2.0 contends that because the District Government can reallocate general funds from government programs, "it is not possible to determine at this time for what purpose these funds will actually be used, not possible to hold the [Joint Applicant's] accountable for their proper use, or to verify that the CIF will actually augment programs above a level that would have been served by the DC General Fund."[462] GRID2.0 states, due to the ability to reallocate funds, "the funds being directed to government programs have all the appearances of a single big slush fund to induce agreement to the Settlement."[463] GRID2.0 also contends that other commitments "such as job creation or retention" are too "vague," "lack specific metrics for accountability," and "are both transient and fleeting" and therefore "should not be counted as providing any substantive benefit."[464] Finally,

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455 DC SUN/MDV-SEIA's Br. at 21-22.

456 DC SUN/MDV-SEIA's Br. at 23.

457 DC SUN/MDV-SEIA's Br. at 23-25, citing NSA Tr. at 499:5-13, 528:5-7 (Smith).

458 DC SUN/MDV-SEIA's Br. at 25.

459 DC SUN/MDV-SEIA's Br. at 26.

460 DC SUN/MDV-SEIA's Br. at 27.

461 GRID2.0's Br. at 7.

462 GRID2.0's Br. at 7.

463 GRID2.0's Br. at 7.

464 GRID2.0's Br. at 8.

GRID2.0 contends there will be "a substantial distribution rate increase on April 1, 2019" after the CIF credits and "largesse to the District Government has expired."[465] They state "[t]he size is difficult to pinpoint since the Settling Parties have competing objectives, but is likely to be no less than 30%."[466] GRID2.0 sees this as "emblematic of a deal that was cobbled together to buy support rather than to meet the actual needs of ratepayers" and that the deal "is inadequate compensation to ratepayers for the additional assumption of risks and the intrinsic conflict with the District's smartgrid aspirations."[467]

45. GSA asserts without citation that in prior Commission merger cases that "[t]he Commission determined that any savings from a proposed merger must be shared with ratepayer, without distinction."[468] GSA cites AOBA Witness Oliver for support that "the Settlement Agreement provides no direct benefits to Pepco's commercial customers."[469] GSA asserts that "[n]othing in the Settlement Agreement or the record before the Commission explains or justifies excluding nonresidential customers from any guaranteed, direct, and tangible benefits under the Settlement Agreement."[470] GSA identifies that "[t]he Settlement and Order in the New Jersey [Exelon-PHI Merger] case requires the CIF to be shared among all customers, not just the residential class."[471] GSA contends that "[e]xcluding commercial customers . . . leaves a significant number of ratepayers, including small businesses, unprotected and without any realization of benefits from the merger."[472] GSA points out that Federal customers represent 25-30 percent of Pepco's annual distribution load and the funds to pay these distribution bills are derived from Federal taxpayers who will be harmed by the present Settlement Agreement.[473]

46. GSA raises a second issue, stating that "[n]onresidential ratepayers . . . are also faced with a continuing obligation to carry the burden of the subsidy problem reflected in Pepco's Negative Rate of Return on its Residential Service, which will become more difficult for the Commission to reduce under the terms of the Settlement Agreement."[474] GSA asserts the Settlement Agreement's restatement of the Commission's goal to address negative rates of

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465 GRID2.0's Br. at 8.

466 GRID2.0's Br. at 8.

467 GRID2.0's Br. at 8.

468 GSA's Br. at 12.

469 GSA's Br. at 12, citing AOBA (B) at 5:14-15 (Bowden), NSA Tr. at 486:8-22 (Commission questioning Oliver). (Emphasis omitted).

470 GSA's Br. at 13.

471 GSA's Br. at 13, citing New Jersey Board of Public Utilities, *BPU Docket No. EM14060581, In the Matter of Exelon Corporation and Pepco Holdings*, Order Approving Stipulation of Settlement, p. 34, dated February 11, 2015.

472 GSA's Br. at 13.

473 GSA's Br. at 13-14.

474 GSA's Br. at 14.

return, does not represent a benefit of the Proposed Merger because "only the Commission—and not the Joint Applicants or Settling Parties—can unilaterally and arbitrarily change this announced Commission goal or policy of eliminating this unfair and disproportionate rate-making."[475] GSA expresses support for the Commission's goal, but asserts the Commission has only "met with limited success."[476] GSA asserts that "[a] decision by the Commission to allow the commercial class to share in the CIF, similar to what was agreed upon in New Jersey . . . would not solve the subsidy problem."[477] After discussing the potential for residential customers to face rate shock after March 31, 2019, GSA states that it "is concerned that the Commission's progress in putting an end to negative class RORs will be further inhibited, as a reduction in the subsidy, during the period ratepayers will receive the Base Rate Credit, would only exacerbate the rate shock residential ratepayers will face."[478]

47. GSA contends, for the first time on brief, that "[t]he Commission should condition approval of the [non]Unanimous Settlement Agreement upon implementation of a rate-freeze for all ratepayers."[479] GSA states that a "base rate freeze (that is, no base rate change for Pepco's customers during the freeze) is a solution to the increases in rates that will occur between the closing of the merger case and the end of March 2019."[480] GSA asserts that a "rate freeze would be similar to the Rate Credit period in that residential customer would not have to pay base rate increases. However, there would be no base rate increases during the rate freeze."[481] GSA points out that the unanimous settlement agreement approved in *Formal Case No. 1002* included a base rate freeze.[482] GSA argues that "[i]f the Commission approves the Settlement Agreement, it should only do so if nonresidential customers receive a guaranteed share of any direct merger-related benefits."[483] GSA presents "[o]ne approach that would remedy this deficiency;" specifically "a two-year freeze (January 1, 2016 through December 31, 2017) of Pepco's distribution base rates that would operate in conjunction with the CIF allocation proposed in the Settlement Agreement."[484] GSA contends that this would "give the commercial class a guaranteed . . . benefit without harming residential customers, not exacerbate

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475 GSA's Br. at 14.

476 GSA's Br. at 15, quoting *Formal Case No. 1103*, Order No. 17424, ¶¶ 437, 438, rel. March 26, 3014.

477 GSA's Br. at 15.

478 GSA's Br. at 16-17.

479 GSA's Br. at 17.

480 GSA's Br. at 17.

481 GSA's Br. at 17.

482 GSA's Br. at 17, citing *Formal Case No. 1119*, Order No. 17947, ¶ 51, rel. August 27, 2015.

483 GSA's Br. at 17.

484 GSA's Br. at 18.

the negative ROR-related subsidy problem, and mitigate future rate shock for the residential class."[485]

Summary of Settling Parties' Reply Position
Pertaining to Factor No. 1

48. The Joint Applicants assert that DC SUN/MDV-SEIA and GRID2.0 "write[ ] off the entire $32.8 million, plus an additional $5.2 million for workforce development in the District" on the sole basis "that the government of the District of Columbia, which will administer some of those funds, simply cannot be trusted to abide in good faith with the express terms of the Settlement Agreement. . ."[486] The Joint Applicants contend that "'[G]overnment officials are presumed to act in good faith,' and when litigants like DC SUN/MDV-SEIA and GRID2.0 allege that officials will not do so, they must 'prove bad faith by the District by well-nigh irrefragable proof.'"[487] The Joint Applicants assert that DC SUN/MDV-SEIA and GRID2.0 have failed to do so in light of Director Wells' testimony that the District will strictly adhere to the terms of the NSA.[488] The District Government also argues that DC SUN/MDV-SEIA's speculative arguments that the "District will 'sweep' the NSA funds to the General Fund" are unfounded and not supported by testimony at the Public Interest Hearings.[489] In fact, the District Government contends that "DC SUN conveniently ignores the many statements by Director Wells under oath that directly rebut DC SUN's allegations regarding the District's intended use of the NSA funds. For example, Director Wells testified that 'the plans and vision for this administration [are] to expend those funds exactly as they've been negotiated.'"[490] The District Government asserts that Director Wells acknowledged that diverting monies in the past was bad policy and in error and that "the administration no longer supports such actions."[491] The District also argues that the magnitude of past diversions was "relatively small" and that DC SUN/MDV-SEIA's argument that the monies have been diverted to cover ordinary tax revenues is undercut by the fact that the District has transferred portions of money originally reprogrammed back into the respective funds.[492]

49. OPC echoes the District Government's objection to the Nonsettling Parties' assertions that the proceeding has been unfair or the insinuations that the Settling Parties have not acted in good faith.[493] Specifically, OPC asserts that DC SUN/MDV-SEIA relies on

485 GSA's Br. at 18.

486 Joint Applicants' R. Br. at 14.

487 Joint Applicants' R. Br. at 14-15.

488 Joint Applicants' R. Br. at 15.

489 District Government's R. Br. at 4-5.

490 District Government's R. Br. at 5.

491 District Government's R. Br. at 5-6.

492 District Government's R. Br. at 6-7.

493 OPC's R. Br. at 18.

"evidence" not on the record, like newspaper and online articles, while simultaneously attacking the letter filed by Mr. Young, before the close of the record, which reiterated the District's commitment to using the funds from the NSA for the purposes outlined in the agreement.[494] OPC argues that DC SUN/MDV-SEIA's reasoning is at best "disingenuous and self-serving."[495]

50. The District Government also rebuts DC SUN/MDV-SEIA's contention that the NSA's provisions are unenforceable as to the District, arguing that the District signed onto the NSA and expressly agreed to act in good faith to effectuate the terms of the NSA. The District Government asserts that, once approved the NSA will become a part of a Commission order that is enforceable by any party as well as the Commission. The District Government contends that it "routinely complies with Commission Orders in numerous proceedings based on its status as a party before the Commission. Therefore, it is incorrect to suggest . . . that the NSA would be unenforceable as to the District."[496] OPC concurs with the District Government on this issue, also arguing that the terms of the NSA are "readily enforceable," stating that claims to the contrary "ignore not only the explicit provisions in the [NSA], but also the sworn written and oral testimony in this proceeding, the force of law backing every Commission order, and penalties provided in current law."[497] OPC asserts that not only has Exelon explicitly submitted to the Commission's jurisdiction to enforce the terms of the NSA, but also the Joint Applicant witness Khouzami "confirmed the enforceability of the commitments . . . ."[498]

51. OPC further points out that the Joint Applicants witness Khouzami also testified when questioned by the Commission as to how the NSA "would interact with any future Commission orders," stating that "if the Commission were to adopt new rules concerning an issue in the [NSA], requiring the Joint Applicants to do something different from a commitment contained in the [NSA], the new Commission order would control [and] OPC witness Dismukes provided the same unequivocal response to that question."[499] OPC also asserts, in response to contentions that the NSA lacks accountability, that the Office "will bring the same level of critical examination to Pepco's applications to change rates filed post-merger that it always brings to such cases."[500]

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494 OPC's R. Br. at 18-19.

495 OPC's R. Br. at 19.

496 District Government's R. Br. at 7-8, referencing *Formal Case No. 1127, In the Matter of the Commission's Establishment of a Discount Program for Low-Income Natural Gas Customers in the District of Columbia*, Order No. 17681, ¶ 26, rel. October 24, 2014 (directing the District to provide monthly reports on the use of LIHEAP funds for REES customers and the number of RES customers receiving LIHEAP funds).

497 OPC's R. Br. at 7-8.

498 OPC's R. Br. at 8.

499 OPC's R. Br. at 9, referencing NSA Tr. at 183:4-14 and 440:13-22.

500 OPC's R. Br. at 10 (internal quotations omitted) (citation omitted).

52. The Joint Applicants also reject DC SUN/MDV-SEIA's argument that DC ratepayers will receive less than their fair share of the total CIF due to the most favored nation's provisions in other jurisdictions. The Joint Applicants argue that it is "nonsense" for DC SUN/MDV-SEIA to "ask the Commission to hold that no matter how strongly the Settlement Agreement benefits the 'public interest' in the District and whether or not it satisfies the District's own standard for approval, the Merger benefits simply vanish because *other* jurisdictions elsewhere *also* receive benefits of a particular magnitude."[501]

53. OPC rebuts MAREC and DC SUN/MDV-SEIA's allegations that the NSA is not in compliance with 15 DCMR § 130.10 because it lacks sufficient clarity on the solar energy related provisions and how the $25.6 million residential rate credit will be divided between residential customers and MMA customers.[502] OPC asserts that the NSA does comply with regulations, has been reduced to writing, and "contains all of the terms and conditions agreed to by the Settling Parties." OPC asserts that the "fact that the [NSA] may not spell out every conceivable implementation detail in no way undermines or alters the conclusion that its terms are sufficiently clear and unambiguous."[503]

54. The Joint Applicants also reject DC SUN/MDV-SEIA's arguments that there is ambiguity concerning the tracking of the residential Customer Base Rate Credits and discord on the meaning of Paragraph 48 of the NSA, relating to the treatment of negative rates of return in future rate cases. The Joint Applicants assert that AOBA has not expressed any concern, as the main proponent of those provisions.[504] OPC also rebuts DC SUN/MDV-SEIA's assertion that the Settling Parties are not in agreement on the meaning of Paragraph 48 of the NSA.[505] OPC asserts that it "previously demonstrated [that] paragraph 48 of the [NSA] is unambiguous and simply does not speak to whether any Settling Party supports or opposes negative class RORs.[506] OPC asserts that "[w]hile AOBA[, through its work papers,] may have provided a preview of its future position on the issue, there is no disagreement among the Settling Parties as what Paragraph 48 provides."[507] For support OPC points to witness Dismukes' testimony that while nothing in the NSA "presumes or states any particular rate design in the future,"[508] nothing in the NSA "will impede the Commission in achieving its stated goal of eliminating negative rates of return, which is of paramount importance to AOBA's members."[509] OPC reasserts as it

501 Joint Applicants' R. Br. at 16 (emphasis in original).

502 OPC's R. Br. at 4-5.

503 OPC's R. Br. at 6-7.

504 Joint Applicants' R. Br. at 20.

505 OPC's R. Br. at 14.

506 OPC's R. Br. at 15.

507 OPC's R. Br. at 15, citing AOBA's Br. at 6-11.

508 OPC's R. Br. at 15, citing NSA Tr. at 425:8-9.

509 OPC's R. Br. at 15, citing AOBA's Br. at 7.

previously explained that the NSA "in no way limits or otherwise constrains the ability and authority of the Commission to establish 'just and reasonable rates'" as well as the Commission's "authority to employ principles of gradualism when setting higher rates or considering other rate designs to protect against and temper 'rate shock' to consumers" – points which were confirmed by AOBA witness Oliver.[510]

55. Furthermore, the Joint Applicants and OPC contend that DC SUN/MDV-SEIA simply attempts to "pit nonresidential customers against residential customers and, in that way, generate a controversy where none exists."[511] This is an effort that both Settling Parties assert should be rejected by the Commission. The Joint Applicants further point out the contradictory nature of DC SUN/MDV-SEIA's arguments that (1) "'only residential customers will receive any benefit' from the CIF commitment 'the largest [nonresidential] customers . . . will get no direct or assured rate relief" and (2) "that 'nonresidential customers have thrown residential customers under the bus' by 'expecting them to bear the lion's share' of the future rate increases."[512] On the first point, the Joint Applicants assert that DC SUN/MDV-SEIA disregards the benefits nonresidential customers will receive from Merger synergies, and on the second point, DC SUN/MDV-SEIA misinterprets AOBA's workpapers.[513] DC Water contends that DC SUN/MDV-SEIA "lack standing" to oppose the CIF enhancements and commercial class benefits under Factor 1, "particularly when the commercial customers interests that have actively participated in the proceeding from the outset . . . have concluded that . . . the Settlement does provide significant benefits to commercial customers . . . ."[514] DC Water also asserts that synergy savings are a direct and tangible benefit for commercial class customers.[515]

56. The District Government rebuts DC SUN/MDV-SEIA's assertion that once the Customer Base Rate Credits expire, there will be dramatic rate shock for residential and MMA customers.[516] The District contends that the 30% to 45% residential distribution rate increase estimated by the Joint Applicants and AOBA, respectively, "may seem dramatic on its face, [but] there are a number of considerations that negate the inference that residential ratepayers will experience rate shock."[517] Namely, that the estimated increases only apply to the distribution portion of a customer's bill; [t]herefore, the effect of the projected April 2019 increase . . . will be far less dramatic on a total bill basis than the 'onerous' and 'dramatic' percentage figures

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510 OPC's R. Br. at 15-16.

511 Joint Applicants' R. Br. at 21, *see also* OPC's R. Br. at 15.

512 Joint Applicants' R. Br. at 22.

513 Joint Applicants' R. Br. at 22.

514 DC Water's R. Br. at 4-5.

515 DC Water's R. Br. at 9-10.

516 District Government's R. Br. at 8.

517 District Government's R. Br. at 8.

cited by DC SUN/MDV-SEIA, which relate to the distribution portion only."[518] Second, the District Government asserts that rate shock will be mitigated by the fact that "the Base Rate Credit will appear as a line item on the customer's bills each month," meaning that customers "will know how much their bills will increase and be prepared when it happens."[519] Lastly, the District Government asserts that GRID2.0's assertion that the rate shock will impact the District's most vulnerable ratepayers the most is mitigated by the fact that RAD customers, who are the most vulnerable, "will be fully protected from any rate increase" as a result of Commission Order No. 18059 which "adopts a new methodology for computing the RAD credit, which sets the new discount at an amount equal to the RAD customer's full distribution charge each month." Therefore, the District Government asserts, any increases in RAD customers' distribution rates "will be fully offset by the RAD credit that is funded through the Commission-set RAD surcharge."[520]

57. OPC also takes issue with GRID2.0 and DC SUN/MDV-SEIA's assertion that District ratepayers will experience rate shock after April 1, 2019. OPC asserts that "the putative concerns of GRID2.0 and DC SUN/MDV-SEIA are based on the unrealistic assumption that ratepayers would be insulated from rate increases if the merger is *not* approved."[521] OPC asserts that while a rate increase may occur after March 31, 2019, "the magnitude of any such increases will likely be mitigated by several [NSA] provisions [and that f]ocusing solely on the potential for a rate increase after March 2019 disregards the considerable benefits ratepayers will enjoy until that time (*i.e.*, significantly lower rates, similar to a rate moratorium) . . . ."[522] OPC argues that DC SUN/MDV-SEIA's objections ignore many benefits that will result because of the Merger that will mitigate rate shock including, but not limited to, the Joint Applicants' concession to exclude from cost recovery related costs-to-achieve that exceed synergy benefits and the cap on reliability-related capital expenditures and O&M costs, which will reduce the impact of reliability related costs on rates.[523]

58. The Joint Applicants also rebut DC SUN/MDV-SEIA's dismissal of the benefits the NSA provide regarding employment guarantees and how those guarantees work with synergy savings, as well as DC SUN/MDV-SEIA's claims that rate shock will occur – pointing out that any increase in rates will come after three years of avoided rate increases, that but for the NSA customers would not have experienced.[524] The Joint Applicants also assert that DC SUN/MDV-SEIA's assertion that nonprofit organizations were manipulated into supporting the NSA by way of promises of charitable contributions "is devoid of any evidentiary support" and that the money

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518 District Government's R. Br. at 8-9.

519 District Government's R. Br. at 9-10.

520 District Government's R. Br. at 10.

521 OPC's R. Br. at 10 (emphasis in original).

522 OPC's R. Br. at 11.

523 OPC's R. Br. at 11-12.

524 Joint Applicants' R. Br. at 23-26.

committed to support charitable activities "benefit District residents, this commitment is one that *will benefit* the District's economy."[525] NCLC/NHT also asserts that GRID2.0 and DC SUN/MDV-SEIA's assertions that the Joint Applicants bought the support of the Settling Parties is unfounded. NCLC/NHT points out that "all of the intervening parties who have not signed onto the NSA were originally and strongly opposed to the merger."[526] However, NCLC/NHT assert that now, from the low-income perspective, the NSA provisions "include more that we had initially sought as a condition on any Commission approval"[527] and "the NSA should be seen as the result of arms-length negotiations by a party who has a statutory mandate to represent that public interest (OPC) as well as parties who represent all of the District's residents (District of Columbia Government), the interests of low-income households (NCLC/NHT), and of commercial-rate customers (AOBA and DC Water)."[528]

59. The Joint Applicants also rebut GSA's assertion that the NSA provides no direct benefits to nonresidential customers because it does not guarantee rate reductions.[529] The Joint Applicants disagree with GSA's arguments in six (6) regards: (1) the Joint Applicants assert that Order No. 17947 does not require a guaranteed rate reduction, but only that any savings be shared among ratepayers; (2) nonresidential customers will realize direct and tangible benefits through synergy savings projected at $51.2 million; (3) the Commission does not have authority to unilaterally impose a rate freeze; (4) GSA's proposal was never presented on the record, therefore, the proposal was never tested through discovery, cross-examination, or the submission of testimony; (5) GSA should not get a "second bite at the apple" to present its untested proposal, which is outside the four corners of the NSA, when "it made a deliberate decision not to submit testimony . . . claiming it wanted to 'remain neutral;'" and (6) GSA will be better off if the Merger is approved because it will receive the benefits of the synergy savings and increased reliability.[530]

60. DC Water echoes the Joint Applicants' assertion that the commercial class will receive benefits under the NSA. DC Water contends that several commercial class representatives are party to the NSA and that "[i]f what GSA is arguing is that there are no direct and immediate financial benefits to the federal government, GSA has no one but itself to blame, given GSA's decision not to actively participate in this case."[531] DC Water further asserts that GSA's criticisms of the NSA are untimely and should be given no weight. DC Water asserts that GSA is a regular participant in Commission proceedings and here "made a deliberate decision not to participate in the case . . ." filing no testimony and failing to participate in the evidentiary

525 Joint Applicants' R. Br. at 27-28.

526 NCLC/NHT's R. Br. at 2-3.

527 NCLC/NHT's R. Br. at 4.

528 NCLC/NHT's R. Br. at 5.

529 Joint Applicants' R. Br. at 28.

530 Joint Applicants' R. Br. at 28-30.

531 DC Water's R. Br. at 2-3.

hearings.[532] DC Water asserts that "[i]t would be prejudicial and fundamentally unfair to the parties . . . to give any weight to GSA's [brief on the merits and] views on the Settlement."[533]

61. OPC also rebuts DC SUN/MDV-SEIA's claims that the synergy savings that inure to all ratepayers are not a meaningful benefit provided by the NSA.[534] OPC asserts that it has been demonstrated that "the synergy savings that will flow through the ratemaking process are an important benefit under the NSA" and prior concerns raised by OPC witness Dismukes, related to the underlying Merger Application, regarding how the synergies would be attained have been addressed by the NSA.[535] Furthermore, OPC asserts that the NSA "obligates Pepco to 'track and account for' merger-related savings, and the cost to achieve those savings, in each base rate case filing made within three years following the merger's closing."[536]

Summary of Nonsettling Parties' Reply Position
Pertaining to Factor No. 1

62. DC SUN/MDV-SEIA, in their reply brief state that "[t]he Joint Applicants misleadingly characterize the rate credit provisions of the Settlement Agreement as a 'freeze' on 'the distribution base rates charge to residential and master metered apartment (MMA) customers until at least April 2019.'"[537] They point to the testimony of AOBA witness Oliver, and state that "[t]he other Settling parties never use this term, and it is simply wrong . . . [r]ather, the rates will continue to rise, as approved by the Commission, but the full effect of those increases will be felt immediately on April 1, 2019, when all the pent up increases will be charged, producing 30% to 45% increase in Distribution rates."[538] In response to the Joint Applicant's dismissal of the idea of rate shock, because the rate increase would occur "regardless of the merger," DC SUN/MDV-SEIA contents that "[t]he immediacy of the shock will be quite palpable" come April 1, 2019.[539] They point out that while "OPC expects the Commission to moderate the undeniable impact of these higher rates, AOBA . . . expects the Commission to adhere strictly to its policy of eliminating negative rates of return."[540]

63. Concerning the impact of NSA Paragraph 48, on addressing negative rates of return, DC SUN/MDV-SEIA assert "[t]he existence of rate shock . . . is inevitable . . . but the

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532 DC Water's R. Br. at 1-2.

533 DC Water's R. Br. at 2.

534 OPC's R. Br. at 13.

535 OPC's R. Br. at 13-14.

536 OPC's R. Br. at 14.

537 DC SUN/MDV-SEIA's R. Br. at 7, quoting Joint Applicants' Br. at 6.

538 DC SUN/MDV-SEIA's R. Br. at 7, citing DC SUN/MDV-SEIA's Br. at 12.

539 DC SUN/MDV-SEIA's R. Br. at 8, citing Joint Applicants' Br. at 23.

540 DC SUN/MDV-SEIA's R. Br. at 8, citing OPC's Br. at 13, AOBA's Br. at 7.

extent of the shock depends on which interpretation the Commission choses for paragraph 48."[541] They represent that "OPC says that it has no impact on any party, or the Commission, so it is essentially a nullity" while "AOBA considers this provision 'paramount' to its acceptance of the Settlement Agreement, and it expects the Commission to use the fortuity of the rate credits to rectify the inequalities between rates of return for residential and non-residential customers."[542] Additionally, they represent that the "Joint Applicants are somewhere in between, simply applying anticipated rates across the board to all rate classes and leaving it for customers to absorb the shock of suddenly higher rates."[543] DC SUN/MDV-SEIA concludes stating "[t]his provision has tied the Settling Parties in knots, but it is not for the Commission to disentangle them. This provision is incapable of resolution that will satisfy all parties and exemplifies the inherent uncertainty that characterizes much of the proposed Settlement Agreement."[544]

64. Regarding payments to the District Government in the NSA, DC SUN/MDV-SEIA state that "the Settling Parties offer no antidote for the lack of enforceability that would ensure that the contributed funds will actually be used for the identified purposes."[545] In response to OPC's position that this is a legislative not a regulatory issue, DC SUN/MDV-SEIA assert that "[t]o the contrary, the Commission may not find that these grants to the District Government provide a tangible benefit if, as history has repeatedly demonstrated, the District is more likely to use that money to simply replace taxpayers funds so that it will be to address whatever other priorities it wishes, without regard to the provisions of the Settlement Agreement."[546] They point out that this provision lacks "an effective Commission enforcement mechanism" because the parties did not "include[ ] provisions in the Settlement Agreement giving the Commission jurisdiction over the District Government to enforce these provisions."[547]

65. GRID2.0 in its reply brief asserts that "[t]he Commission has full authority to prohibit that sale of stock [to effectuate a merger] on the simple grounds that PHI is selling to the wrong company (a company chosen based solely on the interest of the shareholders rather than the interest of customers), and that what PHI is actually selling is control of a franchise whose value is attributable, at least in part, to government action."[548] GRID2.0 contends that "if the Commission can prohibit the transaction on that basis (and it should, in our view), it can condition the transaction on a sharing of the gain."[549] GRID2.0 goes on to explain, "[i]n the

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541 DC SUN/MDV-SEIA's R. Br. at 8.

542 DC SUN/MDV-SEIA's R. Br. at 8-9, citing OPC's Br. at 38, AOBA's Br. at 7.

543 DC SUN/MDV-SEIA's R. Br. at 9, citing Joint Applicants' Br. at 23, Commission Exhibit NSA-5.

544 DC SUN/MDV-SEIA's R. Br. at 9.

545 DC SUN/MDV-SEIA's R. Br. at 10-11.

546 DC SUN/MDV-SEIA's R. Br. at 11.

547 DC SUN/MDV-SEIA's R. Br. at 11.

548 GRID2.0's R. Br. at 14-15.

549 GRID2.0's R. Br. at 15.

context of gain associated with PHI's sale of control of the franchise, Mr. Hempling articulated the simple principle that the gain should go to the group (shareholders or ratepayers) responsible for creating the value."[550]

66. GRID2.0 asserts that "the elements proposed in the Settlement as beneficial to factor #1, they are at best of short-term transitory benefit to select ratepayer classes or other special populations such as low income . . ." and states "that they must be weighed against the long-term and permanent risks posed to ratepayers by the acquisition . . ."[551] Specifically, GRID2.0 urges the Commission not to count certain benefits "because they will or may only serve to displace District Government revenues intended to serve that purpose, and in so doing allow the District Government to repurpose those revenues to other priorities" and "[w]e do not know what those priorities will be and to what extent they will serve the public interest."[552] GRID2.0 states that "[t]he Commission cannot know in advance whether these infusions in to DC programs [such as LIHEAP, SETF, REDF, or the Green Building Fund] will result in a net increase or merely be treated as fungible."[553]

67. GSA in its reply brief states that "GSA, DC Water, and AOBA (in representation of its members), three of Pepco's largest commercial customers, agree that the NSA does not provide direct financial benefits to the vast majority of Pepco's commercial customers" based on citations to AOBA and DC Water's briefs.[554] GSA states "neither DC Water nor any other Settling Party has been able to identify any guaranteed, direct, and tangible merger-related benefit that commercial customers are certain to receive if the Commission approves the Settlement Agreement as currently proposed."[555] GSA rejects claims made by the Settling Parties "that commercial customers will receive a significant share of merger-related synergy savings," by pointing out that the claim is "unsupported by any provision in the Settlement Agreement."[556] GSA sates that "in Order No. 17947, the Commission determined the proposed merger's alleged synergy savings were speculative, finding there were no commitments by the Joint Applicant's 'to provide the District's share of the 10-year synergy savings other than the portion of those savings that are contained in the proposed $33.75 million CIF'" and despite the increase in the CIF, "future synergy savings from the proposed merger remain speculative."[557] In response to the Joint Applicants' commitment to track CTA and synergy savings for three years following the Merger close, GSA cites the Commission's questioning of Witness Khouzami to

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550 GRID2.0's R. Br. at 15.

551 GRID2.0's R. Br. at 16.

552 GRID2.0's R. Br. at 16-17.

553 GRID2.0's R. Br. at 17.

554 GSA's R. Br. at 3, citing AOBA's Br. at 7, DC Water's Br. at 5.

555 GSA's R. Br. at 4. (Emphasis Omitted).

556 GSA's R. Br. at 4.

557 GSA's R. Br. at 4-5, quoting *Formal Case No. 1119*, Order No. 17947, ¶ 101, rel. August 27, 2015.

support that "there are no guarantees that Pepco/Exelon will produce enough merger-related synergy savings to exceed the CTA."[558] Further, GSA states that "the Joint Applicants have made no firm commitment to achieve and flow through to ratepayers over a reasonable period a specific level of realized net merger-related synergy savings, if any."[559] GSA rebuts DC Water's statement "that the Settlement Agreement 'provide[s] verifiable substance to the formerly speculative claim that Pepco's commercial customers will experience a direct and tangible benefit from synergy savings" by point out that "DC Water provides no empirical evidence to support its claim."[560]

68. GSA asserts that "[t]he NSA's silence on the level or share of realized net merger-related synergy savings that will be flowed through to commercial customers during the 3-year tracking period also undermines" DC Water and AOBA's contention that Paragraph 48 of the NSA's restatement of "the Commission's current policy to eliminate negative class rates of return . . . is a benefit to commercial customers."[561] GSA contends that "[t]he restatement of the Commission's policy does not bind the Settling Parties, much less the Commission, in future rate cases" and references OPC's position that Paragraph 48 "is in no way a statement of OPC's position on the goal of eliminating negative class RORs."[562] GSA states that the NSA "includes no commitment or agreement among the Settling Parties that realized net merger-related synergy savings during the tracking period should be used to mitigate the existing interclass revenue subsidy problem. The potential exists that Residential customers—not Commercial customers—may be allocated the bulk of any net synergy savings in future rate cases," which would "exacerbate[ ], not mitigate[ ]" the negative ROR issue.[563] GSA contends that this possibility "contradicts DC Water's assertion that 'Paragraph 48 of the Settlement ensures that this benefit does not come at the expense of commercial customers, and confirms that the Settlement's rate credit will not stand in the way of continued movement toward equitable class RORs.'"[564] GSA states that "if [the Commission] approves the NSA, [it should] condition approval upon the implementation of a two-year rate freeze for all District ratepayers, which would provide a direct and tangible merger-related benefit for all ratepayers, including the commercial class."[565]

2. FACTOR 2: The effects of the transaction on utility management and administrative operations

558 GSA's R. Br. at 4-5, citing NSA Tr. at 215:2-7 (Commission questioning Khouzami)

559 GSA's R. Br. at 5. (Emphasis Omitted).

560 GSA's R. Br. at 5, quoting *1119*, DC Water's Br. at 9.

561 GSA's R. Br. at 6, citing AOBA's Br. at 6-11, DC Water's Br. at 10.

562 GSA's R. Br. at 6, citing OPC's Br. at 38.

563 GSA's R. Br. at 6.

564 GSA's R. Br. at 6, quoting DC Water's Br. at 11.

565 GSA's R. Br. at 7.

Order No. 17947 - Commission's Findings on Factor 2

69. The Commission considered the impact of the Proposed Merger on Factor No. 2 in paragraphs 185 through 197 of Order No. 17947. The Commission found that "the proposed management structure will potentially harm Pepco and the ratepayers that it serves by diminishing Pepco's role and its ability to make decisions that are responsive to the needs of its ratepayers and the policy directives of the District."[566] Specifically, the Commission determined that "Pepco's Region President would lose their seat at the table of the new utility holding company's decision makers if the merger is consummated" because the "post-Proposed Merger organization places Pepco in a clear second-tier status, relying on PHI to represent Pepco's interests along with those of Delmarva Power and ACE within the Exelon Management Committee."[567] The Commission rejected the Joint Applicants' attempts to support their management proposals by highlighting the appointment of David Velazquez as PHI CEO because his appointment is not included in any commitment and there was nothing concerning the qualifications of his successor.[568] Further, the Commission expressed concerns that "EU CEO O'Brien will have a 'direct role in the management of Pepco'" and that such control will be "exercised by persons outside the District of Columbia."[569] Regarding the PHI Board of Directors, the Commission found that "[t]he PHI Board of Directors proposed by the Joint Applicants will be 'decidedly less independent' because it shifts from a majority of independent members pre-merger to a minority of independent members post-merger" and that with only three independent members from the operating utilities, "the Pepco service area, *i.e.*, from either Maryland or the District of Columbia."[570] The Commission expressed concerns that "the Proposed Merger would result in Pepco being subject to both a new management model, and a second service company" and "[n]one of the current Exelon distribution companies operate within a separate holding company or in multiple jurisdictions."[571]

Summary of Nonunanimous Settlement Agreement
Provisions Pertaining to Factor No. 2

70. The NSA makes several enhanced commitments to Pepco's management and board structure. Specifically, Exelon commits that following Merger close: "(a) Pepco will have a CEO, who may also be the CEO of PHI; (b) the Pepco CEO (David Velazquez) will be a member of the Exelon Executive Committee, will meet with Exelon's CEO at least monthly, and will have direct and frequent access to the Exelon CEO and other members of Exelon's senior management team; (c) the Pepco CEO will attend meetings of Exelon's Board of Directors, (d)

566 *Formal Case No. 1119*, Order No. 17947, ¶ 197, rel. August, 27, 2015.

567 *Formal Case No. 1119*, Order No. 17947, ¶¶ 185, 354 (XX), rel. August, 27, 2015.

568 *Formal Case No. 1119*, Order No. 17947, ¶¶ 191, 354 (BBB), rel. August, 27, 2015.

569 *Formal Case No. 1119*, Order No. 17947, ¶¶ 192, 354 (ZZ), 354 (CCC), rel. August, 27, 2015.

570 *Formal Case No. 1119*, Order No. 17947, ¶¶ 193, 354 (AAA), rel. August, 27, 2015.

571 *Formal Case No. 1119*, Order No. 17947, ¶¶ 194, 195, 354 (DDD), 354 (EEE), 354 (FFF), rel. August, 27, 2015.

Mr. Velazquez will be extended an employment contract for no less than two (2) years; (e) the Pepco CEO will reside in the District; and (f) any officer succeeding Mr. Velazquez as Pepco CEO will be knowledgeable about Pepco's District of Columbia operations."[572] Additionally, "the Pepco CEO will have authority to make rate case decisions" taking into account input of the Regional President of Pepco."[573] The Joint Applicants commit that the Regional President of Pepco "will have the same capacities and similar responsibilities" as well as input into decisions related to rate case filings and positions on regulatory and legislative issues that affect Pepco.[574]

71. The Joint Applicants further commit that in addition to the CEO of Pepco being one of the PHI directors, "[a]t least one director [on the PHI Board] will be selected from each of the service territories of PHI's utility subsidiaries, and at least one of the independent directors will be a resident of the District."[575]

Summary of Settling Parties' Position
Pertaining to Factor No. 2

72. The Joint Applicants contend that "[t]he Settlement Agreement contains new and enhanced commitments that address and resolve" the Commission's concern that approving the Merger would diminish Pepco's voice and influence and relegate the company to "second tier status."[576] The amended commitments "assure that Pepco will have a 'seat at the table' in the Exelon Executive Committee" and "ensures that PHI's board will be independent by requiring it to be composed of a majority of independent directors, regardless of the overall number of PHI board members."[577]

73. The Joint Applicants assert that on top of the enhanced commitments regarding management structure, the "EU's CEO, the PHI CEO, the Pepco CEO and the Pepco Regional President will offer to appear annually before the PSC to review Pepco's reliability, safety and customer service performance, and the PSC's Chair or designee shall have the opportunity annually to present a report to the PHI board on Pepco's performance and other matters of importance to the Commission."[578] The Joint Applicants contend that its commitments "make Pepco's and PHI's management structures stronger and more locally focused than they would be

572 NSA, ¶ 51.

573 NSA, ¶ 52.

574 NSA, ¶ 52.

575 NSA, ¶ 55.

576 Joint Applicants' Br. at 36-37.

577 Joint Applicants' Br. at 37.

578 Joint Applicants' Br. at 38-39.

absent the Merger" and that they "provide significant direct and tangible benefits to Pepco's customers in the District of Columbia and the District itself."[579]

74. In addition to points raised by the Joint Applicants, District Government notes that the NSA confers upon the CEO the authority to decide when to file rate cases, in consultation with Pepco's Regional President.[580] District Government states that this Commitment ensures that "the District's needs will be given due consideration within Exelon, and that, post-merger, decisions over rate case filings and legislative issues are performed at the local level by Pepco authorities who are familiar with District Operations."[581] District Government also points out through its witness, Smith, that the Commitment to maintain a majority independent board compares favorably to the Iberdola-United Illuminating Merger, which did not include a similar requirement.[582] Moreover, witness Smith notes that even the Exelon-PHI settlement approved in Maryland did not include a requirement that the PHI Board be independent, and that this Commitment addresses the Commission's concern about Factor 2.[583]

75. OPC is in accord with the Joint Applicants and District Government and adds that the NSA ensures that "the District will enjoy the same access to Pepco and PHI personnel post-merger as it does today."[584] OPC further states that "although such assurances do not provide a new benefit as compared to the status quo, they certainly provide District ratepayers with an additional layer of protection to ensure that their voices will be heard within both Pepco and Exelon."[585] Overall, OPC concludes that these provisions of the NSA serve to favorably tip the balance to ratepayers' benefit when measuring overall risks and benefits.[586]

Summary of Nonsettling Parties' Position
Pertaining to Factor No. 2

76. DC SUN/MDV-SEIA state "[t]he District's utility will inevitably have less local control over its own management and administrative operations if the proposed merger proceeds, and there can be no tangible benefit from relinquishing Pepco's currently held authority to Exelon."[587] They assert that "[n]othing in the Settlement Agreement changes [the] analysis" in

579 Joint Applicants' Br. at 40.

580 District Government's Br. at 11, citing NSA, ¶ 52.

581 District Government's Br. at 11, citing District Government (2A) at 20:7-9 and 18-21.

582 District Government's Br. at 12, citing District Government (2A) at 23:5-17.

583 District Government's Br. at 12, citing District Government (2A) at 23:21-24:15.

584 OPC's Br. at 46, citing NSA, ¶ 54.

585 OPC's Br. at 46.

586 OPC's Br. at 46; See also, AOBA's Br. at 18-19 wherein AOBA statements concur with those of Joint Applicants, District Government, and OPC.

587 DC SUN/MDV-SEIA's Br. at 27.

Order No. 17947 that this transaction is a "change in control" that will have "profound ramifications for utility management."[588] After reviewing testimony regarding post-Merger management, they assert "[n]othing in the Settlement Agreement restricts Exelon's management or Board form overriding any local decision."[589] They state that "[n]othing in the Settlement Agreement modifies Exelon's executives' fiduciary interest and obligation to protect Exelon's generation business above PHI and Pepco."[590] Pointing to the testimony of GRID2.0 Witness Hempling, DC SUN/MDV-SEIA state, "a majority of 'independent' members on the PHI board do not diminish the undisputed power and authority that rests with Exelon in Chicago," because "[t]hose 'independent' directors will still owe fealty to PHI's sole shareholder – Exelon – and will necessarily act in Exelon's best interests, not in the best interests of Pepco's customers."[591]

77. GRID2.0 states "[n]othing in the proposed non-unanimous settlement agreement alters [the Commission's earlier conclusions about Exelon control of PHI and Pepco]."[592] GRID2.0 contends that "[a]n assessment of the important three features of the Exelon-Pepco relationship: independent directors, delegation of spending authority, and managerial hierarchy illustrates the empty promises contained in the Settlement."[593] Regarding, the use of independent directors, GRID2.0 argues that the independent director's ability to "safeguard against the potential 'conflict' of interest" as discussed by Witness Khouzami is "a non-sequitur, because, independent directors are independent of management; they are not independent of shareholders."[594] They go on to explain that independent directors are there to align management's interests with the interests of shareholders, which in this case is Exelon.[595] Regarding the delegation of authority, GRID2.0 states that it is "an internal guideline, not a legal commitment" and "[w]ith its delegation chart, Exelon is saying only what it intends today, but not what it commit[s] to permanently."[596] Finally, regarding the managerial hierarchy, GRID2.0 points out that "Pepco's executives will be reporting to Mr. O'Brien" who "will have the power to mold individual utility decisions to serve the purposes of this superiors" in Exelon.[597] GRID2.0 rejects Mr. Valazquez's assurances that "[he] will use these lines of communication to ensure that Pepco's interests are reflected in Exelon's decisions" because he cannot control what

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588 DC SUN/MDV-SEIA's Br. at 27, citing *Formal Case No. 1119*, Order No. 17947, ¶¶ 277, 87, rel. August 27, 2015.

589 DC SUN/MDV-SEIA's Br. at 28-29.

590 DC SUN/MDV-SEIA's Br. at 29.

591 DC SUN/MDV-SEIA's Br. at 29, citing GRID2.0 (2A) at 13:23-27, 14:11-15:8 (Hempling).

592 GRID2.0's Br. at 9.

593 GRID2.0's Br. at 9.

594 GRID2.0's Br. at 10, quoting Joint Applicants (5A) at 60 (Khousami).

595 GRID2.0's Br. at 10.

596 GRID2.0's Br. at 11.

597 GRID2.0's Br. at 11.

decisions his superiors at Exelon will reach.[598] GRID2.0 points out the Settlement offers no means of enforcing these management commitments.[599] Finally, GRID2.0 contends that the divestiture provision "is of virtually no consequence because the conditions are written so restrictively the Commission will not find them useful" because even after a condition occurs "the Commission must wait until Pepco has already failed to meet its public utility obligations."[600]

Summary of Settling Parties' Reply Position
Pertaining to Factor No. 2

78. The Joint Applicants assert that if the Commission were to accept "DC SUN's and GRID2.0's argument regarding Factor 2, [then] any potential, no matter how small, for a company merging with Pepco to exercise any decisional authority over Pepco whatsoever is grounds for rejection of that merger."[601] The Joint Applicants contend that if that premise were accepted, then no merger could ever be in the public interest. The Joint Applicants assert that in Order No. 17947 the Commission identified specific concerns regarding the effects of the Merger on utility management and administrative operations that each of which was addressed by the Settling Parties.[602] However, the Joint Applicants assert, "[d]espite these explicit provisions directly addressing the Commission's specific concerns . . . DC SUN and [GRID2.0] continue to argue that the Settlement Agreement does 'nothing' to address the Commission's concerns relating to Factor 2."[603] Furthermore, despite the testimony of witness Hempling to the contrary, the Joint Applicants assert that "[t]he record as developed in the public interest hearing demonstrates that Exelon's financial interest in Pepco's electric distribution business aligns with the commitments it has made in the Settlement Agreement to ensure both a prominent place for Pepco in the business of Exelon and consistency with the public policy objectives of the District."[604]

Summary of Nonsettling Parties' Reply Position
Pertaining to Factor No. 2

79. GRID2.0 in its reply brief, reiterates its contention that "[t]he only way to have true local control is for the Exelon holding company controllers to give up that control" and "[t]hat it has not been used before . . . means only that other commissions were comfortable

598 GRID2.0's Br. at 11-12.

599 GRID2.0's Br. at 12-13.

600 GRID2.0's Br. at 13-14.

601 Joint Applicants' R. Br. at 31.

602 Joint Applicants' R. Br. at 32.

603 Joint Applicants' R. Br. at 34

604 Joint Applicants' R. Br. at 35-36.

having their utilities cede control to a separate holding company."[605] GRID2.0 states that "[w]hat Commissioner Fort's questions on this point reveal is not that Hempling's condition is wrong, but that preservation of local control is not readily attainable."[606]

3. FACTOR 3: The effects of the transaction on public safety and the safety and reliability of services

Order No. 17947 - Commission's Findings on Factor 3

80. The Commission considered the impact of the Proposed Merger on Factor No. 3 in paragraphs 217 through 233 of Order No. 17947. The Commission rejected the Joint Applicants' use of a "three-year average [in calculating their reliability commitments] rather than annual compliance as required under the Commission's EQSS."[607] The Commission also found that there is "no evidence that Pepco's reliability improvements and continued compliance with the EQSS would cease if the Proposed Merger is not approved and Pepco continued to operate on a stand-alone basis. In fact . . . the record evidence suggests the opposite is true."[608] Further, the Commission found that the "[r]eliability improvements resulting from DC PLUG cannot be considered products of, or benefits from, the Proposed Merger and must be excluded from Exelon's projections regarding merger-related reliability benefits."[609] Regarding the Joint Applicants' reliability budgets, the Commission found "that the inflated budget . . . is in fact a harmful effect on ratepayers which would result in higher than necessary rates for District ratepayers."[610] The Commission found that the "50 basis point reduction to the return on equity penalty commitment for failure to meet a 2018-2020 reliability performance average . . . provides little meaningful financial incentive to meet either the EQSS standards or Exelon's proposed standards after the Proposed Merger closes."[611] Finally, the Commission found that "Joint Applicants have provided no meaningful details regarding the best practices that Exelon is offering to provide Pepco nor has it demonstrated the effects those best practices would have on public safety and the reliability of services if they were deployed."[612]

Summary of Nonunanimous Settlement Agreement Provisions Pertaining to Factor No. 3

1. *Service Reliability and Quality*

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605 *GRID2.0's R. Br.* at 18, citing Joint Applicants' Br. at 76

606 *GRID2.0's R. Br.* at 18.

607 *Formal Case No. 1119*, Order No. 17947, ¶¶ 220, 354 (GGG), rel. August, 27, 2015.

608 *Formal Case No. 1119*, Order No. 17947, ¶¶ 221, 354 (HHH), rel. August, 27, 2015.

609 *Formal Case No. 1119*, Order No. 17947, ¶¶ 223-224, 354 (III), rel. August, 27, 2015

610 *Formal Case No. 1119*, Order No. 17947, ¶ 225, rel. August, 27, 2015.

611 *Formal Case No. 1119*, Order No. 17947, ¶¶ 228, 354 (JJJ), rel. August, 27, 2015.

612 *Formal Case No. 1119*, Order No. 17947, ¶¶ 231, 354 (LLL), rel. August, 27, 2015.

81. The Joint Applicants assert that "Pepco commits to improve system reliability in its District of Columbia service territory and specifically shall remain: (a) obligated to achieve the currently effective annual Electric Quality of Service Standards ('EQSS') performance levels from 2016 to 2020 . . . and (b) subject to forfeiture . . . if it fails to do so."[613] Pepco also commits "to improving system reliability beyond the current DC statutory requirements . . . as measured using the Commission's current" SAIFI and SAIDI methodology.[614] Pepco commits to certain compliance measures if it fails to meet the reliability performance levels in any of the years 2016-2020.[615] Pepco commits to achieving "the reliability standards set out as Merger Commitments . . . without exceeding certain annual reliability-related capital and O&M spending levels."[616] Pepco also acknowledges that the recovery of any reliability-related capital costs and O&M expenses are subject to the Commission's review and approval.[617]

82. Failure by Pepco to meet these reliability-related budget targets in any of the years 2016-2020 shall result in automatic compliance measures taken by Pepco including, but not limited to: (1) Pepco placing into escrow a non-compliance payment of $63,000 for every $1 million spent in excess of the reliability-related capital budget target for the year; and (2) Pepco shall "forego seeking recovery in customer rates of any amounts spent in excess of the reliability-related O&M budget level for the year."[618] Pepco also commits that it "will not seek reevaluation of the current EQSS reliability performance standards for the years 2016 through 2020 pursuant to 15 D.C.M.R. § 3603."[619]

2. *Root Cause Analysis to Improve Customer Satisfaction and Safety*

83. The Joint Applicants commit that Pepco will "develop an action plan to improve[ ] Pepco's customer-satisfaction scores in the District" as well as "file this analysis and action plan with the Commission no later than six (6) months after Merger closing."[620] The Joint Applicants also state that "Exelon is committed to having all of its utilities achieve and maintain first quartile performance in safety" and that "Pepco will file annual reports on its safety performance and safety initiatives with the Commission" which "will include a report by Exelon on its existing safety and cybersecurity policies."[621]

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613 NSA, ¶ 56.

614 NSA, ¶ 56.

615 NSA, ¶ 56.

616 NSA, ¶ 56.

617 NSA, ¶ 56.

618 NSA, ¶ 58.

619 NSA, ¶ 59.

620 NSA, ¶ 61.

621 NSA, ¶ 62.

Summary of Settling Parties' Position
Pertaining to Factor 3

84. The Joint Applicants assert that there have been significant changes to their reliability commitments including their commitment to "meet annual reliability metrics (SAIFI and SAIDI) over the 2016-2020 period that are better than the standards applicable under EQSS."[622] They commit to achieve the reliability metrics "subject to specified capital and O&M expenditure levels based on Pepco's 2015 budget expenditures filed in the Annual Consolidated Report, to impose self-executing compliance payments if those reliability targets are not met in 2018, 2019, or 2020, and comply with various other requirements."[623] The Joint Applicants also commit to meeting these metrics regardless of the status of DC PLUG.[624] The Joint Applicants also commit "for Pepco to strive to achieve and maintain first-quartile safety performance," as well as that Pepco "will file annual reports on its safety performance and safety initiatives with the Commission."[625] In addition to echoing the points raised by Joint Applicants, District Government points out that the NSA provides that, if "Pepco exceeds its reliability budget in any given year, it must place into escrow a noncompliance payment equal to $63,000 per each $1 million spent in excess of its budget, subject to forfeiture if later determined by the Commission that such excess expenditures were not prudently incurred."[626] District Government states that the NSA's Commitments "represent significant improvements over what the Joint Applicants had previously proposed" and confer system-wide benefits that will inure to all rate classes.[627] In turn, OPC further lists and details the additional new safety and reliability requirements in the NSA,[628] and concludes that the Settlement Agreement satisfies Public Interest Factor 3.[629]

85. AOBA, in turn, asserts that "the potential that Pepco may be able to achieve greater than anticipated reliability improvements while underspending its reliability capital and O&M budgets underscores AOBA's belief that continued Commission oversight of reliability expenditures as provided in the Non-unanimous Settlement Agreement is essential."[630] AOBA is encouraged that the NSA requires greater accountability by Pepco for costs that are incurred to

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622 Joint Applicants' Br. at 40.

623 Joint Applicants' Br. at 41.

624 Joint Applicants' Br. at 41.

625 Joint Applicants' Br. at 42.

626 District Government's Br. at 14, citing NSA, ¶ 55.

627 District Government's Br. at 14, citing District Government (2A) at 28:18-19; See also, DC Water's Br. at 11-12 wherein DC Water concurs with District Government and OPC in recognition of the additional safety and reliability requirements imposed by the NSA on Pepco post-merger.

628 OPC's Br. at 50-55, citing NSA, ¶¶56-62.

629 OPC's Br. at 56.

630 AOBA's Br. at 14.

achieve reliability improvements.[631] AOBA states that as a result, the NSA constitutes a clear improvement over the Joint Applicants' prior proposals under which Pepco's reliability performance would have been assessed using a three-year average SAIFI and SAIDI measures.[632]

Summary of Nonsettling Parties' Position
Pertaining to Factor No. 3

86. DC SUN/MDV-SEIA assert that "[t]he additional reliability commitments in the Settlement Agreement do not rectify the key deficiencies that drove the Commission to conclude that the reliability provisions in the prior Application provided no direct, tangible benefit for customers or the District."[633] They point out that "[t]he record still suggests that Pepco's stand-alone improvements will continue to meet or exceed the Joint Applicants' commitments in the Settlement Agreement."[634] Additionally, they point to conflicting testimony regarding the reliability budget presented by the Joint Applicants and AOBA and state "[a]lthough customers want reliability, it should not be pursued without an eye on affordability."[635] After characterizing the reliability budgets as "extravagant compared with Pepco's recent experience," they state "[i]n no respect have the Joint Applicants agreed to be bound absolutely by budgets that already appear to be inflated."[636] DC SUN/MDV-SEIA point out that no additional details have been offered regarding the implementation of "best practices" at Pepco nor is there any details presented "about what steps [the Joint Applicants] will take to achieve top- decile [reliability] performance at Pepco."[637]

87. GRID2.0 asserts "Pepco currently shows the ability and determination to meet the District's reliability goals, and is expected to continue to do so."[638] GRID2.0 contends that for a merger benefits to be relevant they must be "(i) definite (not illusory or aspirational), and are (ii) made achievable by the consolidation of the two companies."[639] GRID2.0 argues that "[Witness] Tierney has misconstrued the testimony of Mr. Hempling" and points out that GRID2.0 supports the consideration of the merger's impacts, "insofar as those impacts and

631 AOBA's Br. at 14.

632 AOBA's Br. at 14.

633 DC SUN/MDV-SEIA's Br. at 30, citing *Formal Case No. 1119*, Order No. 17947, ¶¶ 217-232, rel. August 27, 2015.

634 DC SUN/MDV-SEIA's Br. at 31.

635 DC SUN/MDV-SEIA's Br. at 32, citing NSA Tr. at 322:16-19 (Velazquez), NSA Tr. at 491:16-492:19 (Oliver).

636 DC SUN/MDV-SEIA's Br. at 32-33.

637 DC SUN/MDV-SEIA's Br. at 34-35.

638 GRID2.0's Br. at 16.

639 GRID2.0's Br. at 15, citing GRID2.0 (2A) at 32:21-33:17 (Hempling).

benefits arise from the consolidation of the two companies, and would not be otherwise achievable."[640] Finally, GRID2.0 states that the Joint Applicants "are unable to show how the merger will result in improvements in reliability beyond what Pepco is currently able to achieve" and that "[t]he District's interest is in meeting the reliability goals, not in receiving forfeitures for failings to do so" as the Joint Applicants propose.[641]

Summary of Settling Parties' Reply Position
Pertaining to Factor No. 3

88. The Joint Applicants assert that the NSA requires Pepco to achieve reliability performance beyond what is required by law, within specified spending targets, backed by significant financial penalties.[642] The Joint Applicants further argue that while DC SUN/MDV-SEIA and GRID2.0 assert that Pepco could achieve the NSA performance targets on a stand-alone basis, they offered no evidence on the record to support that assertion and "no party has offered any testimony alleging that this could be accomplished."[643] The Joint Applicants also refute DC SUN/MDV-SEIA's assertion that the spending levels are inflated, arguing DC SUN/MDV-SEIA's argument is based on Exhibit (4A)-2 which "included costs associated with emergency restoration and repairs and the DC PLUG project."[644] However, the Joint Applicants assert that the NSA "now specifies spending targets that exclude these costs" and there is no evidence on the record to the contrary.[645] The Joint Applicants also assert that "DC SUN is the only party to this proceeding that has questioned the value of the Settling Parties' agreement that Pepco strive to 'achieve and maintain first quartile performance in safety.'"[646] The Joint Applicants contend that this NSA commitment benefits District ratepayers "in that it will allow Pepco to leverage the knowledge that Exelon has gained in achieving first quartile performance at its other utilities and will allow Pepco to achieve that level of performance more quickly."[647]

Summary of Nonsettling Parties' Reply Position
Pertaining to Factor No. 3

89. DC SUN/MDV-SEIA, in their reply brief assert that "the Settlement Agreement gives Pepco no incentive to exceed its demonstrable attainable reliability goals or to underspend its bloated reliability-related capital budget" and because achieving these "reliability and cost

640 GRID2.0's Br. at 15, referencing NSA Tr. at 357-360 (Tierney).

641 GRID2.0's Br. at 16.

642 Joint Applicants' R. Br. at 37-40.

643 Joint Applicants' R. Br. at 38.

644 Joint Applicants' R. Br. at 39.

645 Joint Applicants' R. Br. at 39.

646 Joint Applicants' R. Br. at 41.

647 Joint Applicants' R. Br. at 42, referencing NSA Tr. at 307:3-13 (Commission questioning Velazquez).

goals will not be a stretch for Pepco to achieve, the real work remains with the Commission."[648] In response to OPC's contention that the NSA creates "straightforward penalty provisions" if Pepco does not meet its reliability objectives, DC SUN/MDV-SEIA asserts the NSA's "criteria may be relatively easy attain, so the likelihood of a penalty is small" and because Pepco always has the right "to seek full recovery of all reliability-related costs . . . The real risk that it will cost more to meet reliability targets will inevitability fall back on customers."[649]

4. FACTOR 4: The effects of the transaction on risks associated with all of the Joint Applicants' affiliated non-jurisdictional business operations, including nuclear operations

Order No. 17947 - Commission's Findings on Factor 4

90. The Commission considered the impact of the Proposed Merger on Factor No. 4 in paragraphs 257 through 266 of Order No. 17947. The Commission found "that District ratepayers and Pepco could be protected from any harmful effects of the Proposed Merger in the face of Exelon's unregulated business."[650] The Commission found that "[u]nlike in *Formal Case No. 951*, when Pepco was vertically integrated, the Commission's current ratemaking procedures do not consider inclusion of any costs from generating plants in the cost of service or the rate base of the local distribution company."[651] However, the Commission found "there is a possibility that Pepco's cost of capital could be affected if there were no ring-fencing provisions to assure investors that the finances of Pepco and PHI were separate from the obligations of Exelon."[652] The Commission concluded "that Exelon's ownership of additional non-jurisdictional business interests in general and its ownership of nuclear operations in particular, will have an impact on Pepco and could have an impact on District ratepayers, if the Proposed Merger is approved."[653] Moreover, while some advocate for the Commission to find "the mere presence of the Joint Applicants' unregulated business to be a harm that cannot be mitigated, the Commission declines to do so."[654] Finally the Commission found that "that the Joint Applicants' multiple commitments to implement numerous ring-fencing provisions would insulate Pepco and PHI from most, if not all, of the business risks associated with Exelon's non-regulated businesses and would provide a level of protection to District ratepayers in the event that Exelon's finances are placed in jeopardy by events that impact its unregulated businesses."[655]

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648 DC SUN/MDV-SEIA's R. Br. at 12.

649 DC SUN/MDV-SEIA's R. Br. at 12-13, citing OPC's Br. at 10, 54-55.

650 *Formal Case No. 1119*, Order No. 17947, ¶ 265, rel. August, 27, 2015

651 *Formal Case No. 1119*, Order No. 17947, ¶¶ 257, 354 (MMM), rel. August, 27, 2015.

652 *Formal Case No. 1119*, Order No. 17947, ¶¶ 265, 354 (QQQ), rel. August, 27, 2015.

653 *Formal Case No. 1119*, Order No. 17947, ¶¶ 265, 354 (OOO), rel. August, 27, 2015.

654 *Formal Case No. 1119*, Order No. 17947, ¶¶ 265, 354 (NNN), rel. August, 27, 2015.

655 *Formal Case No. 1119*, Order No. 17947, ¶¶ 265, 354 (RRR), rel. August, 27, 2015.

Summary of Nonunanimous Settlement Agreement Provisions
Pertaining to Factor No. 4

1. *Ring Fencing Protections*

91. The Joint Applicants vow to maintain Pepco's separate existence "as a separate corporate subsidiary and its separate franchises, obligations and privileges."[656] Therefore Pepco will "maintain separate debt so that Pepco will not be responsible for the debts of affiliate companies and preferred stock if any, and Pepco shall maintain its own corporate and debt credit rating, as well as ratings for long-term debt and preferred stock."[657] The Joint Applicants commit to establish "the SPE, a limited liability company" whose main purpose will be to hold "100% of the equity interest in PHI"[658] and that the SPE "will be a direct subsidiary to EEDC."[659] The SPE will be a four director board appointed by EEDC. They will "maintain adequate capital" and will not "require the owners to make any additional capital contributions."[660] The SPE "will issue a non-economic interest in the SPE ("to a Golden Share") to an administration company in the business of protecting SPEs and separate from the administration company retained to provide the person to serve as the independent director for the SPE" and the holder will "have a voting right on the matter" spelled out in the SPE governing documents.[661] Therefore if SPE or PHI submits a voluntary petition for bankruptcy, this will require affirmative consent from the Golden Share.[662] The SPE is not allowed to "comingle its funds or assets of any other entity and shall not maintain any funds or other assets in such a manner that will be costly or difficult to segregate."[663]

92. The Joint Applicants commit that immediately following the close of the Merger, "PHISCo will remain as a subsidiary of PHI."[664] The Joint Applicants assert that "Exelon will obtain a legal opinion in customary form and substance and reasonably satisfactory to the Commission, to the effect that, as a result of the ring-fencing measures it has implemented for PHI."[665] Within five days after the payment of a dividend, Pepco commits to submit "the calculations that it used to determine the equity level at the time the board of directors considered

656 NSA, ¶ 63.

657 NSA, ¶ 65.

658 NSA, ¶ 66.

659 NSA, ¶ 67.

660 NSA, ¶ 70.

661 NSA, ¶ 72.

662 NSA, ¶ 73.

663 NSA, ¶ 85.

664 NSA, ¶ 90.

665 NSA, ¶ 94.

payment of the dividend and the calculations to demonstrate that the common equity ratio immediately after the dividend payment did not fall below 48%."[666] Additionally Pepco will submit to the Commission "an annual compliance report with respect to the ring-fencing and other requirements."[667] The Joint Applicants state that "Exelon shall not engage in any internal corporate reorganization relating to the SPE, PHI, or Pepco, or EEDC for which Commission approval is not required without ninety (90) days prior written notification to the Commission."[668] Lastly, the Joint Applicants agree to "implement the ring-fencing and corporate governance measures set out in Paragraphs 52-55 and 63-102 within 180 days after the Merger close for the purpose of the providing protections to customers."[669] At the end of the Merger "PHI will not initiate or invest in new non-utility operations without first obtaining Commission approval in a written order."[670]

2. *Severance of Exelon-Pepco Relationship*

93. The Joint Applicants commit that after investigating and holding a hearing, the Commission may "Order Exelon to divest its interest in Pepco on terms adequate to protect the interest of the utility investors (including Exelon investors) and consumers and the public," under the condition that the Commission investigation finds that: "(a) one or more of the divestiture conditions described below has occurred, (b) that as a consequence Pepco has failed to meet its obligations as a public utility, and (c) that divestiture is necessary to allow Pepco to meet its obligations and to protect the interest of its customers in a financially healthy utility and in the continued receipt of reasonably adequate utility service at just and reasonable rates."[671] Furthermore, the Joint Applicants state that if there are any divestiture orders made pursuant to the stated commitment it will be limited to three criteria and be limited to assets and operations in the District of Columbia.[672]

Summary of Settling Parties' Position
Pertaining to Factor No. 4

94. The Joint Applicants assert that the ring-fencing provisions enhanced by the Nonunanimous Settlement Agreement provide greater protection for Pepco's customers than what they currently have with PHI.[673] The Joint Applicants note that they have added a divestiture provision and have agreed that the ring-fencing provisions "cannot be changed for the

666 NSA, ¶ 95.

667 NSA, ¶ 98.

668 NSA, ¶ 101.

669 NSA, ¶ 105.

670 NSA, ¶ 106.

671 NSA, ¶ 107.

672 NSA, ¶ 107.

673 Joint Applicants' Br. at 44-45.

first five years post-Merger and, even then, cannot be modified without the Commission's approval. [Therefore], the ring-fencing provisions will continue in perpetuity absent a Commission written order to the contrary."[674]

95. In addition to the new requirements highlighted by Joint Applicants, District Government asserts that the NSA "now requires PHI to obtain Commission approval before it embarks on or invests in any new non-utility operations."[675] According to District Government, the Settlement now requires "Exelon to conduct an analysis of its financial and operational risks to determine whether the NSA's ring-fencing provisions are adequate to protect Pepco and to report its findings to the Commission."[676] District Government witness Smith testified that the NSA's additional ring-fencing commitments, when combined with the Joint Applicants' previously proposed "robust" ring-fencing commitments, "represent the leading edge in ring-fencing and should become the utility industry standard for providing a high degree of protection going forward."[677]

Summary of Nonsettling Parties' Position
Pertaining to Factor No. 4

96. DC SUN/MDV-SEIA point out that the Commission, in Order No. 17947, made no determination about whether additional ring-fencing commitments were necessary to further protect District ratepayers.[678] They assert developments in the Energy Future Holdings ("EFH") bankruptcy "demonstrate[ ] the necessity for even more secure ring-fencing provisions."[679] The two provisions imposed by the Public Utilities Commission of Texas and which are discussed are (1) the sale of a minority interest (19.75%) to an independent shareholder; and (2) the inability of the parent company's board to overrule the utilities board on certain matters.[680] Additionally, concerning the Settlement Agreements' divestiture provisions, DC SUN/MDV-SEIA assert the "conditions are incredibly dire, however, and the Commission may not act until one of the conditions 'has occurred.' By then, irreparable damage may have been done, but this provision gives the Commission no power to take preemptive action that might avert an imminent catastrophe."[681]

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674 Joint Applicants' Br. at 45-46.

675 District Government's Br. at 14, citing NSA, ¶ 106.

676 District Government's Br. at 14, citing NSA, ¶ 104.

677 District Government's Br. at 14, citing District Government (2A) at 43:11-14.

678 DC SUN/MDV-SEIA's Br. at 36, citing *Formal Case No. 1119*, Order No. 17947, ¶ 265, rel. August 27, 2015.

679 DC SUN/MDV-SEIA's Br. at 36.

680 DC SUN/MDV-SEIA's Br. at 36-37, citing *Joint Report and Application of Oncor Energy Electric Delivery Company and Texas Energy Future Holdings Limited Partnership Pursuant to PURPA § 14.101*, Docket No. 34077, Pub. Util. Comm. of Texas, Order on Rehearing (Apr. 24, 2008) ("Oncor Order") at ¶ 75.

681 DC SUN/MDV-SEIA's Br. at 38, citing GRID2.0 (2A) at 58:20-27 (Hempling).

97. GRID2.0 states that, "[i]n finding that Pepco and its ratepayers 'could be' protected with ring-fencing, the Commission was addressing Exelon's current array of business risks" and "did not, and could not, assess whether the proposed ring-fencing would protect against Exelon's future array of business risks."[682] It points out that "[t]he repeal of the federal Public Utilities Holding Company Act removed the pre-existing legal limits on what future risks Exelon can incur."[683] GRID2.0 states that "[the Joint] Applicants characterization of potential harms accused intervenors of speculating about risk, of over-worrying about harm" and asserts "[t]hat [intervenors] cannot identify the precise harms and outcomes is evidence of uncertainty, not a sign of speculation . . . It is Exelon that is speculating—that no matter what risk arrives, the ring-fencing will stop it."[684]

Summary of Settling Parties' Reply Position
Pertaining to Factor No. 4

98. The Joint Applicants argue that GRID2.0 and DC SUN/MDV-SEIA make tenuous arguments that are unsupported by record evidence related to their assertion that the Commission should require Exelon to obtain pre-approval to make any future acquisitions of unregulated businesses.[685] Furthermore, the Joint Applicants contend that the Commission already described the ring-fencing provisions in the NSA as "robust" and "leading edge in utility ring-fencing."[686] The Joint Applicants further assert that the divestiture provision of the NSA have been determined to add considerable value to similar merger proceedings in Maryland and the Settling Parties in this proceeding "reached the same conclusion and negotiated a significant right that is not available with respect to stand-alone PHI regardless of the difficulties that Pepco may encounter in the absence of the Merger."[687] The Joint Applicants also assert, despite GRID2.0's arguments to the contrary, "the requirement for prior Commission approval for *PHI* to embark on new non-utility venture is a valuable positive benefit, which is why the other Settling Parties sought its addition to the Settlement Agreement."[688]

Summary of Nonsettling Parties' Reply Position
Pertaining to Factor No. 4

99. None of the Nonsettling Parties addressed Factor No. 4 in their reply briefs.

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682 GRID2.0's Br. at 17.

683 GRID2.0's Br. at 17, citing GRID2.0 (A) at 86 (Hempling).

684 GRID2.0's Br. at 18.

685 Joint Applicants' R. Br. at 42.

686 Joint Applicants' R. Br. at 43-44, citing Order No. 17947 at p. 264.

687 Joint Applicants' R. Br. at 45.

688 Joint Applicants' R. Br. at 47 (emphasis in original).

5. FACTOR 5: The effects of the transaction on the Commission's ability to regulate the new utility effectively

Order No. 17947 - Commission's Findings on Factor 5

100. The Commission considered the impact of the Proposed Merger on Factor No. 5 in paragraphs 277 through 284 of Order No. 17947. The Commission found that the Joint Applicants' commitment to provide access to Pepco's books within twenty days represented "delayed access to necessary books and records [and] will negatively impact the Commission's ability to effectively carry out its oversight role."[689] Further, the Commission expressed concern that "both PHISCo and EBSC will allocate costs to Pepco; that PHISCo and EBSC have their own cost allocation manual; and that the two companies use different methods of cost allocation."[690] Finally, while the Commission recognized the possibility "that District ratepayers could see a benefit because certain service company functions will be transferred from PHISCo to EBSC following the merger and thereby allow Pepco to 'realize economies of scale and scope' by sharing such services with other Exelon affiliates," the Commission concluded that "the Joint Applicants provided no quantitative evidence to support this conclusion nor did they quantify the cost decrease that Pepco could expect to receive under this scenario."[691]

Summary of Nonunanimous Settlement Agreement Provisions Pertaining to Factor No. 5

101. The Joint Applicants stipulated that Pepco will continue to be subjected to the Commissions existing oversight and authority,[692] and in accordance with D.C. Code § 34-904, Pepco will, "upon request by the Commission or the OPC, . . . provide access on demand of Pepco's original books and records."[693] Additionally, the Joint Applicants committed to "file annual across-the-fence reports comparing the performance and status of the utilities within the Exelon family" which will address "reliability, customer service, safety, rate and regulatory matters, interconnections, energy-efficiency and demand-response programs, and deployment of new technologies, including smart meters and smart grid, automated technologies, micro grids, and utility of the future initiatives."[694] Lastly, Exelon subjects itself to the jurisdiction of the Commission for "(1) all matters related to the Merger and the enforcement of the conditions set forth herein to the extent relevant to operations of Pepco; and (2) matters relating to affiliate

689 *Formal Case No. 1119*, Order No. 17947, ¶¶ 279, 354 (SSS), rel. August, 27, 2015.

690 *Formal Case No. 1119*, Order No. 17947, ¶¶ 280, 354 (TTT), rel. August, 27, 2015.

691 *Formal Case No. 1119*, Order No. 17947, ¶¶ 280, 354 (UUU), rel. August, 27, 2015.

692 NSA, ¶ 108.

693 NSA, ¶ 109.

694 NSA, ¶ 110.

transactions between Pepco and Exelon or its affiliates to the extent relevant to operations of Pepco in the DC."[695]

Summary of Settling Parties' Position
Pertaining to Factor No. 5

102. To address the Commission's expressed concern that post-Merger regulation of Pepco would become more complex, time-consuming, and costly, the Joint Applicants assert that the "Settling Parties have agreed to new and enhanced commitments that provide expeditious access to Pepco's books and records consistent with current law and regulations; preserve the capacity for Pepco to realize economies of scale from the provision of service by EBSC while creating a definitive path forward to having most functions housed in a single service company . . ."[696] The Joint Applicants assert the ultimate goal of these enhanced merger commitments is to make "the Commission's regulation of Pepco more effective."[697] The Joint Applicants maintain their commitment for Exelon to allocate costs to Pepco under Exelon's GSA in a manner that "complies with the current PHI cost allocation manual, or results in a lower allocation of costs in the aggregate, and to submit reports to the Commission demonstrating its compliance with this commitment."[698] The Joint Applicants also commit to several reporting requirements on an annual basis to address pre- and post-merger functions of shared service cost allocations to Pepco and an annual "across-the-fence" performance report – all aimed at giving "the Commission [new and effective tools] to assist in its regulatory oversight that would not exist absent the Merger."[699] Finally, the Joint Applicants assert that post-Merger Pepco will continue to operate subject to the Commission's jurisdiction "and without any reduction in the Commission's existing oversight or authority over Pepco."[700] Additionally, the Joint Applicants commit that Exelon "will submit to the jurisdiction of the Commission for all Merger related matters as well as matters related to affiliate transactions between Pepco and Exelon or its affiliates and – "Exelon will [ ] cause each of its affiliates that supply goods or services to Pepco to submit to the jurisdiction of the Commission for matters relating to the provision or costs of such goods or services to Pepco."[701]

103. In recognition of the Commission's concern about the existence and effect of two service companies post-merger, OPC notes that the Nonunanimous Settlement Agreement requires Exelon to file a plan within six months after the merger's close for Commission approval

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695 NSA, ¶ 111.

696 Joint Applicants' Br. at 46.

697 Joint Applicants' Br. at 47.

698 Joint Applicants' Br. at 48.

699 Joint Applicants' Br. at 49.

700 Joint Applicants' Br. at 49.

701 Joint Applicants' Br. at 49.

to integrate PHISCo within EBSC and other entities.[702] According to OPC, "this integration will reduce the number of entities direct charging and allocating costs to Pepco post-transaction and thereby simplify the Commission's review of Pepco's costs."[703] Another requirement of the NSA OPC identifies is one which requires Pepco to maintain separate books and records as well as to provide the Commission and OPC access on demand to these books and records.[704] OPC believes that by making the books and records available on demand, as opposed to the formerly proposed twenty working-day timeframe, "the Settlement Agreement will enable the Commission to effectively fulfill its oversight role." [705]

Summary of Nonsettling Parties' Position
Pertaining to Factor No. 5

104. DC SUN/MDV-SEIA state "Exelon's conduct after Order No. 17947 should give the Commission pause about its ability to regulate such a formidable behemoth."[706] They go on to reference and discuss in detail the involvement of non-profits in supporting the Merger and Pepco's agreement with the District Government for unspecified naming rights.[707] Additionally, they point to the ability of a post-Merger Exelon to influence PJM. Finally, they assert "[w]hen efforts to influence the District Government or public opinion go beyond traditional lobbying . . . the Commission should recognize the threat to its ability to regulate Exelon . . . [and] should protect customers and the District from a new utility that would dominate the political and regulatory landscape based on its size and willingness to use its outsized wealth."[708]

105. GRID2.0 states "a merger is not a shopping trip. A merger is more of a marriage . . . in which one partner will control the other, in which the one in control has ambitions outside of the relations and in conflict with it."[709] GRID2.0 states that integrating PHISCo and ESBC "is better than not integrating. But submitting the plan after the consummation [of the proposed Merger] has occurred reduces the Commission's influence."[710] GRID2.0 contends "the harm to Pepco and its ratepayers can come from a universe of sources and actions broader than [direct] inter-affiliate transactions" involving Pepco and states "[t]he Commission needs access to any

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[702] OPC's Br. at 64, citing NSA, ¶ 90.

[703] OPC's Br. at 64.

[704] OPC's Br. at 65 citing NSA, ¶ 109.

[705] OPC's Br. at 65. *See* District Government's Br. at 15-16 wherein District Government takes note that the NSA contains a number of commitments designed to address the concerns of the Commission regarding its continued regulatory oversight of Pepco.

[706] DC SUN/MDV-SEIA's Br. at 38.

[707] DC SUN/MDV-SEIA's Br. at 39-42.

[708] DC SUN/MDV-SEIA's Br. at 43.

[709] GRID2.0's Br. at 19.

[710] GRID2.0's Br. at 19.

books and records of any activity that could affect the District's electricity markets."[711] Regarding the comparison of service company costs post-merger, GRID2.0 points out that "[a]fter the first few years there will be no way to know what costs PHI's current [General Services Agreement] would have allocated to Pepco but for the merger; so there is no way to make a valid comparison."[712] GRID2.0 also raises concerns about the need for increased regulatory oversight and resources for the Commission as a result of the proposed Merger and asserts Exelon should pick up such costs.[713]

106. MAREC asserts that "[n]othing in the Settlement Agreement addresses the Commission's concern regarding the heightened need to police the new behemoth entity that will be created."[714] For support, MAREC asserts that "Joint Applicants' Witness Tierney was unable to provide a straight answer when questioned about the increased need for regulatory oversight."[715] Finally, MAREC states that "[n]ot only does the merger increase the potential for Exelon to increase its influence within the District, unless subject to rigorous – potentially costly – regulatory oversight, but it also opens the door for Exelon to dominate throughout the PJM region."[716]

Summary of Settling Parties' Reply Position
Pertaining to Factor No. 5

107. The Joint Applicants assert that "GRID2.0 is the only Non-Settling Party that discusses the provisions of the Settlement Agreement which addresses the Commission's concerns in Order No. 17947 regarding its ability to regulate Pepco," asserting that "the Commission will be unable to enforce the NSA commitment requiring PHISCo to be integrated within EBSC."[717] However, the Joint Applicants argue that this and other GRID2.0 arguments related to Factor 5 are without merit.[718] The Joint Applicants also dispute MAREC's speculative argument that "the Commission will somehow be overwhelmed by Exelon, asserting that Exelon 'appear[s] to buy approval from politicians, charitable organizations, and others' and that the Commission should recognize such 'efforts to influence the District Government or public opinion' as an unspecified 'threat to its ability to regulate Exelon.'"[719] The Joint Applicants argue that DC SUN/MDV-SEIA's assertions are "unsupported attacks on Exelon, Pepco, and the

711 GRID2.0's Br. at 20.

712 GRID2.0's Br. at 20-21.

713 GRID2.0's Br. at 21.

714 MAREC Br. at 11.

715 MAREC Br. at 11, citing NSA Tr. at 375:6-376:16 (Tierney).

716 MAREC Br. at 13.

717 Joint Applicants' R. Br. at 48.

718 Joint Applicants' R. Br. at 48-49.

719 Joint Applicants' R. Br. at 50, citing DC SUN/MDV-SEIA's NSA Br. at 39-40.

District Government and other stakeholders [that] have no place in this proceeding and are belied by the provisions of the Settlement Agreement which ensure and enhance the Commission's ability to continue to regulate Pepco effectively after the Merger."[720]

Summary of Nonsettling Parties' Reply Position
Pertaining to Factor No. 5

108. None of the Nonsettling Parties addressed Factor No. 5 in their reply briefs.

6. FACTOR 6: The effects of the transaction on competition in the local retail and wholesale markets that impacts the District and District ratepayers

Order No. 17947 - Commission's Findings on Factor 6

109. The Commission considered the impact of the Proposed Merger on Factor No. 6 in paragraphs 298 through 301 of Order No. 17947. The Commission concluded "that the Proposed Merger provides no additional benefits with respect to wholesale competition or with respect to retail competition."[721] The Commission found that "any concerns about the participation of the Joint Applicants in the SOS procurement process as both the SOS Administrator and a bidder can be adequately addressed by modifying the rules for the procurement procedures so that there could be no harm to District ratepayers under the wholesale SOS model adopted by this Commission."[722] Additionally, the Commission stated that it did not share the concern "about the ability of an Exelo- owned Pepco to fairly operate the distribution system in a manner that would not discourage distributed generation, especially for solar systems" because the Commission stands ready to enforce fair and equal access to the distribution system as mandated in D.C. Code § 34-1506.[723] However, the Commission also stated that "the Proposed Merger raises a potential harm in that there is a potential conflict of interest if the company that controls the local distribution company seeks to delay changes necessary to encourage additional distributed generation because of its ownership of alternative generation sources."[724]

Summary of Nonunanimous Settlement Agreement Provisions
Pertaining to Factor No. 6

1. *Adherence to Code of Conduct and Provisions of Standard Offer Service*

110. The Joint Applicants committed to "comply with the statutes and regulations applicable to Pepco regarding affiliate transactions, including without limitations 15 D.C.M.R. §

720 Joint Applicants' R. Br. at 50.

721 *Formal Case No. 1119*, Order No. 17947, ¶ 301, rel. August, 27, 2015.

722 *Formal Case No. 1119*, Order No. 17947, ¶¶ 298, 354 (XXX), rel. August, 27, 2015.

723 *Formal Case No. 1119*, Order No. 17947, ¶ 300, rel. August, 27, 2015.

724 *Formal Case No. 1119*, Order No. 17947, ¶ 301, rel. August, 27, 2015.

3900-3999" and "continue to provide Standard Offer Service (SOS) to its customers in the District consistent with D.C. Code and Affiliate Code of Conduct."[725] Furthermore, in regards to separate employees to engage in advocacy, the Joint Applicants will hire "separate legal and government-affairs personnel, and separate law firms and consultants to advocate before the Commission."[726] Additionally, the Joint Applicants commit to continue support of "energy efficiency and demand response playing a role in the energy resource mix, with demand response services being an important tool for customers to manage energy costs."[727] Despite the fact that "questions remain about jurisdiction over demand response, the appropriate compensation mechanisms, and how to incorporate demand response in existing markets, Exelon is of the view that any sensible energy policy should reflect the value of all resources, including demand response."[728] Lastly, the Joint Applicants commit to keep such programs "consistent with the direction and approval of the Commission, District and federal law."[729]

2. *Competition Protections*

111. The Joint Applicants agree to the following competition protections:

(a) Commits that its Affiliated Transmission Companies shall each identify, with PJM's concurrence, at least three independent third-party engineering consulting firms that are qualified to conduct Facilities Studies under the PJM generator interconnection process;

(b) Any generation developer that desires to interconnect to the transmission system of one of Exelon's Affiliated Transmission Companies may, in the developer's discretion and at the developer's expense, direct PJM to utilize one of the identified firms to conduct the Facilities Study for its generation project for upgrades and interconnection facilities required on the Affiliated Transmission Company's facilities;

(c) For all interconnection studies performed by a listed independent third-party engineering consulting firm, the Exelon Affiliated Transmission Company shall cooperate with and, as requested, provide information to PJM and the independent engineering consulting firm as needed to complete all work within the normal scope and timing of the PJM interconnection process;

(d) Commits that Pepco and Pepco Maryland, ACE, Delmarva Power, PECO, and BGE shall remain members of PJM until January 1, 2025; provided, however, that

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725 NSA, ¶¶ 112-113.

726 NSA, ¶ 114.

727 NSA, ¶ 115.

728 NSA, ¶ 115.

729 NSA, ¶ 115.

if there are significant changes to the structure of the industry or to PJM, including markets administered by PJM, during that period that have material impacts on Pepco and Pepco Maryland, ACE, Delmarva Power, PECO or BGE, then any of those companies may file with FERC to withdraw from PJM; and

(e) Exelon agrees that the PJM Market Monitor may review its Demand Resource bids in PJM energy, reserves, and capacity markets.[730]

Additionally, "in order to facilitate consumer advocacy in PJM" The Joint Applicants commit to Exelon "mak[ing] a one-time contribution of $350,000 to fund the expenses of the Consumer Advocates of PJM States Inc. ("CAPS")."[731]

Summary of Settling Parties' Position
Pertaining to Factor No. 6

112. The Joint Applicants assert that "the Settlement Agreement contains an array of provisions with respect to Factor 6 and Factor 7 that will assure an open and transparent process for interconnecting generation at the transmission and distribution levels, oversight of Exelon's demand response bids in PJM's markets, and continued advocacy by Exelon for energy efficiency and demand response within the District and within PJM."[732] The Joint Applicants contend that these added provisions "provide more clarity and certainty to the interconnection processes than currently exist [and] constitute affirmative benefits that are direct, tangible and traceable to the Settlement Agreement and will not exist absent the Merger."[733]

113. The Joint Applicants point to OPC witness Dr. Dismukes' testimony at the Public Interest Hearing as support for its assertion that the added provisions help to address the "inherent conflict" that the Commission noted between Exelon's focus on generation and Pepco's distribution-only focus. In his testimony, Dr. Dismukes stated: "the Agreement includes a number of very strong and meaningful conditions that mitigate Exelon's ability to act on those generation-preferencing incentives in ways that will harm the District's ratepayers."[734] Dr. Dismukes points to the enhanced independence in the government provisions, the affiliate transactions and regulatory provisions, the local control and governance enhancements, as well as the divestiture provision which "unequivocally gives the Commission the authorization to force the corporate separation of Exelon and Pepco" if Exelon acts contrary to District law.[735] The Joint Applicants point out that Dr. Tierney observed that "over 17.5 million retail customers in the PJM footprint, and another 8.5 million retail customers in New York and New England,

730 NSA, ¶ 116.

731 NSA, ¶ 117.

732 Joint Applicants' Br. at 50. (Citations Omitted).

733 Joint Applicants' Br. at 50-51.

734 Joint Applicants' Br. at 52, citing OPC (3A) at 42:1-21 (Dismukes).

735 Joint Applicants' Br. at 52, citing OPC (3A) at 42:1-21 (Dismukes).

are served by distribution utilities with generation affiliates [and] . . . Pepco also was affiliated with a generation company as a result of the Conectiv merger in 2002 until mid-2010;" adding that "[r]egulatory agencies in those states have not experienced any difficulty in dealing with potential 'conflicts of interest,' and there is no reason to believe the Commission will either following the Merger."[736]

114. In its Brief, District Government lists a number of the commitments of the NSA which address the concerns regarding the conflict between a generation-owned-parent-company Exelon, and the local distribution company, Pepco, in a jurisdiction, the District, whose policy is to encourage distributed generation.[737] These commitments are: (1) a process by which Facilities Studies for generation interconnection in the PJM can be conducted in a competitively neutral manner; (2) a one-time contribution of $350,000 to fund the expenses of the Consumer Advocates of PJM States (of which OPC is a member); and (3) a firewall among employees, contractors and consultants who advocate before the Commission on behalf of Exelon's generation interests on the one hand, and Pepco's distribution and affiliated transmission interests on the other hand.[738] OPC's Brief concurs with District Government and adds that it believes that the increased level of protection incorporated into the NSA, in conjunction with vigorous Commission oversight, will appropriately address any potential for conflict between Exelon's generation-focused strategy and the needs of a wires-only distribution company. OPC concludes that the NSA meets Public Interest Factor No. 6.[739]

Summary of Nonsettling Parties' Position
Pertaining to Factor No. 6

115. DC SUN/MDV-SEIA state that "[c]oncerns about Exelon's 'inherent conflict of interest' infect every aspect of this proceeding and will impact competition."[740] Regarding "the ability of an Exelon-owned Pepco to fairly operate the distribution system," they state that "the Settlement Agreement is a step backward because it gives Exelon a favored position vis-à-vis its District-based competitors in developing emerging technologies."[741] DC SUN/MDV-SEIA assert "the Settlement Agreement gives Exelon a preferred position in developing up to 10 MW of solar generation and four microgrids in the District."[742] They state that "granting Exelon the

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736 Joint Applicants' Br. at 52-53, citing Joint Applicants (2E) at 5:17-22 (Gausman) and Joint Applicants (5G) at 18:16-19:3 (Tierney).

737 District Government's Br. at 16, citing *Formal Case No. 1119*, Order No. 17947, ¶ 284, rel. August 27, 2015; See also, NSA, ¶¶ 116-117.

738 District Government's Br. at 16, citing NSA, ¶¶ 114, 116-117.

739 OPC's Br. at 65.

740 DC SUN/MDV-SEIA's Br. at 43, citing *Formal Case No. 1119*, Order No. 17947, ¶ 10, rel. August 27, 2015.

741 DC SUN/MDV-SEIA's Br. at 43.

742 DC SUN/MDV-SEIA's Br. at 44, citing NSA, ¶¶ 118, 128.

sole right to negotiate a contract for 5 MW of solar generation at the Blue Plains Advanced Waste Water Treatment Plant clearly allows Exelon to misuse its controlling position [over Pepco]" and go into detail how prior negotiations with Washington Gas Energy Services ("WGES") broke down over uncertainty about obtaining the necessary interconnection agreement from Pepco.[743] They conclude that through the Settlement a "competitive process" was replaced by "a sole-source procurement" to the benefit of a Pepco affiliate.[744] Finally, regarding PJM membership, DC SUN/MDV-SEIA state "PJM does provide some check on regional anti-competitive behavior, and membership in PJM gives District ratepayers benefits within regional electricity markets" however the Settlement Agreement provides "no opportunity for the Commission to review Pepco's withdrawal decision."[745]

116. GRID2.0, summarizing Order No. 17947, states that with 63% of Exelon's revenue coming from generation, this "financial dependence causes an 'inherent conflict of interest that might inhibit our local distribution company from moving forward to embrace a cleaner and greener environment.'"[746] They explain that "[b]ecause Pepco owns no significant generation, its chief regulatory obligation is to buy resources at the lowest possible price. Exelon, a major owner of generation, seeks to sell power at the highest possible price."[747] They conclude that "[b]ecause Exelon will control Pepco, this seller-buyer conflict will resolve in favor of generation . . . This subordination of buyer interest to seller interest will last as long as Exelon lasts."[748] Regarding wholesale competition, GRID2.0 states, "Even with an objective, District-based auction, Exelon can gain an unearned advantage if it designs the planning, construction, access, cost and cost allocation of transmission facilities to favor its own generation over other options; and then influences the PJM regional planning process to adopt those designs."[749] GRID2.0 also sees a conflict between Exelon's generation interests and the implementation of demand response and the construction of appropriate market structures as well as compensation levels.[750]

117. GRID2.0 identifies a series of conflicts and harms that might occur as part of modernization of the distribution grid, as contemplated in *Formal Case No. 1130*. GRID2.0 asserts, "[f]or these efforts to succeed, participants must share the key objectives: finding the most cost-effective, most customer-empowering solutions, and putting those solutions into effect

743 DC SUN/MDV-SEIA's Br. at 44-45.

744 DC SUN/MDV-SEIA's Br. at 45-46.

745 DC SUN/MDV-SEIA's Br. at 47.

746 GRID2.0's Br. at 22, quoting *Formal Case No. 1119*, Order No. 17947, ¶¶ 9, 10, rel. August 27, 2015.

747 GRID2.0's Br. at 22.

748 GRID2.0's Br. at 22.

749 GRID2.0's Br. at 22.

750 GRID2.0's Br. at 22-23.

methodically but expeditiously."[751] GRID2.0 points out that Pepco is "a necessary player" because "[i]t controls ingredients necessary for success, including 'the last mile,' meter data and interoperability protocols."[752] GRID2.0 asserts Exelon's dependence on generation "gives it an incentive[s] . . . to discourage these innovations and deter competitive entry."[753] GRID2.0 points out that the Commission shares these concerns that Exelon will not be "'the enthusiastic supporter and facilitator necessary to lead the District and its local distribution franchise in the future.'"[754] Finally, GRID2.0 asserts that "Exelon will have opportunities to influence [policies that promote distributed generation], and to control Pepco's influence over those policies."[755]

118. The Market Monitor asserts that the merger should not be approved unless approval is conditioned on "requiring the Companies agree to remain a member of PJM Interconnection, L.L.C."[756] The Market Monitor states that "[t]he Companies have heavily relied on membership in PJM to alleviate market power concerns. There is no basis for alleviating market power concerns if membership in PJM is not made permanent."[757] The Market Monitor states that "[p]ermanent membership would bind the Companies, not this Commission." If at a later date "the Companies can convince the Commission that an alternative to PJM is in the public interest, then this Commission can approve it."[758]

119. MAREC supports the comments of the Market Monitor.[759] Further, MAREC states that "[t]he $350,000 in funding provided . . . to the Consumer Advocate of PJM states to represent consumer interest in PJM as an antidote to Exelon's increased influence is utterly inadequate" and "given the complexity of matters in PJM, this amount could be spent within a year or two, while Exelon's control within PJM will continue far longer."[760]

120. WGL Energy "seeks assurance that Exelon's competitive energy market commitments in the NSA to develop, build, own and operate solar generation and micro-grid facilities will not adversely impact competitive energy markets in the District."[761] WGL Energy asserts "[c]ompetitive energy markets will best flourish if solar generation is provided to District

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751 GRID2.0's Br. at 23.

752 GRID2.0's Br. at 23.

753 GRID2.0's Br. at 23. (Citation omitted).

754 GRID2.0's Br. at 23, quoting *Formal Case No. 1119*, Order No. 17947, ¶ 348, rel. August 27, 2015.

755 GRID2.0's Br. at 24.

756 IMM Br. at 2.

757 IMM Br. at 2.

758 IMM Br. at 3.

759 MAREC's Br. at 13.

760 MAREC's Br. at 13.

761 WGL Energy's Br. at 3.

agencies through competitive bid processes and if the regulated electric utility only owns non-commercial generation that is essential to the reliability and stability of the electric distribution grid."[762] Specifically, regarding Exelon's commitment to develop or assist in the development of 10 MW of solar generation, WGL Energy requests "that the Commission should clarify or otherwise condition Exelon's solar commitment . . . on its participation in a competitively bid solicitation process so other competitive providers can compete for the project."[763]

Summary of Settling Parties' Reply Position
Pertaining to Factor No. 6

121. The Joint Applicants assert that the Non-Settling Parties, IMM in particular, raise arguments previously rejected by the Commission in Order No. 17947 related to retail competition and Exelon's presence in PJM. Regarding the irresolvable "conflict of interest between Exelon's ownership of generation facilities and Pepco's distribution utility business" that the Commission raised in Order No. 17947, the Joint Applicants assert that the NSA addresses these concerns and that the Commission previously "rejected claims that the conflict raised concerns about the effect of the Merger on wholesale and retail competition" and that "the Merger raises no retail competition concerns."[764] Furthermore, the Joint Applicants assert that the Non-Settling parties ignore provisions of the NSA that are designed to address the concerns raised by the Commission in Order No. 17947, specifically the "array of provisions [ ] that [ ] create positive competition-related benefits and address the one competition concern raised by the Commission."[765] The Joint Applicants point out that the other Settling Parties like OPC agree that "the increased level of protection incorporated into the Settlement Agreement, in conjunction with vigorous Commission oversight, will appropriately address any potential conflict between Exelon's generation-focused strategy and the needs of a wires-only distribution company."[766]

122. The Joint Applicants also assert that DC SUN/MDV-SEIA previously argued that there were no commitments related to incorporating renewables and distributed generation as part of the Merger.[767] Based on these assertions and the Commission's discussion of the issue in Order No. 17947, the Joint Applicants assert that the Settling Parties made specific commitments to develop renewables and distributed generation in the District as part of the NSA and DC SUN/MDV-SEIA still takes issue with those commitments.[768] Specifically, the Joint Applicants contend that DC SUN/MDV-SEIA and WGL take issue with the commitment that 10 MW of

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762 WGL Energy's Br. at 3.

763 WGL Energy's Br. at 5.

764 Joint Applicants' R. Br. at 56 (emphasis omitted).

765 Joint Applicants' R. Br. at 57.

766 Joint Applicants' R. Br. at 57-58, citing OPC NSA Br. at p. 65 (internal quotations omitted).

767 Joint Applicants' R. Br. at 58.

768 Joint Applicants' R. Br. at 59.

solar will be developed in the District, asserting that the NSA gives Exelon preferred position or competitive advantage and that a contract with WGL was terminated due to inappropriate conduct by Pepco.[769] The Joint Applicants assert that both of these contentions are unsupported by record evidence, is DC SUN/MDV-SEIA's "claim that provisions in the [NSA] regarding microgrids somehow give Exelon a 'preferred position' in developing four microgrids that Pepco has committed to pursue."[770] The Joint Applicants assert that the NSA explicitly states that "the development and implementation of the microgrid pilot projects *shall be competitively sourced*" and "nothing in this paragraph shall obligate the District to use Pepco for the development, financing, ownership or construction of the microgrids referred to herein, and *the District is free to pursue microgrid development independent of Pepco*."[771] The Joint Applicants assert that the conditions that WGL suggest placing on the NSA are unworkable, overbroad, and unnecessary and should not be adopted by the Commission.[772]

Summary of Nonsettling Parties' Reply Position
Pertaining to Factor No. 6

123. GRID2.0 in its reply brief expresses support for the statements and conclusions made by the Independent Market Monitor for PJM concerning the importance of Exelon's continued membership in PJM and a requirement that Exelon be required to maintain that membership.[773]

7. FACTOR 7: The effects of the transaction on conservation of natural resources and preservation of environmental quality

Order No. 17947 - Commission's Findings on Factor 7

124. The Commission considered the impact of the Proposed Merger on Factor No. 7 in paragraphs 335 through 342 of Order No. 17947. The Commission found "the effect of the Proposed Merger on this factor to be neutral."[774] Regarding Exelon's nuclear generation, the Commission acknowledged "that nuclear power has positive benefits over fossil fuels for the environment and the District's fuel mix contains about 30% nuclear power . . . [and] that 81% of Exelon's total generation output comes from nuclear plants that support clean power production."[775] The Commission stated that "[n]uclear power does not satisfy the District's RPS program under the DGAA; nor can an increased use of nuclear power help the District satisfy its

769 Joint Applicants' R. Br. at 59-60.

770 Joint Applicants' R. Br. at 61.

771 Joint Applicants' R. Br. at 61-62, citing NSA, ¶ 128 (emphasis added) (internal quotations omitted).

772 Joint Applicants' R. Br. at 62-64.

773 GRID2.0's R. Br. at 27-28, citing IMM Br. at 2.

774 *Formal Case No. 1119*, Order No. 17947, ¶ 342, rel. August, 27, 2015.

775 *Formal Case No. 1119*, Order No. 17947, ¶¶ 336, 354 (ZZZ), rel. August, 27, 2015.

goal of obtaining 50% of its power from renewable sources by 2032."[776] The Commission found that "the record in this proceeding shows, that the Joint Applicants made no specific commitment to support the growth of distributed generation and the use of renewables within the District in its original or supplemental testimony with one exception" and "does not contain any specific commitment(s) to enhance the District's existing programs for energy efficiency, sustainability and conservation which could be construed as a benefit."[777] The Commission found that although "the Joint Applicants have demonstrated that they have experience in renewable generation and have, through BGE, interconnected solar customers to its distribution system, they chose not to make any commitments related to incorporating renewables and distributed generation as part of the proposed transaction."[778] The Commission went on to note that "the Joint Applicants acknowledge that the SEU runs energy efficiency programs in the District of Columbia, on which Pepco provides assistance, and Pepco has no direct operational responsibility for energy efficiency programs in the District of Columbia."[779]

Summary of Nonunanimous Settlement Agreement Provisions
Pertaining to Factor No. 7

1. *Development of Solar Generation*

125. The Joint Applicants commit to "develop or assist in the development of 10 MW of solar generation in the District and will enter into good-faith negotiations of a commercially acceptable arrangement for 5 MW of such generation to be constructed at the DC Water Blue Plains Advanced Wastewater Treatment Plant ("Blue Plains") and operational by December 31, 2018."[780] However, in the case that "a commercially acceptable arrangement cannot be negotiated for 5 MW," the "10 MW of solar generation to be developed under this paragraph shall be reduced to 7 MW."[781] The Joint Applicants commit that the "construction and installation shall be competitively bid with a preference for qualified local businesses."[782] Furthermore, the Joint Applicants commit to providing "$5 million of capital to creditworthy governmental entities at market rates for the development of renewable energy projects in the District;" thus Pepco will "coordinate with the District to facilitate planning for and interconnection of renewable generation to be developed."[783]

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776 *Formal Case No. 1119*, Order No. 17947, ¶¶ 336, 354 (AAAA), rel. August, 27, 2015.

777 *Formal Case No. 1119*, Order No. 17947, ¶¶ 337, 341, 354 (CCCC), rel. August, 27, 2015.

778 *Formal Case No. 1119*, Order No. 17947, ¶¶ 337, 341, rel. August, 27, 2015.

779 *Formal Case No. 1119*, Order No. 17947, ¶¶ 337, 341, rel. August, 27, 2015.

780 NSA, ¶ 118.

781 NSA, ¶ 118.

782 NSA, ¶ 118.

783 NSA, ¶ 120.

2. *Enhancement of the Interconnection Process and Support for Customer-Owned Behind-the-Meter Distributed Generation*

126. The Joint Applicants commit to submit a distribution plan no later than six months after the closing of the Merger. The plan will analyze "the long term effects/benefits of the addition of behind-the-meter distributed generation attached to the distribution system within the District, including any impacts on reliability and efficiency."[784] In preparation for review, Exelon, PHI, and Pepco will "provide a transparent, efficient, and clear process" of its "interconnection of proposed energy-generation projects to the Pepco distribution system in the District."[785] The Joint Applicants must show "(1) Service territory maps of circuits, within ninety (90) days after Merger closing" available via Pepco's website for viewing, and "(2) whether when "a utility receives an interconnection request for a behind-the-meter renewable system," what "factors, or criteria limits" are considered when "determin[ing] if upgrades are required at a specific circuit."[786] Some of the factors considered include (a) a report to the Commission within ninety (90) days after Merger closing that provides its criteria limits for distributed energy resources that apply for connection to its distribution; (b) share the research done by the United States Department of Energy, which show how Voltage Regulation strategy, phase balancing, optimal capacitor placement, smart inverters and energy storage may impact Hosting Capacity; (c) PHI will evaluate its criteria with the criteria outlined in the NREL report to identify any improvements that may be made including treatment of behind-the-meter storage equipment; (d) PHI will consider the hourly load shape and the hourly generation of interconnected small generators as a factor to determine the hosting capacity for any given location of a circuit; and (e) PHI shall provide electronic data interface ("EDI") access to historical electric usage through Pepco's Green Button capability to its customers and to customer representatives."[787]

127. The Joint Applicants commit to obtaining an "accepted inverter equipment list for small generation projects," and once it is "reviewed and found to be acceptable for use," it will be "deemed acceptable for future development," and this list should be accessible on Pepco's website and updated quarterly.[788] In addition to the current rules under of 15 D.C.M.R. Chapter 40, District of Columbia Small Generator Interconnection Rules, Pepco will adhere to the following requirements with respect to Level 1 interconnections: "(a) Pepco will issue a permission to operate to the interconnection customer, in the form of an email, within twenty (20) business days after the interconnection customer satisfies the requirements of 15 D.C.M.R. § 4004.4;" (b) [i]n its annual report to be filed with the Commission pursuant to 15 D.C.M.R. § 4008.5, Pepco shall also report its performance with respect to issuance of permission to operate set forth in clause (a) above;" (c) [w]ithin 180 days after the closing of the Merger, Pepco shall

784 NSA, ¶ 121.

785 NSA, ¶ 122.

786 NSA, ¶ 122(b).

787 NSA, ¶ 123 and NSA Tr. at 314:4-9.

788 NSA, ¶ 123.

file a request for proposed rulemaking to add the requirement with respect to issuance of permission to operate set forth in clause (a) above to 15 D.C.M.R. Chapter 40, and to make adherence to the deadlines contained in 15 D.C.M.R. Chapter 40 at not less than a 90% compliance level subject to the EQSS standards in 15 D.C.M.R. Chapter 36;" and "(d) [w]ithin 180 days after closing of the Merger, Pepco shall file a request with the Commission to eliminate the $100 fee currently charged for a Level 1 interconnection application."[789]

128. Lastly, the Joint Applicants commit to having "Pepco develop an enhanced communication plan to proactively promote installation of behind-the-meter solar generation in its District service territory."[790] Therefore within six months after the close of the Merger, "Pepco will implement an automated online interconnection application process."[791]

3. *Development of Microgrid Facilitates*

129. The Joint Applicants agreed to Pepco "coordinat[ing] with the District to interconnect and develop at least four (4) microgrids. The objectives of Pepco and the District with respect to these microgrids will include the following: "(i) to encourage on-site generation, including generation developed by competitive suppliers, (ii) to promote electrical interconnection that enhances the reliability of the electric grid, (iii) to continue universal service and consumer protections for all District electric consumers, and (iv) to identify projects that are cost effective and that leverage private investment, as well as public funding."[792] These microgrids are to be installed "within five (5) years after receiving approval from the Commission of the microgrid projects and of Pepco's cost recovery," but "an interim progress report on the legal, financial and practical issues associated with the planning and development of the microgrid project proposals" should be submitted to the Commission not later than twelve (12) months after the close of the Merger.[793] Lastly, pursuant to *Formal Case 1130*, which was opened to investigate Modernizing the Energy Delivery Structure for Increased Sustainability, the Joint Applicants commit to "to support, the Commission's objectives in opening this proceeding to identify technologies and policies."[794]

4. *Procurement of 100 Megawatts of Wind Energy Under Long-Term Contracts*

130. The Joint Applicants commit that within five (5) years after the closing of the Merger, they will "conduct one or more requests for proposals or other competitive process (each an "RFP") to solicit offers to purchase a total of 100 megawatts ("MW") of renewable energy,

789 NSA, ¶ 125(d).

790 NSA, ¶ 127

791 NSA, ¶ 127.

792 NSA, ¶ 128.

793 NSA, ¶ 128.

794 NSA, ¶ 129.

capacity and ancillary services and all environmental attributes associated therewith." Therefore each RFP and associated documents will include the following provisions: (a) Bidders will be asked to provide credit assurances satisfactory to Exelon in its reasonable discretion as needed to assist Exelon in evaluating each bidder's existing and continued creditworthiness; (b) Exelon will evaluate each proposal received in response to each RFP and will select one or more bidders based on the proposal(s) that Exelon determines, in its sole discretion, represent(s) the best value to Exelon; (c) Exelon will contract for the purchase of Product through one or more power purchase agreement(s) to be negotiated between Exelon and the winning bidder(s) (the "PPA(s)"); (d) The commitments made in this paragraph are intended to promote wind within PJM to facilitate meeting state renewable portfolio standard requirements, including each of the service territories in which PHI utilities provide service; and (e) The costs of implementing this paragraph (including the costs of all procurements and all costs under each PPA) shall not be recovered through Pepco District of Columbia distribution or transmission rates.[795]

131. Lastly, the Joint Applicants agree "to use [their] best efforts to ensure that this Settlement Agreement shall be submitted as soon as possible for approval to the Commission", and that they will "cooperate in good faith and take all reasonable action to effectuate the terms of this Settlement Agreement."[796] None of the Settling Parties are prohibited from or prejudiced in arguing a different policy or position before the Commission in any other proceeding," and the Settling Parties agree that the provisions of the Settlement Agreement are not severable and that the Settle Agreement must be accepted or rejected in its entirety by the Commission.[797]

Summary of Settling Parties' Position
Pertaining to Factor No. 7

132. In response to the Commission's determination that the impact of Factor 7 on the Merger was neutral in Order No. 17947, the Joint Applicants assert that they "agreed . . . to new and enhanced commitments that reflect significant funding of renewable and energy efficiency resources, as well as structural safeguards that will ensure prompt and expeditious benefits and should negate any concern that Exelon is 'less than enthusiastic' about promoting the District's goals with regard to renewable and energy-efficiency resources and sustainability."[798] Those enhanced commitments include, as discussed in the summary of the Nonunanimous Settlement Agreement: CIF funding to develop renewable resources, support energy efficiency initiatives like the SEU, and to support sustainability in the District with a $10.05 million contribution to the Green Building Fund; the development of 10 MW of solar generation in the District; $5 million in funding to creditworthy governmental entities to develop renewable energy projects in the District; as well as commitments to develop microgrid projects in the District, enhance distribution level generation interconnection and to support customer-owned distributed generation in the District; and procurement of 100 MW of wind generation in the PJM

795 NSA, ¶ 130.

796 NSA, ¶ 132.

797 NSA, ¶ 137.

798 Joint Applicants' Br. at 53.

territory.[799] The Joint Applicants assert that the "foregoing programs and initiatives are significant in scale and scope and would not occur, at least in the near term, without the Merger."[800]

133. District Government's Brief provides additional details of the NSA's Commitments.[801] Based on its recitation of Factor 7's Commitments, District Government asserts that the NSA's Commitments under this factor produces direct and tangible benefits to the District and its ratepayers.[802] Additionally, District Government takes issue with the argument of Non-settling Parties regarding the magnitude or degree the NSA offers under Factor No. 7. Specifically, District Government cites to MAREC witness Burcat who focused mainly on Exelon's opposition to extensions of the Federal Production Tax Credit for wind energy. However, District Government asserts that Mr. Burcat admitted that he had not "done any kind of detailed review of the settlement in all other aspects."[803] In fact, District Government notes that Mr. Burcat did not deny that the NSA provided an incremental benefit, but "just believes the benefit should be 'dramatically larger.'"[804] In a similar fashion, District Government cites to the testimony of GRID2.0 witness Martin, who argued that the Nonunanimous Settlement Agreement's Commitment to procure 100 MW of wind energy should not viewed as anything but neutral because it does not specifically commit to support the District's goal of achieving 50% renewable power by 2032.[805] However, District Government also notes that Mr. Martin admitted "Exelon's procurement of new wind generation would have a positive effect on the conservation of natural resources and environmental quality."[806] In light of their testimony, District Government infers that while witnesses Burcat and Martin believe that the NSA confers some incremental benefit, they do not believe the NSA confers enough benefits.[807] Thus, District Government concludes that this is not a basis for rejecting the Nonunanimous Settlement Agreement.[808]

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799 Joint Applicants' Br. at 54-61.

800 Joint Applicants' Br. at 60.

801 District Government's Br. at 17-19.

802 District Government's Br. at 19.

803 District Government's Br. at 21 citing NSA Tr. at 570: 15-20.

804 District Government's Br. at 21 citing NSA Tr. at 566:22-567:4.

805 District Government's Br. at 21 citing GRID2.0 (B) at 9:15-17.

806 District Government's Br. at 22 citing NSA Tr. at 767:16-21.

807 District Government's Br. at 21.

808 District Government's Br. at 21.

134. Similar to District Government, OPC also sets forth the NSA's expanded Commitments under Factor 7.[809] OPC also concludes that the NSA's Commitments under Factor 7 meet that factor's Public Interest Standard.[810]

Summary of Nonsettling Parties' Position
Pertaining to Factor No. 7

135. DC SUN/MDV-SEIA, quoting Order No. 17497, states that "There still is no credible evidence in the record 'that the Joint Applicants will be the enthusiastic supporter and facilitator necessary to lead the District and its local distribution franchise in the future.'"[811] They challenge Witness Dismukes in concluding the "Settlement Agreement has done nothing to transform Exelon's incentives or financial motivations with respect to the role of distributed generation and renewables."[812] Additionally, they conclude "the Joint Applicants have agreed to a few face-saving steps that are unlikely to lead to any real change in the District's ability to conserve natural resources and preserve environmental quality but, if the postulated projects are ever completed at all, will turn a profit for Exelon with no benefit to ratepayers or the District that could not be achieved as well and at lower cost through the competitive market."[813]

136. First, DC SUN/MDV-SEIA challenges the Joint Applicants' commitment concerning support for *Formal Case No. 1130* because "[a]n ingrained corporate mindset does not suddenly embrace principles that, only a few months ago, were deemed to be an existential threat."[814] They assert that Pepco's filings in *Formal Case No. 1130* mirror those of Exelon's in the New York "REV" proceeding due to "Exelon's tepid commitment to the objectives of *Formal Case No. 1130*."[815] Pointing to pre-Merger PHI plans for "Utility 2.0" and "grid to the future," they state, "[u]ntethered from Exelon, the District has the enthusiastic supporter and facilitator necessary to lead the District and its local distribution franchise in the future. An Exelon utility would be a step backward."[816]

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809 OPC's Br. at 69-79.

810 OPC's Br. at 69-79: See also, NCLC Br. at 13-14 and DC Water's Br. at 12-15 wherein each, similar to District Government and OPC, recites and details the benefits of the Non-unanimous Settlement regarding Factor 7. Both NCLC and DC Water conclude that the Non-unanimous Settlement meets the requirements of Public Interest Factor 7.

811 DC SUN/MDV-SEIA's Br. at 49, quoting *Formal Case No. 1119*, Order No. 17947, ¶ 348, rel. August 27, 2015.

812 DC SUN/MDV-SEIA's Br. at 49, citing NSA Tr. at 392:5-11 (Dismukes).

813 DC SUN/MDV-SEIA's Br. at 49.

814 DC SUN/MDV-SEIA's Br. at 49-50.

815 DC SUN/MDV-SEIA's Br. at 50-51.

816 DC SUN/MDV-SEIA's Br. at 51.

137. Second, DC SUN/MDV-SEIA challenges the specific renewable generation programs contained in the Settlement Agreement because they "are unlikely ever to be realized [and] [i]f they are, however, it will only be on favorable terms that suit Exelon, will displace competitive suppliers . . ., and will increase customers' costs for this renewable generation."[817] They state that the commitment "that Exelon will 'develop or assist in the development' of 10 MW of solar generation in the District is ephemeral" because it depends on reaching "a commercially acceptable arrangement" with DC Water for 5 MW.[818] Additionally, they state that "[n]othing in the Settlement Agreement suggest that Exelon will make a 'gift' of this solar facility without receiving 'commercially reasonable' compensation."[819] Beyond the Blue Plains development, DC SUN/MDV-SEIA states that "Exelon's participation in the solar market will do no more than displace other competitors while giving Exelon another opportunity to earn a profit."[820] Regarding the 100 MW of wind, they argue that the "provision gives Exelon a similar opportunity to earn a profit but will likely produce no benefits for the District."[821] After reviewing the various terms of the provision, they conclude "Exelon has not made a firm commitment to purchase anything – much less incremental renewable resources – and if it does, there will be no direct or tangible benefit for the District, and any revenues from this purchase will redound to Exelon, not to ratepayers."[822] Regarding microgrid development, DC SUN/MDV-SEIA assert "nothing precludes Pepco making this same proposal without an Exelon acquisition" because of the commitments dependence on Commission approval of Pepco's cost recovery.[823] Finally, they assert there is no evidence that Exelon's commitment to provide $5 million of capital to credit worthy government entity at market rates is needed or that it would provide a benefit to the District.[824]

138. Third, DC SUN/MDV-SEIA assert the Settlement Agreement's interconnection processes "do not represent material benefit[s] because they are simply the steps every prudent utility should follow" and actions "which Pepco is already implementing or may be required to implement as a result of the Commission's ongoing investigation."[825] They point out that these provisions are not new and "most were lifted verbatim from the Joint Applicants' Delmarva settlement agreement in Delaware."[826] DC SUN/MDV-SEIA assert that "[e]ach of these

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817 DC SUN/MDV-SEIA's Br. at 52.

818 DC SUN/MDV-SEIA's Br. at 52, citing NSA, ¶ 118.

819 DC SUN/MDV-SEIA's Br. at 53.

820 DC SUN/MDV-SEIA's Br. at 54.

821 DC SUN/MDV-SEIA's Br. at 54, citing NSA Tr. at 569:12-17 (Burcat).

822 DC SUN/MDV-SEIA's Br. at 56.

823 DC SUN/MDV-SEIA's Br. at 56, citing NSA, ¶ 128

824 DC SUN/MDV-SEIA's Br. at 57-58.

825 DC SUN/MDV-SEIA's Br. at 58, citing *Formal Case No. 1050*, Order No. 17910, rel. June 15, 2015.

826 DC SUN/MDV-SEIA's Br. at 58-59 (citation omitted).

provisions is touted as a commitment that will provide genuine benefits to customers and the District when they are no more than the performance that the Commission should expect of a regulated utility."[827] They conclude that "[t]he Settlement Agreement does nothing to give Exelon a counterbalancing financial incentive that might offset its otherwise dominant interest in protecting its merchant generation revenues. Without such concrete commitments, the Settlement Agreement's interconnection provisions – while essential for any competent utility – will not synchronize the Joint Applicants' objectives with the District's needs."[828]

139. GRID2.0 assets "the new enticements offered to the Settling Parties do not demonstrate that Exelon understands what is required of a partner to pursue DC goals of 50% renewable energy and 50% increased energy efficiency by 2032, or substantially advance the District's clean energy and sustainability laws."[829] First, GRID2.0 asserts "the settlement's renewable generation and energy efficiency offerings do not relate to the coupling of companies . . . nothing about the merger of PHI and Exelon makes this possible."[830] Second, GRID2.0 asserts the Settlement Agreement provisions indicate that the Joint Applicants "do not exhibit an understanding of the partnership role of the distribution utility in DC. It is not the function of a project developer, but rather a facilitator to advance the policies set in place by CAEA, RPS, CREA and sustainability goals."[831] Specifically, GRID2.0 contends that the development of renewable energy in the District for resale "does not demonstrate DC partnerships to advance CAEA's efficiency goals nor CAEA's goal to expand solar access to a wider constituency . . . [and] is fundamentally different than helping to advance the adoption of CREA through loan guarantees, for example."[832]

140. Third, GRID2.0 asserts that "the projects proposed . . . are either self-serving or inconsequential, and collectively represent little more than window dressing."[833] GRID2.0 explains that the development of 10 MW of solar generation, 5 MW of which would be at DC Water Blue Plains, takes credit for an "eminient[ly] feasible" project and "contort[s] an already healthy market dynamic."[834] GRID2.0 also points out that should the DC Water project fall through and the Joint Applicants only develop the contingency amount of 7 MW of solar generation, "this is no more than token window-dressing insofar as it represents less than 50% of the RPS solar carve-out necessary per year to meet the 2032 RPS goal."[835] GRID2.0

827 DC SUN/MDV-SEIA's Br. at 59.

828 DC SUN/MDV-SEIA's Br. at 61.

829 GRID2.0's Br. at 25.

830 GRID2.0's Br. at 25.

831 GRID2.0's Br. at 25.

832 GRID2.0's Br. at 25-26.

833 GRID2.0's Br. at 26.

834 GRID2.0's Br. at 26.

835 GRID2.0's Br. at 27.

characterizes the commitment to loan $5 million to creditworthy government entities "as simply a profit opportunity for Exelon."[836] GRID2.0 states that "[h]ad the [Joint Applicants] offered $20 million revolving loan fund, or loan guarantees for CREA projects, that would have demonstrated a serious and ongoing commitment to District clean energy policy; and would have extended distributed solar to those who don't already have access."[837] GRID2.0 also asserts that the interconnection commitments in the Settlement Agreement "are already provided for in the future planning of Pepco's grid infrastructure, as is appropriate, prudent, and necessary . . . because [they are] essential for the management of the distribution grid."[838] Concerning microgrid proposals, GRID2.0 asserts that "[r]ather than demonstrating a particular willingness to embrace microgrid strategies, this proffering instead positions Exelon to shape and determine the options explored by DC" as well as "grant[ing] the monopoly distribution utility an unearned, insider role in defining how microgrid strategy will be explored and developed."[839] Concerning the Joint Applicants' support and participation in *Formal Case No. 1130*, GRID2.0 states, "this in no way should be construed to mean anything other than they will express their opinions" and "represent their own interest in [Formal Case No.] 1130."[840] Finally, GRID2.0 asserts the commitment to procure 100 MW of wind energy "is not specific to the District, and could be met without contributing to the DC RPS in any way."[841]

141. GSA asserts that "a microgrid project developed by Pepco and [the District Government] should not be given preferential consideration or rate-making treatment relative to a competing non-[District Government] microgrid project that is as cost-effective and socially beneficial."[842] GSA contends that the Settlement Agreement suggests "preferential consideration and rate-making treatment, since the agreement's multiple microgrid requirement will almost certainly limit Pepco's consideration of competing microgrid projects that may be developed by other parties."[843] GSA states that "[r]ecovery of Pepco's settlement-related microgrid costs is an open issue under the Settlement Agreement" and "it is not unreasonable to expect that nonresidential customers may bear a disproportionate share of Pepco's settlement-related microgrid costs."[844] GSA expresses concerns about "the magnitude of potential microgrid costs" and asserts that, "if the Commission elects to approve the Settlement Agreement, it should impose as a condition of approval a cap on Pepco's total microgrid cost

836 GRID2.0's Br. at 27.

837 GRID2.0's Br. at 27.

838 GRID2.0's Br. at 27-28.

839 GRID2.0's Br. at 28.

840 GRID2.0's Br. at 29.

841 GRID2.0's Br. at 29.

842 GSA's Br. at 18-19.

843 GSA's Br. at 19.

844 GSA's Br. at 19.

recovery under [the] Settlement Agreement."[845] GSA concludes that this "would limit the potential financial risk to which ratepayers could be exposed" in connection with microgrid projects under the Settlement Agreement.[846]

142. MAREC asserts that nothing in the NSA addresses the concern that Exelon's reliance on generation creates an "inherent conflict of interest that might inhibit our local distribution company from moving forward to embrace a cleaner and greener environment."[847] MAREC supports this by citing testimony from Witness Burcat about Exelon's continued opposition to the wind Production Tax Credit ("PTC").[848] Further, MAREC states that, the NSA proposals, "cannot be viewed as a benefit to ratepayers on any level given the paltry size of the commitments and their indefinite nature."[849] MAREC quotes Witness Burcat's testimony, where he explains that "[t]he addition of this 100 MW [of wind] to Exelon's portfolio would not have any significant impact on Exelon's perspective on renewable energy" because it only represents 0.29% of Exelon's total generation or 0.53% of Exelon's nuclear generation.[850] MAREC also points out that such "procurements will take place even without the merger" and identified the District Government's purchase of wind on a long term contract.[851] Finally, MAREC challenges the credibility of Exelon's solar commitments because "5 of the megawatts of solar had already been under development long prior to the merger" and the dependence of the commitment on the parties reaching "commercially reasonable" terms means that "it is not necessarily binding since Exelon can back out if the deal does not serve its interests."[852]

143. WGL Energy contends that Pepco's involvement in at least four "public purpose" microgrid projects, "contemplates that Pepco could again own generation in the District of Columbia."[853] WGL Energy points out that "Pepco was ordered by the Commission to divest all its previously-owned generation in the implementation of the Retail Electric Competition and Consumers Protection Act of 1999 (Order No. 11576, Formal Case No. 945, issued December 30, 1999)."[854] WGL Energy states its belief "that the development of 'commercial' micro-grid generation and micro-gird projects are competitive functions not a utility function, and the public

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845 GSA's Br. at 19.

846 GSA's Br. at 19-20.

847 MAREC's Br. at 5, 10-11.

848 MAREC's Br. at 6-7, citing MAREC (A) at 7:17-18 (Burcat); NSA Tr. at 582:17-583:13.

849 MAREC's Br. at 7.

850 MAREC's Br. at 8, citing MAREC (A) at 8:9-10.

851 MAREC's Br. at 8-9.

852 MAREC's Br. at 9-10.

853 WGL Energy's Br. at 5.

854 WGL Energy's Br. at 5 n 4.

would be best served through the competitive market."[855] WGL Energy states that "[it] understands the electric utility could own and operate local generation to the extent necessary to provide stability and reliability to the distribution grid as a utility function but not as [a] commercial size project serving distributed generation sales to micro-grid customers."[856] WGL Energy urges "that the Commission explicitly defer all micro-grid issues that [the NSA] may raise to Formal Case No.1130 or other proceeding the Commission may institute and state that such issues are not to be preempted or otherwise determined by any Commission approval of the merger."[857] Finally, regarding the NSA's interconnection and net metering procedures, WGL states that "the commitments do not go far enough to support the development of behind-the meter distributed generation and improve competitive energy markets in the District" and concludes these issues "are capable of being addressed and resolved in Formal Case No. 1130 or other proceedings the Commission may institute."[858]

Summary of Settling Parties' Reply Position
Pertaining to Factor No. 7

144. The Joint Applicants assert that in an effort to address the Commission's finding that the effect of the original Merger Application was "neutral" on Factor 7, the NSA "incorporates detailed provisions that direct more than $17 million of the CIF to advance the District's renewable energy, energy efficiency, and sustainability programs as well as numerous other commitments."[859] The Joint Applicants assert that despite these enhanced commitments, the Nonsettling Parties continue to maintain that the effect of the NSA on the District's conservation of natural resources is neutral, even though the Commission already "found that it did not share concerns of these parties that an Exelon-owned Pepco would operate the distribution system in a manner that would discourage distributed generation."[860] The Joint Applicants also reject DC SUN/MDV-SEIA's assertion that the Joint Applicants are not committed to actively participate in *Formal Case No. 1130*.[861] In fact, the Joint Applicants contend that the "record of Formal Case No. 1130 amply demonstrates that Pepco has continued to be an active participant in the matter, presenting at the Commission's kickoff workshop . . . [and attending] the Commission's developer workshop. . . ."[862] The Joint Applicants assert that DC SUN/MDV-SEIA and the other Nonsettling Parties have pointed to no credible evidence to

855 WGL Energy's Br. at 5-6.

856 WGL Energy's Br. at 6.

857 WGL Energy's Br. at 6.

858 WGL Energy's Br. at 7.

859 Joint Applicants' R. Br. at 65.

860 Joint Applicants' R. Br. at 66, referencing *Formal Case No. 1119*, Order No. 17947, ¶ 300, rel. August 27, 2015.

861 Joint Applicants' R. Br. at 67-68.

862 Joint Applicants' R. Br. at 69-70.

support their contention that the Joint Applicants are not or will not fulfill their commitments under the NSA related to Factor 7.

145. The Joint Applicants also assert that the criticisms of NSA enhancements related to solar development, renewables funding, and interconnection processes offered by the Nonsettling Parties are unfounded. The Joint Applicants specifically point to the objections raised related to the Blue Plains solar project stating: "DC Water remains entirely free to pursue the project with another party if it is able to obtain a better financial arrangement."[863] Furthermore, the Joint Applicants assert that the $5 million dollar fund to support government renewable energy projects does provide direct and tangible benefits, despite DC SUN/MDV-SEIA's contention to the contrary.[864] DC Water echoes the Joint Applicants position, stating that its witness Hawkins testified at length about the "now-cancelled 5 MW project" and that there is no evidence that a new agreement will fail due to the "interconnection timing issue."[865] DC Water asserts that it "is confident that it will strike an agreement with Exelon that is commercially acceptable to both parties and that will provide a more desirable project financially for DC Water's ratepayers (the vast majority of which are Pepco customers), than if DC Water had gone to the market yet again in pursuit of its solar goals.[866] The Joint Applicants note that "even GRID2.0's witness, Larry Martin, agreed that the CIF and Exelon's development of solar generation in the District are clear benefits of the [NSA]."[867]

146. OPC also rebuts DC SUN/MDV-SEIA and MAREC's assertions that the NSA commitment to develop 5 MW of solar at Blue Plains should not be considered a benefit because it is "specious" and "not yet fully formed" or binding.[868] OPC contends that absent the NSA there would be no commitment to develop solar in the District. Further, the NSA obligates Exelon to negotiate in good-faith, a commercially acceptable arrangement for the project.[869] OPC asserts that DC SUN/MDV-SEIA's assertion that the terms are not binding is false because "if Exelon does not enter into good-faith negotiations to develop the facility, it will be in violation of the [NSA] and subject to resulting Commission enforcement measures."[870]

147. The Joint Applicants contend that the Nonsettling Parties, while attacking the NSA's commitment to develop 100 MW of wind capacity, fail to rebut record evidence that

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863 Joint Applicants' R. Br. at 72.

864 Joint Applicants' R. Br. at 73.

865 DC Water's R. Br. at 11-12 (internal quotations omitted).

866 DC Water's R. Br. at 13.

867 Joint Applicants' R. Br. at 72, referencing NSA Tr. at 758:14-760:12 (Martin Cross); *see also* NSA Tr. at 566:22-1-3 (Burcat Cross) (conceding that Settlement Agreement provides incremental renewable-related benefits while arguing that benefits should be larger).

868 OPC's R. Br. at 16, citing MAREC Br. at 9 and DC SUN/MDV-SEIA's Br. at 53.

869 OPC's R. Br. at 16.

870 OPC's R. Br. at 17.

demonstrates that the five year procurement period is reasonable and the PTC was renewed through 2019.[871] Furthermore, the Joint Applicants assert that the commitment is guaranteed with minimal bidder participation.[872] Lastly, the Joint Applicants assert that the NSA "microgrid provisions are designed to advance the development of microgrids in the District through an open process, *without* giving any advantage to Pepco (or Exelon) or creating any conflict with potential developments in other Commission proceedings, including FC 1130."[873]

Summary of Nonsettling Parties' Reply Position
Pertaining to Factor No. 7

148. DC SUN/MDV-SEIA, in their reply brief, responds to the Joint Applicants argument that "nothing in the Settlement Agreement obligates DC Water to actually contract with Exelon; if DC Water determines that another solar developer will deliver an even better project for DC Water and the District, DC Water remains entirely free to pursue that opportunity."[874] They assert that "[i]f that is the case, the provision for an Exelon-supplied solar generation facility at DC Water has no value at all, and the merger transaction creates no benefit" and alternatively due to the requirement that Exelon and DC Water "reach an agreement on 'commercially acceptable' terms, that provision is speculative and may not be the basis for a determination that he merger is in the public interest."[875] Finally, DC SUN/MDV-SEIA challenges the Joint Applicants argument that renewable generation projects under the NSA "would not occur, at least in the near term, without the Merger," by pointing out how "speculative" it is given that Congress recently "extended the investment tax credits for wind and solar" which increases the prospects for competitive market projects like DC Water project.[876] They conclude that "because of the Settlement Agreement's anti-competitive features, more projects might be built without the Settlement Agreement than with it."[877]

149. GRID2.0, in its reply brief, responds to the Joint Applicants' statement that "Mr. Martin's specific descriptions of various Factor 7-related commitments under the Settlement Agreement are simply wrong . . . and they provide no basis for the Commission to discount these clear benefits of the Merger."[878] GRID2.0 states, "a close reading of the [Joint Applicants'] supposed 'benefits of the Merger' in factor #7 show that what benefits are created accrue mostly to the [Joint Applicants], and are of uncertain value to District ratepayers."[879] GRID2.0 clarifies

871 Joint Applicants' R. Br. at 74.

872 Joint Applicants' R. Br. at 74-75.

873 Joint Applicants' R. Br. at 75 (emphasis in original).

874 DC SUN/MDV-SEIA's R. Br. at 13, citing Joint Applicants' Br. at 56.

875 DC SUN/MDV-SEIA's R. Br. at 13.

876 DC SUN/MDV-SEIA's R. Br. at 14, citing Joint Applicants' Br. at 60 (citations omitted).

877 DC SUN/MDV-SEIA's R. Br. at 14.

878 GRID2.0's R. Br. at 28, citing Joint Applicants' Br. at 81.

879 GRID2.0's R. Br. at 28.

thatin response to the arguments of the District Government, that "the actual construction of wind and solar power generation would be beneficial in a general way, however, the Settlement, as proposed undercuts the benefit of these offers."[880] First, GRID2.0 points out the solar commitments is commercial and owned by Exelon, and in looking at how it affects DC, the 10 MW "is less than half a year's commitment to solar installation necessary to meet the RPS goal in 2022. This is far short of a commitment to achieve 50% renewable power by 2032, and thus Mr. Martin allows that it is beneficial, but that its tokenism, and does not provide a net benefit when balanced against the risks to the public interest as discussed in this factor."[881] Second, regarding the 100 MW of wind, GRID2.0 states that "[w]hile the idea is generally beneficial, it cannot be counted as a benefit because it is not assured that it will ever count toward DC's RPS or its renewable power sustainability goal."[882]

150. In response to the Joint Applicants' argument "that Exelon would construct a [solar] system [at Blue Plains] 'that has not been able to proceed after a competitive procurement," GRID2.0 contends the project "is all entirely speculative because the details of the supposed project 'are yet to be worked out.'"[883] GRID2.0 states that, as described by DC Water Witness Hawkins "the failing was nothing more than the inability to receive Pepco's commitment to approve the facility in a timely fashion for reasons that were not fully articulated and remain murky."[884] GRID2.0 states that "[w]hat we know is that maybe a commercially acceptable solar project will be built at Blue Plains by Exelon." And that under the NSA "there is simply no verifiable project to hold the [Joint Applicants] accountable for."[885] Beyond Blue Plains, GRID2.0 states, "[t]here can be no doubt that with the recent agreement to install approximately 11 Mw of solar on 50 District buildings the market for solar seems quite robust."[886] GRID2.0 suggests the Joint Applicants could have shown they were "serious about a partnership with the District" through a now "$10M revolving loan fund – below market rates, or permanent loan guarantees for CREA projects" and concludes, "[i]f the Pepco deal were so dear to Exelon on would think they might actively embrace the District's laws to advance and promote distributed generation and ownership of solar power."[887]

151. Additionally, GRID2.0 contends that the Joint Applicants offer of a $5M loan pool to the District Government for renewable energy "at market rates" "is simply wiring a loan for which Exelon will receive remuneration equivalent to any institution that makes loans to

880 GRID2.0's R. Br. at 29.

881 GRID2.0's R. Br. at 29 (emphasis omitted).

882 GRID2.0's R. Br. at 29.

883 GRID2.0's R. Br. at 30, citing Joint Applicants' Br. at 56, NSA Tr. at 623:1-2 (Hawkins).

884 GRID2.0's R. Br. at 30, citing NSA Tr. at 612:10-613:4 (Hawkins).

885 GRID2.0's R. Br. at 30-31.

886 GRID2.0's R. Br. at 31, citing NSA Tr. at 142:13-143.14 (Wells).

887 GRID2.0's R. Br. at 31-32 (emphasis omitted).

governments" provides no benefit.[888] Regarding the interconnections provisions of the NSA, GRID2.0 asserts that they "are 'simply good practices' that Pepco should be doing in any event or should be required to implement by the Commission."[889] GRID2.0 also expresses agreement with WGL Energy's position that the provisions can be addressed and resolved in *Formal Case No. 1130*, and GRID2.0 states that "this is even preferable . . . because it allows for a robust and open exploration of optimal conditions and outcomes; whereas the Settlement presents a set of arrangements optimized to one party principally."[890] Regarding microgrids, GRID2.0 expresses its agreement with WGL Energy on the deferral of all issues to *Formal Case No. 1130* and asserts that the microgrid provisions in the NSA is simply "a means to inappropriately and preemptively influence the development of the microgrid/smartgrid design feature to [the Joint Applicants'] maximum benefit."[891] GRID2.0, like other parties, reiterates its contention that the Joint Applicants' participation in *Formal Case No. 1130* is nothing more "than compliance with the law" despite their protests to the contrary.[892] Finally, GRID2.0 explains that the procurement of 100 MW of wind generation is "an open-ended commitment without a fixed deadline."[893]

152. GSA states that "[it] supports WGL's recommendation that the Commission 'explicitly defer all micro-grid issues that Section 128 may raise to Formal Case No. 1130 or other proceedings the Commission may institute . . .'"[894] GSA identifies that, at the Public Hearing, the District Government "agreed that it would defer to 'whatever [Commission] rules and orders that come out of Formal Case No. 1130.'"[895] However, GSA stated it "remain[s] concerned that WGL's recommendations do not provide adequate financial protection for ratepayers" against Pepco's costs in developing micro-grids under the NSA.[896] GSA also expressed concerns that "WGL's recommendations . . . do not go far enough to ensure that microgrid projects other than those already identified by the DC Government will not be put at a regulatory disadvantage."[897] GSA states that "[i]t continues to be unclear to GSA why the DCG and Pepco should be the parties selecting public-purpose microgrid projects, rather than a Commission-directed process such as Formal Case No. 1130 or other proceedings the Commission may institute."[898] As an alternative to capping Pepco's cost recovery for microgrid

888 GRID2.0's R. Br. at 32-33, citing GRID2.0 (2C) at 6:18-7:5.

889 GRID2.0's R. Br. at 33.

890 GRID2.0's R. Br. at 33-34, citing WGL Energy's Br. at 5-6.

891 GRID2.0's R. Br. at 35, citing WGL Energy's Br. at 5- 6.

892 GRID2.0's R. Br. at 36.

893 GRID2.0's R. Br. at 37.

894 GSA's R. Br. at 8, quoting WGL Energy's Br. at 6.

895 GSA's R. Br. at 7, quoting NSA Tr. at 176:1-17.

896 GSA's R. Br. at 8.

897 GSA's R. Br. at 8.

898 GSA's R. Br. at 8.

projects, GSA suggests that "[a] Commission-directed and controlled process such as Formal Case No. 1130 to select microgrid projects is another way to promote a level and competitive playing field for all potential microgrid projects in the District."[899]

153. MAREC, in response to the Joint Applicants, reiterates Witness Burcat's explanation during the hearing "that he did not intend to suggest that entities like the Office of People's Counsel or the District are unconcerned about renewables, but rather, was referring to those organizations with primary and principal goals of promoting renewables."[900] Additionally, MAREC states that "Mr. Burcat's criticism of the 100 MW [of wind] procurement as not in the public interest is indeed sound, contrary to the [Joint] Applicants' contention" because "the proposed procurement alone, without the other conditions originally endorsed by MAREC was not sufficient particularly given the size of Exelon's nuclear fleet."[901]

899 GSA's R. Br. at 9.

900 MAREC's R. Br. at 4, citing Joint Applicants R. Br. at 84.

901 MAREC's R. Br. at 4.

ATTACHMENT C: NONUNANIMOUS SETTLEMENT AGREEMENT

1. The Nonunanimous Full Settlement Agreement and Stipulation (Joint Applicants' Exhibit NSA-1, pages 1 through 43) submitted by the Joint Applicants; the Office of People's Counsel; the District of Columbia Government; the District of Columbia Water and Sewer Authority; the National Consumer Law Center; National Housing Trust; the National Housing Trust-Enterprise Preservation Corporation; and the Apartment and Office Building Association of Metropolitan Washington, as moved into the record of this case by the Joint Applicants, follows:

JA NSA-1

NONUNANIMOUS FULL SETTLEMENT AGREEMENT AND STIPULATION

WHEREAS, on April 29, 2014, Exelon Corporation ("Exelon") and Pepco Holdings, Inc. ("PHI") executed an Agreement and Plan of Merger, and on July 18, 2014 executed an Amended and Restated Agreement and Plan of Merger (the "Merger");

WHEREAS, on June 18, 2014, Exelon, PHI, Potomac Electric Power Company ("Pepco"), Exelon Energy Delivery Company, LLC ("EEDC") and New Special Purpose Entity, LLC ("SPE") (collectively, the "Joint Applicants") filed an application with the Public Service Commission of the District of Columbia (the "Commission") seeking approval of the proposed merger of Exelon and PHI and the resulting change in control of Pepco pursuant to Sections 34-504 and 34-1001 of the District of Columbia Official Code (the "Application");

WHEREAS, on June 27, 2014, by Order No. 17530, the Commission commenced a proceeding to examine and investigate the Application under Formal Case No. 1119;

WHEREAS, the Office of People's Counsel ("OPC") is a statutory party of right in all utility-related proceedings before the Commission, and by Order No. 17597 the Commission also granted the petitions to intervene in Formal Case No. 1119 of: the Apartment and Office Building Association of Metropolitan Washington ("AOBA"); DC Solar United Neighborhoods ("DC SUN"); the District of Columbia Government ("District Government"); the District of Columbia Water and Sewer Authority ("DC Water"); the United States General Services Administration ("General Services Administration"); GRID 2.0 Working Group ("GRID 2.0"); the Maryland DC Virginia Solar Energy Industries Association ("MDV-SEIA"); the Mid-Atlantic Renewable Energy Coalition ("MAREC"); Monitoring Analytics, Inc., acting as the Independent Market Monitor for PJM ("IMM"); the National Consumer Law Center ("NCLC"); National Housing Trust ("NHT"); the National Housing Trust-Enterprise Preservation Corporation ("NHT-E"); and NRG Energy, Inc. ("NRG") (collectively, the "Parties");

WHEREAS, in assessing the Application, the Commission established a seven factor public interest test in Order No. 17597 for consideration of the effects of the transaction on:

> (1) ratepayers, shareholders, the financial health of the utilities standing alone and as merged, and the economy of the District; (2) utility management and administrative operations; (3) public safety and the safety and reliability of services; (4) risks associated with all of the Joint Applicants' affiliated non-jurisdictional business operations, including nuclear operations; (5) the Commission's ability to regulate the new utility effectively; (6) competition in the local retail, and wholesale markets that impacts the District and District ratepayers; and (7) conservation of natural resources and preservation of environmental quality;[1]

[1] *Formal Case No. 1119*, Order No. 17597 (Aug. 22, 2014), ¶ 55.

WHEREAS, the Parties took substantial discovery in Formal Case No. 1119 from the Joint Applicants, including hundreds of written discovery requests;

WHEREAS, the Joint Applicants and the Parties submitted pre-filed witness testimony, and the live testimony of witnesses before the Commission over the course of eleven days of evidentiary hearings held on March 30 through April 8, 2015 and April 20 through April 22, 2015;

WHEREAS, witnesses presented by the District Government, OPC, and other Parties presented testimony that the as-filed Merger would:

- Lead to higher rates for customers immediately after the Merger;
- Provide no net economic benefit to the District and inadequate benefits to Pepco customers, particularly low-income customers;
- Result in no improved reliability for District customers;
- Guarantee job loss in the District due to the absence of adequate employment protections;
- Eliminate the benefits of a locally-controlled distribution utility; and
- Fail to advance the District's leadership and progress in renewable energy and distributed generation, conservation of natural resources, and preservation of environmental quality;

WHEREAS, in an Opinion and Order dated August 27, 2015 (the "Opinion and Order"), the Commission, based on its review of the Application and the evidence, agreed with many of the arguments presented by the District Government, OPC, DC Water, NCLC, NHT, NHT-E, and AOBA, and concluded that the Merger as filed was not in the public interest "because it does not benefit District ratepayers and the District rather than merely leave them unharmed";[2]

WHEREAS, the Joint Applicants disputed the testimony presented by many of the Parties and have filed an Application for Reconsideration of the Opinion and Order with the Commission;

WHEREAS, the Joint Applicants, the District Government, OPC, DC Water, NCLC, NHT, NHT-E, and AOBA (the "Settling Parties") wish to resolve their disputes and avoid additional lengthy litigation, including a possible appeal of the Opinion and Order by the Joint Applicants;

WHEREAS, the Settling Parties have now agreed to settlement terms and commitments above and beyond those contained in the Application and the commitments previously filed by the Joint Applicants, and believe these terms and commitments establish that the Merger, taken

[2] *Formal Case No. 1119*, Order No. 17947 (Aug. 27, 2015), ¶ 348.

as a whole, is in the public interest as required by D.C. Code § 34-504 and 34-1001, benefits the public, fully satisfies the seven factor test established in Order No. 17597, and addresses in all material respects the deficiencies in the Application identified by the Commission in the Opinion and Order;

WHEREAS, the Commission, pursuant to the District of Columbia Code, Title 34, has plenary authority to review and determine whether the proposed Merger is in the public interest and pursuant to Title 34, § 608 of the District of Columbia Code has the authority any time to "rescind, alter, modify or amend" its orders;

WHEREAS, under 15 D.C.M.R. § 146.1, the Commission may, to the extent required, exercise its discretion to waive any of the provisions of Chapters 1 and 2 of Title 15 of the District of Columbia Municipal Regulations after duly advising the parties of its intention to do so;

NOW, THEREFORE, as of this 6th day of October, 2015, the following terms and conditions are agreed to by the Settling Parties in this Nonunanimous Full Settlement Agreement and Stipulation (the "Settlement Agreement"):

Recommendation of Approval of the Merger

1. Subject to the provisions set forth in this Settlement Agreement, the Settling Parties agree that the statutory criteria for approval of a merger application under D.C. Code Sections 34-504 and 34-1001 have been satisfied. More specifically, the Settling Parties agree that the record in Formal Case No. 1119, coupled with the conditions set forth in this Settlement Agreement, support findings and conclusions by the Commission that the Merger, taken as a whole, is in the public interest and fully satisfies the Commission's seven factor test.[3]

2. Subject to the provisions set forth in this Settlement Agreement, the Settling Parties agree that the Joint Applicants should be authorized to take those actions that are necessary in order for the Merger to be lawfully consummated.

Settlement Terms Addressing Commission Factor No. 1

Customer Investment Fund

3. Exelon will provide a Customer Investment Fund ("CIF") to the District of Columbia with a value totaling $72.8 million. This represents a benefit of $215.94 per distribution customer (based on a customer count of 337,117 as of December 31, 2013). Pepco will not seek recovery of the CIF in utility rates. The Settling Parties agree that the CIF shall be allocated as set forth in Paragraphs 4 through 9 below:

[3] The commitments set forth herein constitute the entirety of the Joint Applicants' commitments. While the commitments are organized in this Settlement Agreement by the seven factors established by the Commission in Order No. 17597, many of the commitments and the associated benefits are applicable to multiple factors.

Residential Customer Base Rate Credit

4. Exelon will provide a Residential Customer Base Rate Credit in the amount of $25.6 million, which will be a credit used to offset residential rate increases approved by the Commission in any Pepco base rate case filed after close of the Merger until the Residential Customer Base Rate Credit is fully utilized. Residential customers shall include customers who participate in Pepco's Residential Aid Discount ("RAD") Program. For purposes of this paragraph, residential customers shall include all Master Metered Apartment units, and $4.3 million of the $25.6 million shall be allocated for application as a credit for the Master Metered Apartments. Pepco will defer recovery of any residential rate increase before March 31, 2019 not offset by the Residential Customer Base Rate Credit through the creation of a regulatory asset equaling the incremental amount of the deferred residential rate increase until March 31, 2019 (the "Incremental Offset"). Pepco will recover the balance of the Incremental Offset regulatory asset, along with a 5% return, automatically in residential rates, without the need for any further Commission approval, over a two-year period commencing April 1, 2019; provided, however, that the recovery period will be extended beyond the two-year period if and as necessary to ensure that the recovery of the balance does not exceed $1 million per year. Only the Incremental Offset amount, and return thereon, if any, will be recovered in rates, and no portion of the Residential Customer Base Rate Credit shall be recovered in utility rates.

Residential Customer Bill Credit

5. Exelon will fund a one-time direct bill credit of $14 million to be distributed among Pepco residential customers (including RAD Program customers). The credit shall be provided within sixty (60) days after the Merger closing based on active accounts as of the billing cycle commencing thirty (30) days after the Merger closing.

Renewable Generation Development

6. Within sixty (60) days after direction by the District Government after Merger close, Exelon will provide funding in the amount of $3.5 million to the Renewable Energy Development Fund established by D.C. Code § 34-1436, or to one or more Community Development Financial Institutions ("CDFIs"), for the expansion of renewable generation in the District.

Support for Energy Efficiency Initiatives

7. Within sixty (60) days after Merger close, Exelon will provide funding in the amount of $3.5 million to the Sustainable Energy Trust Fund established under D.C. Code § 8-1774.10, to further the District's energy efficiency efforts.

Support for Sustainability in the District

8. Within sixty (60) days after Merger close, Exelon will provide funding in the amount of $10.05 million to the District of Columbia Consumer and Regulatory Affairs Green Building Fund established by D.C. Code § 6-1451.07, to promote sustainability in the District.

Assistance for Low- and Limited-Income Customers

9. Funding of $16.15 million will be provided for assistance to low- and limited-income electric customers in the District of Columbia, in addition to maintaining Pepco's low-income customer assistance programs pursuant to current requirements and commitments, as follows:

(a) To help reduce the burden of long-standing energy debt for limited-income and other families, Pepco shall forgive all District of Columbia residential customer accounts receivable over two years old as of the date of the Merger close (which is expected to total approximately $400,000);

(b) Within sixty (60) days after receiving direction from the District Government after the Merger closes, Exelon will provide $9 million for supplemental funding for customers eligible for the Low-Income Home Energy Assistance Program ("LIHEAP").

(c) Within sixty (60) days after receiving direction from the District Government after the Merger closes, Exelon will provide $6.75 million for energy efficiency programs developed or designated by the District in consultation with the National Consumer Law Center and National Housing Trust, targeted toward both affordable multifamily units and master-metered multifamily buildings which include low- and limited-income residents. Such multifamily programs may include funding for CDFIs or other qualified non-profit entities that support and enable targeted energy-efficiency programs.

Corporate Presence in the District of Columbia

10. Within six (6) months after consummation of the Merger, Exelon will colocate Exelon corporate headquarters in the District of Columbia for Exelon Corporate Strategy and Exelon Utilities ("EU"), the organization that oversees the utility businesses of Exelon. Exelon shall do so by moving the headquarters of Exelon Utilities and Exelon Corporate Strategy to the District of Columbia; and by moving the primary offices of Exelon Utilities' Chief Executive Officer, Exelon's Chief Financial Officer and Exelon's Chief Strategy Officer to the District of Columbia. Exelon's Chief Executive Officer will also have an office in the District of Columbia. Exelon will maintain the above in the District for at least ten (10) years, and will also maintain the PHI and Pepco headquarters in the District for at least ten (10) years. "Primary offices" in this paragraph means the business location where these officers are expected to spend the majority of their office hours each year, recognizing that the duties of these senior officers often require extensive business travel, including to other Exelon business locations.

11. All of the members of Exelon's Executive Committee who are in Exelon's Business Service Company – including the chief officer for each of the Legal, Human Resources, Supply, Risk, Communications, Government Affairs, and Information Technology functions – will have offices within the District (as well as elsewhere in the Exelon system).

12. The Exelon Executive Committee will include the District among the locations of its meetings.

13. Exelon will include the District of Columbia among the locations of Exelon's Board of Directors meetings and Exelon's annual shareholder meetings.

Employment in the District of Columbia

14. Exelon will transfer Pepco Energy Services' ("PES") Arlington, Virginia operations and associated employees into the District within six (6) months after Merger close and will retain such operations in the District for at least ten (10) years from the date of the transfer.

15. As part of its commitment to establish the District of Columbia as Exelon's co-Corporate Headquarters and the Headquarters of EU, and including its transfer of PES, by January 1, 2018, Exelon and PHI will relocate 100 positions to the District of Columbia. By February 1, 2018, Exelon will file a report with the Commission confirming relocation of these positions.

16. In addition to honoring its existing collective bargaining agreements, Pepco will use best efforts to hire, within two (2) years after the Merger closing date, at least 102 union workers in the District of Columbia. The incremental cost of these hires (a) will be included in rates only to the extent that the workers have actually been hired, and (b) in any event will not be included in customer rates until after January 1, 2017.

17. For at least five (5) years after Merger close, Exelon shall not permit a net reduction, due to involuntary attrition as a result of the Merger integration process, in the employment levels at Pepco's utility operations in the District. For purposes of this paragraph, "involuntary attrition" includes transfer-or-quit offers where the employee decides to quit or retire rather than being transferred to a work location outside of the District.

18. Pepco shall, on an annual basis for the first five (5) years after Merger close, file a report with the Commission by April 1 regarding employment levels at Pepco. The reports shall detail all job losses – including whether the attrition was involuntary or voluntary – as well as any job gains, delineated using an industry-accepted categorization method such as by SAIC code.

19. Following the Merger closing date until January 1, 2018, Exelon and PHI shall not permit a net reduction greater than 100 positions, due to involuntary attrition as a result of the merger integration process, in the employment levels in the District for Exelon Business Services Company ("EBSC") and PHI Service Company ("PHISCo"). Eligible PHISCo employees involuntarily terminated as a result of the Merger integration process will receive severance benefits, including a cash payment, which can be used for outplacement services, at the discretion of the employee. The 100 positions moved to the District as part of the co-Headquarters/EU Headquarters relocations and the PES relocations will not be among the 100 EBSC and PHISCo positions that may be involuntarily reduced as a result of the Merger integration prior to January 1, 2018. For purposes of this paragraph, "involuntary attrition" includes transfer-or-quit offers where the employee decides to quit or retire rather than being transferred to a work location outside of the District.

20. As a result of the commitments in Paragraphs 14-19, Exelon, PHI and Pepco commit that the Merger's impact will be net jobs-positive for the District through at least January 1, 2018.

Exelon will file a report with the Commission by April 1, 2018, demonstrating satisfaction of this commitment. Exelon, PHI and Pepco also commit that the Merger will not become net job-negative through involuntary attrition as a result of the Merger integration process through December 31, 2019. Exelon shall file a report with the Commission by April 1, 2020, demonstrating satisfaction of this commitment.

21. For two (2) years after Merger close Exelon shall provide current and former Pepco and PHISCo employees compensation and benefits that are at least as favorable in the aggregate as the compensation and benefits provided to those employees immediately before execution of the Merger Agreement.

22. Exelon shall also assume PHI's obligations, or cause PHI to continue to meet its obligations, to Pepco employees and retirees with respect to pension and retiree health benefits.

23. Pepco shall also continue its commitments to supplier and workforce diversity. Pepco shall, on an annual basis for the first three (3) years following consummation of the Merger, file a report with the Commission by April 1 explaining its efforts to promote supplier and workforce diversity.

Workforce Development

24. In order to promote local employment and the local economy in the District, Exelon will contribute $5.2 million to District workforce development programs including those administered by the Department of Employment Services ("DOES"), the University of the District of Columbia system, DC Water for green infrastructure training programs, and programs targeted to underserved communities, as directed by the District Government. These contributions will be in addition to the CIF, will not count toward meeting the annual charitable contribution commitment described in Paragraph 27, and will not be recovered in utility rates.

Economic Benefits Reporting

25. For each of the first five (5) years after Merger approval, Pepco will submit an annual report, or include as part of its existing reporting requirements, data detailing the economic benefits of the Merger for the District. The report will detail the methodology used to calculate the benefits and the specific description of the benefits.

Development of an Arrearage Management Program

26. Pepco will work with the District Government and other interested stakeholders, including the National Consumer Law Center, to develop in good faith a mutually agreeable Arrearage Management Program ("AMP") for LIHEAP or RAD-qualifying customers in arrears, which would include the provision of credits or matching payments for customers who make timely payments on their current bills, with such discussions to be initiated no later than 60 days after the closing of the Merger, and with the understanding that the parties will seek to reach agreement within six (6) months after the closing of the Merger and that any agreement

regarding the adoption of an AMP would be submitted to the Commission for its review and approval.

Charitable Contributions and Community Support

27. Exelon and its subsidiaries shall, during the ten-year period following the Merger, provide at least an annual level of charitable contributions and traditional local community support in the District of Columbia that exceeds the 2014 level of $1.9 million (calculated using a three-year rolling average).

Cost Accounting and Synergy Savings

28. Pepco shall track and account for Merger-related savings, and the cost to achieve those savings, in each of its base rate cases filed within in a three-year period following Merger close. Pepco will flow all synergy savings allocable to the District to customers through the normal ratemaking process.

29. Pepco will amortize the costs to achieve synergy savings ("CTA") over a five-year period of time commencing with the effective date of the first Pepco base rate case filed after Merger close. To the extent CTA are incurred after the first rate case, such CTA will be amortized over a five-year period commencing with the effective date of the first rate case after such costs are incurred. Pepco shall not recover CTA in a Pepco rate case in an amount greater than the synergy savings that Pepco demonstrates for the applicable test year.

30. Exelon shall ensure that merger accounting is rate-neutral for Pepco customers. Exelon shall ensure that any accounting treatments associated with merger accounting do not affect rates charged to Pepco's customers. Pepco will not seek recovery in distribution rates of: (a) the acquisition premium or goodwill associated with the Merger; or (b) the Transaction Costs, as defined below, incurred in connection with the Merger by Exelon, PHI or their subsidiaries. Any acquisition premium or goodwill shall be excluded from the ratemaking capital structure and Exelon will not record any of the impacts of purchase accounting at the PHI utility companies, thereby maintaining historical cost accounting at each of the PHI utility companies. Transaction Costs are defined as: (a) consultant, investment banker, regulatory fees (including the $2 million in regulatory support costs noted in Paragraph 101 of the Opinion and Order) and legal fees associated with the Merger Agreement and regulatory approvals, (b) purchase price, change-in-control payments, retention payments, executive severance payments and the accelerated portion of supplemental executive retirement plan ("SERP") payments, (c) costs associated with the shareholder meetings and proxy statement related to Merger approval by the PHI shareholders, and (d) costs associated with the imposition of conditions or approval of settlement terms in other state jurisdictions.

31. Exelon also commits that the Staff of the Public Service Commission of the District of Columbia ("Commission Staff") and OPC shall have reasonable access upon demand to the accounting records of Exelon's affiliates that are the basis for charges to Pepco pursuant to the Exelon General Services Agreement ("GSA") to determine the reasonableness of allocation

factors used by Exelon to assign those costs and the amounts subject to allocation and direct charges.

32. The Joint Applicants agree that PHI and its subsidiaries, including Pepco, will execute the GSA filed as Exhibit No. 7 with the Application. The Joint Applicants agree to allocate costs to Pepco in a manner that either substantially complies with the current PHI GSA, or results in a lower allocation of costs in the aggregate. The Joint Applicants agree to demonstrate this in the first District of Columbia base rate case filing occurring after the closing of the Merger as compared to Pepco's allocated costs pre-Merger.

33. In each of Pepco's base rate cases filed within five (5) years after closing of the Merger, Pepco shall provide in addition to the information otherwise required to be provided with Pepco's 21-day compliance filing, the following information with respect to charges to Pepco from Exelon, EBSC or any other affiliate that supplies service to Pepco after the Merger:

(a) The Cost Allocation Manual(s) in effect and used to allocate costs to Pepco and Pepco's District of Columbia operations:

(b) The service agreement(s) in effect between Pepco and Exelon, EBSC, and any other affiliate that charges costs to Pepco;

(c) An exhibit separately stating the costs that are directly assigned or allocated to Pepco and Pepco's District of Columbia operations for the test year and for each year post-Merger, by entity charging the costs, including:

(i) Total amount of direct charged costs and total amount of allocated costs to Pepco and to Pepco's District of Columbia operation;

(ii) Total amount of direct charged costs and total amount of allocated costs included in Pepco's rate base and in Pepco's rate base for the District of Columbia; and

(iii) Total amount of direct charged costs and total amount of allocated costs included in Pepco's operating and maintenance expenses and in Pepco's operating and maintenance expenses for the District of Columbia.

34. The Joint Applicants agree they will work together with the Commission Staff and OPC to determine the format of an annual filing of EBSC costs charged to Pepco that will be substantially in the same format as Pepco's current, annual filing. The filing will be made by June 30th of each subsequent year and will include a copy of EBSC's FERC Form 60 as well as detail on the actual EBSC allocations and costs charged to Pepco during the prior year. Pepco shall also make an ongoing commitment to explain any change to allocation factors to Pepco that are more than five percentage points versus the previous year. Pepco shall also make available on request any prior months' variance reports regarding EBSC's billings to Pepco. The Joint Applicants shall provide a side-by-side comparison by function of pre- and post-merger shared-services cost allocations to Pepco for five pre- and post-merger years. The comparisons shall be filed on an annual basis as a separate letter, and the first letter shall be filed no later than the end

of the second quarter in 2017. This filing will include additional analysis detailing the reasons for any changes, if any, in allocated costs for Pepco on a year over year basis. In the event that Pepco files a post-merger base rate case prior to receipt of the first side-by-side comparison in 2017, then Pepco shall include as part of its rate increase application a side-by-side comparison, by function, of pre- and post-merger shared-services cost allocations available through the test year, to the extent applicable. To the extent any other Exelon subsidiary charges costs to Pepco, the same information identified above will be provided with respect to such subsidiary.

35. Controls and procedures will be designed to provide reasonable assurance that PHI's subsidiaries will not bear costs associated with the business activities of any other Exelon affiliate (other than PHI or a PHI subsidiary) other than the reasonable costs of providing materials and services to PHI (or a PHI subsidiary). PHI and its subsidiaries will maintain reasonable pricing protocols for determining transfer prices for transactions involving non-power goods and services between PHI and its subsidiaries and Exelon and any Exelon affiliate consistent with the requirements of the Commission and FERC.

36. EBSC costs shall be directly charged whenever practicable and possible. In its next District of Columbia base rate proceeding, Pepco shall file testimony addressing EBSC charges and the bases for such charges. Pepco's testimony shall also explain any changes in allocation procedures that have been adopted since its last base rate proceeding.

37. Pepco shall also provide copies to Commission Staff and OPC of the portions of any external audit reports performed for EBSC pertaining directly or indirectly to Exelon's determinations of direct billings and cost allocations to Pepco. Such material shall be provided no later than 30 days after the final report is completed.

38. Pepco shall promptly notify the Commission, Commission Staff and OPC when it has received notice that the SEC, the FERC, or the state regulatory commission in any state in which an affiliate utility company operates has initiated an audit of EBSC or PHISCo. Pepco shall provide copies of the portions of all audit reports highlighting the findings and recommendations and ordered changes to the GSA pertaining directly or indirectly to EBSC or PHISCo's determinations of direct billings and cost allocations to its affiliate utility companies, as well as any sections addressing Pepco. If after review of such material, Commission Staff or OPC reasonably determines that review of the remainder of such audit report is warranted, Pepco shall make the complete report available for review in Pepco's District of Columbia office or at the Commission, subject to appropriate conditions to protect confidential or proprietary information.

39. Pepco shall promptly notify the Commission, Commission Staff and OPC when it has received notice that the SEC, the FERC, or any state regulatory commission in which an affiliate utility company operates has issued a specific decision affecting EBSC or PHISCo, including a rulemaking, pertaining directly or indirectly to EBSC or PHISCO's determinations of direct billings and cost allocations to its affiliate utility companies.

40. For assets that EBSC acquires for use by Pepco, the same capitalization/expense policies shall apply to those assets that are applicable under the Commission's standards for assets acquired directly by Pepco.

41. For depreciable assets that EBSC acquires for use by Pepco, the depreciation expense charged to Pepco by EBSC shall reflect the same depreciable lives and methods required by the Commission for similar assets acquired directly by Pepco. In no event shall depreciable lives on plant acquired for Pepco by EBSC be shorter than those approved by the Commission for similar property acquired directly by Pepco.

42. For assets that EBSC acquires for use by Pepco, the rate of return shall be based on Pepco's authorized rate of return, unless EBSC is able to finance the asset at a lower cost than Pepco. In such cases, the lower cost financing will be reflected in EBSC's billings to Pepco, and the resulting benefit will be passed on to ratepayers.

43. The Commission and OPC will be sent copies of any and all "60-day" letters, and supporting documentation, sent by EBSC to the FERC concerning a proposed change in the GSA.

44. Pepco shall file petitions for approval of any modifications to the GSA, including changes in methods or formulae used to allocate costs, with the Commission at the same time it makes a filing with the FERC. Commission Staff and OPC shall have the right to review the GSA and related cost allocations in Pepco's future base rate cases in the District of Columbia, in conjunction with future competitive service audits, in response to any changes in the Commission's affiliate relations standards, and for other good cause shown.

45. With the exception of Corporate Governance Services, Pepco shall have the right to opt out of any EBSC service that it determines can be procured elsewhere in a more economical manner, is not of a desired quality level, or for any other valid reason, including Commission Orders, after having failed to first resolve the issue with EBSC.

46. Pepco agrees that the Commission, under its authority pursuant to 15 D.C.M.R. §§ 3900-3999, may review the allocation of costs in sufficient detail to analyze their reasonableness, the type and scope of services that EBSC provides to Pepco and the basis for inclusion of new participants in EBSC's allocation formula. Pepco and EBSC shall record costs and cost allocation procedures in sufficient detail to allow the Commission to analyze, evaluate, and render a determination as to their reasonableness for ratemaking purposes.

47. The new "SolutionOne" SAP billing system platform will be in use for its expected useful life. If, for any reason, the use of the "SolutionOne" SAP billing system platform is terminated before the end of this expected useful life, ratepayers shall not be responsible for any un-depreciated costs or lease payment obligations remaining after the date upon which use is terminated.

Future Rate Design in Pepco-DC Base Rate Cases

48. Nothing in the Settlement Agreement shall be construed as a change to the Commission's stated goal to move "in a deliberate and reasonable fashion over a series of Pepco rate cases to put an end to negative class RORs" as set forth in Formal Case 1087, Order No. 16930, ¶ 329 and affirmed in Formal Case 1103, Order No. 17424, ¶¶ 437 and 438.

Tax Indemnity and Other Tax Commitments

49. Exelon shall indemnify Pepco for any liability for federal or local income taxes (including interest and penalties related thereto, if any) in excess of Pepco's standalone liability for federal or local income taxes (including interest and penalties related thereto, if any) for any period during which Pepco is included in a consolidated group with Exelon. Under applicable law, following the Merger, Pepco will have no liability for federal or local income taxes (including interest and penalties related thereto, if any) of Exelon or any other subsidiary of Exelon for any period during which Pepco was not included in a consolidated group with Exelon (i.e. any period before the Merger). Exelon will take no action to cause Pepco to have any liability for federal or local income taxes (including interest and penalties related thereto, if any) of Exelon or any other subsidiary of Exelon for any period during which Pepco was not included in a consolidated group with Exelon for purposes of filing federal or local income tax returns. If Pepco is included in a consolidated group with Exelon for purposes of filing federal or local income tax returns and the rating for Exelon's senior unsecured long term public debt securities, without third-party credit enhancement, is downgraded to a rating that indicates "substantial risks" (below B3 by Moody's or B- by S&P or Fitch) by at least two of the three major credit rating agencies, the Commission may, after investigation and hearing, require Exelon to deliver to Pepco collateral of the type and amount determined by the Commission pursuant to the hearing to secure Exelon's tax indemnity to Pepco if the Commission finds that such collateral is necessary for the protection of Pepco's interests under Exelon's tax indemnity. Pepco shall be required to surrender or release such collateral security to Exelon (1) promptly after the rating of Exelon's senior unsecured long term public debt, without third-party credit enhancement, is restored to a rating above "substantial risks" (at or above B3 by Moody's or B- by S&P or Fitch) by at least two of the three major credit rating agencies, or (2) if and when Pepco is determined by a body of competent jurisdiction no longer to be liable for federal or local income taxes as a member of a consolidated group with Exelon, other than Pepco's standalone liability for federal or local income taxes (including interest and penalties related thereto, if any), or (3) upon a finding by the Commission, after investigation and hearing upon application of Exelon, that the conditions under which such collateral security was originally required no longer exist.

50. Exelon and Pepco shall ensure that the Merger will not affect the accounting and ratemaking treatments of accumulated deferred income taxes ("ADIT"), and accumulated deferred investment tax credits ("ADITC"), such that ADIT and ADITC will continue to be used as rate base deductions and amortization credits in future Pepco rate cases.

Settlement Terms Addressing Commission Factor No. 2

Pepco's Management Structure

51. To address concerns about whether the needs of the District of Columbia will be properly raised and addressed within Exelon, Exelon commits that, following the Merger closing date: (a) Pepco will have a CEO, who may also be the CEO of PHI; (b) the Pepco CEO (David Velazquez) will be a member of the Exelon Executive Committee, will meet with Exelon's CEO at least monthly, and will have direct and frequent access to the Exelon CEO and other members of Exelon's senior management team; (c) the Pepco CEO will attend meetings of Exelon's Board

of Directors, (d) Mr. Velazquez will be extended an employment contract for no less than two (2) years; (e) the Pepco CEO will reside in the District; and (f) any officer succeeding Mr. Velazquez as Pepco CEO will be knowledgeable about Pepco's District of Columbia operations. In addition, PHI will continue to have a Chief Financial Officer, Treasurer and a number of other officers, and Pepco will maintain appropriate levels of senior management at its District of Columbia headquarters.

52. The Regional President of Pepco will have the same capacities and similar responsibilities as she has today. Consistent with those capacities and responsibilities, the Regional President of Pepco will have input into decisions related to rate case filings and positions on regulatory and legislative issues that affect Pepco. The Pepco CEO will have the authority to make rate case decisions, including the revenue requirement that will be requested in Pepco's rate cases in the District of Columbia, taking into consideration the input of the Regional President of Pepco.

53. EU's CEO, the PHI CEO, the Pepco CEO, and the Pepco Regional President will annually offer to appear publicly before the Commission to review and provide documentation concerning Pepco's reliability, safety, and customer service performance and to answer questions about Pepco's performance in the District of Columbia. This review shall not be construed as approval of any particular Pepco program or expenditure by the Commission.

54. The Commission and stakeholders in the District of Columbia will enjoy the same access to Pepco and PHI personnel after the Merger. In addition, the Commission's Chair or designee shall have the opportunity annually to present and provide a report to the full PHI board as to the performance of Pepco in the District and other issues of importance to the Commission.

Board Structure

55. PHI will have a board of directors consisting of 7 or more people. A majority of the PHI board (4 directors on a board of 7) will be "independent" (as defined by New York Stock Exchange rules). At least one director shall be selected from each of the service territories of PHI's utility subsidiaries, and at least one of the independent directors will be a resident of the District. The CEO of Pepco will be one of the PHI directors.

Settlement Terms Addressing Commission Factor No. 3

Service Reliability and Quality

56. Pepco commits to improve system reliability in its District of Columbia service territory and specifically shall remain: (a) obligated to achieve the currently effective annual Electric Quality of Service Standards ("EQSS") performance levels from 2016 to 2020 pursuant to 15 D.C.M.R. §§ 3600 *et seq.*, and (b) subject to forfeiture pursuant to 15 D.C.M.R. § 3603.13 in the event that it fails to do so. In addition, Pepco is committed to improving system reliability beyond the current DC statutory requirements, and therefore Pepco also commits to achieve the annual reliability performance levels for the District of Columbia set forth in Table 1 as measured using the Commission's current methodology for calculating SAIFI and SAIDI, with exclusion of major service outages:

Table 1

Annual Commitment		2016	2017	2018	2019	2020
EQSS	SAIFI	1.02	0.98	0.95	0.92	0.89
	SAIDI	120	109	99	89	81
Merger Commitment	SAIFI	0.91	0.82	0.74	0.66	0.58
	SAIDI	118	107	97	87	79

Failure to meet these reliability performance levels will result in the compliance measures described herein. If Pepco fails to meet the reliability-performance levels set out above as a Merger Commitment in any of the years 2016-2020, Pepco will file a corrective action plan by April 1 of the following year including an explanation as to why the target was missed, and the Commission can subject the utility to forfeitures as provided under the current EQSS regulations. In addition, if either of the SAIFI or SAIDI reliability-performance levels set out above as Merger Commitments are not met in any of the years 2018, 2019 or 2020, then Pepco will automatically make a non-compliance payment by April 1 of the following year to the DC Sustainable Energy Trust Fund established under D.C. Code § 8-1774.10, as set forth in Table 2 below, which payment will not be recoverable in Pepco customer rates:

Table 2

	2018	2019	2020
Non-Compliance Payment	$2.0M	$3.0M	$6.0M

Pepco shall achieve the reliability standards set out as Merger Commitments in Table 1 above without exceeding certain annual reliability-related capital and O&M spending levels. Specifically, Table 3 sets forth Pepco's 2016 – 2019 Capital Budget and Forecast for the District of Columbia as contained in the Annual Consolidated Report filed with the Commission in 2015 for the identified categories of capital spending. Pepco commits to meeting the reliability standards set forth in Table 1 without exceeding the budget for the category of "Budget Commitment – Total Reliability net of DCPLUG and Emergency Restoration", absent changes in law or regulations requiring increases in reliability-related spending. Table 4 sets forth Pepco's projected reliability-related operations and maintenance ("O&M") budget as contained in the Annual Consolidated Report filed with the Commission in 2015, and Pepco commits to not exceed those amounts.

57. Pepco acknowledges that the reliability-related capital costs and O&M expenses set forth below must go through the regular ratemaking processes of the Commission before they can be recovered in customers' rates, and Pepco's commitments here do not imply an endorsement by the Settling Parties or any party or the Commission that such costs or expenses are just and reasonable.

Table 3

Reliability Driven Capital Expenditure 2016-2020					
					*Projected
	2016	2017	2018	2019	2020
Total Distribution Reliability Expenditures	$200,979,715	$173,369,005	$219,211,894	$227,914,850	$234,752,296
DCPLUG Expenditures	$ 92,746,708	$ 62,509,008	$ 75,000,000	$ 55,000,000	$ 56,650,000
Distribution Reliability net of DCPLUG Expenditures	$108,233,007	$110,859,997	$144,211,894	$172,914,850	$178,102,296
Distribution Emergency Restoration Expenditures	$ 14,589,928	$ 14,498,357	$ 14,383,143	$ 14,383,143	$ 14,814,637
Budget Commitment -Total reliability net of DCPLUG and Emergency Restoration	$ 93,643,079	$ 96,361,640	$129,828,751	$158,531,707	$163,287,658

* 2020 budget equal to 2019 budget escalated by three percent to reflect inflation.

Table 4

	Pepco O&M Reliability Budget 2016-2020					
		2016	2017	2018	2019	2020
S21200	Distribution System Planned Scheduled Maint DC and MD	$20,271,059	$20,879,190	$21,505,566	$22,150,733	$22,815,255
S21260	Distribution Forestry (Tree Trimming) District of Columbia	$2,394,309	$2,466,138	$2,540,123	$2,616,326	$2,694,816
	2016 - 2020 budget forecast based on 2015 budget increased by 3% per year					
	Planned scheduled maint actual costs are allocated to DC and MD					

58. The consequences for failure to meet the reliability-related budget targets for the "Budget Commitment – Total Reliability net of DCPLUG and Emergency Restoration" and for reliability-related O&M set forth above are:

(a) If Pepco exceeds the reliability-related capital budgets set out above in any of the years, then Pepco shall automatically place into escrow a non-compliance payment in the amount of $63,000 for every $1 million spent in excess of the reliability-related capital budget target for the year.

(b) All non-compliance payments shall be placed in escrow no later than April 1 of the subsequent calendar year during which the capital budget level was exceeded.

(c) By June 30, 2021, Pepco shall file with the Commission a comprehensive report on the reliability performance and prudence of actual spending levels for 2016-2020 to allow the Commission to determine whether the escrowed funds should be directed to the DC Sustainable Energy Trust Fund established under D.C. Code § 8-1774.10 or returned to the Company.

(d) No later than six (6) months after the close of the Merger, Pepco shall file with the Commission a report which includes a forecast of planned reliability-related work for that calendar year, including at a minimum the general project descriptions, locations, and associated reliability-related capital and O&M spending. The project description should denote the intended improvements to outage duration, frequency, or some other reliability metric. The filed forecast shall serve as a baseline comparison for the June 30, 2021 Company report on actual reliability-related expenditures, but shall not prompt Commission approval, denial, or other action in advance of the report. By April 1 of each subsequent calendar year through 2019, Pepco shall file the same information as part of its Annual Consolidated Report. Receipt of the forecast shall not constitute an endorsement by the Commission of the prudence of the expenditures.

(e) If Pepco asserts that "unplanned" reliability-related work contributed to excess capital spending, then the report should include a narrative as to the prudence of the capital expenditures. Specifically, the report should describe any incremental SAIDI or SAIFI improvement attributable to the "unplanned" work and an assessment of whether the completion of such work during the period resulted in any cost savings, compared to delay of such work to a later date.

(f) If Pepco fails to meet the reliability-related O&M budget levels set out above in any of the years, then Pepco shall automatically forgo seeking recovery in customer rates of any amounts spent in excess of the reliability-related O&M budget level for the year.

(g) Pepco's proposed reliability-related capital spending levels are set forth above, and actual costs shall be reviewed by the Commission in full base rate cases. Pepco shall not file for a tracker or surcharge mechanism to recover such reliability-related capital and O&M expenditures incurred for the period 2016-2020 (other than for the District of Columbia Power Line Undergrounding ("DC PLUG")).

59. Pepco will not seek reevaluation of the current EQSS reliability performance standards for the years 2016 through 2020 pursuant to 15 D.C.M.R. § 3603.

60. Pepco will continue to meet with Staff and OPC as part of the Productivity Improvement Working Group ("PIWG") to discuss reliability and system productivity measures and will continue to file information concerning its capital budget, including but not limited to its budget for reliability-related investments, as part of its Annual Consolidated Report. On an annual basis as part of a PIWG meeting, Pepco will specifically review the reliability performance, actual spend and projected budget for reliability-related capital as filed in the Annual Consolidated Report. Such review with Commission Staff and OPC shall not be construed as pre-approval of the particular capital expenditures and parties shall remain free to contest capital expenditures in future base rate cases.

Root Cause Analysis to Improve Customer Satisfaction

61. Pepco shall conduct a root-cause analysis of, and develop an action plan to improve, Pepco's customer-satisfaction scores in the District of Columbia. Pepco will file this analysis and action plan with the Commission no later than six (6) months after Merger closing and will also present this information to the PIWG.

Safety

62. Exelon is committed to having all of its utilities achieve and maintain first quartile performance in safety. Consistent therewith, Pepco will file annual reports on its safety performance and safety initiatives with the Commission as part of its Annual Consolidated Report, and will also present this information to the PIWG. Pepco's reporting will include a report by Exelon on its existing safety and cybersecurity policies.

Settlement Terms Addressing Commission Factor No. 4

Ring Fencing Protections

63. Pepco will maintain its separate existence as a separate corporate subsidiary and its separate franchises, obligations and privileges.

64. Pepco will not incur or assume any debt, including the provision of guarantees or collateral support, related to this Merger or any future Exelon acquisition.

65. Pepco shall maintain separate debt so that Pepco will not be responsible for the debts of affiliate companies and preferred stock, if any, and Pepco shall maintain its own corporate and debt credit rating, as well as ratings for long-term debt and preferred stock.

66. Exelon has established the SPE, a limited liability company, as a special purpose entity for the purpose of holding 100% of the equity interest in PHI.

67. The SPE will be a direct subsidiary of EEDC.

68. EEDC will transfer 100% of the equity interest in PHI to the SPE as an absolute conveyance with the intention of removing PHI and its utility subsidiaries from the bankruptcy estate of Exelon and EEDC.

69. The SPE will have no employees and no operational functions other than those related to holding the equity interests in PHI.

70. The SPE shall maintain adequate capital in light of its contemplated business purpose, transactions and liabilities; provided, however, the foregoing shall not require the owners to make any additional capital contributions.

71. The SPE will have four directors appointed by EEDC. One of the four SPE directors will be an independent director, who will be an employee of an administration company in the business of protecting SPEs, and must meet the other independence criteria set forth in the SPE governing documents. One other director will be appointed from among the officers or employees of PHI or a PHI subsidiary. The other two SPE directors may be officers or employees of Exelon or its affiliates, including PHI and its subsidiaries.

72. The SPE will issue a non-economic interest in the SPE (a "Golden Share") to an administration company in the business of protecting SPEs and separate from the administration company retained to provide the person to serve as the independent director for the SPE. The holder of the SPE's Golden Share will have a voting right on matters specified in the SPE governing documents, as described below.

73. A voluntary petition for bankruptcy by the SPE will require the affirmative consent of the holder of the Golden Share and the unanimous vote of the SPE board of directors (including the independent director). A voluntary petition for bankruptcy by PHI will require the affirmative consent of the holder of the Golden Share, the unanimous vote of the SPE board of directors (including the independent director), and the unanimous vote of the PHI board of directors. A voluntary petition for bankruptcy for any of PHI's subsidiaries will require the unanimous vote of the PHI board of directors (including its independent directors) and the unanimous vote of the board of directors of the relevant PHI subsidiary.

74. The SPE will maintain arms-length relationships with each of its affiliates and observe all necessary, appropriate and customary company formalities in its dealings with its affiliates. PHI and PHI's subsidiaries will maintain arms-length relationships with Exelon and its affiliates, including the SPE.

75. PHI's CEO and other senior officers who directly report to the CEO will hold no positions with Exelon or Exelon affiliates other than PHI and PHI's subsidiaries.

76. At all times, the SPE will hold itself out as an entity separate from its affiliates, will conduct business in its own name through its duly authorized directors and officers and comply with all organizational formalities to maintain its separate existence and shall use commercially reasonable efforts to correct any known misunderstanding regarding its separate identity. PHI and its subsidiaries will hold themselves out as separate entities from Exelon and the SPE,

conduct business in their own names (provided that PHI and each of PHI's utility subsidiaries may identify itself as an affiliate of Exelon on a basis consistent with other Exelon utility subsidiaries).

77. The SPE shall maintain its own separate books, records, bank accounts and financial statements reflecting its separate assets and liabilities. PHI and each of PHI's subsidiaries will maintain separate books, accounts and financial statements reflecting its separate assets and liabilities.

78. The SPE shall comply with Generally Accepted Accounting Principles in all material respects (subject, in the case of unaudited financial statements, to the absence of footnotes and to normal year-end audit adjustments) in all financial statements and reports required of it and issue such financial statements and reports separately from any financial statements or reports prepared for its affiliates; provided that such financial statements or reports may be consolidated with those of its affiliates if the separate existence of the SPE and its assets and liabilities are clearly noted therein.

79. The SPE shall account for and manage all of its liabilities separately from any other entity, and pay its own liabilities only out of its own funds.

80. The SPE shall neither guarantee nor become obligated for the debts of any other entity nor hold out its credit or assets as being available to satisfy the obligations of any other entity.

81. Each PHI utility will maintain separate debt and preferred stock, if any, so that none will be responsible for the debts or preferred stock of affiliated companies, and each will maintain its own corporate and debt credit rating as well as ratings for long-term debt and preferred stock, if any. PHI and its subsidiaries will use reasonable efforts to maintain separate credit ratings for their publicly traded securities. PHI will not issue additional long-term debt securities. In particular, PHI shall not rollover or otherwise refinance its currently outstanding long-term debt by issuing new long-term debt. PHI and its utility subsidiaries will use reasonable efforts and prudence to preserve investment grade credit ratings.

82. PHI will not assume liability for the debts of Exelon, the SPE, or any other affiliate of Exelon other than a PHI subsidiary. The PHI subsidiaries will not assume liability for the debts of Exelon, PHI, the SPE, the other PHI subsidiaries, or any other affiliate of Exelon. The SPE shall not acquire, assume or guarantee obligations of any affiliate. PHI will not guarantee the debt or credit instruments of Exelon, the SPE or any other Exelon affiliate other than a PHI subsidiary. The PHI utilities will not guarantee the debt or credit instruments of Exelon, PHI or any other Exelon affiliate including the SPE.

83. The SPE shall not pledge its assets for the benefit of any other entity or make loans to, or purchase or hold any indebtedness of, any other entity. The PHI utilities will not pledge or use as collateral, or grant a mortgage or other lien on any asset or cash flow, or otherwise pledge such assets or cash flow as security for repayment of the principal or interest of any loan or credit instrument of, or otherwise for the benefit of, Exelon, PHI or any other Exelon affiliate including the SPE.

84. Pepco will not include in any of its debt or credit agreements cross-default provisions between Pepco securities and the securities of Exelon or any other Exelon affiliate. Pepco will not include in its debt or credit agreements any financial covenants or rating- agency triggers related to Exelon or any other Exelon affiliate.

85. The SPE will not commingle its funds or other assets with the funds or other assets of any other entity and shall not maintain any funds or other assets in such a manner that it will be costly or difficult to segregate, ascertain or identify its individual funds or other assets from those of its owners or any other person.

86. PHI and its subsidiaries will maintain in its own name all assets and other interests in property used or useful in their respective business and will not transfer its ownership interest in any such property to Exelon or an Exelon affiliate (other than a PHI subsidiary) without requisite approval of the Commission and any approval required under the Federal Power Act; provided that the foregoing shall not limit the ability of PHI to transfer to Exelon or Exelon affiliates any business or operations of PHI or PHI subsidiaries that are not regulated by state or local utility regulatory authorities.

87. The SPE shall ensure that its funds will not be transferred to its owners or affiliates except with the consent and authority of the SPE board of directors.

88. The SPE shall ensure that title to all real and personal property acquired by it is acquired, held and conveyed in its name.

89. No entities other than PHI and its subsidiaries, including the PHI utilities and PHISCo, will participate in the PHI utilities' money pool. The PHI utilities will not participate in any money pool operated by Exelon, and there will be no commingling of the PHI money pool funds with Exelon. Any deposits into or loans through the PHI money pool by PHI utilities shall be on terms no less favorable than the depositor or lender could obtain through a short-term investment of similar funds with independent parties. Any borrowings from the PHI money pool by a PHI utility shall be on terms no less favorable and cost effective than the PHI utility could obtain through short-term borrowings from (including sales of commercial paper to) independent parties. Exelon will give notice to the Commission within seven (7) days in the event that any participant in the PHI money pool is rated below investment grade by any of the three major credit rating agencies. The documents and instruments creating the PHI money pool (and any modification thereof) will be subject to approval by the Commission.

90. Immediately following the Merger close, PHISCo will remain as a subsidiary of PHI and will continue to perform functions and to maintain related assets currently involved in providing services exclusively to the PHI utilities. Other functions that are currently provided by PHISCo, including those that are provided to PHI utilities and to other current PHI subsidiaries, will be transferred to EBSC or another Exelon affiliate in a phased transition over a period of time following the Merger closing. To address concerns that there would be two service companies under the proposed Merger, Exelon will file a plan within six (6) months after the Merger's close for Commission approval to integrate PHISCo within EBSC and other entities. The plan to integrate PHISCo with EBSC shall not include any net transfer of PHISCo employees located in

the District of Columbia pre-Merger to any location outside of the District, subject to the provisions of Paragraph 19.

91. PHI subsidiaries, other than PHISCo and the PHI utilities, that are currently engaged in operations that are not regulated by a state or local utility regulatory authority will be transferred to Exelon or an Exelon affiliate; provided that: (a) PHI may retain ownership of Conectiv LLC ("Conectiv") as a holding company for ACE and Delmarva Power; (b) Conectiv may transfer its 50% ownership interest in Millennium Account Services LLC to PHI; and (c) Conectiv or subsidiaries of Conectiv may retain ownership of real estate and other assets that are used in whole or in part in the business of the PHI utilities. PHI may elect to hold the stock of Delmarva and ACE directly, and cease the use of Conectiv as a holding company.

92. The SPE will maintain a separate name from and will not use the trademarks, service marks or other intellectual property of Exelon, PHI, or PHI's subsidiaries. PHI and its utility subsidiaries will each maintain a separate name from and will not use the trademarks, service marks or other similar intellectual property of Exelon or its other affiliates, except that PHI and each of PHI's utility subsidiaries may identify itself as an affiliate of Exelon on a basis consistent with other Exelon utility subsidiaries.

93. Any amendment to the organizational documents of the SPE that would remove or alter the voting or other ring-fencing requirements described above will require the unanimous vote of the board of directors of the SPE, including the independent director, and the affirmative consent of the holder of the Golden Share.

94. Within 180 days following completion of the Merger, Exelon will obtain a legal opinion in customary form and substance and reasonably satisfactory to the Commission, to the effect that, as a result of the ring-fencing measures it has implemented for PHI and its subsidiaries, a bankruptcy court would not consolidate the assets and liabilities of the SPE with those of Exelon or EEDC, in the event of an Exelon or EEDC bankruptcy, or the assets and liabilities of PHI or its subsidiaries with those of either the SPE, Exelon or EEDC, in the event of a bankruptcy of the SPE, Exelon or EEDC. In the event that such opinion cannot be obtained, Exelon will promptly implement such measures as are required to obtain such opinion.

95. Pepco shall maintain a rolling 12-month average annual equity ratio of at least 48%. Pepco will not pay dividends to its parent company if, immediately after the dividend payment, its common equity level would fall below 48%, as equity levels are calculated under the ratemaking precedents of the Commission.

96. Pepco shall not make any distribution to its parent if Pepco's corporate issuer or senior unsecured credit rating, or its equivalent, is rated by any of the three major credit rating agencies below investment grade.

97. Pepco shall file with the Commission, within five (5) business days after the payment of a dividend, the calculations that it used to determine the equity level at the time the board of directors considered payment of the dividend and the calculations to demonstrate that the

common equity ratio immediately after the dividend payment did not fall below 48%, as equity levels are calculated under the ratemaking precedents of the Commission.

98. Pepco will file with the Commission an annual compliance report with respect to the ring-fencing and other requirements.

99. At the time of Merger close and every year thereafter, Pepco shall provide the Commission with a certificate from an officer of Exelon certifying that: (a) Exelon shall maintain the requisite legal separateness in the corporate reorganization structure; (b) the organization structure serves important business purposes for Exelon; and (c) Exelon acknowledges that subsequent creditors of PHI and Pepco may rely upon the separateness of PHI and Pepco and would be significantly harmed in the event separateness is not maintained and a substantive consolidation of PHI or Pepco with Exelon were to occur.

100. Exelon shall not, without prior Commission approval, alter the corporate character of EEDC to become a functioning corporate entity providing common support services for PHI utilities.

101. Exelon shall not engage in an internal corporate reorganization relating to the SPE, PHI or Pepco, or EEDC for which Commission approval is not required without ninety (90) days prior written notification to the Commission. Such notification shall include: (a) an opinion of reputable bankruptcy counsel that the reorganization does not materially impact the effectiveness of PHI's existing ring-fencing; or (b) a letter from reputable bankruptcy counsel describing what changes to the ring-fencing would be required to ensure PHI is at least as effectively ring-fenced following the reorganization and a letter from Exelon committing to obtain a new non-consolidation option following the reorganization and to take any further steps necessary to obtain such an opinion. Exelon will not object if the Commission elects to open an investigation into the matter if the Commission deems it appropriate. Notwithstanding the above language in this paragraph, the Joint Applicants shall not materially alter the ring-fencing plan described in this Settlement Agreement without first obtaining approval in a written order from the Commission.

102. None of the cost of establishing, operating or modifying the SPE will be borne by Pepco or its distribution customers. The cost of obtaining the opinion of legal counsel referred to above (or any future opinion) will not be borne by Pepco or its distribution customers.

103. Upon the effective date of the proposed Merger, PHI and its utility subsidiaries will adopt delegations of authority setting forth the authorizations of officers of PHI and its utility subsidiaries to act on behalf of PHI and its utility subsidiaries without further authorization from Exelon. The proposed delegations of authority for PHI and its utility subsidiaries are set forth on Table 5. The delegations of authority for Pepco adopted by PHI will not be amended to reduce authorization levels of Pepco officers without prior notice to the Commission.

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Table 5

Transaction Type (Note 1)	Approval Threshold							
	Exelon Board of Directors	Exelon Board Committees	Exelon President & CEO	Chief Executive Officer, Exelon Utilities	PHI or Utility Board of Directors	President & CEO, PHI or Utility	Sr. Vice Pres., CFO and Treas., PHI or Utility	Sr. Vice Pres., PHI or Utility
Capital and Related O&M	> $200M	≤ $200M	≤ $100M	≤ $50M	> $50M	≤ $25M	≤ $15M	
Mergers, Acquisitions, New Business or Ventures	> $100M		≤ $100M		> $5M	≤ $5M		
Sale of Receivables					> $10M	≤ $10M	≤ $1M	≤ $1M
Sale/Divestiture of Other Assets (including Real Estate)			≤ $100M		> $10M	≤ $10M	≤ $1M	≤ $1M
Customer Account Credits/Bill Adjustments/Charge Offs					> $10M	≤ $10M	≤ $1M	≤ $1M
Natural Gas Contracts (Note 2)	> $200M	≤ $200M			> $100M	≤ $100M		
Other Electric Energy Procurement Contracts (Note 2)	> $100M	≤ $100M		≤ $50M	> $50M	≤ $25M		
Purchases of Services and Non-Capital Materials	> $200M	≤ $200M	≤ $150M	≤ $50M	> $50M	≤ $25M	≤ $5M	≤ $5M
Legal, Regulatory or Income Tax Settlements (Note 3)	> $200M	≤ $200M	≤ $100M	≤ $50M	> $50M	≤ $25M	≤ $5M	≤ $5M
Issue/Redeem Debt	> $300M	≤ $300M	≤ $200M		ALL			
Financial Guarantees	> $150M	≤ $150M	≤ $100M	≤ $50M	≤ $100M			
Employee Benefit Plans and Arrangements			≤ $50M		ALL			
Contribution to Benefit Plans (Note 4)	> $200M	≤ $200M			ALL			
Negotiated Utility Rate Contracts			≤ $75M	≤ $50M	> $50M	≤ $25M	≤ $5M	≤ $5M
Other Contractual Commitments, Leases and Instruments	> $200M	≤ $200M	≤ $100M	≤ $50M	> $50M	≤ $25M	≤ $15M	≤ $5M
Corporate Contributions and Philanthropy	≥ $1M		≤ $1M	< $1M	≥ $1M	< $50K	≤ $10K	≤ $10K

Note 1: Delegations are to the respective officers and agents of Pepco Holdings LLC and its utility subsidiaries (collectively, "PHI"). Authority delegated to officers and agents to approve transactions is limited to transactions having subject matters related to their areas of responsibility. Additional written delegations to officers or employees below the CEO level may be made by the authorized officers generally or for specific purposes.
Note 2: Approval by the PHI or Exelon board of directors is not required for energy procurement contracts that are a direct result of an auction process or procurement plan approved by a state or local utility regulatory commission.
Note 3: The Pepco CEO has the authority to make rate case decisions including the revenue requirement that will be requested in Pepco's rate cases in the District of Columbia, taking into consideration the input of the Regional President of Pepco.
Note 4: Approval is not required for legally required periodic contributions to the pension and employee benefit plans.

104. Exelon shall conduct an analysis of its operational and financial risk to determine the adequacy of existing ring fencing measures. Exelon shall file this analysis with the Commission no later than the end of the third quarter in 2017.

105. The Joint Applicants agree to implement the ring-fencing and corporate governance measures set out in Paragraphs 51-55 and 63-102 within 180 days after Merger closing for the purpose of providing protections to customers. Not earlier than five (5) years after the closing of the Merger, the Joint Applicants shall have the right to review these ring-fencing provisions and to make a filing with the Commission requesting authority to modify or terminate those provisions. Notwithstanding such right, Joint Applicants agree not to proceed with any such modification or termination without first obtaining Commission approval in a written order. In addition, the Joint Applicants recognize that the Commission at any time may initiate its own review or investigation regarding ring-fencing measures (or upon petition by any party) and order modifications that it deems to be appropriate, in the public interest and the best interest of Pepco customers.

Commission Approval of PHI Non-Utility Operations

106. After the Merger, PHI will not initiate or invest in new non-utility operations without first obtaining Commission approval in a written order.

Severance of the Exelon - Pepco Relationship

107. Notwithstanding any other powers that the Commission currently possesses under existing, applicable law, the Joint Applicants agree that the Commission may, after investigation and a hearing, order Exelon to divest its interest in Pepco on terms adequate to protect the interests of utility investors (including Exelon investors) and consumers and the public, if the Commission finds that: (a) one or more of the divestiture conditions described below has occurred, (b) that as a consequence Pepco has failed to meet its obligations as a public utility, and (c) that divestiture is necessary to allow Pepco to meet its obligations and to protect the interests of its customers in a financially healthy utility and in the continued receipt of reasonably adequate utility service at just and reasonable rates. Any divestiture order made pursuant to this commitment shall be applicable to Pepco only to the extent consistent with the application of the criteria in the preceding clauses (a) – (c) and shall be limited to the assets and operations of Pepco in the District of Columbia. The divestiture conditions covered by this commitment are: (i) a nuclear accident or incident at an Exelon nuclear power facility involving the release or threatened release of radioactive isotopes, resulting in (x) a material disruption of operations at such facility and material loss to Exelon that is not covered by insurance or indemnity or (y) the permanent closure of a material number of Exelon nuclear plants as a result of such accident or incident; (ii) a bankruptcy filing by Exelon or any of its subsidiaries constituting 10% or more of Exelon's consolidated assets at the end of its most recent fiscal quarter, or 10% or more of Exelon's consolidated net income for the twelve (12) months ended at the close of its most recent fiscal quarter; (iii) the rating for Exelon's senior unsecured long-term public debt securities, without third-party credit enhancement, are downgraded to a rating that indicates "substantial risks" (i.e., below B3 by Moody's or B- by S&P or Fitch) by at least two of the three major credit rating agencies, and such condition continues for more than six (6) months; or (iv) Exelon and/or PHI have committed a pattern of material violations of lawful

Commission orders or regulations, or applicable provisions of the D.C. Code and, despite notice and opportunity to cure such violations, have continued to commit the violations.

Settlement Terms Addressing Commission Factor No. 5

Consent to the Commission's Jurisdiction

108. Pepco will continue to operate within the District of Columbia as an electric public utility subject to the continuing jurisdiction of the Commission pursuant to the District of Columbia Public Utilities Act, and without any reduction in the Commission's existing oversight or authority over Pepco.

Prompt Access to Pepco's Books and Records

109. Pepco will maintain separate books and records. Upon request by the Commission or the OPC, the Joint Applicants agree to provide access on demand in the District of Columbia to Pepco's original books and records as maintained in the ordinary course of business in accordance with D.C. Code § 34-904. The Joint Applicants also agree to notify the Commission of any material change in the administration, management or condition of Pepco DC's books and records within ten (10) days after the event.

Exelon Utility Performance Comparison Reporting

110. Exelon and PHI shall file annual across-the-fence reports comparing the performance and status of the utilities within the Exelon family. The reports shall address substantive areas as directed by the Commission and may include subject areas such as reliability, customer service, safety, rate and regulatory matters, interconnections, energy-efficiency and demand-response programs, and deployment of new technologies, including smart meters and smart grid, automated technologies, microgrids and utility-of-the future initiatives. The annual reports shall only be filed under separate cover in the event that the across-the-fence comparison is not duplicative of analysis provided in a separate report required by the Commission.

Consent to Jurisdiction

111. Exelon submits to the jurisdiction of the Commission for: (1) all matters related to the Merger and the enforcement of the conditions set forth herein to the extent relevant to operations of Pepco; and (2) matters relating to affiliate transactions between Pepco and Exelon or its affiliates to the extent relevant to operations of Pepco in the District of Columbia. Exelon shall also cause each of its affiliates that supplies goods or services to Pepco to submit to the jurisdiction of the Commission for matters relating to the provision or costs of such goods or services to Pepco.

Settlement Terms Addressing Commission Factor No. 6

Adherence to Code of Conduct and Provision of Standard Offer Service

112. The Joint Applicants agree to comply with the statutes and regulations applicable to Pepco regarding affiliate transactions, including without limitation 15 D.C.M.R. §§ 3900-3999.

113. Pepco will continue to provide SOS ("Standard Offer Service") to its customers in the District consistent with the District of Columbia Code and Affiliate Code of Conduct. The Settling Parties acknowledge that Exelon intends to continue to participate in the SOS auction process following the Merger.

Separate Employees to Engage in Advocacy

114. Exelon shall utilize separate legal and government-affairs personnel, support personnel, and separate law firms and consultants to advocate before the Commission, on behalf of Exelon Generation and/or Constellation Energy Resources, LLC, on the one hand, and Pepco and any Affiliated Transmission Company, on the other.

Advocacy for Energy Efficiency and Demand Response

115. Exelon has supported and will continue to support energy efficiency and demand response playing a role in the energy resource mix, with demand response services being an important tool for customers to manage energy costs. While questions remain about jurisdiction over demand response, the appropriate compensation mechanisms, and how to incorporate demand response in existing markets, Exelon is of the view that any sensible energy policy should reflect the value of all resources, including demand response. To that end, PHI and Pepco will maintain and promote energy efficiency and demand response programs consistent with the direction and approval of the Commission, District and federal law. Exelon will continue to advocate that demand response should be reflected in markets that serve the District of Columbia.

Competition Protections

116. Exelon agrees to the following competition protections. For purposes of this condition, "Affiliated Transmission Companies" are Pepco (in the District of Columbia and Maryland), Delmarva Power, Atlantic City Electric ("ACE"), PECO Energy Company ("PECO"), Baltimore Gas and Electric Company ("BGE") and Commonwealth Edison Company ("ComEd"), and any transmission owning entity that is in the future affiliated with Exelon and is a member of PJM Interconnection, LLC ("PJM"). "Exelon" refers to Exelon and its affiliates and subsidiaries.

(a) Exelon commits that its Affiliated Transmission Companies shall each identify, with PJM's concurrence, at least three independent third-party engineering consulting firms that are qualified to conduct Facilities Studies under the PJM generator interconnection process. Any generation interconnection applicant may propose other independent third- party engineering consulting firms to Exelon for its consideration with respect to adding them to this list of qualified firms. Exelon shall make a decision with respect to whether any proposed independent third-party engineering consulting firm can be included on such list within thirty days after a request to include any such proposed firm. Once approved, Exelon shall not be permitted to remove a third-party engineering consulting firm from such list unless and until it can demonstrate good cause as determined by the PJM Market Monitor or the FERC.

(b) Any generation developer that desires to interconnect to the transmission system of one of Exelon's Affiliated Transmission Companies may, in the developer's discretion and at the developer's expense, direct PJM to utilize one of the identified firms to conduct the Facilities

Study for its generation project for upgrades and interconnection facilities required on the Affiliated Transmission Company's facilities.

(c) For all interconnection studies performed by a listed independent third-party engineering consulting firm, the Exelon Affiliated Transmission Company shall cooperate with and, as requested, provide information to PJM and the independent engineering consulting firm as needed to complete all work within the normal scope and timing of the PJM interconnection process. The Affiliated Transmission Company shall provide to PJM the cost estimate for any facilities for which it has construction responsibility assigned in the PJM Interconnection Services Agreement. If a dispute arises in connection with the Study performed by the independent engineering consulting firm or the Affiliated Transmission Company, then the generation developer or the Affiliated Transmission Company may pursue resolution of the dispute through the process laid out in the PJM Tariff. Affiliates of Exelon that are pursuing the development of generation within the service territories of one of the Affiliated Transmission Companies shall, at their own expense, direct PJM to utilize one of the independent engineering consulting firms to conduct the Facilities Study for upgrades and interconnection facilities required on the Affiliated Transmission Company's facilities and the Feasibility Study and System Impact Study shall be performed by PJM. Nothing in this paragraph precludes an applicant, as part of its project team, from contracting with other contractors to assist it in the PJM interconnection process at its sole discretion.

(d) Exelon commits that Pepco and Pepco Maryland, ACE, Delmarva Power, PECO, and BGE shall remain members of PJM until January 1, 2025; provided, however, that if there are significant changes to the structure of the industry or to PJM, including markets administered by PJM, during that period that have material impacts on Pepco and Pepco Maryland, ACE, Delmarva Power, PECO or BGE, then any of those companies may file with FERC to withdraw from PJM.

(e) Exelon agrees that the PJM Market Monitor may review its Demand Resource bids in PJM energy, reserves, and capacity markets.

117. In order to facilitate consumer advocacy in PJM, Exelon shall make a one-time contribution of $350,000 to fund the expenses of the Consumer Advocates of PJM States Inc. ("CAPS"). This contribution shall be a single contribution made with respect to all of the PHI utilities and service territories and shall not be specific to Pepco. The cost of the contribution shall not be recovered in the rates of any Exelon utility. Exelon shall agree to support reasonable proposals to have PJM members fund CAPS.

Settlement Terms Addressing Commission Factor No. 7

Development of Solar Generation

118. In addition to funding renewable generation as provided in Paragraph 6, Exelon shall, by December 31, 2018, develop or assist in the development of 10 MW of solar generation in the District of Columbia and will enter into good-faith negotiations of a commercially acceptable arrangement for 5 MW of such generation to be constructed at the DC Water Blue Plains Advanced Wastewater Treatment Plant ("Blue Plains") and operational by December 31,

2018. In the event a commercially acceptable arrangement cannot be negotiated for 5 MW of ground-mounted solar generation at Blue Plains, the 10 MW of solar generation to be developed under this paragraph shall be reduced to 7 MW. Exelon shall sell the output of solar generation constructed in fulfillment of this commitment in the market, and shall not seek to recover the costs of this commercial solar development through Pepco District of Columbia distribution or transmission rates. The construction and installation shall be competitively bid with a preference for qualified local businesses. Exelon shall retain the solar renewable energy certificates and tax attributes for the solar projects; however, the SRECs created by such projects may not be used for District of Columbia Renewable Portfolio Standard compliance prior to December 31, 2018. SRECs created in years prior to 2019 may be banked and then used in 2019 or thereafter, to the extent permitted by law. Additionally, Exelon may apply for, and the Commission may grant, a waiver from prohibition of SREC usage prior to 2019, upon finding of good cause by the Commission.

119. Exelon shall provide $5 million of capital to creditworthy governmental entities at market rates for the development of renewable energy projects in the District of Columbia.

120. Pepco shall coordinate with the District Government to facilitate planning for and interconnection of renewable generation to be developed by the District Government for governmental buildings or public facilities.

Enhancement to the Interconnection Process and Support for Customer-Owned Behind-the-Meter Distributed Generation

121. Pepco shall reflect in its distribution system planning actual and anticipated renewable generation penetration. Beginning not later than six months after closing of the Merger, Pepco's distribution system planning will include an analysis of the long term effects/benefits of the addition of behind-the-meter distributed generation attached to the distribution system within the District of Columbia, including any impacts on reliability and efficiency. Pepco will also work with PJM to evaluate any impacts that the growth in these resources may have on the stability of the distribution system in the District of Columbia.

122. Exelon, PHI and Pepco shall provide a transparent, efficient, and clear process for review and approval of interconnection of proposed energy-generation projects to the Pepco distribution system in the District of Columbia including the following:

(a) Service territory maps of circuits, within ninety (90) days after Merger closing, will be uploaded to the Pepco website, to be updated at least quarterly, that have the following information included: the area where circuits are restricted, and to what size systems the restrictions apply. Three different maps will depict different restriction sizes. Each map will have the circuit areas on the particular map highlighted in a different color. One map will show circuits that are restricted to all sizes. One map will show circuits restricted to systems less than 50kW. One map will show circuits restricted to less than 250kW. The maps will also serve to identify areas that are approaching their operating limits and could become restricted to larger systems in future years. As of September 1, 2015, there were no "restricted" secondary network circuits, but if they occur, a new map or method of depiction may be necessary. A second network circuit may become restricted if the active and pending generation would cause utility

system operating violations. The categories of size restrictions depicted on the circuit maps will be made available for information purposes only, and will neither yield automatic cost allocation assumptions for resulting upgrades nor supplant the determination of the level of utility review afforded to the interconnection request.

(b) When a utility receives an interconnection request for a behind-the-meter renewable system, there are several factors, or criteria limits, to consider when it determines if upgrades are required at a specific circuit. Pepco shall:

(i) Provide a report to the Commission within ninety (90) days after Merger closing that provides its criteria limits for distributed energy resources that apply for connection to its distribution. This report shall include supporting studies and information that substantiate those limits. The report will describe and discuss how Pepco considers the generation profile of renewable energy relative to load, as well as discuss the approaches utilized in other jurisdictions that have addressed the issue of the impact of on-site renewable resources on the local grid and circuits. Pepco shall make itself available for discussions with the stakeholders on the report and to demonstrate the modeling tools used by Pepco to perform its analysis to accommodate additional distributed energy resources.

(ii) PHI is currently working with the United States Department of Energy in research designed to show how Voltage Regulation strategy, phase balancing, optimal capacitor placement, smart inverters and energy storage may impact Hosting Capacity. PHI will share this research with stakeholders upon completion of the project.

(iii) PHI has provided data to National Renewable Energy Laboratory ("NREL") as part of its in-depth work to review utility interconnection criteria. A report is expected to be issued by the end of 2015. PHI will evaluate its criteria with the criteria outlined in the NREL report to identify any improvements that may be made including treatment of behind-the-meter storage equipment. PHI shall share information, discuss approaches, evaluating interconnection criteria, working with NREL, and providing an opportunity for stakeholders to comment on PHI's proposed recommendations on interconnection criteria prior to public release. PHI will collaborate with stakeholders in good faith but nothing in this Settlement Agreement obligates PHI to accept or be bound by the recommendations of the stakeholders. This collaborative effort will be completed within one (1) year following the approval of the Merger.

(iv) PHI will consider the hourly load shape and the hourly generation of interconnected small generators as a factor to determine the hosting capacity for any given location of a circuit. PHI's hosting capacity determinations shall adopt the minimum daytime load ("MDL") supplemental review screen standards established in FERC Order 792 as well as findings from the collaborative research referenced above that allow for interconnection of distributed generation systems without additional need for study or upgrade investments (e.g., "Fast Track Capacity") as long as aggregate installed nameplate capacity on the circuit, including the proposed system, would not exceed 100% of MDL on the circuit and the proposed system passes a voltage and power quality screen and a safety and reliability screen.

(v) PHI shall provide electronic data interface ("EDI") access to historical electric usage through Pepco's Green Button capability to its customers and to customer representatives (distributed energy companies and others who a customer designates to receive such information).

123. Pepco shall maintain within ninety (90) days after Merger closing an accepted inverter equipment list for small generation projects where once an inverter is reviewed and found to be acceptable for use, it is deemed acceptable for future development. This list shall be easily accessible on the Pepco websites and updated quarterly. Pepco will review its policy for requiring an equipment list to be submitted for panels and switchgear with each application and post on its website any changes in policy.

124. Exelon is committed to maintaining Pepco's existing interconnection and net metering programs.

125. In addition to the current requirements of 15 D.C.M.R. Chapter 40 District of Columbia Small Generator Interconnection Rules, Pepco will adhere to the following requirements with respect to Level 1 interconnections:

(a) Pepco will issue a permission to operate to the interconnection customer, in the form of an email, within twenty (20) business days after the interconnection customer satisfies the requirements of 15 D.C.M.R. § 4004.4 (signed Interconnection Agreement, certificate of completion and the inspection certificate).

(b) In its annual report to be filed with the Commission pursuant to 15 D.C.M.R. § 4008.5, Pepco shall also report its performance with respect to issuance of permission to operate set forth in clause (a) above. If more than 10% of the permissions to operate requested are not issued by Pepco within twenty (20) business days after satisfaction of the applicable requirements, the annual report will also include specific remedial action to be taken by Pepco to resolve the shortfall and the time frame to perform the remedial action.

(c) Within 180 days after the closing of the Merger, Pepco shall file a request for proposed rulemaking to add the requirement with respect to issuance of permission to operate set forth in clause (a) above to 15 D.C.M.R. Chapter 40, and to make adherence to the deadlines contained in 15 D.C.M.R. Chapter 40 at not less than a 90% compliance level subject to the EQSS standards in 15 D.C.M.R. Chapter 36.

(d) Within 180 days after closing of the Merger, Pepco shall file a request with the Commission to eliminate the $100 fee currently charged for a Level 1 interconnection application.

126. In behind-the-meter applications where the battery never exports while in parallel with the grid and both the battery and the solar system share one inverter, no additional metering or monitoring equipment shall be required for a solar plus storage facility than would be required for a solar facility without storage technology. Pepco, through a stakeholder process, shall undertake appropriate further study of the issues regarding the coupling of solar and storage. As a result of such studies, stakeholders may recommend changes to this protocol to the Commission. Pepco, in consultation with Commission Staff and interested stakeholders, shall

determine an appropriate target completion date for this review within one (1) year after Merger closing.

127. Pepco shall develop an enhanced communication plan to proactively promote installation of behind-the-meter solar generation in its District service territory. Included in the plan will be measures to utilize the Pepco web site and bill inserts to provide public service information useful to businesses and individuals that may be interested in installing solar generation as well as informing customers as to the capabilities of Pepco's net energy metering program and advanced metering infrastructure. Pepco will share its enhanced communication plan with the Settling Parties and other interested parties for their comment within six (6) months after Merger closing. Within six months after Merger closing, Pepco will implement an automated online interconnection application process. This process will enable customers to securely complete interconnection applications online and to track online the status of the customer application, including resolution of customer inquiries, issues and complaints.

Development of Microgrid Facilities

128. Pepco will coordinate with the District to interconnect and develop at least four (4) microgrids. The objectives of Pepco and the District with respect to these microgrids will include the following: (i) to encourage on-site generation, including generation developed by competitive suppliers, (ii) to promote electrical interconnection that enhances the reliability of the electric grid, (iii) to continue universal service and consumer protections for all District electric consumers, and (iv) to identify projects that are cost effective and that leverage private investment, as well as public funding. Pepco will, within eighteen (18) months after Merger close, file with the Commission a proposal for at least four (4) pilot public-purpose microgrid projects within the District to provide enhanced energy services during emergency events. The filing shall include a proposal for funding and recovery of Pepco's costs in connection with the projects through Pepco District of Columbia regulated retail utility rates and a description of any federal or District contribution to the development of the microgrid projects. The filing shall also address alternatives for allocation of the costs of the microgrid projects to customers, including payment by all Pepco customers or payment by a smaller subset of customers who benefit from the project. Pepco shall coordinate with the District on the selection of the pilot locations, the development of the proposal and the implementation of the projects. The proposal for the microgrid projects will include, but is not limited to: planning, design and construction of physical facilities and control technologies, the development of on-site distributed generation sources, such as combined heat and power, solar photovoltaic and fuel cells, and operation and maintenance activities. The development and implementation of the microgrid pilot projects shall be competitively sourced. Pepco shall install the microgrids within five (5) years after receiving approval from the Commission of the microgrid projects and of Pepco's cost recovery. Nothing in this Settlement Agreement precludes OPC or any party from reviewing and, if deemed necessary in OPC's or each such party's individual sole discretion, from challenging any such filing or proposed funding, recovery, or allocation of microgrid costs, or restricts in any way the arguments that can be made in any such challenge. No later than twelve (12) months after the Merger close, Pepco shall file with the Commission an interim progress report on the legal, financial and practical issues associated with the planning and development of the microgrid project proposals. The report should address at a minimum different ownership and operational structures for these microgrid projects to be located in the District of Columbia,

including a legal assessment of the ability of an investor-owned utility to own either or both of the distribution and generation assets integrated into a microgrid project. Nothing in this paragraph shall obligate the District to use Pepco for the development, financing, ownership or construction of the microgrids referred to herein, and the District is free to pursue microgrid development independent of Pepco, subject to applicable law, including interconnection rules and procedures.

Support of Formal Case No. 1130 (Investigation into Modernizing the Energy Delivery Structure for Increased Sustainability)

129. The Commission, pursuant to Order No. 17912 issued on June 12, 2015, opened Formal Case No. 1130. Pepco, as the electric distribution utility in the District of Columbia, is an active participant in this proceeding and is subject to assessment to fund costs of the Commission and the OPC incurred in this proceeding in accordance with the laws of the District of Columbia. Exelon commits that it will support, and cause Pepco to continue to support, the Commission's objectives in opening this proceeding to identify technologies and policies that can modernize the District of Columbia energy delivery system for increased sustainability and to make the District of Columbia energy delivery system more reliable, efficient, cost-effective and interactive.

Procurement of 100 Megawatts of Wind Energy Under Long-Term Contracts

130. Exelon or its non-utility subsidiaries (for purposes of this section, "Exelon") will, within five (5) years after the Merger close, conduct one or more requests for proposals or other competitive process (each an "RFP") to solicit offers to purchase a total of 100 megawatts ("MW") of renewable energy, capacity and ancillary services and all environmental attributes associated therewith, including but not limited to renewable energy credits (collectively, the "Product"), from one or more new or existing wind-generation facilities located within the PJM territory with an anticipated Product delivery date beginning approximately three years following the applicable RFP date. Each RFP and associated documents will include the following provisions:

(a) Bidders will be asked to provide credit assurances satisfactory to Exelon in its reasonable discretion as needed to assist Exelon in evaluating each bidder's existing and continued creditworthiness.

(b) Exelon will evaluate each proposal received in response to each RFP and will select one or more bidders based on the proposal(s) that Exelon determines, in its sole discretion, represent(s) the best value to Exelon. In the event that Exelon receives fewer than three qualifying proposals in connection with an RFP, Exelon reserves the right to make no award in connection therewith and to conduct a replacement RFP at a future date.

(c) Exelon will contract for the purchase of Product through one or more power purchase agreement(s) to be negotiated between Exelon and the winning bidder(s) (the "PPA(s)"). The PPA(s) will have delivery term lengths of ten (10) years and contain commercially reasonable, standard terms and conditions for the purchase and sale of the Product and, for purchases from new wind projects, development milestones and related standard

provisions. Product purchased by Exelon pursuant to the PPA(s) may be resold, retired, used for compliance purposes, remarketed, or otherwise used as deemed appropriate by Exelon in its sole discretion.

(d) The commitments made in this paragraph are intended to promote wind within PJM to facilitate meeting state renewable portfolio standard requirements, including each of the service territories in which PHI utilities provide service. This commitment shall be a single commitment made with respect to all the PHI utilities and service territories. Exelon and its non-utility subsidiaries will use commercially reasonable efforts to utilize the environmental attributes purchased through procurements under this paragraph to satisfy any obligations of Exelon and its non-utility subsidiaries under the District of Columbia's renewable portfolio standard.

(e) The costs of implementing this paragraph (including the costs of all procurements and all costs under each PPA) shall not be recovered through Pepco District of Columbia distribution or transmission rates.

Additional Provisions

131. Each of the Settling Parties agrees to use its best efforts to ensure that this Settlement Agreement shall be submitted as soon as possible for approval to the Commission. Exelon and PHI intend to file a Motion of Joint Applicants to Reopen the Record in Formal Case No. 1119 to Allow for Consideration of Nonunanimous Full Settlement Agreement and Stipulation, or for Other Alternative Relief (the "Motion of Joint Applicants to Reopen"). The other Settling Parties shall promptly file a statement either supporting or consenting to a Commission determination to grant the Motion of Joint Applicants to Reopen. If the Commission does not accept the Motion of Joint Applicants to Reopen, the Joint Applicants will file a new application consistent with terms and conditions of this Settlement Agreement (the "New Application"). The other Settling Parties shall promptly file a statement in support of the New Application.

132. Each of the Settling Parties agrees to cooperate in good faith and take all reasonable action to effectuate the terms of this Settlement Agreement.

133. The Settling Parties agree that this Settlement Agreement represents the entirety of the agreement among the Settling Parties concerning the subject matter hereof and does not limit or otherwise affect rights and obligations any Settling Party may have under any other agreement.

134. The Settling Parties agree to support approval of the Merger upon the terms set forth in this Settlement Agreement in any proceedings before the Commission regarding approval of the Merger and/or implementation of commitments or conditions, which shall include filing testimony in support of the Settlement Agreement and the Merger. The Settling Parties further agree to defend this Settlement Agreement in the event of opposition to approval of the Merger from non-signatory parties before the Commission.

135. This Settlement Agreement contains terms and conditions each of which is interdependent with the others and essential in its own right to the signing of this Settlement Agreement. Each term is vital to the Settlement Agreement as a whole, since the Settling Parties expressly and jointly state that they would not have signed the Settlement Agreement had any

term been modified in any way. None of the Settling Parties shall be prohibited from or prejudiced in arguing a different policy or position before the Commission in any other proceeding, as such agreements pertain only to this matter and to no other matter.

136. Notwithstanding anything to the contrary set forth in this Settlement Agreement, upon the occurrence of any of the following events, either Exelon or PHI, in its sole discretion, may terminate this Settlement Agreement, and this Settlement Agreement then shall be deemed null and void and of no force or effect:

(a) if the Commission does not, within forty-five (45) days after the date of the initial filing of the Settlement Agreement with the Commission as an attachment to the Motion of the Joint Applicants to Reopen (the "Settlement Filing Date"), set a schedule for action for consideration of this Settlement Agreement which allows for a Final Order for approval of the Merger within 150 days after the Settlement Filing Date;

(b) if the Commission sets a schedule for action on the Motion of the Joint Applicants to Reopen or the New Application (if the Joint Applicants file the New Application), or establishes a revised schedule, which does not allow for a Final Order for approval of the Merger within 150 days after the Settlement Filing Date;

(c) if the Commission fails to adopt a Final Order approving the Merger and this Settlement Agreement as filed with the Commission without condition or modification within 150 days after the Settlement Filing Date;

(d) if the Commission issues a Final Order disapproving the Merger or the Settlement Agreement or adding conditions or making modifications to the Merger or this Settlement Agreement; or

(e) if the Merger Agreement is terminated or the Merger is not consummated for any reason.

137. This Settlement Agreement is submitted to the Commission for approval as a whole and the Settling Parties state that its provisions are not severable, in accordance with 15 D.C.M.R. § 130.10(f).

138. The terms and conditions set forth in this Settlement Agreement in Paragraphs 1 through 130 shall only be binding on the Settling Parties upon approval by the Commission and upon consummation of the Merger, which are express conditions precedent. In the event that the Commission enters a Final Order approving this Merger which is subsequently reversed or vacated, then Exelon shall have the right to void any executory obligations and recover any funds paid consistent with the decision of the District of Columbia Court of Appeals or the Commission's order on remand.

139. Exelon submits to the jurisdiction of the Commission for enforcement of the terms and conditions herein. Nothing in this Settlement Agreement is intended to diminish the jurisdiction of the Commission with respect to the Settling Parties.

140. This Settlement Agreement may only be modified by a further written agreement executed by all the parties to this Settlement Agreement.

141. This Settlement Agreement may be executed in as many counterparts as there are parties to this Settlement Agreement, each of which counterparts shall be an original, but all of which shall constitute one and the same instrument.

142. The Settling Parties are submitting this Settlement Agreement, inter alia, subject to and in accordance with 15 D.C.M.R. Section 130.10. As required by Section 130.10, this Settlement Agreement (a) has been reduced to writing; (b) contains all of the terms and conditions agreed upon by the Settling Parties; (c) has been clearly and accurately labeled as a nonunanimous settlement; (d) has been clearly and accurately labeled as a full settlement; (e) indicates by this clause that the parties to Formal Case 1119 that have not signed the Settlement Agreement are expected to either oppose or be neutral with respect to the acceptance of the Settlement Agreement; (f) states that the provisions of the Settlement Agreement are not severable and that the Settlement Agreement must be accepted or rejected in its entirety by the Commission; and (g) indicates that the Settling Parties have stipulated, or will stipulate, the admission into evidence of the testimony and exhibits filed by the Settling Parties in support of this Settlement Agreement.

[Signature page follows]

JA NSA-1

EXELON CORPORATION, on behalf of itself, EXELON ENERGY DELIVERY COMPANY, LLC, and NEW SPECIAL PURPOSE ENTITY, LLC

BY: Darryl M. Bradford, Executive Vice President and General Counsel

PEPCO HOLDINGS, INC., and POTOMAC ELECTRIC POWER COMPANY

BY: Kevin C. Fitzgerald, Executive Vice President & General Counsel, Pepco Holdings, Inc.

GOVERNMENT OF THE DISTRICT OF COLUMBIA

BY: Muriel Bowser
Mayor of the District of Columbia

BY: Karl A. Racine
Attorney General for the District of Columbia

OFFICE OF THE PEOPLE'S COUNSEL OF THE DISTRICT OF COLUMBIA

BY: Sandra Mattavous-Frye
People's Counsel

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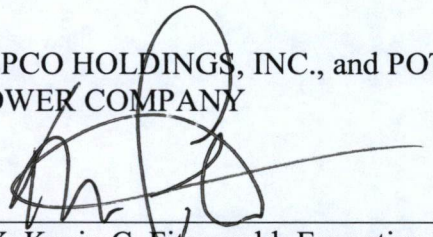

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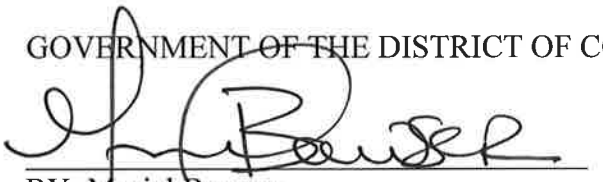

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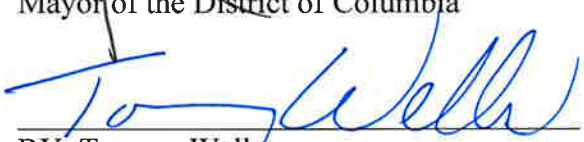
Mayor of the District of Columbia



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PEPCO HOLDINGS, INC., and POTOMAC ELECTRIC POWER COMPANY

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BY: Kevin C. Fitzgerald, Executive Vice President & General Counsel, Pepco Holdings, Inc.

GOVERNMENT OF THE DISTRICT OF COLUMBIA

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BY: Muriel Bowser
Mayor of the District of Columbia

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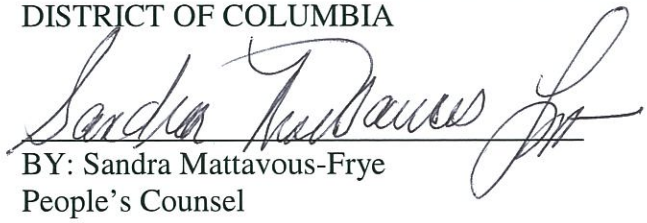
BY: Karl A. Racine
Attorney General for the District of Columbia

OFFICE OF THE PEOPLE'S COUNSEL OF THE DISTRICT OF COLUMBIA



BY: Sandra Mattavous-Frye
People's Counsel

JA NSA-1

DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY

BY: George Hawkins
Chief Executive Officer and General Manager

BY: Randy Hayman
General Counsel

[Signature page to October 6, 2015 Settlement Agreement[

JA NSA-1

NATIONAL CONSUMER LAW CENTER, NATIONAL HOUSING TRUST, and NATIONAL HOUSING TRUST – ENTERPRISE PRESERVATION CORPORATION

BY: Charles Harak
Senior Attorney

[Signature page to October 6, 2015 Settlement Agreement[

JA NSA-1

APARTMENT AND OFFICE BUILDING
ASSOCIATION OF METROPOLITAN WASHINGTON

BY: Margaret Jeffers, Esq.
Executive Vice President

[Signature page to October 6, 2015 Settlement Agreement[

ATTACHMENT D: REDLINED REVISED NONUNANIMOUS SETTLEMENT AGREEMENT

WHEREAS, on April 29, 2014, Exelon Corporation ("Exelon") and Pepco Holdings, Inc. ("PHI") executed an Agreement and Plan of Merger, and on July 18, 2014 executed an Amended and Restated Agreement and Plan of Merger (the "Merger");

WHEREAS, on June 18, 2014, Exelon, PHI, Potomac Electric Power Company ("Pepco"), Exelon Energy Delivery Company, LLC ("EEDC") and New Special Purpose Entity, LLC ("SPE") (collectively, the "Joint Applicants") filed an application with the Public Service Commission of the District of Columbia (the "Commission") seeking approval of the proposed merger of Exelon and PHI and the resulting change in control of Pepco pursuant to Sections 34-504 and 34-1001 of the District of Columbia Official Code (the "Application");

WHEREAS, on June 27, 2014, by Order No. 17530, the Commission commenced a proceeding to examine and investigate the Application under Formal Case No. 1119;

WHEREAS, the Office of People's Counsel ("OPC") is a statutory party of right in all utility-related proceedings before the Commission, and by Order No. 17597 the Commission also granted the petitions to intervene in Formal Case No. 1119 of: the Apartment and Office Building Association of Metropolitan Washington ("AOBA"); DC Solar United Neighborhoods ("DC SUN"); the District of Columbia Government ("District Government"); the District of Columbia Water and Sewer Authority ("DC Water"); the United States General Services Administration ("General Services Administration"); GRID 2.0 Working Group ("GRID 2.0"); the Maryland DC Virginia Solar Energy Industries Association ("MDV-SEIA"); the Mid-Atlantic Renewable Energy Coalition ("MAREC"); Monitoring Analytics, Inc., acting as the Independent Market Monitor for PJM ("IMM"); the National Consumer Law Center ("NCLC"); National Housing Trust ("NHT"); the National Housing Trust-Enterprise Preservation Corporation ("NHT-E"); and NRG Energy, Inc. ("NRG") (collectively, the "Parties");

WHEREAS, in assessing the Application, the Commission established a seven factor public interest test in Order No. 17597 for consideration of the effects of the transaction on:

> (1) ratepayers, shareholders, the financial health of the utilities standing alone and as merged, and the economy of the District; (2) utility management and administrative operations; (3) public safety and the safety and reliability of services; (4) risks associated with all of the Joint Applicants' affiliated non-jurisdictional business operations, including nuclear operations; (5) the Commission's ability to regulate the new utility effectively; (6) competition in the local retail, and wholesale markets that impacts the District and

District ratepayers; and (7) conservation of natural resources and preservation of environmental quality;[902]

WHEREAS, the Parties took substantial discovery in Formal Case No. 1119 from the Joint Applicants, including hundreds of written discovery requests;

WHEREAS, the Joint Applicants and the Parties submitted pre-filed witness testimony, and the live testimony of witnesses before the Commission over the course of eleven days of evidentiary hearings held on March 30 through April 8, 2015 and April 20 through April 22, 2015;

WHEREAS, witnesses presented by the District Government, OPC, and other Parties presented testimony that the as-filed Merger would:

- Lead to higher rates for customers immediately after the Merger;
- Provide no net economic benefit to the District and inadequate benefits to Pepco customers, particularly low-income customers;
- Result in no improved reliability for District customers;
- Guarantee job loss in the District due to the absence of adequate employment protections;
- Eliminate the benefits of a locally-controlled distribution utility; and
- Fail to advance the District's leadership and progress in renewable energy and distributed generation, conservation of natural resources, and preservation of environmental quality;

WHEREAS, in an Opinion and Order dated August 27, 2015 (the "Opinion and Order"), the Commission, based on its review of the Application and the evidence, agreed with many of the arguments presented by the District Government, OPC, DC Water, NCLC, NHT, NHT-E, and AOBA, and concluded that the Merger as filed was not in the public interest "because it does not benefit District ratepayers and the District rather than merely leave them unharmed";[903]

WHEREAS, the Joint Applicants disputed the testimony presented by many of the Parties and have filed an Application for Reconsideration of the Opinion and Order with the Commission;

WHEREAS, the Joint Applicants, the District Government, OPC, DC Water, NCLC, NHT, NHT-E, and AOBA (the "Settling Parties") wish to resolve their disputes and avoid

[902] *Formal Case No. 1119*, Order No. 17597 (Aug. 22, 2014), ¶ 55.

[903] *Formal Case No. 1119*, Order No. 17947 (Aug. 27, 2015), ¶ 348.

additional lengthy litigation, including a possible appeal of the Opinion and Order by the Joint Applicants;

WHEREAS, the Settling Parties have now agreed to settlement terms and commitments above and beyond those contained in the Application and the commitments previously filed by the Joint Applicants, and believe these terms and commitments establish that the Merger, taken as a whole, is in the public interest as required by D.C. Code § 34-504 and 34-1001, benefits the public, fully satisfies the seven factor test established in Order No. 17597, and addresses in all material respects the deficiencies in the Application identified by the Commission in the Opinion and Order;

WHEREAS, the Commission, pursuant to the District of Columbia Code, Title 34, has plenary authority to review and determine whether the proposed Merger is in the public interest and pursuant to Title 34, § 608 of the District of Columbia Code has the authority any time to "rescind, alter, modify or amend" its orders;

WHEREAS, under 15 D.C.M.R. § 146.1, the Commission may, to the extent required, exercise its discretion to waive any of the provisions of Chapters 1 and 2 of Title 15 of the District of Columbia Municipal Regulations after duly advising the parties of its intention to do so;

NOW, THEREFORE, as of this ~~6th day of October, 2015~~ March __, 2016, the following terms and conditions are agreed to by the Settling Parties in this Revised Nonunanimous Full Settlement Agreement and Stipulation (the "Revised Settlement Agreement"):

Recommendation of Approval of the Merger

1. Subject to the provisions set forth in this Settlement Agreement, the Settling Parties agree that the statutory criteria for approval of a merger application under D.C. Code Sections 34-504 and 34-1001 have been satisfied. More specifically, the Settling Parties agree that the record in Formal Case No. 1119, coupled with the conditions set forth in this Settlement Agreement, support findings and conclusions by the Commission that the Merger, taken as a whole, is in the public interest and fully satisfies the Commission's seven factor test.[904]

2. Subject to the provisions set forth in this Settlement Agreement, the Settling Parties agree that the Joint Applicants should be authorized to take those actions that are necessary in order for the Merger to be lawfully consummated.

Settlement Terms Addressing Commission Factor No. 1

Customer Investment Fund

[904] The commitments set forth herein constitute the entirety of the Joint Applicants' commitments. While the commitments are organized in this Settlement Agreement by the seven factors established by the Commission in Order No. 17597, many of the commitments and the associated benefits are applicable to multiple factors.

3. Exelon will provide a Customer Investment Fund ("CIF") to the District of Columbia with a value totaling $72.8 million. This represents a benefit of $215.94 per distribution customer (based on a customer count of 337,117 as of December 31, 2013). Pepco will not seek recovery of the CIF in utility rates. The Settling Parties agree that the CIF shall be allocated as set forth in Paragraphs 4 through 9 below:

~~Residential~~ Customer Base Rate Credit

4. Exelon will provide a ~~Residential~~ Customer Base Rate Credit in the amount of $25.6 million, which will be a credit to offset rate increases for Pepco customers approved by the Commission in any Pepco base rate case filed after the close of the Merger until the Customer Base Rate Credit is fully utilized. The parties in the next Pepco base rate case will be provided an opportunity to propose to the Commission how the Customer Base Rate Credit will be allocated among Pepco customers and over what period of time. No portion of the Customer Base Rate Credit shall be recovered in utility rates. ~~which will be a credit used to offset residential rate increases approved by the Commission in any Pepco base rate case filed after close of the Merger until the Residential Customer Base Rate Credit is fully utilized. Residential customers shall include customers who participate in Pepco's Residential Aid Discount ("RAD") Program. For purposes of this paragraph, residential customers shall include all Master Metered Apartment units, and $4.3 million of the $25.6 million shall be allocated for application as a credit for the Master Metered Apartments. Pepco will defer recovery of any residential rate increase before March 31, 2019 not offset by the Residential Customer Base Rate Credit through the creation of a regulatory asset equaling the incremental amount of the deferred residential rate increase until March 31, 2019 (the "Incremental Offset"). Pepco will recover the balance of the Incremental Offset regulatory asset, along with a 5% return, automatically in residential rates, without the need for any further Commission approval, over a two-year period commencing April 1, 2019; provided, however, that the recovery period will be extended beyond the two-year period if and as necessary to ensure that the recovery of the balance does not exceed $1 million per year. Only the Incremental Offset amount, and return thereon, if any, will be recovered in rates, and no portion of the Residential Customer Base Rate Credit shall be recovered in utility rates.~~

Residential Customer Bill Credit

5. Exelon will fund a one-time direct bill credit of $14 million to be distributed among Pepco residential customers (including RAD Program customers). The credit shall be provided within sixty (60) days after the Merger closing based on active accounts as of the billing cycle commencing thirty (30) days after the Merger closing.

~~6. Renewable Generation Development~~ Creation of Formal Case No. 1119 Escrow Fund

7. ~~Within sixty (60) days after direction by the District Government after Merger close, Exelon will provide funding in the amount of $3.5 million to the Renewable Energy Development Fund established by D.C. Code § 34-1436, or to one or more Community Development Financial Institutions ("CDFIs"), for the expansion of renewable generation in the District.~~ Within sixty (60) days after Merger close, Exelon shall provide Pepco with the funds

and Pepco shall establish a Formal Case No. 1119 Escrow Fund with two subaccounts: the Formal Case No. 1130 MEDSIS Pilot Project Fund Subaccount and The Energy Efficiency and Energy Conservation Initiatives Fund Subaccount The escrowed funds shall be placed in an interest-bearing account or invested in instruments issued or guaranteed as to principle and interest and shall be administered by a third party administrator to be paid from a portion of the interest proceeds with the approval of the Commission. Any unused interest will be deposited proportionally into the two subaccounts.

Support for Energy Efficiency Initiatives Support for Formal Case No. 1130

8. ~~Within sixty (60) days after Merger close, Exelon will provide funding in the amount of $3.5 million to the Sustainable Energy Trust Fund established under D.C. Code § 8-1774.10, to further the District's energy efficiency efforts.~~ Within sixty (60) days after Merger close, Exelon shall provide funding in the amount of $21.55 million to the Formal Case No. 1130 MEDSIS Pilot Project Fund Subaccount within the Formal Case No. 1119 Escrow Fund. The fund shall be held in escrow until the Commission approves a pilot project and directs that the funds be released.

Support for Sustainability in the District

9. ~~Within sixty (60) days after Merger close, Exelon will provide funding in the amount of $10.05 million to the District of Columbia Consumer and Regulatory Affairs Green Building Fund established by D.C. Code § 6-1451.07, to promote sustainability in the District.~~ [Text Deleted] [Funds accounted for in paragraph 7]

~~Assistance for Low- and Limited-Income Customers~~ Support for Energy Efficiency and Energy Conservation Initiatives Fund

10. ~~Funding of $16.15 million will be provided for assistance to low- and limited-income electric customers in the District of Columbia, in addition to maintaining Pepco's low-income customer assistance programs pursuant to current requirements and commitments, as follows:~~ To support innovative energy efficiency and energy conservation initiatives with a primary focus on assisting low and limited income residents and to help reduce the burden of energy bills and long-standing energy debt on low and limited income residents in the District:

(a) Within sixty (60) days after Merger close, Exelon shall provide funding in the amount of $11.25 million to the Energy Efficiency and Energy Conservation Initiatives Fund Subaccount within the Formal Case No. 1119 Escrow Fund to support innovative energy conservation or energy efficiency programs targeted primarily towards both affordable multifamily units and master metered multifamily buildings which include low and limited income residents that are sponsored or operated by the District or by qualified non-profit entities that support and enable targeted energy-efficiency programs. The funds shall be held in escrow until the Commission directs that the funds be released.

(b) ~~To help reduce the burden of long-standing energy debt for limited-income and other families,~~ Pepco shall forgive all District of Columbia residential customer accounts

receivable over two years old as of the date of the Merger close (which is expected to total approximately $400,000);

~~(c) Within sixty (60) days after receiving direction from the District Government after the Merger closes, Exelon will provide $9 million for supplemental funding for customers eligible for the Low-Income Home Energy Assistance Program ("LIHEAP").~~

~~(d) Within sixty (60) days after receiving direction from the District Government after the Merger closes, Exelon will provide $6.75 million for energy efficiency programs developed or designated by the District in consultation with the National Consumer Law Center and National Housing Trust, targeted toward both affordable multifamily units and master-metered multifamily buildings which include low- and limited-income residents. Such multifamily programs may include funding for CDFIs or other qualified non-profit entities that support and enable targeted energy-efficiency programs.~~

Corporate Presence in the District of Columbia

11. Within six (6) months after consummation of the Merger, Exelon will colocate Exelon corporate headquarters in the District of Columbia for Exelon Corporate Strategy and Exelon Utilities ("EU"), the organization that oversees the utility businesses of Exelon. Exelon shall do so by moving the headquarters of Exelon Utilities and Exelon Corporate Strategy to the District of Columbia; and by moving the primary offices of Exelon Utilities' Chief Executive Officer, Exelon's Chief Financial Officer and Exelon's Chief Strategy Officer to the District of Columbia. Exelon's Chief Executive Officer will also have an office in the District of Columbia. Exelon will maintain the above in the District for at least ten (10) years, and will also maintain the PHI and Pepco headquarters in the District for at least ten (10) years. "Primary offices" in this paragraph means the business location where these officers are expected to spend the majority of their office hours each year, recognizing that the duties of these senior officers often require extensive business travel, including to other Exelon business locations.

12. All of the members of Exelon's Executive Committee who are in Exelon's Business Service Company – including the chief officer for each of the Legal, Human Resources, Supply, Risk, Communications, Government Affairs, and Information Technology functions – will have offices within the District (as well as elsewhere in the Exelon system).

13. The Exelon Executive Committee will include the District among the locations of its meetings.

14. Exelon will include the District of Columbia among the locations of Exelon's Board of Directors meetings and Exelon's annual shareholder meetings.

Employment in the District of Columbia

15. Exelon will transfer Pepco Energy Services' ("PES") Arlington, Virginia operations and associated employees into the District within six (6) months after Merger close and will retain such operations in the District for at least ten (10) years from the date of the transfer.

16. As part of its commitment to establish the District of Columbia as Exelon's co-Corporate Headquarters and the Headquarters of EU, and including its transfer of PES, by January 1, 2018, Exelon and PHI will relocate 100 positions to the District of Columbia. By February 1, 2018, Exelon will file a report with the Commission confirming relocation of these positions.

17. In addition to honoring its existing collective bargaining agreements, Pepco will use best efforts to hire, within two (2) years after the Merger closing date, at least 102 union workers in the District of Columbia. The incremental cost of these hires (a) will be included in rates only to the extent that the workers have actually been hired, and (b) in any event will not be included in customer rates until after January 1, 2017.

18. For at least five (5) years after Merger close, Exelon shall not permit a net reduction, due to involuntary attrition as a result of the Merger integration process, in the employment levels at Pepco's utility operations in the District. For purposes of this paragraph, "involuntary attrition" includes transfer-or-quit offers where the employee decides to quit or retire rather than being transferred to a work location outside of the District.

19. Pepco shall, on an annual basis for the first five (5) years after Merger close, file a report with the Commission by April 1 regarding employment levels at Pepco. The reports shall detail all job losses – including whether the attrition was involuntary or voluntary – as well as any job gains, delineated using an industry-accepted categorization method such as by SAIC code.

20. Following the Merger closing date until January 1, 2018, Exelon and PHI shall not permit a net reduction greater than 100 positions, due to involuntary attrition as a result of the merger integration process, in the employment levels in the District for Exelon Business Services Company ("EBSC") and PHI Service Company ("PHISCo"). Eligible PHISCo employees involuntarily terminated as a result of the Merger integration process will receive severance benefits, including a cash payment, which can be used for outplacement services, at the discretion of the employee. The 100 positions moved to the District as part of the co-Headquarters/EU Headquarters relocations and the PES relocations will not be among the 100 EBSC and PHISCo positions that may be involuntarily reduced as a result of the Merger integration prior to January 1, 2018. For purposes of this paragraph, "involuntary attrition" includes transfer-or-quit offers where the employee decides to quit or retire rather than being transferred to a work location outside of the District.

21. As a result of the commitments in Paragraphs 14-19, Exelon, PHI and Pepco commit that the Merger's impact will be net jobs-positive for the District through at least January 1, 2018. Exelon will file a report with the Commission by April 1, 2018, demonstrating satisfaction of this commitment. Exelon, PHI and Pepco also commit that the Merger will not become net job-negative through involuntary attrition as a result of the Merger integration process through December 31, 2019. Exelon shall file a report with the Commission by April 1, 2020, demonstrating satisfaction of this commitment.

22. For two (2) years after Merger close Exelon shall provide current and former Pepco and PHISCo employees compensation and benefits that are at least as favorable in the aggregate as

the compensation and benefits provided to those employees immediately before execution of the Merger Agreement.

23. Exelon shall also assume PHI's obligations, or cause PHI to continue to meet its obligations, to Pepco employees and retirees with respect to pension and retiree health benefits.

24. Pepco shall also continue its commitments to supplier and workforce diversity. Pepco shall, on an annual basis for the first three (3) years following consummation of the Merger, file a report with the Commission by April 1 explaining its efforts to promote supplier and workforce diversity.

Workforce Development

25. In order to promote local employment and the local economy in the District, Exelon will contribute $5.2 million to District workforce development programs including those administered by the Department of Employment Services ("DOES"), the University of the District of Columbia system, DC Water for green infrastructure training programs, and programs targeted to underserved communities, as directed by the District Government. These contributions will be in addition to the CIF, will not count toward meeting the annual charitable contribution commitment described in Paragraph 27, and will not be recovered in utility rates.

Economic Benefits Reporting

26. For each of the first five (5) years after Merger approval, Pepco will submit an annual report, or include as part of its existing reporting requirements, data detailing the economic benefits of the Merger for the District. The report will detail the methodology used to calculate the benefits and the specific description of the benefits.

Development of an Arrearage Management Program

27. Pepco will work with the District Government and other interested stakeholders, including the National Consumer Law Center, to develop in good faith a mutually agreeable Arrearage Management Program ("AMP") for LIHEAP or RAD-qualifying customers in arrears, which would include the provision of credits or matching payments for customers who make timely payments on their current bills, with such discussions to be initiated no later than 60 days after the closing of the Merger, and with the understanding that the parties will seek to reach agreement within six (6) months after the closing of the Merger and that any agreement regarding the adoption of an AMP would be submitted to the Commission for its review and approval.

Charitable Contributions and Community Support

28. Exelon and its subsidiaries shall, during the ten-year period following the Merger, provide at least an annual level of charitable contributions and traditional local community support in the District of Columbia that exceeds the 2014 level of $1.9 million (calculated using a three-year rolling average).

Cost Accounting and Synergy Savings

29. Pepco shall track and account for Merger-related savings, and the cost to achieve those savings, in each of its base rate cases filed within in a three-year period following Merger close. Pepco will flow all synergy savings allocable to the District to customers through the normal ratemaking process.

30. Pepco will amortize the costs to achieve synergy savings ("CTA") over a five-year period of time commencing with the effective date of the first Pepco base rate case filed after Merger close. To the extent CTA are incurred after the first rate case, such CTA will be amortized over a five-year period commencing with the effective date of the first rate case after such costs are incurred. Pepco shall not recover CTA in a Pepco rate case in an amount greater than the synergy savings that Pepco demonstrates for the applicable test year.

31. Exelon shall ensure that merger accounting is rate-neutral for Pepco customers. Exelon shall ensure that any accounting treatments associated with merger accounting do not affect rates charged to Pepco's customers. Pepco will not seek recovery in distribution rates of: (a) the acquisition premium or goodwill associated with the Merger; or (b) the Transaction Costs, as defined below, incurred in connection with the Merger by Exelon, PHI or their subsidiaries. Any acquisition premium or goodwill shall be excluded from the ratemaking capital structure and Exelon will not record any of the impacts of purchase accounting at the PHI utility companies, thereby maintaining historical cost accounting at each of the PHI utility companies. Transaction Costs are defined as: (a) consultant, investment banker, regulatory fees (including the $2 million in regulatory support costs noted in Paragraph 101 of the Opinion and Order) and legal fees associated with the Merger Agreement and regulatory approvals, (b) purchase price, change-in-control payments, retention payments, executive severance payments and the accelerated portion of supplemental executive retirement plan ("SERP") payments, (c) costs associated with the shareholder meetings and proxy statement related to Merger approval by the PHI shareholders, and (d) costs associated with the imposition of conditions or approval of settlement terms in other state jurisdictions.

32. Exelon also commits that the Staff of the Public Service Commission of the District of Columbia ("Commission Staff") and OPC shall have reasonable access upon demand to the accounting records of Exelon's affiliates that are the basis for charges to Pepco pursuant to the Exelon General Services Agreement ("GSA") to determine the reasonableness of allocation factors used by Exelon to assign those costs and the amounts subject to allocation and direct charges.

33. The Joint Applicants agree that PHI and its subsidiaries, including Pepco, will execute the GSA filed as Exhibit No. 7 with the Application. The Joint Applicants agree to allocate costs to Pepco in a manner that either substantially complies with the current PHI GSA, or results in a lower allocation of costs in the aggregate. The Joint Applicants agree to demonstrate this in the first District of Columbia base rate case filing occurring after the closing of the Merger as compared to Pepco's allocated costs pre-Merger.

34. In each of Pepco's base rate cases filed within five (5) years after closing of the Merger, Pepco shall provide in addition to the information otherwise required to be provided with Pepco's 21-day compliance filing, the following information with respect to charges to Pepco from Exelon, EBSC or any other affiliate that supplies service to Pepco after the Merger:

(a) The Cost Allocation Manual(s) in effect and used to allocate costs to Pepco and Pepco's District of Columbia operations:

(b) The service agreement(s) in effect between Pepco and Exelon, EBSC, and any other affiliate that charges costs to Pepco;

(c) An exhibit separately stating the costs that are directly assigned or allocated to Pepco and Pepco's District of Columbia operations for the test year and for each year post-Merger, by entity charging the costs, including:

(i) Total amount of direct charged costs and total amount of allocated costs to Pepco and to Pepco's District of Columbia operation;

(ii) Total amount of direct charged costs and total amount of allocated costs included in Pepco's rate base and in Pepco's rate base for the District of Columbia; and

(iii) Total amount of direct charged costs and total amount of allocated costs included in Pepco's operating and maintenance expenses and in Pepco's operating and maintenance expenses for the District of Columbia.

35. The Joint Applicants agree they will work together with the Commission Staff and OPC to determine the format of an annual filing of EBSC costs charged to Pepco that will be substantially in the same format as Pepco's current, annual filing. The filing will be made by June 30th of each subsequent year and will include a copy of EBSC's FERC Form 60 as well as detail on the actual EBSC allocations and costs charged to Pepco during the prior year. Pepco shall also make an ongoing commitment to explain any change to allocation factors to Pepco that are more than five percentage points versus the previous year. Pepco shall also make available on request any prior months' variance reports regarding EBSC's billings to Pepco. The Joint Applicants shall provide a side-by-side comparison by function of pre- and post-merger shared-services cost allocations to Pepco for five pre- and post-merger years. The comparisons shall be filed on an annual basis as a separate letter, and the first letter shall be filed no later than the end of the second quarter in 2017. This filing will include additional analysis detailing the reasons for any changes, if any, in allocated costs for Pepco on a year over year basis. In the event that Pepco files a post-merger base rate case prior to receipt of the first side-by-side comparison in 2017, then Pepco shall include as part of its rate increase application a side-by-side comparison, by function, of pre- and post-merger shared-services cost allocations available through the test year, to the extent applicable. To the extent any other Exelon subsidiary charges costs to Pepco, the same information identified above will be provided with respect to such subsidiary.

36. Controls and procedures will be designed to provide reasonable assurance that PHI's subsidiaries will not bear costs associated with the business activities of any other Exelon

affiliate (other than PHI or a PHI subsidiary) other than the reasonable costs of providing materials and services to PHI (or a PHI subsidiary). PHI and its subsidiaries will maintain reasonable pricing protocols for determining transfer prices for transactions involving non-power goods and services between PHI and its subsidiaries and Exelon and any Exelon affiliate consistent with the requirements of the Commission and FERC.

37. EBSC costs shall be directly charged whenever practicable and possible. In its next District of Columbia base rate proceeding, Pepco shall file testimony addressing EBSC charges and the bases for such charges. Pepco's testimony shall also explain any changes in allocation procedures that have been adopted since its last base rate proceeding.

38. Pepco shall also provide copies to Commission Staff and OPC of the portions of any external audit reports performed for EBSC pertaining directly or indirectly to Exelon's determinations of direct billings and cost allocations to Pepco. Such material shall be provided no later than 30 days after the final report is completed.

39. Pepco shall promptly notify the Commission, Commission Staff and OPC when it has received notice that the SEC, the FERC, or the state regulatory commission in any state in which an affiliate utility company operates has initiated an audit of EBSC or PHISCo. Pepco shall provide copies of the portions of all audit reports highlighting the findings and recommendations and ordered changes to the GSA pertaining directly or indirectly to EBSC or PHISCo's determinations of direct billings and cost allocations to its affiliate utility companies, as well as any sections addressing Pepco. If after review of such material, Commission Staff or OPC reasonably determines that review of the remainder of such audit report is warranted, Pepco shall make the complete report available for review in Pepco's District of Columbia office or at the Commission, subject to appropriate conditions to protect confidential or proprietary information.

40. Pepco shall promptly notify the Commission, Commission Staff and OPC when it has received notice that the SEC, the FERC, or any state regulatory commission in which an affiliate utility company operates has issued a specific decision affecting EBSC or PHISCo, including a rulemaking, pertaining directly or indirectly to EBSC or PHISCO's determinations of direct billings and cost allocations to its affiliate utility companies.

41. For assets that EBSC acquires for use by Pepco, the same capitalization/expense policies shall apply to those assets that are applicable under the Commission's standards for assets acquired directly by Pepco.

42. For depreciable assets that EBSC acquires for use by Pepco, the depreciation expense charged to Pepco by EBSC shall reflect the same depreciable lives and methods required by the Commission for similar assets acquired directly by Pepco. In no event shall depreciable lives on plant acquired for Pepco by EBSC be shorter than those approved by the Commission for similar property acquired directly by Pepco.

43. For assets that EBSC acquires for use by Pepco, the rate of return shall be based on Pepco's authorized rate of return, unless EBSC is able to finance the asset at a lower cost than

Pepco. In such cases, the lower cost financing will be reflected in EBSC's billings to Pepco, and the resulting benefit will be passed on to ratepayers.

44. The Commission and OPC will be sent copies of any and all "60-day" letters, and supporting documentation, sent by EBSC to the FERC concerning a proposed change in the GSA.

45. Pepco shall file petitions for approval of any modifications to the GSA, including changes in methods or formulae used to allocate costs, with the Commission at the same time it makes a filing with the FERC. Commission Staff and OPC shall have the right to review the GSA and related cost allocations in Pepco's future base rate cases in the District of Columbia, in conjunction with future competitive service audits, in response to any changes in the Commission's affiliate relations standards, and for other good cause shown.

46. With the exception of Corporate Governance Services, Pepco shall have the right to opt out of any EBSC service that it determines can be procured elsewhere in a more economical manner, is not of a desired quality level, or for any other valid reason, including Commission Orders, after having failed to first resolve the issue with EBSC.

47. Pepco agrees that the Commission, under its authority pursuant to 15 D.C.M.R. §§ 3900-3999, may review the allocation of costs in sufficient detail to analyze their reasonableness, the type and scope of services that EBSC provides to Pepco and the basis for inclusion of new participants in EBSC's allocation formula. Pepco and EBSC shall record costs and cost allocation procedures in sufficient detail to allow the Commission to analyze, evaluate, and render a determination as to their reasonableness for ratemaking purposes.

48. The new "SolutionOne" SAP billing system platform will be in use for its expected useful life. If, for any reason, the use of the "SolutionOne" SAP billing system platform is terminated before the end of this expected useful life, ratepayers shall not be responsible for any un-depreciated costs or lease payment obligations remaining after the date upon which use is terminated.

Future Rate Design in Pepco-DC Base Rate Cases

49. Nothing in the Settlement Agreement shall be construed as a change to the Commission's stated goal to move "in a deliberate and reasonable fashion over a series of Pepco rate cases to put an end to negative class RORs" as set forth in Formal Case 1087, Order No. 16930, ¶ 329 and affirmed in Formal Case 1103, Order No. 17424, ¶¶ 437 and 438.

Tax Indemnity and Other Tax Commitments

50. Exelon shall indemnify Pepco for any liability for federal or local income taxes (including interest and penalties related thereto, if any) in excess of Pepco's standalone liability for federal or local income taxes (including interest and penalties related thereto, if any) for any period during which Pepco is included in a consolidated group with Exelon. Under applicable law, following the Merger, Pepco will have no liability for federal or local income taxes

(including interest and penalties related thereto, if any) of Exelon or any other subsidiary of Exelon for any period during which Pepco was not included in a consolidated group with Exelon (i.e. any period before the Merger). Exelon will take no action to cause Pepco to have any liability for federal or local income taxes (including interest and penalties related thereto, if any) of Exelon or any other subsidiary of Exelon for any period during which Pepco was not included in a consolidated group with Exelon for purposes of filing federal or local income tax returns. If Pepco is included in a consolidated group with Exelon for purposes of filing federal or local income tax returns and the rating for Exelon's senior unsecured long term public debt securities, without third-party credit enhancement, is downgraded to a rating that indicates "substantial risks" (below B3 by Moody's or B- by S&P or Fitch) by at least two of the three major credit rating agencies, the Commission may, after investigation and hearing, require Exelon to deliver to Pepco collateral of the type and amount determined by the Commission pursuant to the hearing to secure Exelon's tax indemnity to Pepco if the Commission finds that such collateral is necessary for the protection of Pepco's interests under Exelon's tax indemnity. Pepco shall be required to surrender or release such collateral security to Exelon (1) promptly after the rating of Exelon's senior unsecured long term public debt, without third-party credit enhancement, is restored to a rating above "substantial risks" (at or above B3 by Moody's or B- by S&P or Fitch) by at least two of the three major credit rating agencies, or (2) if and when Pepco is determined by a body of competent jurisdiction no longer to be liable for federal or local income taxes as a member of a consolidated group with Exelon, other than Pepco's standalone liability for federal or local income taxes (including interest and penalties related thereto, if any), or (3) upon a finding by the Commission, after investigation and hearing upon application of Exelon, that the conditions under which such collateral security was originally required no longer exist.

51. Exelon and Pepco shall ensure that the Merger will not affect the accounting and ratemaking treatments of accumulated deferred income taxes ("ADIT"), and accumulated deferred investment tax credits ("ADITC"), such that ADIT and ADITC will continue to be used as rate base deductions and amortization credits in future Pepco rate cases.

Settlement Terms Addressing Commission Factor No. 2

Pepco's Management Structure

52. To address concerns about whether the needs of the District of Columbia will be properly raised and addressed within Exelon, Exelon commits that, following the Merger closing date: (a) Pepco will have a CEO, who may also be the CEO of PHI; (b) the Pepco CEO (David Velazquez) will be a member of the Exelon Executive Committee, will meet with Exelon's CEO at least monthly, and will have direct and frequent access to the Exelon CEO and other members of Exelon's senior management team; (c) the Pepco CEO will attend meetings of Exelon's Board of Directors, (d) Mr. Velazquez will be extended an employment contract for no less than two (2) years; (e) the Pepco CEO will reside in the District; and (f) any officer succeeding Mr. Velazquez as Pepco CEO will be knowledgeable about Pepco's District of Columbia operations. In addition, PHI will continue to have a Chief Financial Officer, Treasurer and a number of other officers, and Pepco will maintain appropriate levels of senior management at its District of Columbia headquarters.

53. The Regional President of Pepco will have the same capacities and similar responsibilities as she has today. Consistent with those capacities and responsibilities, the Regional President of Pepco will have input into decisions related to rate case filings and positions on regulatory and legislative issues that affect Pepco. The Pepco CEO will have the authority to make rate case decisions, including the revenue requirement that will be requested in Pepco's rate cases in the District of Columbia, taking into consideration the input of the Regional President of Pepco.

54. EU's CEO, the PHI CEO, the Pepco CEO, and the Pepco Regional President will annually offer to appear publicly before the Commission to review and provide documentation concerning Pepco's reliability, safety, and customer service performance and to answer questions about Pepco's performance in the District of Columbia. This review shall not be construed as approval of any particular Pepco program or expenditure by the Commission.

55. The Commission and stakeholders in the District of Columbia will enjoy the same access to Pepco and PHI personnel after the Merger. In addition, the Commission's Chair or designee shall have the opportunity annually to present and provide a report to the full PHI board as to the performance of Pepco in the District and other issues of importance to the Commission.

Board Structure

56. PHI will have a board of directors consisting of 7 or more people. A majority of the PHI board (4 directors on a board of 7) will be "independent" (as defined by New York Stock Exchange rules). At least one director shall be selected from each of the service territories of PHI's utility subsidiaries, and at least one of the independent directors will be a resident of the District. The CEO of Pepco will be one of the PHI directors.

Settlement Terms Addressing Commission Factor No. 3

Service Reliability and Quality

57. Pepco commits to improve system reliability in its District of Columbia service territory and specifically shall remain: (a) obligated to achieve the currently effective annual Electric Quality of Service Standards ("EQSS") performance levels from 2016 to 2020 pursuant to 15 D.C.M.R. §§ 3600 *et seq.*, and (b) subject to forfeiture pursuant to 15 D.C.M.R. § 3603.13 in the event that it fails to do so. In addition, Pepco is committed to improving system reliability beyond the current DC statutory requirements, and therefore Pepco also commits to achieve the annual reliability performance levels for the District of Columbia set forth in Table 1 as measured using the Commission's current methodology for calculating SAIFI and SAIDI, with exclusion of major service outages:

Table 1

Annual Commitment		2016	2017	2018	2019	2020
EQSS	SAIFI	1.02	0.98	0.95	0.92	0.89
	SAIDI	120	109	99	89	81
Merger Commitment	SAIFI	0.91	0.82	0.74	0.66	0.58
	SAIDI	118	107	97	87	79

Failure to meet these reliability performance levels will result in the compliance measures described herein. If Pepco fails to meet the reliability-performance levels set out above as a Merger Commitment in any of the years 2016-2020, Pepco will file a corrective action plan by April 1 of the following year including an explanation as to why the target was missed, and the Commission can subject the utility to forfeitures as provided under the current EQSS regulations. In addition, if either of the SAIFI or SAIDI reliability-performance levels set out above as Merger Commitments are not met in any of the years 2018, 2019 or 2020, then Pepco will automatically make a non-compliance payment by April 1 of the following year to the DC Sustainable Energy Trust Fund established under D.C. Code § 8-1774.10, as set forth in Table 2 below, which payment will not be recoverable in Pepco customer rates:

Table 2

	2018	2019	2020
Non-Compliance Payment	$2.0M	$3.0M	$6.0M

Pepco shall achieve the reliability standards set out as Merger Commitments in Table 1 above without exceeding certain annual reliability-related capital and O&M spending levels. Specifically, Table 3 sets forth Pepco's 2016 – 2019 Capital Budget and Forecast for the District of Columbia as contained in the Annual Consolidated Report filed with the Commission in 2015 for the identified categories of capital spending. Pepco commits to meeting the reliability standards set forth in Table 1 without exceeding the budget for the category of "Budget Commitment – Total Reliability net of DCPLUG and Emergency Restoration", absent changes in law or regulations requiring increases in reliability-related spending. Table 4 sets forth Pepco's projected reliability-related operations and maintenance ("O&M") budget as contained in the Annual Consolidated Report filed with the Commission in 2015, and Pepco commits to not exceed those amounts.

58. Pepco acknowledges that the reliability-related capital costs and O&M expenses set forth below must go through the regular ratemaking processes of the Commission before they can be recovered in customers' rates, and Pepco's commitments here do not imply an endorsement by the Settling Parties or any party or the Commission that such costs or expenses are just and reasonable.

Table 3

Reliability Driven Capital Expenditure 2016-2020					
					*Projected
	2016	2017	2018	2019	2020
Total Distribution Reliability Expenditures	$200,979,715	$173,369,005	$219,211,894	$227,914,850	$234,752,296
DCPLUG Expenditures	$ 92,746,708	$ 62,509,008	$ 75,000,000	$ 55,000,000	$ 56,650,000
Distribution Reliability net of DCPLUG Expenditures	$108,233,007	$110,859,997	$144,211,894	$172,914,850	$178,102,296
Distribution Emergency Restoration Expenditures	$ 14,589,928	$ 14,498,357	$ 14,383,143	$ 14,383,143	$ 14,814,637
Budget Commitment -Total reliability net of DCPLUG and Emergency Restoration	$ 93,643,079	$ 96,361,640	$129,828,751	$158,531,707	$163,287,658

* 2020 budget equal to 2019 budget escalated by three percent to reflect inflation.

Table 4

	Pepco O&M Reliability Budget 2016-2020					
		2016	2017	2018	2019	2020
S21200	Distribution System Planned Scheduled Maint DC and MD	$20,271,059	$20,879,190	$21,505,566	$22,150,733	$22,815,255
S21260	Distribution Forestry (Tree Trimming) District of Columbia	$2,394,309	$2,466,138	$2,540,123	$2,616,326	$2,694,816
	2016 - 2020 budget forecast based on 2015 budget increased by 3% per year					
	Planned scheduled maint actual costs are allocated to DC and MD					

59. The consequences for failure to meet the reliability-related budget targets for the "Budget Commitment – Total Reliability net of DCPLUG and Emergency Restoration" and for reliability-related O&M set forth above are:

(a) If Pepco exceeds the reliability-related capital budgets set out above in any of the years, then Pepco shall automatically place into escrow a non-compliance payment in the amount of $63,000 for every $1 million spent in excess of the reliability-related capital budget target for the year.

(b) All non-compliance payments shall be placed in escrow no later than April 1 of the subsequent calendar year during which the capital budget level was exceeded.

(c) By June 30, 2021, Pepco shall file with the Commission a comprehensive report on the reliability performance and prudence of actual spending levels for 2016-2020 to allow the Commission to determine whether the escrowed funds should be ~~directed to the DC Sustainable Energy Trust Fund established under D.C. Code § 8-1774.10~~ returned to the Formal Case No. 1130 MEDSIS Pilot Project Fund Subaccount or returned to the Company.

(d) No later than six (6) months after the close of the Merger, Pepco shall file with the Commission a report which includes a forecast of planned reliability-related work for that calendar year, including at a minimum the general project descriptions, locations, and associated reliability-related capital and O&M spending. The project description should denote the intended improvements to outage duration, frequency, or some other reliability metric. The filed forecast shall serve as a baseline comparison for the June 30, 2021 Company report on actual reliability-related expenditures, but shall not prompt Commission approval, denial, or other action in advance of the report. By April 1 of each subsequent calendar year through 2019, Pepco shall file the same information as part of its Annual Consolidated Report. Receipt of the forecast shall not constitute an endorsement by the Commission of the prudence of the expenditures.

(e) If Pepco asserts that "unplanned" reliability-related work contributed to excess capital spending, then the report should include a narrative as to the prudence of the capital expenditures. Specifically, the report should describe any incremental SAIDI or SAIFI improvement attributable to the "unplanned" work and an assessment of whether the completion of such work during the period resulted in any cost savings, compared to delay of such work to a later date.

(f) If Pepco fails to meet the reliability-related O&M budget levels set out above in any of the years, then Pepco shall automatically forgo seeking recovery in customer rates of any amounts spent in excess of the reliability-related O&M budget level for the year.

(g) Pepco's proposed reliability-related capital spending levels are set forth above, and actual costs shall be reviewed by the Commission in full base rate cases. Pepco shall not file for a tracker or surcharge mechanism to recover such reliability-related capital and O&M expenditures incurred for the period 2016-2020 (other than for the District of Columbia Power Line Undergrounding ("DC PLUG")).

60. Pepco will not seek reevaluation of the current EQSS reliability performance standards for the years 2016 through 2020 pursuant to 15 D.C.M.R. § 3603.

61. Pepco will continue to meet with Staff and OPC as part of the Productivity Improvement Working Group ("PIWG") to discuss reliability and system productivity measures and will continue to file information concerning its capital budget, including but not limited to its budget for reliability-related investments, as part of its Annual Consolidated Report. On an annual basis as part of a PIWG meeting, Pepco will specifically review the reliability performance, actual spend and projected budget for reliability-related capital as filed in the Annual Consolidated Report. Such review with Commission Staff and OPC shall not be construed as pre-approval of the particular capital expenditures and parties shall remain free to contest capital expenditures in future base rate cases.

Root Cause Analysis to Improve Customer Satisfaction

62. Pepco shall conduct a root-cause analysis of, and develop an action plan to improve, Pepco's customer-satisfaction scores in the District of Columbia. Pepco will file this analysis and action plan with the Commission no later than six (6) months after Merger closing and will also present this information to the PIWG.

Safety

63. Exelon is committed to having all of its utilities achieve and maintain first quartile performance in safety. Consistent therewith, Pepco will file annual reports on its safety performance and safety initiatives with the Commission as part of its Annual Consolidated Report, and will also present this information to the PIWG. Pepco's reporting will include a report by Exelon on its existing safety and cybersecurity policies.

Settlement Terms Addressing Commission Factor No. 4

Ring Fencing Protections

64. Pepco will maintain its separate existence as a separate corporate subsidiary and its separate franchises, obligations and privileges.

65. Pepco will not incur or assume any debt, including the provision of guarantees or collateral support, related to this Merger or any future Exelon acquisition.

66. Pepco shall maintain separate debt so that Pepco will not be responsible for the debts of affiliate companies and preferred stock, if any, and Pepco shall maintain its own corporate and debt credit rating, as well as ratings for long-term debt and preferred stock.

67. Exelon has established the SPE, a limited liability company, as a special purpose entity for the purpose of holding 100% of the equity interest in PHI.

68. The SPE will be a direct subsidiary of EEDC.

69. EEDC will transfer 100% of the equity interest in PHI to the SPE as an absolute conveyance with the intention of removing PHI and its utility subsidiaries from the bankruptcy estate of Exelon and EEDC.

70. The SPE will have no employees and no operational functions other than those related to holding the equity interests in PHI.

71. The SPE shall maintain adequate capital in light of its contemplated business purpose, transactions and liabilities; provided, however, the foregoing shall not require the owners to make any additional capital contributions.

72. The SPE will have four directors appointed by EEDC. One of the four SPE directors will be an independent director, who will be an employee of an administration company in the business of protecting SPEs, and must meet the other independence criteria set forth in the SPE governing documents. One other director will be appointed from among the officers or employees of PHI or a PHI subsidiary. The other two SPE directors may be officers or employees of Exelon or its affiliates, including PHI and its subsidiaries.

73. The SPE will issue a non-economic interest in the SPE (a "Golden Share") to an administration company in the business of protecting SPEs and separate from the administration company retained to provide the person to serve as the independent director for the SPE. The holder of the SPE's Golden Share will have a voting right on matters specified in the SPE governing documents, as described below.

74. A voluntary petition for bankruptcy by the SPE will require the affirmative consent of the holder of the Golden Share and the unanimous vote of the SPE board of directors (including the independent director). A voluntary petition for bankruptcy by PHI will require the affirmative consent of the holder of the Golden Share, the unanimous vote of the SPE board of directors (including the independent director), and the unanimous vote of the PHI board of directors. A voluntary petition for bankruptcy for any of PHI's subsidiaries will require the unanimous vote of the PHI board of directors (including its independent directors) and the unanimous vote of the board of directors of the relevant PHI subsidiary.

75. The SPE will maintain arms-length relationships with each of its affiliates and observe all necessary, appropriate and customary company formalities in its dealings with its affiliates. PHI and PHI's subsidiaries will maintain arms-length relationships with Exelon and its affiliates, including the SPE.

76. PHI's CEO and other senior officers who directly report to the CEO will hold no positions with Exelon or Exelon affiliates other than PHI and PHI's subsidiaries.

77. At all times, the SPE will hold itself out as an entity separate from its affiliates, will conduct business in its own name through its duly authorized directors and officers and comply with all organizational formalities to maintain its separate existence and shall use commercially reasonable efforts to correct any known misunderstanding regarding its separate identity. PHI and its subsidiaries will hold themselves out as separate entities from Exelon and the SPE,

conduct business in their own names (provided that PHI and each of PHI's utility subsidiaries may identify itself as an affiliate of Exelon on a basis consistent with other Exelon utility subsidiaries).

78. The SPE shall maintain its own separate books, records, bank accounts and financial statements reflecting its separate assets and liabilities. PHI and each of PHI's subsidiaries will maintain separate books, accounts and financial statements reflecting its separate assets and liabilities.

79. The SPE shall comply with Generally Accepted Accounting Principles in all material respects (subject, in the case of unaudited financial statements, to the absence of footnotes and to normal year-end audit adjustments) in all financial statements and reports required of it and issue such financial statements and reports separately from any financial statements or reports prepared for its affiliates; provided that such financial statements or reports may be consolidated with those of its affiliates if the separate existence of the SPE and its assets and liabilities are clearly noted therein.

80. The SPE shall account for and manage all of its liabilities separately from any other entity, and pay its own liabilities only out of its own funds.

81. The SPE shall neither guarantee nor become obligated for the debts of any other entity nor hold out its credit or assets as being available to satisfy the obligations of any other entity.

82. Each PHI utility will maintain separate debt and preferred stock, if any, so that none will be responsible for the debts or preferred stock of affiliated companies, and each will maintain its own corporate and debt credit rating as well as ratings for long-term debt and preferred stock, if any. PHI and its subsidiaries will use reasonable efforts to maintain separate credit ratings for their publicly traded securities. PHI will not issue additional long-term debt securities. In particular, PHI shall not rollover or otherwise refinance its currently outstanding long-term debt by issuing new long-term debt. PHI and its utility subsidiaries will use reasonable efforts and prudence to preserve investment grade credit ratings.

83. PHI will not assume liability for the debts of Exelon, the SPE, or any other affiliate of Exelon other than a PHI subsidiary. The PHI subsidiaries will not assume liability for the debts of Exelon, PHI, the SPE, the other PHI subsidiaries, or any other affiliate of Exelon. The SPE shall not acquire, assume or guarantee obligations of any affiliate. PHI will not guarantee the debt or credit instruments of Exelon, the SPE or any other Exelon affiliate other than a PHI subsidiary. The PHI utilities will not guarantee the debt or credit instruments of Exelon, PHI or any other Exelon affiliate including the SPE.

84. The SPE shall not pledge its assets for the benefit of any other entity or make loans to, or purchase or hold any indebtedness of, any other entity. The PHI utilities will not pledge or use as collateral, or grant a mortgage or other lien on any asset or cash flow, or otherwise pledge such assets or cash flow as security for repayment of the principal or interest of any loan or credit instrument of, or otherwise for the benefit of, Exelon, PHI or any other Exelon affiliate including the SPE.

85. Pepco will not include in any of its debt or credit agreements cross-default provisions between Pepco securities and the securities of Exelon or any other Exelon affiliate. Pepco will not include in its debt or credit agreements any financial covenants or rating- agency triggers related to Exelon or any other Exelon affiliate.

86. The SPE will not commingle its funds or other assets with the funds or other assets of any other entity and shall not maintain any funds or other assets in such a manner that it will be costly or difficult to segregate, ascertain or identify its individual funds or other assets from those of its owners or any other person.

87. PHI and its subsidiaries will maintain in its own name all assets and other interests in property used or useful in their respective business and will not transfer its ownership interest in any such property to Exelon or an Exelon affiliate (other than a PHI subsidiary) without requisite approval of the Commission and any approval required under the Federal Power Act; provided that the foregoing shall not limit the ability of PHI to transfer to Exelon or Exelon affiliates any business or operations of PHI or PHI subsidiaries that are not regulated by state or local utility regulatory authorities.

88. The SPE shall ensure that its funds will not be transferred to its owners or affiliates except with the consent and authority of the SPE board of directors.

89. The SPE shall ensure that title to all real and personal property acquired by it is acquired, held and conveyed in its name.

90. No entities other than PHI and its subsidiaries, including the PHI utilities and PHISCo, will participate in the PHI utilities' money pool. The PHI utilities will not participate in any money pool operated by Exelon, and there will be no commingling of the PHI money pool funds with Exelon. Any deposits into or loans through the PHI money pool by PHI utilities shall be on terms no less favorable than the depositor or lender could obtain through a short-term investment of similar funds with independent parties. Any borrowings from the PHI money pool by a PHI utility shall be on terms no less favorable and cost effective than the PHI utility could obtain through short-term borrowings from (including sales of commercial paper to) independent parties. Exelon will give notice to the Commission within seven (7) days in the event that any participant in the PHI money pool is rated below investment grade by any of the three major credit rating agencies. The documents and instruments creating the PHI money pool (and any modification thereof) will be subject to approval by the Commission.

91. Immediately following the Merger close, PHISCo will remain as a subsidiary of PHI and will continue to perform functions and to maintain related assets currently involved in providing services exclusively to the PHI utilities. Other functions that are currently provided by PHISCo, including those that are provided to PHI utilities and to other current PHI subsidiaries, will be transferred to EBSC or another Exelon affiliate in a phased transition over a period of time following the Merger closing. To address concerns that there would be two service companies under the proposed Merger, Exelon will file a plan within six (6) months after the Merger's close for Commission approval to integrate PHISCo within EBSC and other entities. The plan to integrate PHISCo with EBSC shall not include any net transfer of PHISCo employees located in

the District of Columbia pre-Merger to any location outside of the District, subject to the provisions of Paragraph 19.

92. PHI subsidiaries, other than PHISCo and the PHI utilities, that are currently engaged in operations that are not regulated by a state or local utility regulatory authority will be transferred to Exelon or an Exelon affiliate; provided that: (a) PHI may retain ownership of Conectiv LLC ("Conectiv") as a holding company for ACE and Delmarva Power; (b) Conectiv may transfer its 50% ownership interest in Millennium Account Services LLC to PHI; and (c) Conectiv or subsidiaries of Conectiv may retain ownership of real estate and other assets that are used in whole or in part in the business of the PHI utilities. PHI may elect to hold the stock of Delmarva and ACE directly, and cease the use of Conectiv as a holding company.

93. The SPE will maintain a separate name from and will not use the trademarks, service marks or other intellectual property of Exelon, PHI, or PHI's subsidiaries. PHI and its utility subsidiaries will each maintain a separate name from and will not use the trademarks, service marks or other similar intellectual property of Exelon or its other affiliates, except that PHI and each of PHI's utility subsidiaries may identify itself as an affiliate of Exelon on a basis consistent with other Exelon utility subsidiaries.

94. Any amendment to the organizational documents of the SPE that would remove or alter the voting or other ring-fencing requirements described above will require the unanimous vote of the board of directors of the SPE, including the independent director, and the affirmative consent of the holder of the Golden Share.

95. Within 180 days following completion of the Merger, Exelon will obtain a legal opinion in customary form and substance and reasonably satisfactory to the Commission, to the effect that, as a result of the ring-fencing measures it has implemented for PHI and its subsidiaries, a bankruptcy court would not consolidate the assets and liabilities of the SPE with those of Exelon or EEDC, in the event of an Exelon or EEDC bankruptcy, or the assets and liabilities of PHI or its subsidiaries with those of either the SPE, Exelon or EEDC, in the event of a bankruptcy of the SPE, Exelon or EEDC. In the event that such opinion cannot be obtained, Exelon will promptly implement such measures as are required to obtain such opinion.

96. Pepco shall maintain a rolling 12-month average annual equity ratio of at least 48%. Pepco will not pay dividends to its parent company if, immediately after the dividend payment, its common equity level would fall below 48%, as equity levels are calculated under the ratemaking precedents of the Commission.

97. Pepco shall not make any distribution to its parent if Pepco's corporate issuer or senior unsecured credit rating, or its equivalent, is rated by any of the three major credit rating agencies below investment grade.

98. Pepco shall file with the Commission, within five (5) business days after the payment of a dividend, the calculations that it used to determine the equity level at the time the board of directors considered payment of the dividend and the calculations to demonstrate that the

common equity ratio immediately after the dividend payment did not fall below 48%, as equity levels are calculated under the ratemaking precedents of the Commission.

99. Pepco will file with the Commission an annual compliance report with respect to the ring-fencing and other requirements.

100. At the time of Merger close and every year thereafter, Pepco shall provide the Commission with a certificate from an officer of Exelon certifying that: (a) Exelon shall maintain the requisite legal separateness in the corporate reorganization structure; (b) the organization structure serves important business purposes for Exelon; and (c) Exelon acknowledges that subsequent creditors of PHI and Pepco may rely upon the separateness of PHI and Pepco and would be significantly harmed in the event separateness is not maintained and a substantive consolidation of PHI or Pepco with Exelon were to occur.

101. Exelon shall not, without prior Commission approval, alter the corporate character of EEDC to become a functioning corporate entity providing common support services for PHI utilities.

102. Exelon shall not engage in an internal corporate reorganization relating to the SPE, PHI or Pepco, or EEDC for which Commission approval is not required without ninety (90) days prior written notification to the Commission. Such notification shall include: (a) an opinion of reputable bankruptcy counsel that the reorganization does not materially impact the effectiveness of PHI's existing ring-fencing; or (b) a letter from reputable bankruptcy counsel describing what changes to the ring-fencing would be required to ensure PHI is at least as effectively ring-fenced following the reorganization and a letter from Exelon committing to obtain a new non-consolidation option following the reorganization and to take any further steps necessary to obtain such an opinion. Exelon will not object if the Commission elects to open an investigation into the matter if the Commission deems it appropriate. Notwithstanding the above language in this paragraph, the Joint Applicants shall not materially alter the ring-fencing plan described in this Settlement Agreement without first obtaining approval in a written order from the Commission.

103. None of the cost of establishing, operating or modifying the SPE will be borne by Pepco or its distribution customers. The cost of obtaining the opinion of legal counsel referred to above (or any future opinion) will not be borne by Pepco or its distribution customers.

104. Upon the effective date of the proposed Merger, PHI and its utility subsidiaries will adopt delegations of authority setting forth the authorizations of officers of PHI and its utility subsidiaries to act on behalf of PHI and its utility subsidiaries without further authorization from Exelon. The proposed delegations of authority for PHI and its utility subsidiaries are set forth on Table 5. The delegations of authority for Pepco adopted by PHI will not be amended to reduce authorization levels of Pepco officers without prior notice to the Commission.

Table 5

Transaction Type (Note 1)	Approval Threshold							
	Exelon Board of Directors	Exelon Board Committees	Exelon President & CEO	Chief Executive Officer, Exelon Utilities	PHI or Utility Board of Directors	President & CEO, PHI or Utility	Sr. Vice Pres., CFO and Treas., PHI or Utility	Sr. Vice Pres., PHI or Utility
Capital and Related O&M	> $200M	≤ $200M	≤ $100M	≤ $50M	> $50M	≤ $25M	≤ $15M	
Mergers, Acquisitions, New Business or Ventures	> $100M		≤ $100M		> $5M	≤ $5M		
Sale of Receivables					> $10M	≤ $10M	≤ $1M	≤ $1M
Sale/Divestiture of Other Assets (including Real Estate)			≤ $100M		> $10M	≤ $10M	≤ $1M	≤ $1M
Customer Account Credits/Bill Adjustments/Charge Offs					> $10M	≤ $10M	≤ $1M	≤ $1M
Natural Gas Contracts (Note 2)	> $200M	≤ $200M			> $100M	≤ $100M		
Other Electric Energy Procurement Contracts (Note 2)	> $100M	≤ $100M		≤ $50M	> $50M	≤ $25M		
Purchases of Services and Non-Capital Materials	> $200M	≤ $200M	≤ $150M	≤ $50M	> $50M	≤ $25M	≤ $5M	≤ $5M
Legal, Regulatory or Income Tax Settlements (Note 3)	> $200M	≤ $200M	≤ $100M	≤ $50M	> $50M	≤ $25M	≤ $5M	≤ $5M
Issue/Redeem Debt	> $300M	≤ $300M	≤ $200M		ALL			
Financial Guarantees	> $150M	≤ $150M	≤ $100M	≤ $50M	≤ $100M			
Employee Benefit Plans and Arrangements			≤ $50M		ALL			
Contribution to Benefit Plans (Note 4)	> $200M	≤ $200M			ALL			
Negotiated Utility Rate Contracts			≤ $75M	≤ $50M	> $50M	≤ $25M	≤ $5M	≤ $5M
Other Contractual Commitments, Leases and Instruments	> $200M	≤ $200M	≤ $100M	≤ $50M	> $50M	≤ $25M	≤ $15M	≤ $5M
Corporate Contributions and Philanthropy	≥ $1M		≤ $1M	< $1M	≥ $1M	< $50K	≤ $10K	≤ $10K

Note 1: Delegations are to the respective officers and agents of Pepco Holdings LLC and its utility subsidiaries (collectively, "PHI"). Authority delegated to officers and agents to approve transactions is limited to transactions having subject matters related to their areas of responsibility. Additional written delegations to officers or employees below the CEO level may be made by the authorized officers generally or for specific purposes.

Note 2: Approval by the PHI or Exelon board of directors is not required for energy procurement contracts that are a direct result of an auction process or procurement plan approved by a state or local utility regulatory commission.

Note 3: The Pepco CEO has the authority to make rate case decisions including the revenue requirement that will be requested in Pepco's rate cases in the District of Columbia, taking into consideration the input of the Regional President of Pepco.

Note 4: Approval is not required for legally required periodic contributions to the pension and employee benefit plans.

105. Exelon shall conduct an analysis of its operational and financial risk to determine the adequacy of existing ring fencing measures. Exelon shall file this analysis with the Commission no later than the end of the third quarter in 2017.

106. The Joint Applicants agree to implement the ring-fencing and corporate governance measures set out in Paragraphs 51-55 and 63-102 within 180 days after Merger closing for the purpose of providing protections to customers. Not earlier than five (5) years after the closing of the Merger, the Joint Applicants shall have the right to review these ring-fencing provisions and to make a filing with the Commission requesting authority to modify or terminate those provisions. Notwithstanding such right, Joint Applicants agree not to proceed with any such modification or termination without first obtaining Commission approval in a written order. In addition, the Joint Applicants recognize that the Commission at any time may initiate its own review or investigation regarding ring-fencing measures (or upon petition by any party) and order modifications that it deems to be appropriate, in the public interest and the best interest of Pepco customers.

Commission Approval of PHI Non-Utility Operations

107. After the Merger, PHI will not initiate or invest in new non-utility operations without first obtaining Commission approval in a written order.

Severance of the Exelon - Pepco Relationship

108. Notwithstanding any other powers that the Commission currently possesses under existing, applicable law, the Joint Applicants agree that the Commission may, after investigation and a hearing, order Exelon to divest its interest in Pepco on terms adequate to protect the interests of utility investors (including Exelon investors) and consumers and the public, if the Commission finds that: (a) one or more of the divestiture conditions described below has occurred, (b) that as a consequence Pepco has failed to meet its obligations as a public utility, and (c) that divestiture is necessary to allow Pepco to meet its obligations and to protect the interests of its customers in a financially healthy utility and in the continued receipt of reasonably adequate utility service at just and reasonable rates. Any divestiture order made pursuant to this commitment shall be applicable to Pepco only to the extent consistent with the application of the criteria in the preceding clauses (a) – (c) and shall be limited to the assets and operations of Pepco in the District of Columbia. The divestiture conditions covered by this commitment are: (i) a nuclear accident or incident at an Exelon nuclear power facility involving the release or threatened release of radioactive isotopes, resulting in (x) a material disruption of operations at such facility and material loss to Exelon that is not covered by insurance or indemnity or (y) the permanent closure of a material number of Exelon nuclear plants as a result of such accident or incident; (ii) a bankruptcy filing by Exelon or any of its subsidiaries constituting 10% or more of Exelon's consolidated assets at the end of its most recent fiscal quarter, or 10% or more of Exelon's consolidated net income for the twelve (12) months ended at the close of its most recent fiscal quarter; (iii) the rating for Exelon's senior unsecured long-term public debt securities, without third-party credit enhancement, are downgraded to a rating that indicates "substantial risks" (i.e., below B3 by Moody's or B- by S&P or Fitch) by at least two of the three major credit rating agencies, and such condition continues for more than six (6) months; or (iv) Exelon and/or PHI have committed a pattern of material violations of lawful

Commission orders or regulations, or applicable provisions of the D.C. Code and, despite notice and opportunity to cure such violations, have continued to commit the violations.

Settlement Terms Addressing Commission Factor No. 5

Consent to the Commission's Jurisdiction

109. Pepco will continue to operate within the District of Columbia as an electric public utility subject to the continuing jurisdiction of the Commission pursuant to the District of Columbia Public Utilities Act, and without any reduction in the Commission's existing oversight or authority over Pepco.

Prompt Access to Pepco's Books and Records

110. Pepco will maintain separate books and records. Upon request by the Commission or the OPC, the Joint Applicants agree to provide access on demand in the District of Columbia to Pepco's original books and records as maintained in the ordinary course of business in accordance with D.C. Code § 34-904. The Joint Applicants also agree to notify the Commission of any material change in the administration, management or condition of Pepco DC's books and records within ten (10) days after the event.

Exelon Utility Performance Comparison Reporting

111. Exelon and PHI shall file annual across-the-fence reports comparing the performance and status of the utilities within the Exelon family. The reports shall address substantive areas as directed by the Commission and may include subject areas such as reliability, customer service, safety, rate and regulatory matters, interconnections, energy-efficiency and demand-response programs, and deployment of new technologies, including smart meters and smart grid, automated technologies, microgrids and utility-of-the future initiatives. The annual reports shall only be filed under separate cover in the event that the across-the-fence comparison is not duplicative of analysis provided in a separate report required by the Commission.

Consent to Jurisdiction

112. Exelon submits to the jurisdiction of the Commission for: (1) all matters related to the Merger and the enforcement of the conditions set forth herein to the extent relevant to operations of Pepco; and (2) matters relating to affiliate transactions between Pepco and Exelon or its affiliates to the extent relevant to operations of Pepco in the District of Columbia. Exelon shall also cause each of its affiliates that supplies goods or services to Pepco to submit to the jurisdiction of the Commission for matters relating to the provision or costs of such goods or services to Pepco.

Settlement Terms Addressing Commission Factor No. 6

Adherence to Code of Conduct and Provision of Standard Offer Service

113. The Joint Applicants agree to comply with the statutes and regulations applicable to Pepco regarding affiliate transactions, including without limitation 15 D.C.M.R. §§ 3900-3999.

114. Pepco will continue to provide SOS ("Standard Offer Service") to its customers in the District consistent with the District of Columbia Code and Affiliate Code of Conduct. The Settling Parties acknowledge that Exelon intends to continue to participate in the SOS auction process following the Merger.

Separate Employees to Engage in Advocacy

115. Exelon shall utilize separate legal and government-affairs personnel, support personnel, and separate law firms and consultants to advocate before the Commission, on behalf of Exelon Generation and/or Constellation Energy Resources, LLC, on the one hand, and Pepco and any Affiliated Transmission Company, on the other.

Advocacy for Energy Efficiency and Demand Response

116. Exelon has supported and will continue to support energy efficiency and demand response playing a role in the energy resource mix, with demand response services being an important tool for customers to manage energy costs. While questions remain about jurisdiction over demand response, the appropriate compensation mechanisms, and how to incorporate demand response in existing markets, Exelon is of the view that any sensible energy policy should reflect the value of all resources, including demand response. To that end, PHI and Pepco will maintain and promote energy efficiency and demand response programs consistent with the direction and approval of the Commission, District and federal law. Exelon will continue to advocate that demand response should be reflected in markets that serve the District of Columbia.

Competition Protections

117. Exelon agrees to the following competition protections. For purposes of this condition, "Affiliated Transmission Companies" are Pepco (in the District of Columbia and Maryland), Delmarva Power, Atlantic City Electric ("ACE"), PECO Energy Company ("PECO"), Baltimore Gas and Electric Company ("BGE") and Commonwealth Edison Company ("ComEd"), and any transmission owning entity that is in the future affiliated with Exelon and is a member of PJM Interconnection, LLC ("PJM"). "Exelon" refers to Exelon and its affiliates and subsidiaries.

(a) Exelon commits that its Affiliated Transmission Companies shall each identify, with PJM's concurrence, at least three independent third-party engineering consulting firms that are qualified to conduct Facilities Studies under the PJM generator interconnection process. Any generation interconnection applicant may propose other independent third- party engineering consulting firms to Exelon for its consideration with respect to adding them to this list of qualified firms. Exelon shall make a decision with respect to whether any proposed independent third-party engineering consulting firm can be included on such list within thirty days after a request to include any such proposed firm. Once approved, Exelon shall not be permitted to remove a third-party engineering consulting firm from such list unless and until it can demonstrate good cause as determined by the PJM Market Monitor or the FERC.

(b) Any generation developer that desires to interconnect to the transmission system of one of Exelon's Affiliated Transmission Companies may, in the developer's discretion and at the developer's expense, direct PJM to utilize one of the identified firms to conduct the Facilities

Study for its generation project for upgrades and interconnection facilities required on the Affiliated Transmission Company's facilities.

(c) For all interconnection studies performed by a listed independent third-party engineering consulting firm, the Exelon Affiliated Transmission Company shall cooperate with and, as requested, provide information to PJM and the independent engineering consulting firm as needed to complete all work within the normal scope and timing of the PJM interconnection process. The Affiliated Transmission Company shall provide to PJM the cost estimate for any facilities for which it has construction responsibility assigned in the PJM Interconnection Services Agreement. If a dispute arises in connection with the Study performed by the independent engineering consulting firm or the Affiliated Transmission Company, then the generation developer or the Affiliated Transmission Company may pursue resolution of the dispute through the process laid out in the PJM Tariff. Affiliates of Exelon that are pursuing the development of generation within the service territories of one of the Affiliated Transmission Companies shall, at their own expense, direct PJM to utilize one of the independent engineering consulting firms to conduct the Facilities Study for upgrades and interconnection facilities required on the Affiliated Transmission Company's facilities and the Feasibility Study and System Impact Study shall be performed by PJM. Nothing in this paragraph precludes an applicant, as part of its project team, from contracting with other contractors to assist it in the PJM interconnection process at its sole discretion.

(d) Exelon commits that Pepco and Pepco Maryland, ACE, Delmarva Power, PECO, and BGE shall remain members of PJM until January 1, 2025; provided, however, that if there are significant changes to the structure of the industry or to PJM, including markets administered by PJM, during that period that have material impacts on Pepco and Pepco Maryland, ACE, Delmarva Power, PECO or BGE, then any of those companies may file with FERC to withdraw from PJM.

(e) Exelon agrees that the PJM Market Monitor may review its Demand Resource bids in PJM energy, reserves, and capacity markets.

118. In order to facilitate consumer advocacy in PJM, Exelon shall make a one-time contribution of $350,000 to fund the expenses of the Consumer Advocates of PJM States Inc. ("CAPS"). This contribution shall be a single contribution made with respect to all of the PHI utilities and service territories and shall not be specific to Pepco. The cost of the contribution shall not be recovered in the rates of any Exelon utility. Exelon shall agree to support reasonable proposals to have PJM members fund CAPS.

Settlement Terms Addressing Commission Factor No. 7

Development of Solar/Renewable Generation

119. ~~In addition to funding renewable generation as provided in Paragraph 6,~~ Exelon shall, by December 31, 2018, develop or assist in the development of ~~10~~ 7 MW of solar generation in the District of Columbia outside of Blue Plains. ~~and will enter into good-faith negotiations of a commercially acceptable arrangement for 5 MW of such generation to be constructed at the DC Water Blue Plains Advanced Wastewater Treatment Plant ("Blue Plains") and operational~~

~~by December 31, 2018. In the event a commercially acceptable arrangement cannot be negotiated for 5 MW of ground-mounted solar generation at Blue Plains, the 10 MW of solar generation to be developed under this paragraph shall be reduced to 7 MW.~~ Exelon shall sell the output of solar generation constructed in fulfillment of this commitment in the market, and shall not seek to recover the costs of this commercial solar development through Pepco District of Columbia distribution or transmission rates. The construction and installation shall be competitively bid with a preference for qualified local businesses. Exelon shall retain the solar renewable energy certificates and tax attributes for the solar projects; however, the SRECs created by such projects may not be used for District of Columbia Renewable Portfolio Standard compliance prior to December 31, 2018. SRECs created in years prior to 2019 may be banked and then used in 2019 or thereafter, to the extent permitted by law. Additionally, Exelon may apply for, and the Commission may grant, a waiver from prohibition of SREC usage prior to 2019, upon finding of good cause by the Commission. In addition, Pepco shall support and expedite the interconnection for 5 MW of ground-mounted solar generation at Blue Plains that is developed, constructed and installed by a vendor selected by DC Water.

120. Exelon shall provide $5 million of capital to creditworthy governmental entities at market rates for the development of renewable energy projects in the District of Columbia.

121. Pepco shall coordinate with the District Government to facilitate planning for and interconnection of renewable generation to be developed by the District Government for governmental buildings or public facilities.

Enhancement to the Interconnection Process and Support for Customer-Owned Behind-the-Meter Distributed Generation[905]

122. Pepco shall reflect in its distribution system planning actual and anticipated renewable generation penetration. Beginning not later than six months after closing of the Merger, Pepco's distribution system planning will include an analysis of the long term effects/benefits of the addition of behind-the-meter distributed generation attached to the distribution system within the District of Columbia, including any impacts on reliability and efficiency. Pepco will also work with PJM to evaluate any impacts that the growth in these resources may have on the stability of the distribution system in the District of Columbia.

123. Exelon, PHI and Pepco shall provide a transparent, efficient, and clear process for review and approval of interconnection of proposed energy-generation projects to the Pepco distribution system in the District of Columbia including the following:

(a) Service territory maps of circuits, within ninety (90) days after Merger closing, will be uploaded to the Pepco website, to be updated at least quarterly, that have the following

[905] Throughout the Public Interest Hearing on the NSA, the Settling Parties' witnesses universally acknowledged that any subsequent Commission orders or rulemakings would supersede provisions of the NSA that were inconsistent or contradictory to any subsequent orders or rules issued by the Commission. NSA Tr. at 176:18 – 177:15 (District Government redirect examination of Witness Wells); NSA Tr. at 182-183 (Khouzami); NSA Tr. at 440 (Dismukes); NSA Tr. at 464-465 (Oliver).

information included: the area where circuits are restricted, and to what size systems the restrictions apply. Three different maps will depict different restriction sizes. Each map will have the circuit areas on the particular map highlighted in a different color. One map will show circuits that are restricted to all sizes. One map will show circuits restricted to systems less than 50kW. One map will show circuits restricted to less than 250kW. The maps will also serve to identify areas that are approaching their operating limits and could become restricted to larger systems in future years. As of September 1, 2015, there were no "restricted" secondary network circuits, but if they occur, a new map or method of depiction may be necessary. A second network circuit may become restricted if the active and pending generation would cause utility system operating violations. The categories of size restrictions depicted on the circuit maps will be made available for information purposes only, and will neither yield automatic cost allocation assumptions for resulting upgrades nor supplant the determination of the level of utility review afforded to the interconnection request.

(b) When a utility receives an interconnection request for a behind-the-meter renewable system, there are several factors, or criteria limits, to consider when it determines if upgrades are required at a specific circuit. Pepco shall:

(i) Provide a report to the Commission within ninety (90) days after Merger closing that provides its criteria limits for distributed energy resources that apply for connection to its distribution. This report shall include supporting studies and information that substantiate those limits. The report will describe and discuss how Pepco considers the generation profile of renewable energy relative to load, as well as discuss the approaches utilized in other jurisdictions that have addressed the issue of the impact of on-site renewable resources on the local grid and circuits. Pepco shall make itself available for discussions with the stakeholders on the report and to demonstrate the modeling tools used by Pepco to perform its analysis to accommodate additional distributed energy resources.

(ii) PHI is currently working with the United States Department of Energy in research designed to show how Voltage Regulation strategy, phase balancing, optimal capacitor placement, smart inverters and energy storage may impact Hosting Capacity. PHI will share this research with stakeholders upon completion of the project.

(iii) PHI has provided data to National Renewable Energy Laboratory ("NREL") as part of its in-depth work to review utility interconnection criteria. A report is expected to be issued by the end of 2015. PHI will evaluate its criteria with the criteria outlined in the NREL report to identify any improvements that may be made including treatment of behind-the-meter storage equipment. PHI shall share information, discuss approaches, evaluating interconnection criteria, working with NREL, and providing an opportunity for stakeholders to comment on PHI's proposed recommendations on interconnection criteria prior to public release. PHI will collaborate with stakeholders in good faith but nothing in this Settlement Agreement obligates PHI to accept or be bound by the recommendations of the stakeholders. This collaborative effort will be completed within one (1) year following the approval of the Merger.

(iv) PHI will consider the hourly load shape and the hourly generation of interconnected small generators as a factor to determine the hosting capacity for any given

location of a circuit. PHI's hosting capacity determinations shall adopt the minimum daytime load ("MDL") supplemental review screen standards established in FERC Order 792 as well as findings from the collaborative research referenced above that allow for interconnection of distributed generation systems without additional need for study or upgrade investments (e.g., "Fast Track Capacity") as long as aggregate installed nameplate capacity on the circuit, including the proposed system, would not exceed 100% of MDL on the circuit and the proposed system passes a voltage and power quality screen and a safety and reliability screen.

(v) PHI shall provide electronic data interface ("EDI") access to historical electric usage through Pepco's Green Button capability to its customers and to customer representatives (distributed energy companies and others who a customer designates to receive such information).

124. Pepco shall maintain within ninety (90) days after Merger closing an accepted inverter equipment list for small generation projects where once an inverter is reviewed and found to be acceptable for use, it is deemed acceptable for future development. This list shall be easily accessible on the Pepco websites and updated quarterly. Pepco will review its policy for requiring an equipment list to be submitted for panels and switchgear with each application and post on its website any changes in policy.

125. Exelon is committed to maintaining Pepco's existing interconnection and net metering programs.

126. In addition to the current requirements of 15 D.C.M.R. Chapter 40 District of Columbia Small Generator Interconnection Rules, Pepco will adhere to the following requirements with respect to Level 1 interconnections:

(a) Pepco will issue a permission to operate to the interconnection customer, in the form of an email, within twenty (20) business days after the interconnection customer satisfies the requirements of 15 D.C.M.R. § 4004.4 (signed Interconnection Agreement, certificate of completion and the inspection certificate).

(b) In its annual report to be filed with the Commission pursuant to 15 D.C.M.R. § 4008.5, Pepco shall also report its performance with respect to issuance of permission to operate set forth in clause (a) above. If more than 10% of the permissions to operate requested are not issued by Pepco within twenty (20) business days after satisfaction of the applicable requirements, the annual report will also include specific remedial action to be taken by Pepco to resolve the shortfall and the time frame to perform the remedial action.

(c) Within 180 days after the closing of the Merger, Pepco shall file a request for proposed rulemaking to add the requirement with respect to issuance of permission to operate set forth in clause (a) above to 15 D.C.M.R. Chapter 40, and to make adherence to the deadlines contained in 15 D.C.M.R. Chapter 40 at not less than a 90% compliance level subject to the EQSS standards in 15 D.C.M.R. Chapter 36.

(d) Within 180 days after closing of the Merger, Pepco shall file a request with the Commission to eliminate the $100 fee currently charged for a Level 1 interconnection application.

127. In behind-the-meter applications where the battery never exports while in parallel with the grid and both the battery and the solar system share one inverter, no additional metering or monitoring equipment shall be required for a solar plus storage facility than would be required for a solar facility without storage technology. Pepco, through a stakeholder process, shall undertake appropriate further study of the issues regarding the coupling of solar and storage. As a result of such studies, stakeholders may recommend changes to this protocol to the Commission. Pepco, in consultation with Commission Staff and interested stakeholders, shall determine an appropriate target completion date for this review within one (1) year after Merger closing.

128. Pepco shall develop an enhanced communication plan to proactively promote installation of behind-the-meter solar generation in its District service territory. Included in the plan will be measures to utilize the Pepco web site and bill inserts to provide public service information useful to businesses and individuals that may be interested in installing solar generation as well as informing customers as to the capabilities of Pepco's net energy metering program and advanced metering infrastructure. Pepco will share its enhanced communication plan with the Settling Parties and other interested parties for their comment within six (6) months after Merger closing. Within six months after Merger closing, Pepco will implement an automated online interconnection application process. This process will enable customers to securely complete interconnection applications online and to track online the status of the customer application, including resolution of customer inquiries, issues and complaints.

~~Development of Microgrid Facilities~~

129. ~~Pepco will coordinate with the District to interconnect and develop at least four (4) microgrids. The objectives of Pepco and the District with respect to these microgrids will include the following: (i) to encourage on-site generation, including generation developed by competitive suppliers, (ii) to promote electrical interconnection that enhances the reliability of the electric grid, (iii) to continue universal service and consumer protections for all District electric consumers, and (iv) to identify projects that are cost effective and that leverage private investment, as well as public funding. Pepco will, within eighteen (18) months after Merger close, file with the Commission a proposal for at least four (4) pilot public-purpose microgrid projects within the District to provide enhanced energy services during emergency events. The filing shall include a proposal for funding and recovery of Pepco's costs in connection with the projects through Pepco District of Columbia regulated retail utility rates and a description of any federal or District contribution to the development of the microgrid projects. The filing shall also address alternatives for allocation of the costs of the microgrid projects to customers, including payment by all Pepco customers or payment by a smaller subset of customers who benefit from the project. Pepco shall coordinate with the District on the selection of the pilot locations, the development of the proposal and the implementation of the projects. The proposal for the microgrid projects will include, but is not limited to: planning, design and construction of physical facilities and control technologies, the development of on-site distributed generation sources, such as combined heat and power, solar photovoltaic and fuel cells, and operation and maintenance activities. The development and implementation of the microgrid pilot projects shall be competitively sourced. Pepco shall install the microgrids within five (5) years after receiving approval from the Commission of the microgrid projects and of Pepco's cost recovery. Nothing in this Settlement Agreement precludes OPC or any party from reviewing and, if~~

~~deemed necessary in OPC's or each such party's individual sole discretion, from challenging any such filing or proposed funding, recovery, or allocation of microgrid costs, or restricts in any way the arguments that can be made in any such challenge. No later than twelve (12) months after the Merger close, Pepco shall file with the Commission an interim progress report on the legal, financial and practical issues associated with the planning and development of the microgrid project proposals. The report should address at a minimum different ownership and operational structures for these microgrid projects to be located in the District of Columbia, including a legal assessment of the ability of an investor-owned utility to own either or both of the distribution and generation assets integrated into a microgrid project. Nothing in this paragraph shall obligate the District to use Pepco for the development, financing, ownership or construction of the microgrids referred to herein, and the District is free to pursue microgrid development independent of Pepco, subject to applicable law, including interconnection rules and procedures.~~ [Text Deleted]

Support of Formal Case No. 1130 (Investigation into Modernizing the Energy Delivery Structure for Increased Sustainability)

130. The Commission, pursuant to Order No. 17912 issued on June 12, 2015, opened Formal Case No. 1130. Pepco, as the electric distribution utility in the District of Columbia, is an active participant in this proceeding and is subject to assessment to fund costs of the Commission and the OPC incurred in this proceeding in accordance with the laws of the District of Columbia. Exelon commits that it will support, and cause Pepco to continue to support, the Commission's objectives in opening this proceeding to identify technologies and policies that can modernize the District of Columbia energy delivery system for increased sustainability and to make the District of Columbia energy delivery system more reliable, efficient, cost-effective and interactive. Further, Pepco and Exelon shall support and facilitate the implementation of any pilot projects approved by the Commission that emerge from the Formal Case No. 1130 proceeding.

Procurement of 100 Megawatts of Wind Energy Under Long-Term Contracts

131. Exelon or its non-utility subsidiaries (for purposes of this section, "Exelon") will, within five (5) years after the Merger close, conduct one or more requests for proposals or other competitive process (each an "RFP") to solicit offers to purchase a total of 100 megawatts ("MW") of renewable energy, capacity and ancillary services and all environmental attributes associated therewith, including but not limited to renewable energy credits (collectively, the "Product"), from one or more new or existing wind-generation facilities located within the PJM territory with an anticipated Product delivery date beginning approximately three years following the applicable RFP date. Each RFP and associated documents will include the following provisions:

(a) Bidders will be asked to provide credit assurances satisfactory to Exelon in its reasonable discretion as needed to assist Exelon in evaluating each bidder's existing and continued creditworthiness.

(b) Exelon will evaluate each proposal received in response to each RFP and will select one or more bidders based on the proposal(s) that Exelon determines, in its sole discretion,

represent(s) the best value to Exelon. In the event that Exelon receives fewer than three qualifying proposals in connection with an RFP, Exelon reserves the right to make no award in connection therewith and to conduct a replacement RFP at a future date.

(c) Exelon will contract for the purchase of Product through one or more power purchase agreement(s) to be negotiated between Exelon and the winning bidder(s) (the "PPA(s)"). The PPA(s) will have delivery term lengths of ten (10) years and contain commercially reasonable, standard terms and conditions for the purchase and sale of the Product and, for purchases from new wind projects, development milestones and related standard provisions. Product purchased by Exelon pursuant to the PPA(s) may be resold, retired, used for compliance purposes, remarketed, or otherwise used as deemed appropriate by Exelon in its sole discretion.

(d) The commitments made in this paragraph are intended to promote wind within PJM to facilitate meeting state renewable portfolio standard requirements, including each of the service territories in which PHI utilities provide service. This commitment shall be a single commitment made with respect to all the PHI utilities and service territories. Exelon and its non-utility subsidiaries will use commercially reasonable efforts to utilize the environmental attributes purchased through procurements under this paragraph to satisfy any obligations of Exelon and its non-utility subsidiaries under the District of Columbia's renewable portfolio standard.

(e) The costs of implementing this paragraph (including the costs of all procurements and all costs under each PPA) shall not be recovered through Pepco District of Columbia distribution or transmission rates.

Additional Provisions

132. Each of the Settling Parties agrees to use its best efforts to ensure that this Settlement Agreement shall be submitted as soon as possible for approval to the Commission. Exelon and PHI intend to file a Motion of Joint Applicants to Reopen the Record in Formal Case No. 1119 to Allow for Consideration of Nonunanimous Full Settlement Agreement and Stipulation, or for Other Alternative Relief (the "Motion of Joint Applicants to Reopen"). The other Settling Parties shall promptly file a statement either supporting or consenting to a Commission determination to grant the Motion of Joint Applicants to Reopen. If the Commission does not accept the Motion of Joint Applicants to Reopen, the Joint Applicants will file a new application consistent with terms and conditions of this Settlement Agreement (the "New Application"). The other Settling Parties shall promptly file a statement in support of the New Application.

133. Each of the Settling Parties agrees to cooperate in good faith and take all reasonable action to effectuate the terms of this Settlement Agreement.

134. The Settling Parties agree that this Settlement Agreement represents the entirety of the agreement among the Settling Parties concerning the subject matter hereof and does not limit or otherwise affect rights and obligations any Settling Party may have under any other agreement.

135. The Settling Parties agree to support approval of the Merger upon the terms set forth in this Settlement Agreement in any proceedings before the Commission regarding approval of the

Merger and/or implementation of commitments or conditions, which shall include filing testimony in support of the Settlement Agreement and the Merger. The Settling Parties further agree to defend this Settlement Agreement in the event of opposition to approval of the Merger from non-signatory parties before the Commission.

136. This Settlement Agreement contains terms and conditions each of which is interdependent with the others and essential in its own right to the signing of this Settlement Agreement. Each term is vital to the Settlement Agreement as a whole, since the Settling Parties expressly and jointly state that they would not have signed the Settlement Agreement had any term been modified in any way. None of the Settling Parties shall be prohibited from or prejudiced in arguing a different policy or position before the Commission in any other proceeding, as such agreements pertain only to this matter and to no other matter.

137. Notwithstanding anything to the contrary set forth in this Settlement Agreement, upon the occurrence of any of the following events, either Exelon or PHI, in its sole discretion, may terminate this Settlement Agreement, and this Settlement Agreement then shall be deemed null and void and of no force or effect:

(a) if the Commission does not, within forty-five (45) days after the date of the initial filing of the Settlement Agreement with the Commission as an attachment to the Motion of the Joint Applicants to Reopen (the "Settlement Filing Date"), set a schedule for action for consideration of this Settlement Agreement which allows for a Final Order for approval of the Merger within 150 days after the Settlement Filing Date;

(b) if the Commission sets a schedule for action on the Motion of the Joint Applicants to Reopen or the New Application (if the Joint Applicants file the New Application), or establishes a revised schedule, which does not allow for a Final Order for approval of the Merger within 150 days after the Settlement Filing Date;

(c) if the Commission fails to adopt a Final Order approving the Merger and this Settlement Agreement as filed with the Commission without condition or modification within 150 days after the Settlement Filing Date;

(d) if the Commission issues a Final Order disapproving the Merger or the Settlement Agreement or adding conditions or making modifications to the Merger or this Settlement Agreement; or

(e) if the Merger Agreement is terminated or the Merger is not consummated for any reason.

138. This Settlement Agreement is submitted to the Commission for approval as a whole and the Settling Parties state that its provisions are not severable, in accordance with 15 D.C.M.R. § 130.10(f).

139. The terms and conditions set forth in this Settlement Agreement in Paragraphs 1 through 130 shall only be binding on the Settling Parties upon approval by the Commission and upon consummation of the Merger, which are express conditions precedent. In the event that the Commission enters a Final Order approving this Merger which is subsequently reversed or

vacated, then Exelon shall have the right to void any executory obligations and recover any funds paid consistent with the decision of the District of Columbia Court of Appeals or the Commission's order on remand.

140. Exelon submits to the jurisdiction of the Commission for enforcement of the terms and conditions herein. Nothing in this Settlement Agreement is intended to diminish the jurisdiction of the Commission with respect to the Settling Parties.

141. This Settlement Agreement may only be modified by a further written agreement executed by all the parties to this Settlement Agreement.

142. This Settlement Agreement may be executed in as many counterparts as there are parties to this Settlement Agreement, each of which counterparts shall be an original, but all of which shall constitute one and the same instrument.

143. The Settling Parties are submitting this Settlement Agreement, inter alia, subject to and in accordance with 15 D.C.M.R. Section 130.10. As required by Section 130.10, this Settlement Agreement (a) has been reduced to writing; (b) contains all of the terms and conditions agreed upon by the Settling Parties; (c) has been clearly and accurately labeled as a nonunanimous settlement; (d) has been clearly and accurately labeled as a full settlement; (e) indicates by this clause that the parties to Formal Case 1119 that have not signed the Settlement Agreement are expected to either oppose or be neutral with respect to the acceptance of the Settlement Agreement; (f) states that the provisions of the Settlement Agreement are not severable and that the Settlement Agreement must be accepted or rejected in its entirety by the Commission; and (g) indicates that the Settling Parties have stipulated, or will stipulate, the admission into evidence of the testimony and exhibits filed by the Settling Parties in support of this Settlement Agreement.

[Signature page follows]

EXELON CORPORATION, on behalf of itself, EXELON ENERGY DELIVERY COMPANY, LLC, and NEW SPECIAL PURPOSE ENTITY, LLC

_____

BY: Darryl M. Bradford, Executive Vice President and General Counsel

PEPCO HOLDINGS, INC., and POTOMAC ELECTRIC POWER COMPANY

_____

BY: Kevin C. Fitzgerald, Executive Vice President & General Counsel, Pepco Holdings, Inc.

GOVERNMENT OF THE DISTRICT OF COLUMBIA

_____

BY: Muriel Bowser
Mayor of the District of Columbia

_____

BY: Tommy Wells
Director, Department of Energy and Environment

_____

BY: Karl A. Racine
Attorney General for the District of Columbia

OFFICE OF THE PEOPLE'S COUNSEL OF THE DISTRICT OF COLUMBIA

_____

BY: Sandra Mattavous-Frye
People's Counsel

DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY

_____

BY: George Hawkins
Chief Executive Officer and General Manager

NATIONAL CONSUMER LAW CENTER, NATIONAL HOUSING TRUST, and NATIONAL HOUSING TRUST – ENTERPRISE PRESERVATION CORPORATION

_____

BY: Charles Harak
Senior Attorney

APARTMENT AND OFFICE BUILDING ASSOCIATION OF METROPOLITAN WASHINGTON

_____

BY: Margaret Jeffers, Esq.
Executive Vice President