

Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015

589

PUBLIC SERVICE COMMISSION  
OF THE DISTRICT OF COLUMBIA

----- :  
IN THE MATTER OF THE JOINT : Formal Case  
APPLICATION OF EXELON : No. 1119  
CORPORATION, PEPCO HOLDINGS, :  
INC., POTOMAC ELECTRIC POWER :  
COMPANY, EXELON ENERGY :  
DELIVERY COMPANY, LLC AND :  
NEW SPECIAL PURPOSE ENTITY, LLC: Volume III  
FOR AUTHORIZATION AND APPROVAL : (Pages 589 -  
OF PROPOSED MERGER TRANSACTION : 803)  
----- :

Washington, D.C.

Friday, December 4, 2015

The Public Interest Hearing in the above-captioned matter began at 10:10 a.m., pursuant to notice, at the Public Service Commission of the District of Columbia, 1325 G Street, N.W., Washington, D.C.

BEFORE: BETTY ANN KANE - CHAIRMAN  
JOANNE DODDY FORT - COMMISSIONER  
WILLIE L. PHILLIPS - COMMISSIONER

Before: Bonnie L. Russo

Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015

590

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Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015

591

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Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015

592

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Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015

593

1 I N D E X

2	WITNESS	DIRECT	CROSS	RED	REC
3	GEORGE HAWKINS	595	640	--	--
4	SCOTT HEMPLING	646	647	--	--
5	LARRY MARTIN	737	738 764	--	--

6  
7 E X H I B I T S

8			FOR ID	IN EVD
9	D.C. Water B	Hawkins Testimony	596	644
10	JANSA 4	Settlement Agreement	648	736
11	Grid 2 2A	Hempling Testimony		736
12				
13	Grid 2 2C	Martin Testimony		795
14				
15	PSC 8	Preliminarily PSC 3		645

16  
17  
18  
19  
20  
21  
22

Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015

594

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

2 THE SECRETARY: All rise.

3 You may be seated.

4 CHAIRMAN KANE: Good morning. We  
5 are back on the record in Formal Case 1119. It  
6 is Friday, December 4th, at 10:10 a.m.

7 This will be the last day of our  
8 hearings, and before we start with the next  
9 witness, are there any preliminary matters from  
10 any of the parties? Nothing? All right.

11 In keeping with our taking the  
12 settling parties first, Ms White, is Mr.  
13 Hawkins here?

14 MS. WHITE: Yes, Madam Chair, he is  
15 here.

16 CHAIRMAN KANE: Then we will call --  
17 you may call your witness.

18 MS. WHITE: Thank you, Madam Chair.

19 On behalf of the District of  
20 Columbia Water and Sewer Authority, I am Nancy  
21 White and I would like to call Mr. George  
22 Hawkins to the stand.

Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015

595

1     GEORGE HAWKINS,  
2     being first duly sworn, to tell the truth, the  
3     whole truth and nothing but the truth,  
4     testified as follows:

5             DIRECT EXAMINATION BY COUNSEL FOR D.C. WATER

6                     BY MS. WHITE:

7             Q.     Could you please state your name for  
8     the record.

9             A.     George Hawkins.

10            Q.     By whom are you employed and what is  
11     your position?

12            A.     Chief executive officer and general  
13     manager, D.C. Water.

14            Q.     Do you have before you a copy of the  
15     direct testimony of George S. Hawkins filed in  
16     this proceeding on October 30, 2015?

17            A.     I do.

18            Q.     If I asked you the same questions in  
19     that document, would your answers be the same  
20     today?

21            A.     Yes.

22            Q.     And are those answers true and

Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015

596

1 correct to the best of your knowledge,  
2 information and belief?

3 A. Yes.

4 MS. WHITE: I would ask that Mr.  
5 Hawkins' testimony be marked as D.C. Water B.

6 CHAIRMAN KANE: So marked.

7 (Exhibit D.C. Water B was marked for  
8 identification.)

9 MS. WHITE: Thank you. And Madam  
10 Chair, we have a very limited rejoinder  
11 testimony.

12 CHAIRMAN KANE: Thank you.

13 BY MS. WHITE:

14 Q. Mr. Hawkins, have you reviewed the  
15 testimony of Larry Martin filed on behalf of  
16 Grid 2.0 in this proceeding?

17 A. I have reviewed the testimony of my  
18 friend Larry Martin.

19 Q. Do you recall Mr. Martin's  
20 discussion on Page 6 of his testimony about the  
21 solar project that D.C. Water was considering  
22 and specifically his discussion of that project

Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015

597

1 as being eminently feasible?

2 A. I am.

3 Q. Do you have any comments on Mr.  
4 Martin's testimony about that project?

5 A. I appreciate Mr. Martin's both  
6 awareness of the project. We have been friends  
7 for many years and his comments on the project.  
8 We had issued a competitive procurement for  
9 that project, actually gone through the  
10 procurement and we were at the point of award,  
11 but that contract has been canceled, and we  
12 were not able to fulfill the contract due to  
13 various business clauses that were not able to  
14 be executed, so at current state, there are no  
15 projects planned for Blue Plains, although we  
16 are always actively considering alternative  
17 energy projects.

18 MS. WHITE: Madam Chair, Mr. Hawkins  
19 is available for cross-examination.

20 CHAIRMAN KANE: Thank you.  
21 Cross-examination by the parties? Then I will  
22 start.

Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015

598

1                   Mr. Hawkins, would you look at your  
2 testimony on Page 3 starting on Line 9.

3                   See that?

4                   THE WITNESS: Uh-huh.

5                   CHAIRMAN KANE: And here, you are  
6 speaking in this section of the D.C. Water's  
7 evaluation of the original joint applicants  
8 application, correct?

9                   THE WITNESS: Correct.

10                  CHAIRMAN KANE: You say: "D.C.  
11 Water also was skeptical of the joint  
12 applicants position that there was no need for  
13 the Commission to be concerned, that commercial  
14 customers like D.C. Water receive an immediate  
15 tangible financial benefit as a result of the  
16 merger because those customers would reap most  
17 of the benefits of merger synergy savings  
18 following a merger closing."

19                  And you say: "D.C. Water found  
20 these merger synergy savings to be too  
21 speculative to meet the Commission's  
22 requirement of a direct traceable and tangible

Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015

599

1 ratepayer benefit."

2 Have you looked at the merger -- the  
3 synergy savings in the nonunanimous settlement  
4 agreement?

5 THE WITNESS: I have.

6 CHAIRMAN KANE: And would I direct  
7 you in particular to Commitment 28 in the  
8 nonunanimous settlement agreement, which says  
9 -- just one sentence: "Pepco shall track and  
10 account for merger-related savings and the cost  
11 to achieve those savings in each of its base  
12 rate cases filed within a three-year period  
13 following merger close."

14 Do you consider a three-year  
15 tracking of the merger synergy savings  
16 adequate?

17 THE WITNESS: It may well be  
18 adequate for some purposes for the immediate  
19 benefit to D.C. Water. My experience in  
20 evaluating mergers in this hearing and others,  
21 that in the short term, there is actually  
22 additional cost as enterprises integrate their

Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015

600

1 operations, and we do believe there are likely  
2 to be significant synergies over time, but for  
3 the immediate benefit that we were seeking and  
4 the merger itself, we didn't see that in the  
5 time frame evaluated.

6 CHAIRMAN KANE: My question went to  
7 the due application, the three years needed,  
8 you say three years.

9 THE WITNESS: Yes.

10 CHAIRMAN KANE: So your evaluation  
11 of the original proposal that the merger  
12 synergy savings were too speculative, has that  
13 changed since they are only going to be tracked  
14 for three years?

15 THE WITNESS: We don't think they  
16 are speculative. We suspect that the savings  
17 will be revealed over a longer period of three  
18 years. The reason we engage in the settlement  
19 agreement is to be sure that D.C. Water  
20 receives tangible and specific benefits  
21 separate in addition to the synergy savings.

22 CHAIRMAN KANE: Would you describe



1 what those separate and tangible benefits are?

2 THE WITNESS: Certainly. There are  
3 elements that we are aware of in the agreement  
4 that are meaningful to D.C. Water, that are  
5 tangible to many parties, but one is on the  
6 reliability requirements that are in addition  
7 to what have been previously committed to the  
8 Public Service Commission.

9 The greatest risk to D.C. Water is  
10 power reliability, so we were delighted to see  
11 those provisions in the settlement agreement.  
12 We are equally pleased at the commitments to  
13 improve interconnection arrangements which is  
14 something D.C. Water is concerned about, both  
15 for our own purposes and in general, and those  
16 are broadly applied, and we are pleased with  
17 both, specifically for D.C. Water.

18 There is a arrangement we have  
19 through the city administrator's office for a  
20 \$2 million donation for our green  
21 infrastructure fund. We have infrastructure  
22 work here in the District which we consider a

Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015

602

1 significant benefit as well as provision in the  
2 agreement about a 5 megawatt solar installation  
3 at Blue Plains.

4 CHAIRMAN KANE: Let me ask you a  
5 little more detail about each of those.

6 One of the benefits that you did  
7 cite was the \$10.5 million going to the  
8 consumer and regulatory affairs department of  
9 the District for a green building fund.

10 And on Page 4 of your testimony,  
11 looking at Lines 3 to 5, Page 4, Lines 3 to 5  
12 you say: "It is my understanding that the  
13 District will allocate 2 million of this green  
14 building fund to support the green  
15 infrastructure program that D.C. Water is  
16 spiriting."

17 What is the basis of your  
18 "understanding?"

19 THE WITNESS: Conversations I have  
20 had with the city administrator as well as  
21 Director Wells from the Department of Energy  
22 and the Environment. And it is my

Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015

603

1 understanding that it will be from the green  
2 building fund, but I also understand it may  
3 well in the ultimate negotiation would be from  
4 the work force development fund. It is  
5 separately identified in Paragraph 24.

6 It is our intention at the  
7 conclusion of this proceeding and the merger  
8 discussions that we would enter into a  
9 memorandum of agreement with the District which  
10 we do so regularly on issues of this sort,  
11 identify funding and what work we intend to do  
12 related to that funding, and essentially, it  
13 will mainly be a District Government decision  
14 as to which fund is used to support D.C. Water.

15 We would have an MOU that would lock  
16 in that the funds would be available, would be  
17 to the District Government to determine which  
18 of the two funds or a combination of both, I  
19 imagine, made most sense to them to provide  
20 funding from.

21 CHAIRMAN KANE: Okay. Then on Line  
22 5 on the same page, you say: "In addition to

Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015

604

1 the CIF, Exelon commits in Paragraph 24," which  
2 you just cited, "of the settlement entitled  
3 work force development to provide 5.2 million  
4 to support various work force development  
5 programs, including those administered by D.C.  
6 Water for its GI training program."

7 Now is that a separate allocation  
8 from the 2 million from the green building fund  
9 for a total -- or explain that to me.

10 THE WITNESS: It is my understanding  
11 that the designation of specific funds for D.C.  
12 Water is a total of 2 million. There's none in  
13 addition to that. Support going to D.C. to  
14 support work force development is good for D.C.  
15 Water in general. We have a very extensive  
16 interaction with the Department of Employment  
17 Services, given the scale of our operations and  
18 our construction grants program, so that is  
19 supportive of us, but the specific donation to  
20 our green infrastructure is 2 million and there  
21 is no, in addition to that, in either of them.

22 CHAIRMAN KANE: Thank you. That was

Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015

605

1 confusing the way it was written.

2 Then on Page 6 of your testimony,  
3 Lines 1 to 6 -- actually, it starts on page --  
4 yeah, Page 6.

5 You are speaking of an additional \$2  
6 million to support development of a robust GI  
7 program including possibly establishing a D.C.  
8 Water Division dedicated to GI installation, GI  
9 being green infrastructure, inspection and  
10 maintenance.

11 Now is this another 2 million?

12 THE WITNESS: No, this is referring  
13 --

14 CHAIRMAN KANE: It's the same 2  
15 million.

16 THE WITNESS: It's the same 2  
17 million. The conversation Director Wells and I  
18 have had is that all the jurisdictions in the  
19 area are ramping up on green infrastructure,  
20 and the actual installation costs for all  
21 municipal agencies is increasing, and that if  
22 D.C. Water could create its own program to do

Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015

606

1 green infrastructure, we would actually offer  
2 that services to the District.

3 That was the background of where  
4 Director Wells and I initiated this  
5 conversation but it's the same \$2 million.

6 CHAIRMAN KANE: Same \$2 million  
7 whether it's out of the green building fund or  
8 the work force donation or this additional CIF  
9 that you are referring to.

10 THE WITNESS: If we were inartful,  
11 we -- there is one \$2 million donation and  
12 there are two different funds it could come  
13 from, and quite frankly, we are fine with  
14 either or both, but our commitment from the  
15 city will be doing a MOU for what work we will  
16 do and the city will decide what makes most  
17 sense from the source.

18 CHAIRMAN KANE: So would it be for  
19 job training or would it be to set up this  
20 whole new division within D.C. Water, which I'm  
21 assuming, and correct me if I am wrong, would  
22 be some kind of ongoing organizational

Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015

607

1 division.

2 THE WITNESS: Correct. We have not  
3 determined exactly what the contours of the  
4 program will be. We have independently  
5 committed to the city administrator and the  
6 mayor, to develop a green infrastructure  
7 training program, and we wanted to make sure in  
8 the arrangement we had in negotiating these  
9 provisions that what we would do with 2 million  
10 would be in addition to what we had already  
11 committed to on green infrastructure training.

12 We still may have some of those  
13 funds be dedication in addition to what we had  
14 already allocated. What we've also talked  
15 about doing is program -- but quite honestly,  
16 we have not developed the contours of what  
17 exactly the program will be, other than the  
18 topic area, job development and focused on  
19 implementing green infrastructure in the city  
20 and employing district residents to do that  
21 work.

22 CHAIRMAN KANE: They would be

Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015

608

1 working for D.C. Water or --

2 THE WITNESS: That is one of the  
3 ideas that we are very interested in is on the  
4 table, but we have not worked through all the  
5 business parameters of whether or not that  
6 makes sense or whether we would continue to  
7 contract out which is what most jurisdictions  
8 are currently doing.

9 CHAIRMAN KANE: But it would be for  
10 D.C. Water.

11 THE WITNESS: D.C. Water work and  
12 for D.C. resident hiring.

13 CHAIRMAN KANE: Thank you.

14 Let me ask about the 5 megawatts of  
15 solar at Blue Plains. Just in general, you  
16 referred to the -- answering the question  
17 concerning what Mr. Martin had said in his  
18 testimony, but you said that -- when did D.C.  
19 Water start to consider putting solar at Blue  
20 Plains?

21 THE WITNESS: We have had -- we've  
22 looked at the issue on and off over many years,



Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015

609

1 more than five probably. We have such a large  
2 site as you know at Blue Plains, 155 acres,  
3 with very little shade, so it's one of the  
4 sites in the District where a large  
5 installation is possible. On the other hand,  
6 it is a gigantic operating facility so it is a  
7 complex engineering arrangement for how that  
8 setting would be undertaken.

9 More particularly with the project  
10 that we actually went to bid and had done some  
11 contract negotiations on, we initiated that in  
12 2014, and we are working very thoroughly at it  
13 in 2014 and early 2015.

14 CHAIRMAN KANE: You said you had  
15 already put it out to bid and --

16 THE WITNESS: Correct.

17 CHAIRMAN KANE: Working with -- is  
18 it public information who you had?

19 THE WITNESS: Yes. It was WGL  
20 Energy and Energy Systems, which is a part of  
21 the Washington Gas, and Standard Solar, Inc.,  
22 SSI, was their joint partner.

Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015

610

1 CHAIRMAN KANE: That was a  
2 competitive process?

3 THE WITNESS: That was.

4 CHAIRMAN KANE: And you referred to  
5 staff data requests to D.C. Water. I will  
6 bring that out and put it in the record.

7 Yes. If you could -- do you have  
8 that before you, the D.C. Water responses to  
9 staff data requests?

10 THE WITNESS: I do.

11 CHAIRMAN KANE: And I want staff  
12 data request No. 8, which was preliminarily  
13 marked as No. 3 on No. 8 -- answer to Question  
14 2 but it was preliminarily marked as Exhibit  
15 No. 8.

16 Do you have that before us?

17 THE WITNESS: I do.

18 CHAIRMAN KANE: The question was  
19 about the previous plans and whether or not the  
20 5 megawatts of solar generation to be  
21 constructed at Blue Plains pursuant to the  
22 nonunanimous agreement settlement is in

Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015

611

1 addition to the planned 10 megawatts of solar  
2 generation and your answer is that it is not;  
3 is that correct?

4 THE WITNESS: That is correct.

5 CHAIRMAN KANE: It is not in  
6 addition.

7 In your answer -- we asked what had  
8 happened to -- what was the reason it didn't go  
9 forward; is that correct?

10 THE WITNESS: Yes.

11 CHAIRMAN KANE: And you answered  
12 that it was: "Due to the difficulty of  
13 receiving an interconnection agreement with  
14 Pepco prior to the end of 2016."

15 Is that your answer still? I guess  
16 I should ask you on this data request before I  
17 -- you are the sponsor of this data request and  
18 the answer to it.

19 THE WITNESS: Yes.

20 CHAIRMAN KANE: And if you were  
21 asked the same questions today, would your  
22 answer be the same?

Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015

612

1           THE WITNESS: It would. I might add  
2 a few clarifying comments which I will in a  
3 moment.

4           CHAIRMAN KANE: Thank you. I quoted  
5 your -- it said, "due," was cancelled: "Due to  
6 the difficulty of receiving an interconnection  
7 agreement with Pepco prior to the end of 2016."

8           Is that still your answer?

9           THE WITNESS: I would add a  
10 clarifying comment. We were actually not  
11 directly engaged with discussions between WGEL  
12 and Solar SSI and Pepco. The question was more  
13 an in-depth answer. It is not clear whether  
14 Pepco, the interconnection agreement would have  
15 been completed the end of 2016.

16           The question in constructing the  
17 deal was whether there could be a guarantee  
18 that it would be completed by the end of 2016,  
19 because as we all know, at the end of 2016, the  
20 investment tax credits option, 30 percent to 10  
21 percent.

22           If the interconnection agreement was

Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015

613

1 not completed in time, then that ITC tax credit  
2 would not avail of the project and the question  
3 was, if that were to happen, who would cover  
4 the loss of the benefit of the tax credit?

5           And so the language I would change  
6 is it's unclear to us whether or not the  
7 interconnection agreement would have been  
8 granted or not. The issue at hand was whether  
9 it could be guaranteed that it would be granted  
10 and what we wanted is that it would be a  
11 guarantee that would be granted and whether or  
12 not it was granted, we would still do the deal  
13 and what WGL and SSI wanted us to do is to make  
14 up for the difference of the loss of the  
15 investment tax credit, if it were not granted  
16 by the end of 2016, which was not a backstop  
17 that we were willing to place, because that  
18 made the deal financially not sound, so that is  
19 the more subtle answer.

20           It's not clear whether the  
21 interconnection agreement would have been done  
22 by the end of the year or not. We were not in

Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015

614

1     that negotiation.

2             The question was who would guarantee  
3     whether it would be done, and if it weren't,  
4     who would pay the cost of the lost tax credit,  
5     and that was something D.C. Water was not  
6     willing to backstop.

7             CHAIRMAN KANE: Do you know how long  
8     your WGLES and Standard Solar were working and  
9     trying to get an interconnection agreement with  
10    Pepco?

11            THE WITNESS: It would have been  
12    this spring in probably February to April time  
13    frame, that's when we were negotiating with  
14    them as well. I don't know specifically, like  
15    I said, we were not party to those discussions  
16    but it was the spring of this past year, of  
17    this year.

18            CHAIRMAN KANE: Of 2015.

19            THE WITNESS: Correct.

20            CHAIRMAN KANE: To get that done by  
21    the end of 2016, the agreement you were talking  
22    about 22 months.

Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015

615

1 THE WITNESS: Correct.

2 CHAIRMAN KANE: Did they give you  
3 any indication that that was an unusual amount  
4 of time to try to get an interconnection  
5 agreement done?

6 THE WITNESS: Not that I'm aware of.  
7 It was sort of simply a matter of fact that  
8 they were not certain it could be done and the  
9 question was who would guarantee the  
10 consequence if it weren't.

11 And I actually do not know enough  
12 about the industry to know what the standard  
13 time frame is for those kind of agreements.

14 CHAIRMAN KANE: So now under the  
15 nonunanimous settlement, the plan is that 5  
16 megawatts would be constructed by Exelon; is  
17 that correct?

18 THE WITNESS: That's correct.

19 CHAIRMAN KANE: And that would mean  
20 that you've already made it rather than working  
21 with WGLES and Standard Solar which was done as  
22 a competitive process, you've made the decision

Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015

616

1 or -- if this would go through, you have  
2 already chosen who you're going to work with;  
3 is that correct?

4 THE WITNESS: For that portion of  
5 it.

6 CHAIRMAN KANE: For that portion of  
7 it.

8 Is D.C. Water under requirements  
9 under your procurement to do things  
10 competitively?

11 THE WITNESS: We can do sole source  
12 requirements, as long as those justifications  
13 pass muster, and in this case, it would be a  
14 sole source that would go before the board, but  
15 I believe this would be a justified sole source  
16 procurement.

17 CHAIRMAN KANE: So it would still  
18 have to be approved by your board?

19 THE WITNESS: Correct.

20 CHAIRMAN KANE: What would be the  
21 basis of doing it sole source?

22 THE WITNESS: Financial, and I



Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015

617

1     imagine the deal would be better than we would  
2     get in a competitive open market.

3             CHAIRMAN KANE:   Okay.   The --  
4     Paragraph 118 of the settlement provides in  
5     part that in addition to funding renewable  
6     generation as provided in Paragraph 6, Exelon  
7     shall by December 31, 2018 develop or assist in  
8     the development of 10 megawatts of solar  
9     generation in the District and will enter into  
10    good faith negotiations of a  
11    commercially-acceptable arrangement for 5  
12    megawatts of such generation to be constructed  
13    at Blue -- for D.C. Water Blue Plains, et  
14    cetera, and operational by December 18.

15            In the event a  
16    commercially-acceptable arrangement cannot be  
17    negotiated for 5 megawatts of ground managed  
18    solar at Blue Plains, the 10 megawatts of solar  
19    generation to be developed over this contract  
20    shall be reduced to 7 megawatts.

21            So as I read this, am I reading this  
22    wrong that there is going to be negotiations,

Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015

618

1   there is going to a commercially-acceptable  
2   arrangement, it has to go to your board to be  
3   justified as sole source or how do you know now  
4   that this is going to be a better deal than  
5   putting it out to bid?

6                   THE WITNESS: That's a very good  
7   question and the challenge in this particular  
8   paragraph is that we were settling on D.C.  
9   Water's part, the provision of adding the 5  
10   megawatts was added to a paragraph that had  
11   already been negotiated about the non-D.C.  
12   Water component, and it was -- I'm not so  
13   certain we wouldn't have perhaps negotiated  
14   different words had we had a standalone  
15   paragraph, but what I am confident in, is that  
16   we will work with Exelon to have --  
17   commercially-acceptable in the sense both  
18   parties are coming to a project at a very short  
19   order where many of the technical  
20   specifications were unknown.

21                   Commercially-acceptable is meant to  
22   give a way out, if Exelon, who did not know a

Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015

619

1 lot about our facility when they walked -- when  
2 we discussed this provision, found that it was  
3 so expensive to do a project at D.C. Water,  
4 that it was far more than the norm, which we  
5 don't believe is true, but it was hard to make  
6 that determination in a very short negotiation.

7 I believe that the terms of the  
8 agreement which I have great confidence in,  
9 they're two motivated parties who have had a  
10 lot of experience with Pepco Energy Services,  
11 they just finished building us a very large  
12 combined heat power plants at Blue Plains. We  
13 have very recent experience, is that we will  
14 construct a project where Exelon will pay for  
15 the cost of constructing, designing and  
16 constructing the 5 megawatt facility.

17 D.C. Water will agree to pay for the  
18 electricity generated by the facility at the  
19 cost of power, but will not pay the  
20 distribution and transmission costs in that  
21 cost, so that every party gets a benefit.

22 I believe we will be able to develop

Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015

620

1 a project with Exelon, it will be within the  
2 range of costs that they find acceptable to  
3 construct and design. So I believe we will, in  
4 fact, achieve a project that is better than  
5 what we would have achieved.

6 The standard project purchase  
7 agreement with power, as you well know, D.C.  
8 Water would have also been covering the cost of  
9 construction and design and the payback time of  
10 the purchase of the power, and we do not  
11 believe that will be part of this deal which is  
12 what makes it a better option for D.C. Water  
13 than simply continuing to go to the market to  
14 see what might be done at Blue Plains for solar  
15 power.

16 CHAIRMAN KANE: I'm sorry. What is  
17 the part that you won't be paying for?

18 THE WITNESS: The design and  
19 construction of the facility itself, Exelon  
20 will build, and what we would -- at their cost.

21 CHAIRMAN KANE: As a gift.

22 THE WITNESS: As a gift, with us

Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015

621

1 agreeing to pay for the power that is generated  
2 from the solar, for the 5 megawatts. That is  
3 what I believe.

4 CHAIRMAN KANE: That is what you  
5 believe. That is not in writing anywhere.

6 THE WITNESS: What is in writing is  
7 what you see.

8 CHAIRMAN KANE: What you see here.  
9 But it's your understanding that Exelon is  
10 going to donate the cost of design and  
11 construction?

12 THE WITNESS: Donate, yes.

13 CHAIRMAN KANE: Well, I use the word  
14 donate or gift, it's -- here it is, we are not  
15 asking you to pay for it. We are not asking  
16 the ratepayers to pay for it. It's a  
17 charitable contribution, if you will, when you  
18 do it through a government agency, it's a  
19 different category.

20 Is that what you are expecting, that  
21 the cost of the design and construction of this  
22 facility, the physical facility, the panels and

Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015

622

1 whatever, was going to be provided to D.C.  
2 Water at no cost, and that that cost will not  
3 be recovered from D.C. Water through any  
4 mechanism such as a power purchase agreement.

5 THE WITNESS: That is what I expect  
6 and hope. What I would also understand to be  
7 part of the negotiation and for what D.C. Water  
8 believes is that the deal has to be better for  
9 our ratepayers, than what would have achieved  
10 had we just gone back and bid a 5 megawatt  
11 project on the market. It may well be that  
12 Exelon comes back with a proposal that is not  
13 paying for the entire cost of design and  
14 construction, but is some alternative.

15 The key issue for D.C. Water is that  
16 the project is more desirable on a financial  
17 basis for D.C. Water and its ratepayers than  
18 had we just gone to bid and built it on the  
19 market as we had sought to do in the past. Our  
20 view is that we hope the design and  
21 construction is covered by Exelon and that we  
22 pay for the power that is generated. Those

Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015

623

1 details are not spelled out in the paragraph  
2 and they are to be worked out.

3 Like I said, I have strong  
4 expectation that it will be a good deal for  
5 D.C. ratepayers, otherwise, there would be no  
6 reason to have it in the agreement because we  
7 would have gone to competitive market to do the  
8 project in any event.

9 CHAIRMAN KANE: Let me ask you  
10 finally about the difficulty that arose, the  
11 timing difficulty in getting an interconnection  
12 agreement with Pepco, that your previous  
13 winning bidder had experienced, not being able  
14 to guarantee that could be done in 22 months.

15 If Exelon is doing the construction  
16 and design, do you expect that that will make  
17 it easier to get -- how will this issue of the  
18 timing and how long it might take or the  
19 difficulty in getting an interconnection  
20 agreement be overcome in this new plan?

21 THE WITNESS: I'm uncertain of how  
22 that will be handled. It will be one of the

Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015

624

1 financial attributes to be determined. It is  
2 not -- we are motivated and ready to move very  
3 quickly. We have been wanting to do a project  
4 like this for some period of time.

5 I have spoken with officials from  
6 Exelon and Pepco, they are both ready to move  
7 as well. The financial characteristics of the  
8 arrangement and whether or not it would be done  
9 in time to receive the investment tax credit is  
10 an issue connected to the interconnection  
11 agreement. It's an element that I'm not  
12 certain of and would have to be evaluated when  
13 we both look at the business transaction. But  
14 I do not know how exactly that will be handled.

15 CHAIRMAN KANE: Is there any  
16 indication that because Exelon, some subsidiary  
17 or affiliate of Pepco would be doing it, it  
18 might happen quicker?

19 THE WITNESS: That might be a  
20 reasonable expectation. It will certainly be  
21 in this case, D.C. Water having direct  
22 discussions about these issues rather than



Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015

625

1 through the procuring parties. As I mentioned,  
2 when it was WGEL and SSI, they were negotiating  
3 with Pepco and we were sort of a third party  
4 hearing what the results of those negotiations  
5 were. In this case, we will be having  
6 discussions directly.

7 CHAIRMAN KANE: You will be having  
8 discussions direction with Pepco?

9 THE WITNESS: Pepco and through  
10 Exelon.

11 CHAIRMAN KANE: But through Exelon.

12 THE WITNESS: Correct.

13 CHAIRMAN KANE: Its affiliate.

14 THE WITNESS: Yes.

15 CHAIRMAN KANE: One final question.  
16 I know you said you were anxious to get this  
17 done. Is it correct that the -- in order to  
18 get the projects done, the cap on the amount of  
19 the megawatt size, that was eligible for SRECs  
20 needed to be raised and that you received  
21 legislation from the counsel last summer or a  
22 year ago to raise that cap?

Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015

626

1 THE WITNESS: Correct.

2 CHAIRMAN KANE: Thank you. Then  
3 finally, I want to ask about two more things,  
4 rate decreases -- excuse me, on microgrids.

5 In your testimony on Page 8,  
6 starting on Line 16. The settlement provides  
7 in Paragraph 128 that Pepco will coordinate  
8 with the District to interconnect and develop  
9 at least 4 microgrids. D.C. Water's Blue  
10 Plains complex would be an ideal choice for  
11 such a microgrid given the already operational  
12 digestive project and the future on-site solar  
13 project.

14 A microgrid at D.C. Water would  
15 provide direct and casual benefits to District  
16 residents in the form of enhanced reliability,  
17 and I anticipate that D.C. Water will seek to  
18 be selected as one of the four pilot microgrid  
19 locations provided for in the settlement.

20 There is no certainty, is there,  
21 that D.C. Water would receive one of those --  
22 would be selected?

Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015

627

1                   THE WITNESS: There is no certainty  
2   in the settlement agreement. I had those  
3   conversations with Director Wells. I think he  
4   mentioned it in his testimony on Wednesday, as  
5   well as conversations with Pepco and Exelon. I  
6   think everyone believes that D.C. Water would  
7   be a very, very strong choice for a host of  
8   reasons.

9                   We are already generating 13  
10   megawatts in total. It's a significant amount  
11   of on-site power with our digester project, in  
12   addition to solar power, will enable us to get  
13   to our ultimate goal which is to be able to run  
14   the core facilities of our program if there was  
15   some catastrophic problem with power  
16   reliability, and that is of such great interest  
17   to the public health and welfare of the entire  
18   water system and Chesapeake Bay that I think it  
19   is an extremely worthwhile goal and then how we  
20   see these provisions working together that  
21   developing a solar project connecting to a  
22   microgrid with our existing green power, by the

Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015

628

1 way, which is being generated by a Pepco Energy  
2 Services facility, which by the way was our  
3 very first design build operate procurement, so  
4 in fact, Pepco Energy Service is running that  
5 power plant on site, that if we had a  
6 microgrid, we'd be able to devote the power  
7 generated on site to those facilities that are  
8 needed most significantly and at a time of --  
9 that we hope never happens, but should it  
10 happen of power loss, and that would be of such  
11 great interest that we would be a very prime  
12 candidate for a microgrid.

13 CHAIRMAN KANE: But there's no  
14 guarantee.

15 THE WITNESS: There is no guarantee.

16 CHAIRMAN KANE: Are you familiar  
17 with the last sentence of Commitment 128 which  
18 says: "Nothing in this paragraph shall  
19 obligate the District to use Pepco for the  
20 development, financing, ownership or  
21 construction of the microgrids referred to  
22 herein. District is free to pursue microgrid

Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015

629

1 development independent of Pepco while  
2 including interconnection rules and  
3 procedures."

4 THE WITNESS: That gives an out --  
5 we have been and will continue to look on that  
6 issue on a resiliency basis independently. We  
7 just think that this presents an opportunity,  
8 we hope to drive both in concert with an  
9 additional -- addition of solar generation in  
10 our facility with our digester and microgrid.  
11 The health and welfare of the region can be  
12 substantially improved in the event of a  
13 catastrophic problem.

14 CHAIRMAN KANE: Thank you. Then  
15 finally in terms of rate increases, are you  
16 familiar -- were you here in the previous  
17 hearings when we discussed with the joint  
18 applicants their work papers that referred to  
19 the assumptions that are underlining --  
20 underlying the -- some of the numbers that they  
21 are using in regard to the 25 billion customer  
22 credit and the schedule for proposed rate

Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015

630

1 increases?

2 THE WITNESS: I did attend some of  
3 the hearings. I was not here for that portion.

4 CHAIRMAN KANE: So if I ask you  
5 whether you are familiar with the work papers  
6 from the joint applicants and the assumptions  
7 that there will be three rate increases filed  
8 in the next three years and that none of the  
9 credits go to any credits for commercial  
10 customers, were you able to answer that  
11 question?

12 THE WITNESS: I was not -- I'm not  
13 familiar with that. On the other hand, that is  
14 an issue obviously that's of interest to us.

15 CHAIRMAN KANE: Thank you.  
16 Commissioner Fort, do you have any questions?

17 COMMISSIONER FORT: I just have a  
18 couple followup ones.

19 You were responding to the Chair and  
20 you said that D.C. Water already generates 13  
21 megawatts and your goal is to have enough  
22 megawatts to run the core facilities of the

Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015

631

1 program, but you didn't identify what that  
2 number of megawatts would be. What is that,  
3 just so we have it on the record.

4 THE WITNESS: The 13 megawatts,  
5 actually three of that is used to run the  
6 combined heat and power system itself, so it's  
7 self-powered. 10 megawatts is net for the  
8 facility, that is about a third of our use. I  
9 don't know that exactly. I would have to go  
10 back to our engineering, but we are looking at  
11 about 20 to 22 to have -- megawatts of power to  
12 have our core facilities in operation and that  
13 is within range of what could be done with  
14 photo tag given the physical size of the  
15 facility.

16 COMMISSIONER FORT: You were talking  
17 about the negotiations that were going on in  
18 the spring of 2015 with WG Energy Services for  
19 the solar.

20 In your contracting process, how  
21 long does it take from the time you get a  
22 contract negotiation completed to when the

Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015

632

1 contract actually starts?

2 THE WITNESS: It varies, but we move  
3 very quickly. Normally, if we complete a  
4 contract negotiation, we will put it before the  
5 board in the next month. We do do contract  
6 approvals before our board if they are over a  
7 million dollars every month except August, and  
8 then we will have a special meeting in August  
9 if need be, so there is almost an immediate  
10 review with the committee and the board that we  
11 anticipate in advance and then we will have a  
12 start date very shortly thereafter on some  
13 projects. On others, there is a longer period  
14 that we have to prepare, depends on the site  
15 development.

16 The advantage on that -- we have  
17 been disappointed, we haven't been able to do a  
18 solar project to date. We are very connected  
19 and supportive of alternate power sources as  
20 you know, but there were consequences, we've  
21 done a lot of preparatory work for how we would  
22 do a project like this at Blue Plains, so one



Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015

633

1 of the reasons we think this is a  
2 commercially-viable project is, we are not  
3 starting from scratch. We have a lot of  
4 preparation, our engineering team has  
5 fully-evaluated the site, and we do have  
6 existing thought and plans on how to move  
7 forward so we are ready and raring to go and  
8 believe that this could be a project executed  
9 in fairly short order.

10 COMMISSIONER FORT: Has Exelon seen  
11 those plans?

12 THE WITNESS: To date, they have not  
13 as far as I know, but we certainly are willing  
14 to engage forthwith as soon as it looks like  
15 the right thing to do.

16 COMMISSIONER FORT: And the Chair  
17 had you look at what was now marked as the PSC  
18 exhibit, cross-examination Exhibit No. 8, and  
19 she just had you look at question -- Question  
20 2. Can I get you -- but you have addressed  
21 topics that are included in both Question 1  
22 which is on Page 2 of 8 of that exhibit, and

Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015

634

1 Question 3 which is on Page 4 and 5 of 8 of  
2 that exhibit.

3 If you could look at those questions  
4 and I will ask you the same thing, were those  
5 sponsored -- your name appears, so they were  
6 sponsored by you?

7 THE WITNESS: Yes.

8 COMMISSIONER FORT: I'll ask you the  
9 question, would your answers be the same?

10 THE WITNESS: Yes.

11 COMMISSIONER FORT: Okay. In your  
12 discussion with her, you talked about  
13 commercially-acceptable arrangements which is  
14 the subject of Question 3. I assume you are  
15 adding onto that discussion.

16 THE WITNESS: Yes.

17 COMMISSIONER FORT: Just to have a  
18 clear record on those things.

19 You talked to the Chair a bit about  
20 the green infrastructure program. You say on  
21 Page 5 of your testimony at Lines 22 through  
22 14, that during the initial rollout of the GI

Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015

635

1 program, it becomes clear that additional  
2 funding over and above that which D.C. Water  
3 itself is obliged to provide under the MOA  
4 would allow D.C. Water and the District to  
5 maximize the GI program's potential.

6 That's the MOA that you speak about  
7 earlier, the one that was completed in May?

8 THE WITNESS: Correct.

9 COMMISSIONER FORT: The one -- that  
10 MOA was not completed in any respect in  
11 connection with this case; is that correct?

12 THE WITNESS: That's correct.

13 COMMISSIONER FORT: It says that  
14 D.C. Water is obligated to provide some funding  
15 under that MOA. That is funding for the GI  
16 program?

17 THE WITNESS: Specifically, to set  
18 up and establish a work force developmental  
19 program for green infrastructure including a  
20 certification, so that our goal is to have a  
21 District resident trained and certified to do  
22 green infrastructure.

Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015

636

1           A, they will be ready and prepared  
2   to do the work that we seek to do, as well as  
3   the District seeks to do, but can also take  
4   that as a credential and enable them to have a  
5   better work life, potentially to take with  
6   them, so the funding that we have obligated in  
7   an MOU is to set up the training and the  
8   certification program, completely separate from  
9   the MOU, we've committed to the EPA and the  
10   Department of Justice to spend up to a hundred  
11   million dollars on green infrastructure in the  
12   city, to come back from buying sewers. That's  
13   what we are setting up the green infrastructure  
14   program to provide the employees for, is to do  
15   that green infrastructure work.

16           That is a consent decree  
17   modification package, it's with the Department  
18   of Justice and the U.S. EPA.

19           COMMISSIONER FORT: So getting back  
20   to my question, how much is D.C. Water already  
21   committed to funding?

22           THE WITNESS: I should know that off

Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015

637

1 the top of my head. My recollection is, it's  
2 between 2 and \$3 million is what we committed.  
3 That may be wrong. I can get a specific  
4 answer.

5 COMMISSIONER FORT: I just wanted to  
6 know whether -- need you to confirm that what  
7 we are talking about within the context of this  
8 settlement agreement is money over and above  
9 that money.

10 THE WITNESS: Absolutely. I made  
11 that commitment here and made it very directly  
12 to the city administrator that what we had  
13 committed, and again, I don't remember the  
14 exact number, but what we had committed to in  
15 the MOU, we will undertake and what funds that  
16 we seek to have in a separate MOU will be in  
17 addition to that under this arrangement.

18 COMMISSIONER FORT: On Page 4 of  
19 your testimony, Lines 8 through 10, you're  
20 talking about the \$5.2 million work force  
21 development funding and the green  
22 infrastructure program. You say that:

Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015

638

1 "Support for the GI program is a clear benefit  
2 for D.C. Water, its ratepayers and district  
3 residents. That did not exist under the joint  
4 applicants prior proposal."

5 When you use ratepayers in that  
6 sentence, you are talking about D.C. Water's  
7 ratepayers.

8 THE WITNESS: Correct.

9 COMMISSIONER FORT: As opposed to  
10 Pepco ratepayers.

11 THE WITNESS: Yes, although they're,  
12 at least in the District, one and the same.

13 COMMISSIONER FORT: Most of them are  
14 the same.

15 And when you talk about benefits,  
16 are there benefits for Pepco's ratepayers as  
17 well as benefits for your D.C. Water ratepayers  
18 that comes from the GI program?

19 THE WITNESS: The GI program will be  
20 establishing green infrastructure for the city  
21 which improves the health and the environment  
22 of the city as a whole, so that is a benefit to

Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015

639

1 all the residents in the city. Every person  
2 that we are able to identify, train and put  
3 into a position with the -- life and job  
4 through doing green infrastructure is  
5 frequently someone who is taking services from  
6 the city now, because they need them and  
7 instead, becoming a viable taxpaying member of  
8 the community, so I consider that to be a  
9 benefit to all ratepayers in the city becoming  
10 part of the working economy, so we think this  
11 whole green infrastructure program, job  
12 development, providing good jobs for district  
13 residents will provide direct benefit to  
14 ratepayers of Pepco and the city in Washington,  
15 D.C. as well as the health and environment of  
16 the city as a whole.

17 COMMISSIONER FORT: Those are all my  
18 questions. Thank you.

19 MR. MEIER: Your Honor, if I may, I  
20 think it would be helpful for the record if I  
21 were allowed to pose a couple clarifying  
22 questions?

Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015

640

1 CHAIRMAN KANE: You mean you want to  
2 cross-examine the witness? He is not your  
3 witness.

4 MR. MEIER: Yes, I would like to  
5 cross-examine the witness.

6 CHAIRMAN KANE: It would be up to  
7 Ms. White to, on redirect, ask clarifying  
8 questions, but if you want to take it to her  
9 and to cross-examine the witness, go ahead.

10 MR. MEIER: Thank you.

11 CROSS-EXAMINATION BY COUNSEL FOR PEPCO HOLDINGS

12 BY MR. MEIER:

13 Q. There was -- let me do it this way:  
14 You have a data response that it has been  
15 referred to, it's premarked 9, I believe. It  
16 is Question No. 3.

17 And in that response, it states:  
18 "From D.C. Water's perspective, issues that  
19 would factor into whether it could reach a  
20 commercially-reasonable arrangement for any  
21 third party, including Exelon, to install solar  
22 facilities on site include the ultimate cost of



Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015

641

1 the project's power."

2 Do you see that language, Mr.

3 Hawkins?

4 A. I do.

5 Q. I apologize. My name is Peter  
6 Meier. I am with Pepco Holdings and I  
7 represent the joint applicants and I should  
8 have identified myself first.

9 A. Greetings.

10 Q. Greetings. Is that cost of project  
11 power -- will that be set forth in a power  
12 purchase agreement?

13 A. My presumption is that it will be,  
14 and as I stated, my understanding is that we  
15 would be paying the cost of the power but not  
16 distribution and yes, I think there would be an  
17 agreement that we would have for the cost of  
18 the power.

19 Q. Is that a similar structure to the  
20 one you previously put out to bid?

21 A. It's a similar structure. The  
22 provision in the previous to bid was covering

Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015

642

1 the cost of the construction and design as the  
2 project purchase agreement does, and I think  
3 that will be different in this case but those  
4 details are to be arranged.

5 Q. The fourth item you list there is  
6 interconnection timing issues.

7 Are there timing issues involved?  
8 For example, you mentioned the 22 months. Is  
9 that only for interconnection or are there  
10 other timing issues related to the construction  
11 of a project?

12 A. Other issues related to timing.

13 There is always issues that D.C.  
14 Water for when work is done and not done that  
15 I'm confident that we will be able to  
16 undertake, a tremendous amount of work. I'm  
17 not exactly sure which timing issues you are  
18 referring to.

19 Q. Are you familiar with the concept  
20 of, for example, of construction completion  
21 date and guaranteed completion dates?

22 A. Absolutely.

Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015

643

1 Q. What do those involve?

2 A. We set completion dates, often there  
3 are stipulated penalties if those dates are not  
4 reached for a suitable reason, and we establish  
5 those ahead of time so every party is clear as  
6 to what those dates are, and we have them  
7 regularly with most of our big construction  
8 projects.

9 Q. And you mentioned one of the  
10 advantages or benefits in the agreement was  
11 enhanced interconnection processes?

12 A. Yes.

13 Q. Do you understand that the  
14 interconnection processes that Pepco must  
15 comply with, are those approved by the Public  
16 Service Commission of the District of Columbia?

17 A. Yes.

18 MR. MEIER: Thank you very much.

19 Thank you, Ms. White for your  
20 indulgence as well.

21 CHAIRMAN KANE: Ms. White?

22 MS. WHITE: Thank you, Madam Chair,

Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015

644

1 and I would offer, if the Commissioners would  
2 like, to make the memorandum of understanding  
3 with the city administrator on GI issues that  
4 you discussed with Mr. Hawkins. I would be  
5 happy to provide that for the record.

6 CHAIRMAN KANE: The existing  
7 memorandum?

8 MS. WHITE: Yes, the existing.

9 COMMISSIONER KANE: For the D.C.  
10 training program?

11 MS. WHITE: Yes.

12 CHAIRMAN KANE: If you wish to  
13 provide that, that's fine. Thank you.

14 Is that all?

15 MS. WHITE: That's all. I have no  
16 redirect and at this time, I would like to move  
17 the admission of Exhibit D.C. Water B.

18 CHAIRMAN KANE: It is so moved.

19 (Exhibit D.C. Water B was admitted  
20 into evidence.)

21 CHAIRMAN KANE: I will move the  
22 admission of PSC preliminarily No. 3 and it

Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015

645

1 will now be PSC 8. PSC 8. We will move that  
2 into the record.

3 Thank you, Mr. Hawkins.

4 (PSC Exhibit 8 was admitted into  
5 evidence.)

6 THE WITNESS: I appreciate your  
7 time. Thank you very much.

8 CHAIRMAN KANE: Thank you for your  
9 work.

10 That concludes the settling parties  
11 witnesses.

12 We will now turn to Grid 2.0. You  
13 may call your first witness.

14 MR. RORIES: Good morning, Your  
15 Honors. I am Charles Rories, and I represent  
16 the Grid 2 working group. I would like to call  
17 our first witness, Mr. Scott Hempling.

18 SCOTT HEMPLING,  
19 being first duly sworn, to tell the truth, the  
20 whole truth and nothing but the truth,  
21 testified as follows:

22 DIRECT EXAMINATION BY COUNSEL FOR GRID 2.0

Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015

646

1 BY MR. RORIES:

2 Q. Good morning, Mr. Hempling. For the  
3 record, would you please state your name and  
4 business address.

5 A. Scott Hempling, 417 St. Lawrence  
6 Drive, Silver Spring, Maryland 20901.

7 Q. Do you have before you your  
8 supplemental testimony that has been premarked  
9 Grid 2, 2A consisting of 75 pages?

10 A. Yes.

11 Q. To date, do you have any changes to  
12 that testimony?

13 A. I understand that the two  
14 corrections I have were offered already.

15 Q. Was that testimony prepared by you  
16 or under your supervision?

17 A. Yes.

18 Q. If I asked you the same questions  
19 today, would your answers be the same?

20 A. Yes.

21 Q. And is this testimony true to the  
22 best of your information, belief and knowledge?

Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015

647

1 A. Yes.

2 MR. RORIES: Your Honors, Mr.

3 Hempling is available for cross-examination.

4 CHAIRMAN KANE: Thank you.

5 MR. MEIER: Thank you very much,

6 Your Honor.

7 CROSS-EXAMINATION BY COUNSEL FOR PEPSCO HOLDINGS

8 BY MR. MEIER:

9 Q. Good morning, Mr. Hempling. My name  
10 is Peter Meier. I'm with Pepco Holdings, and  
11 I'm representing the joint applicants today.

12 How are you doing this morning?

13 A. Fine, Counselor, how are you?

14 Q. Good, thank you.

15 Just to get us organized, I'm going  
16 to be talking about three documents or expect  
17 to be talking only about three documents in  
18 this questioning.

19 The first is your testimony, which  
20 has just been identified from Mr. Rories and  
21 you.

22 The next is the settlement agreement

Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015

648

1    itself, and you should have up at the table  
2    there a book called cross-examination exhibits  
3    of joint applicants, and if you will open it,  
4    you will see something that has been a grid  
5    that says it's -- references JANSA 1 which is  
6    the nonunanimous settlement, and if you look  
7    behind Tab 1, you will find the settlement  
8    agreement.

9                   Do you see that?

10           A.     Yes.

11           Q.     Great. The third document I want to  
12    identify are the responses of Grid 2.0 to Pepco  
13    to the Joint Applicants' data request No. 2  
14    filed November 27, 2015 that has been  
15    preliminarily marked as JANSA 2 so that would  
16    be in your second tab and which I would like to  
17    mark at this time as JANSA 4.

18                   CHAIRMAN KANE: So marked.

19                   (Deposition JANSA 4 was marked for  
20    identification.)

21                   BY MR. MEIER:

22           Q.     Mr. Hempling, could you turn to Tab



Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015

649

1 2?

2 We talked about this briefly  
3 yesterday and I spoke to your counsel. These  
4 are all your data responses, Nos. 16 through  
5 55, so if you turn to the -- what is marked on  
6 the top corner Page 4 of 22, you see about  
7 halfway down the page, something that is -- the  
8 heading that says: "Questions 16 through 55  
9 for witness Scott Hempling."

10 A. I have my own copy.

11 Q. Okay. Very good. And so that  
12 consists of -- well, Questions 16 through 55  
13 for which you are identified as the sponsor; is  
14 that correct?

15 A. Yes.

16 Q. And if you were asked these  
17 questions today, your answers would be the  
18 same; is that correct, sir?

19 A. Yes.

20 Q. They were prepared by you or under  
21 your supervision?

22 A. By me.

Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015

650

1 Q. Very good. Thank you.

2 Mr. Hempling, could the Commission  
3 or the District Council order Pepco to fund the  
4 \$5.2 million work force development fund  
5 referenced in Paragraph 24 of the settlement  
6 agreement?

7 A. No, not without assuring  
8 compensation. I'm speaking now for the  
9 District. I don't think the Commission on its  
10 own has the authority. The Council could of  
11 course do it if they assured compensation.  
12 Otherwise, you would be giving orders without  
13 compensating and I wouldn't advise that either  
14 politically or constitutionally.

15 Q. Thank you, Mr. Hempling.

16 On Pages 42 -- Page 42, Lines 1 to 2  
17 of your supplemental testimony.

18 A. One moment, please.

19 Q. Certainly.

20 A. Okay.

21 Q. You state that: "If the District is  
22 concerned with preserving and boosting

Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015

651

1 employment, the responsibility is with the D.C.  
2 Council and the mayor not with the utility or  
3 its regulators."

4 Do you recall that?

5 A. Yes.

6 Q. Do you believe that is a reason to  
7 ignore the benefits for employment that are  
8 generated by the commitment made in Paragraph  
9 24?

10 A. Yes, because you're improperly  
11 mixing political decision making that belongs  
12 with the Council with merger decision making  
13 that belongs with the Commission.

14 Q. Are you aware whether --

15 A. Excuse me, I wasn't finished. My  
16 apology, and you are confusing what the issue  
17 is in this case, which is what are the  
18 consolidation benefits to public interest.

19 That's the end of my answer, sir.

20 Q. Okay. Thank you. Are you aware  
21 whether any of the seven factors identified by  
22 the Commission for evaluation of whether the

Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015

652

1 merger is in the public interest might  
2 implicate employment in the District of  
3 Columbia?

4 A. I am aware of that, yes, sir.

5 Q. Do you know whether Factor 1  
6 includes consideration of benefits that affect  
7 the economy of the District?

8 A. I am aware. I don't remember which  
9 of the factors are, but I have no dispute that  
10 employment is a factor but I believe where it  
11 belongs is a factor is considering, for  
12 example, whether consolidation of the companies  
13 might lead to higher cost to the companies such  
14 that jobs might be improperly cut so as to harm  
15 both employment and the District itself.

16 I don't view the factors as  
17 affording an opportunity for the Commission to  
18 act as a full employment agency and add jobs or  
19 preserve jobs that are unrelated to the  
20 efficient operation of the company. There is a  
21 place for employment considerations in the  
22 context of the consolidation, yes.

1 Q. And as a general matter,  
2 consolidation would result in a reduction of  
3 employment. Would you agree with that?

4 A. Not necessarily. Consolidation can  
5 create opportunities for new efficiencies that  
6 could increase employment in particular areas.  
7 It all depends on the nature of the  
8 consolidation, its purposes, the type of  
9 efficiencies that can be gained. One can have  
10 a consolidation that creates new insights as to  
11 operate a company so as, for example, to afford  
12 more jobs in the areas of cyber security, but  
13 fewer jobs in the area where efficiencies and  
14 synergies might be obtained. Those are the  
15 types of employment considerations that belong  
16 in a case like this.

17 Q. Without a further proceeding, could  
18 the Commission order Pepco to commit to higher  
19 reliability standards for the penalties and  
20 budget limitations included in the settlement  
21 agreement?

22 A. I'm not sure I understand your

Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015

654

1 question. If what you are saying is, could the  
2 Commission wake up one day and suddenly impose  
3 new reliability standards with consequences  
4 without declaring a formal proceeding, I would  
5 expect the answer would be no. Is that your  
6 question?

7 Q. Yes, and thank you. Do you  
8 acknowledge that a utility can be providing  
9 satisfactory service including meeting the  
10 applicable prudent standard and yet an  
11 acquiring party could improve that service?

12 A. Yes, it's possible for an acquiring  
13 party to come to a utility that is using quill  
14 pens and Roman numerals and say why don't we  
15 use computers and modern technology, but not to  
16 be cute about it, but yes, there's a  
17 possibility that an acquiring company could be  
18 better at some things than the incumbent  
19 company and thereby as a result of its  
20 presence, improve things, yes, sir.

21 Q. And I appreciate your answer and  
22 that's consistent with your testimony, but I

Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015

655

1 asked a slightly different question, and I will  
2 try to highlight the difference, which is -- I  
3 think we can agree that using quill pens and  
4 Roman numerals today or failing to use  
5 computers today, would not be prudent. That  
6 would not be a prudent utility practice; isn't  
7 that correct?

8 A. Correct.

9 Q. My question was, a utility that is  
10 otherwise been found to be operating in a  
11 prudent fashion and is providing satisfactory  
12 service by any objective measure that is used,  
13 that nevertheless, that utility service could  
14 be improved in an acquisition?

15 A. I'm not meaning to be difficult.  
16 Here is the problem I have with your question.  
17 You and I may be defining prudence  
18 differently. I would define prudence as  
19 achieving the quality of service that is  
20 achievable by competent companies. If there is  
21 a differential in performance between, for  
22 example, Pepco and Exelon, but that's a

Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015

656

1 differential that is achievable by solid  
2 managerial efforts and good employee practices,  
3 then I would argue that the incumbent company  
4 is not behaving prudently.

5           For me, prudence is achieving the  
6 quality of service that is achievable by  
7 competent people so certainly, it's possible  
8 that an acquirer could improve the performance  
9 of an acquiree, but if that improvement is  
10 something that the competent people can  
11 achieve, then I would disagree with the  
12 hypothetical that begins with the assumption  
13 that the incumbent was prudent, so I agree with  
14 your general principle that certainly somebody  
15 can show up and do things better and teach the  
16 incumbent how to do things better, but I would  
17 not accept your premise that the incumbent had  
18 been prudent if those improvements are feasible  
19 by the incumbent themselves -- the incumbent  
20 itself.

21           Q.     To me, Mr. Hempling, and you will  
22 correct me, I'm sure, that suggests that there



Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015

657

1 is some knowable -- and I will use the slightly  
2 pejorative term, one size fits all measure of  
3 prudence. Explain why that is not what you are  
4 saying.

5 A. It is so different from what I'm  
6 saying I need to think about how to explain it.

7 Q. May I give you an example?

8 A. Let me think about answering your  
9 question first.

10 No, I don't -- I disagree with your  
11 thought that the fact that there are gaps  
12 between one company's performance and another  
13 means that there is necessarily a single  
14 identifiable knowable definition of what that  
15 best performance is. The one way finds out who  
16 performs the best is by comparison, is by  
17 posing competitive opportunities, by subjecting  
18 an incumbent to the accountability that is  
19 associated with the risk of losing business  
20 when being subjected to competition.

21 That is how one finds out what the  
22 best performances are. One doesn't find them

Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015

658

1 out by guessing nor does one find them out by  
2 selecting a single company as Pepco did by  
3 searching for the highest premium that could be  
4 paid and saying, well, this is an improvement  
5 and therefore the consolidation makes sense.  
6 So I disagree with your premise.

7 Q. And so one area of comparison, for  
8 example, could be the IEEE standards for SAIDI  
9 and SAIFI?

10 A. Correct.

11 Q. On Page 50, Lines 22 to 23 of your  
12 testimony, I'm going to paraphrase your  
13 testimony. It's to the effect that the type of  
14 discrimination that the commitments in  
15 Paragraph 6, 7 and 8 of the settlement  
16 agreement, evidence a type of discrimination  
17 that is unseemly and unlawful. And the way I  
18 get there is -- I think on Lines 22 to 23, you  
19 refer to discrimination is unseemly and  
20 unlawful, and then on your very next question  
21 on Page 51, Line 4, you say -- you are asked  
22 provide examples of the discrimination and you

1 refer to Paragraph 6, 7 and 8.

2 Did I connect those up correctly?

3 A. Well, the testimony connects them as  
4 they do, we can start with your description as  
5 a foundation, sir, yes.

6 Q. Okay.

7 A. My comments about discrimination are  
8 not confined to those three paragraphs.

9 Q. Understood. Do you believe that the  
10 commitment of \$3.5 million for the expansion of  
11 renewable generation in the District, 3.5  
12 million to support the District's energy  
13 efficiency efforts and 10.05 million to support  
14 the District's green building fund and related  
15 sustainability projects, do not promote the  
16 public policy objectives of the District of  
17 Columbia?

18 A. They promote the policy objectives,  
19 yes, sir, but there are many other objectives  
20 that are left out of the settlement and that's  
21 why the settlement is discriminatory.

22 For example, I do work for the

1 NAACP. The NAACP is very concerned with the  
2 effect on children's asthma of having  
3 generating plants in low-income neighborhoods.  
4 There is no paragraph in the settlement to  
5 solve that problem, because the NAACP is not an  
6 intervenor. There is nothing in the settlement  
7 about hiring more translators for the  
8 Spanish-speaking or the Vietnamese-speaking of  
9 the Filipino-speaking members of this  
10 community, because they were not intervenors.

11 That's the type of discrimination,  
12 Counselor, I'm talking about. The omissions  
13 are causes that are subject and consistent with  
14 public policies of this District but are not  
15 pursued in the settlement because their  
16 proponents were not intervenors in this case.  
17 That's what I mean by discrimination.

18 I have no quarrel with a single one  
19 -- I won't overstate it. I have no quarrel  
20 with most of the elements of the settlement as  
21 being consistent with the District's policies.  
22 The problem is how they appeared here and what

Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015

661

1 is missing, and the context for which -- the  
2 context in which they were reached.

3 Q. It's a concern that there are  
4 specific interests addressed but not others?

5 A. That is one concern. The other  
6 concern is that even with respect to those  
7 elements that are wholly consistent with public  
8 policy, like solar energy, like renewable in  
9 general, these are reached in a scattered and  
10 episodic manner, they're not reached as part of  
11 an integrated process that the Commission is  
12 capable of running and certainly has run in the  
13 past.

14 And one of them in particular, the  
15 one that we discussed earlier today about Blue  
16 Plains, you are now sending a signal that  
17 people who want to compete for the opportunity  
18 to build solar energy in Blue Plains are out,  
19 because they were not part of this case and  
20 they were not proposing a merger.

21 That is not the kind of signal I  
22 would want to send if I were a District saying

Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015

662

1 we are open for business and merits matter.  
2 Not the size of the pocketbook of an acquiring  
3 company, but the merits with respect to the  
4 ability to develop solar energy. That's what  
5 concerns me.

6 I listened to Mr. Hawkins, I've  
7 never met him before. He sounds like an  
8 excellent individual in the job that he's in,  
9 but he has to produce in the context that he is  
10 working in. And to use this merger case as an  
11 opportunity to give Exelon a first-mover  
12 advantage in the solar business seems to be  
13 inconsistent with the public policy of the  
14 District which is to let merits prevail.

15 Q. You heard Mr. Hawkins testify that  
16 in doing this, his objective is to create the  
17 most value in this project for his ratepayers,  
18 the water users of the District of Columbia?

19 A. Yes, sir. I respect that.

20 Q. Okay. On Page 51, Lines 9 through  
21 10, you go on to talk about how this money  
22 appeals to specific interests to citizens who

1 value those initiatives. Your use of the word  
2 "specific" here, does that connote something  
3 different from a special interest?

4 A. I didn't use the word special  
5 interest, sir. It has a pejorative element  
6 that I didn't mean to and chose not to imply.  
7 I used the word specific because the settlement  
8 has specifics, as opposed to the specifics that  
9 were not included, such as the ones I mentioned  
10 before.

11 Q. So your choice -- not to belabor the  
12 point, but a special interest is a worse kind  
13 of interest than a specific interest. Is that  
14 the point you are making?

15 A. I'm sorry. I didn't hear the  
16 question, sir.

17 Q. Sure. You said you chose not to use  
18 special -- the term special interest, you used  
19 specific interest because special interest was  
20 pejorative.

21 A. Yes, sir. I think when people use  
22 the words special interest, they are talking

Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015

664

1 about something that's potentially antithetical  
2 to the public interest, something that is  
3 selfish, something that is just for themselves  
4 and nobody else. Something that is destructive  
5 of the sense of common purpose in a society and  
6 in a government. Specific just means what it  
7 means. The specific elements that are in this  
8 nonunanimous settlement.

9 Q. So your client Grid 2.0 is a  
10 specific interest but not a special interest?

11 A. To be honest with you, I don't have  
12 enough information to answer that question, and  
13 I think the problem with your question, I don't  
14 mean to be disrespectful, is that you're  
15 mingling two things.

16 One is the nature of the  
17 organization and the other is the nature of the  
18 elements in the settlement and I think what I  
19 was referring to here is the specifics in the  
20 settlement, but I'm not capable of  
21 characterizing Grid 2.0. They can do that  
22 themselves. You will have Mr. Martin shortly.



Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015

665

1           Q.     Are you familiar with Grid 2.0's  
2     petition to intervene in which they said as the  
3     basis for their intervention that no other  
4     party will adequately represent the interest  
5     served through the protection of environmental  
6     quality as specified in the D.C. Clean and  
7     Affordable Energy Act?

8           A.     I'm familiar with that paragraph,  
9     but I haven't read their petition in many  
10    months since it has been filed.

11          Q.     Do you think the interest of  
12    protecting the environment is a specific  
13    interest or a broad-based interest?

14          A.     It's an interest that is validated  
15    by both a statutory law and Element 7 of the  
16    Commission 7 factors so it's an interest that  
17    is directly relevant to this case.

18          Q.     And you would agree that the  
19    District of Columbia Government is principally  
20    responsible for achieving the objectives and  
21    implementing the D.C. Clean and Affordable  
22    Energy Act?

Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015

666

1           A.     I will accept that. I am not  
2 familiar with their statutory authority, but  
3 what you say makes complete sense.

4           Q.     Prior to your supplemental  
5 testimony, did Grid 2.0 ever criticize in  
6 testimony or pleading before the Commission any  
7 of the commitments sought by DCG, OPC or any  
8 other party?

9           A.     I don't know the answer to that  
10 question.

11          Q.     Did you?

12          A.     Sir?

13          Q.     Did you criticize any of the  
14 commitments being sought previously by D.C.  
15 Government or OPC in your testimony?

16          A.     No. I was focused on the  
17 consolidation that is at issue in this case.

18          Q.     Would you agree that of the 16 or so  
19 utility merger or acquisition transactions in  
20 which you have been involved since 1985, and of  
21 the dozen or more regulatory orders you have  
22 received, you have not seen one which,

Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015

667

1 according to your standard, you would describe  
2 as having its chief purpose to serve the public  
3 interest and -- disclosure here, I'm reading  
4 from your data response 216.

5 A. Can I hear the question again,  
6 please.

7 Q. Right. Let's turn to 216.

8 A. Sorry, you're in my data responses?

9 Q. Yes.

10 A. Which one, please?

11 Q. It is on Page 4 of 22 in the right  
12 hand.

13 A. Just give me the number, I have got  
14 a different pagination.

15 Q. Certainly. 16. It may be Page 3 of  
16 19.

17 A. It's Question 16, sir?

18 Q. Yes.

19 A. All right. Give me one second,  
20 please.

21 Q. Certainly. It is the last couple  
22 lines that go on to Page 4 of 19. On your

Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015

668

1 pagination, Page 5 of 22 on the premarked  
2 exhibit.

3 A. Yes, I am with you now.

4 CHAIRMAN KANE: Mr. Meier, which  
5 premarked exhibit is it?

6 MR. MEIER: Yes, ma'am. It is  
7 premarked joint applicants Exhibit NSA 4. It's  
8 premarked 2, which is marked as 4.

9 CHAIRMAN KANE: Marked as 4,  
10 premarked as 2 which now is 4. Thank you.

11 MR. MEIER: It is Page 4 of 19 on  
12 the bottom and 5 of 22 on the right-hand  
13 corner.

14 BY MR. MEIER:

15 Q. And what I am asking you to do is  
16 confirm that your data response there, which is  
17 that of the 16 or so mergers you have been  
18 involved in, of the mergers you have been  
19 involved in, the standard of review that the  
20 chief purpose of the merger must be to serve  
21 the public interest, you are not aware of any  
22 proceeding in which that standard was adopted?

Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015

669

1           A.       Sorry, Counselor. I think the  
2 question and my answer got garbled. Let me  
3 read the exact sentence you are referring to  
4 because I think in your question you just  
5 conflated proceedings with mergers. What the  
6 last sentence which is part of a much longer  
7 and much more complete answer says is: "Of the  
8 16 or so utility merger or acquisition  
9 transactions in which Hempling has been  
10 involved since 1985, and of the dozens more  
11 whose regulatory orders he has reviewed, he has  
12 not seen one which, according to this  
13 explanation (referring to the foregoing  
14 explanation in this data response)? he would  
15 describe as having its chief purpose serving  
16 the public interest."

17                   That is my answer in -- and I remain  
18 in agreement with that answer and the reason  
19 is, that I have yet to see a merger transaction  
20 where the first sentence is, the purpose of  
21 this or -- excuse me, I've yet to see an  
22 application, where the first sentence and

Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015

670

1 remaining support says the purpose of this  
2 transaction is to increase quality or reduce  
3 costs or increase innovation or increase  
4 customer empowerment for the serviced territory  
5 which we are -- with which we are merging or  
6 which we are acquiring.

7           There have been some mergers that  
8 are more consistent with the public interest  
9 than others, and we can discuss those when you  
10 wish, many of them would be the mergers of  
11 adjacent companies that occurred roughly  
12 between '85 and the mid-'90s. Your merger is a  
13 very different type.

14           Q.     In your testimony, you criticize the  
15 settling parties for not addressing merger  
16 policy in their supplemental testimony; isn't  
17 that correct?

18           A.     I don't think I used the word  
19 criticize. My purpose was to characterize.  
20 Many of the settling parties are friends of  
21 mine, they are witnesses or friends of mine.  
22 They were doing a professional job. What I

Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015

671

1    meant to do was to characterize their testimony  
2    as focusing on the settlement items rather than  
3    the consolidation of two companies which is at  
4    issue in this proceeding. It was a  
5    characterization, not a criticism.

6            Q.    Thank you for that distinction.

7                    At the beginning of this proceeding,  
8    didn't the Commission in Order No. 17530  
9    identify or ask the parties to comment on the  
10   factors to be considered in this merger?

11            A.    I'm sure that's correct. I don't  
12   recall the specific language. I'm sure you are  
13   correct.

14            Q.    And then on August --

15            A.    Sir, I'm sorry for interrupting you.  
16   If I may complete my answer.

17                    I read the Commission's instruction  
18   as to require comments on how the consolidation  
19   meshed with the seven factors. What you  
20   presented here in your nonunanimous settlement  
21   has nothing to do with the consolidation. It  
22   has to do with a separate set of elements.

Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015

672

1 Q. I understand that's your testimony.

2 And are you aware that the  
3 Commission in Order 17597, set forth the seven  
4 factors that the Commission will use to  
5 evaluate if the merger is in the public  
6 interest?

7 A. Yes, sir.

8 Q. You make some positive statements  
9 about the New York proceeding commonly called  
10 the REV proceeding; isn't that correct?

11 A. Yes. REV stands for Reform Energy  
12 Vision. I'm not sure if I made positive  
13 comments or simply alluded to it, but my  
14 testimony is what it is.

15 Q. Right. I am referring to Page 9 and  
16 26 through Page 10, Line 4, if you want to look  
17 at it. I don't think we need to, but if you  
18 care to?

19 A. One moment. Go ahead, sir. What  
20 page was that?

21 Q. It was Page 9.

22 A. Yep. Got it.



Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015

673

1 Q. Line 26. The REV proceeding is not  
2 a merger proceeding, is it?

3 A. Correct.

4 Q. Are you familiar with Formal Case  
5 1130 addressed to issues relating to  
6 modernizing the grid that the D.C. Public  
7 Service Commission opened?

8 A. I'm familiar that the case exists.  
9 I'm not familiar with anything more than that,  
10 other than the general issues.

11 Q. Are you also familiar that that is  
12 not a merger proceeding?

13 A. Correct. But I believe that's the  
14 proper place to address issues like microgrids,  
15 because microgrids deeply affect the future  
16 structure of the industry and need to be  
17 considered in the context of many other moving  
18 parts as the New York proceeding is doing.  
19 That's why I brought up the New York proceeding  
20 because of its comprehensiveness, as opposed to  
21 the episodic nature the microgrid proposal and  
22 other elements of this nonunanimous settlement.

Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015

674

1 MR. MEIER: Thank you very much, Mr.  
2 Hempling. I have no further questions.

3 CHAIRMAN KANE: Any other, Counsel?

4 MR. RORIES: Your Honor, I would  
5 like to just ask one quick question.

6 CHAIRMAN KANE: We have some  
7 Commission questions first and then you can do  
8 redirect.

9 MR. RORIES: Excuse me.

10 CHAIRMAN KANE: That's okay.  
11 Commissioner Fort?

12 COMMISSIONER FORT: Good morning,  
13 Mr. Hempling.

14 THE WITNESS: Good morning,  
15 Commissioner.

16 COMMISSIONER FORT: On Page 8 of  
17 your testimony, Lines 13 through 19 where you  
18 are talking about demand response, and I assume  
19 referring to Paragraph 115 of the settlement  
20 agreement, your concerns about Exelon  
21 influencing demand response policy at BGE and  
22 FERC?

Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015

675

1 THE WITNESS: Yes, ma'am.

2 COMMISSIONER FORT: You agree that  
3 the Commission has no authority over the  
4 actions taken by Exelon or PHI or Pepco at PJM  
5 or FERC, except to the extent that the  
6 Commission would intervene in a FERC proceeding  
7 and make its opinions known.

8 Would you agree with that?

9 THE WITNESS: Commissioner, I would  
10 not agree with it a hundred percent, and may I  
11 explain? Certainly, with respect to Exelon at  
12 the present, there is no Commission authority.

13 With respect to whether the  
14 Commission has authority to -- I would put it  
15 affirmatively this way. I believe the  
16 Commission through its regulatory authority  
17 over Pepco can influence the positions that  
18 Pepco takes on any number of issues at PJM,  
19 whether the Commission could direct Pepco to  
20 write certain words into its comments to PJM or  
21 to FERC would for me raise First Amendment  
22 issues, and I wouldn't advise the Commission to

Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015

676

1 go there, but I believe the Commission through  
2 its rate-making authority, through its  
3 authority to approve any number of things can  
4 describe a vision and a purpose and an intent  
5 that a wise utility would follow as it takes  
6 positions in Pepco.

7 In other words, I think there is  
8 subtle ways to influence positions that Pepco  
9 would take and for me, that is one of the  
10 important losses to the Commission should  
11 Exelon control Pepco.

12 COMMISSIONER FORT: You say there  
13 would be First Amendment issues if we were to  
14 direct the companies to do something. Why is  
15 that not an issue with respect to the arguments  
16 that have been raised by some parties that we  
17 put, as a condition, that Exelon not oppose the  
18 tax credits for wind?

19 THE WITNESS: You make a very  
20 strong --

21 COMMISSIONER FORT: Would that raise  
22 the same First Amendment issue?

Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015

677

1           THE WITNESS: Yes, ma'am. In a  
2 million years, I would not advise the  
3 Commission to condition anything on requiring  
4 someone to take a particular position. So I  
5 hope that is a clear answer. It is as clear as  
6 I can possibly make it.

7           What I'm thinking about is the  
8 notion in the Commission's order rejecting this  
9 consolidation, willing partner, that it's just  
10 easier to work with somebody who has no  
11 internal conflicts with the Commission's  
12 objectives than with somebody who does. All of  
13 you have been involved in public policy work  
14 and regulation long enough to know that when  
15 people share a vision without conflict, it's  
16 just easier to get things done and one need not  
17 go anywhere near the First Amendment third rail  
18 to recognize that, yes, ma'am.

19           COMMISSIONER FORT: I heard you say  
20 that you do some work with the NAACP. You  
21 would agree, wouldn't you, that there are a  
22 number of issues where people didn't share the

Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015

678

1 vision that people had of civil rights and  
2 NAACP and that usually was not a reason not to  
3 work with folks but sometimes it was a reason  
4 to push people forward a bit.

5 THE WITNESS: Of course. I  
6 certainly agree with that.

7 COMMISSIONER FORT: On Paragraph 115  
8 of the settlement agreement.

9 THE WITNESS: One moment, please.

10 COMMISSIONER FORT: Yes.

11 THE WITNESS: Yes, ma'am.

12 COMMISSIONER FORT: I think that's  
13 the provision that would speak to the concerns  
14 that you raised on Page 8.

15 Do you believe that that commitment  
16 does not address the concerns that you raised?

17 THE WITNESS: Correct. If I may  
18 explain. There is an aspirational paragraph.  
19 I know a certain amount about demand response  
20 because I advised PJM on matters relating to  
21 demand response. I'm going to be very brief,  
22 but the two major questions for public policy

1 makers in the area of demand response are  
2 market structure and compensation.

3           Market structure concerns who gets  
4 to play in a demand response market, who sells  
5 demand response, who buys it, compensation  
6 concerns, how much money goes to the ultimate  
7 provider of demand response, how much the gain  
8 from demand response gets divided up among the  
9 various players in that market.

10           There is any number of ways to say  
11 you and I are in agreement that we should make  
12 more demand response happen, and there are any  
13 number of ways for you and I to differ  
14 fundamentally over market structure and  
15 compensation.

16           So the mere statement in 115 that a  
17 person is committed to demand response,  
18 especially when that person stands to lose  
19 generation profit because demand response is a  
20 direct competitor generation, to me, it's  
21 aspirational.

22           It doesn't get us to the point where

Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015

680

1 we know we have a willing partner which is I  
2 believe what we more likely have with a Pepco  
3 that is unconflicted by ownership of  
4 generation.

5 COMMISSIONER FORT: Turn to a  
6 different topic in your testimony on Pages 14  
7 -- on Pages 13 through 15. You talk about the  
8 types of roles that should be used to measure  
9 independence -- of independent directives, and  
10 that you are critical of using -- well, you  
11 talk about rules other than the New York Stock  
12 Exchange rules, that you think should be used;  
13 is that correct.

14 THE WITNESS: No, ma'am. I may  
15 misunderstand your question. What I did here  
16 was follow the company statement that there  
17 would be "independent" directors, and that the  
18 definition of independence would be the  
19 definition used by the New York Stock Exchange  
20 and I pointed out that what that definition is,  
21 is that independent means independent from  
22 management. That is not a subtlety. It's what



Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015

681

1 independent always means.

2 I was concerned that the word  
3 independent might be misunderstood, either by  
4 its users or by the readers as independent of  
5 the types of conflicts that we're concerned  
6 about in this consolidation. But what clearly  
7 independent means is independent of management  
8 so that the directors are responsive to the  
9 shareholder and the shareholder, of course,  
10 after this consolidation is Exelon.

11 I didn't want there to be a  
12 misunderstanding that independent somehow meant  
13 independent of the very Exelon priorities that  
14 are a concern -- that was a concern of the  
15 Commission in its rejection order.

16 COMMISSIONER FORT: So my question  
17 was going to be: Can you identify any state  
18 that currently has in place some different  
19 definition of independent director rules that  
20 you would think would be more appropriate?

21 THE WITNESS: The direct answer to  
22 your question is no. What I proposed in my

Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015

682

1 condition, in my conditions, in my direct  
2 testimony, which was, of course, rejected by  
3 the company was that we make -- is that the  
4 company executives at the holding company level  
5 legally commit not to overrule decisions by  
6 Pepco.

7 That of course is the commitment  
8 that is fundamentally in conflict with the  
9 notion of shareholder control, holding company  
10 control, which is why the company  
11 unsurprisingly rejected it. I didn't use the  
12 word independent in that context because I  
13 didn't want to cause confusion over the word  
14 independent.

15 COMMISSIONER FORT: Can you identify  
16 any company in the course of any proceeding  
17 that has done that to your knowledge?

18 THE WITNESS: I cannot. Nobody  
19 would acquire -- nobody I think would  
20 rationally acquire another company if they  
21 didn't have control over that company. There  
22 really shouldn't be any dispute in this room

Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015

683

1 that Exelon will control the decisions of  
2 Pepco. For me, that is an issue that doesn't  
3 go away because there is 120 paragraphs in the  
4 settlement.

5 COMMISSIONER FORT: And so I  
6 understand it, you think that there is no way  
7 that you can select directors who are  
8 independent of management or the stockholder if  
9 the management and stockholder are the same.  
10 Is that --

11 THE WITNESS: Again, absent my  
12 condition, my answer to your question is yes.  
13 If I understand you. Let me restate it because  
14 I may have mixed up the negative.

15 Absent my condition, which requires  
16 the holding company to legally forego from  
17 overruling or otherwise controlling decisions  
18 of Pepco, there is -- I'm not aware of any  
19 other way to do it. You have to call it what  
20 you're going to call it, and unless you call it  
21 that, there is control because control is  
22 inherent in the holding company form.

Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015

684

1           The famous quote from the U.S.  
2       Supreme Court in the Copperweld case, 1984,  
3       holding company and subsidiaries, the  
4       subsidiaries are like horses being drawn by a  
5       single cart and the fellow in control of that  
6       cart is running those horses and that's the  
7       relationship of a subsidiary to a holding  
8       company. There's no secret about it.

9           COMMISSIONER FORT: On Page 20 of  
10      your testimony, turning to a different issue  
11      now, Lines 8 through 10, you were talking about  
12      a condition that you had proposed that the  
13      Commission should review each new acquisition  
14      by Exelon that the Commission deems  
15      significant.

16           THE WITNESS: Yes, ma'am. I just  
17      want to be clear with respect to that, the last  
18      caveat.

19           I in no way was proposing that each  
20      and every Tom, Dick and Harry acquisition or  
21      venture Exelon gets involved in, the Commission  
22      has to send all the staff to review. That the

1 commission would define the types of  
2 acquisitions and ventures that could cause a  
3 concern either by magnitude, by type of  
4 industry, by remoteness from the District, and  
5 that the Commission would review that, because  
6 absent such a condition, what you're buying  
7 into here is not Exelon today. It's Exelon  
8 today plus whatever acquisitions they make in  
9 the future.

10           The point I had made in my direct  
11 testimony was that prior to 2005, the Federal  
12 Public Utility Holding Company Act restricted  
13 those acquisitions, now there is none. So I  
14 didn't want the Commission should it otherwise  
15 find merit in this transaction to be like  
16 Illinois is today, watching Exelon acquire  
17 Pepco and having nothing to say about it.

18           COMMISSIONER FORT: In the merger  
19 proceedings that you have either participated  
20 in or the merger orders that you have reviewed,  
21 particularly I guess in the ones since 2005, is  
22 there any state or Public Service Commission

Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015

686

1 that has included such a provision?

2 THE WITNESS: There is not a short  
3 answer but let me give you a medium answer and  
4 you will tell me if that's sufficient. The one  
5 example I have, and I put this in my direct  
6 testimony, is that there is a Connecticut --  
7 the name of the agency has changed, but we will  
8 call it the Connecticut Commission in reviewing  
9 a telecommunications transaction involving the  
10 company called Frontier, that did have a  
11 condition that said roughly speaking again, I  
12 quoted it carefully in my direct testimony, but  
13 roughly speaking, it says if you are going to  
14 do anything -- if you're going to make any  
15 other acquisitions the next two years, let us  
16 know first. I don't think it specifically said  
17 we will review it, but it didn't say we  
18 wouldn't.

19 The other caveat I want to make sure  
20 you know is that in some states, Wisconsin in  
21 particular, there has been since the '80s, a  
22 statute that itself restricts the mixing of

Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015

687

1 utility and nonutility businesses. There is a  
2 25 percent rule. Again, roughly speaking, and  
3 I quoted this in my direct testimony that there  
4 can't be an acquisition that would make the  
5 nonutility businesses more than 25 percent of  
6 the total, and I'm simply pointing that out as  
7 an example of a restriction that would make a  
8 specific review process less necessary. Those  
9 are the two examples, Commissioner, that I  
10 would give you.

11 COMMISSIONER FORT: On Page 24 of  
12 your testimony on Line 3, you say the District  
13 loses the benefits of across the fence in  
14 benchmark competition. Then you go on to talk  
15 a bit about the BG&E and the fact that Pepco  
16 and BG&E would both be controlled by the same  
17 company.

18 As I read your comments, I think on  
19 Page 30, you conclude that the settlement also  
20 does nothing to address across the fence  
21 rivals. As I read the comments in the states  
22 that you cite, those are all states where the

Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015

688

1 multiple companies are operating in the same  
2 state, BG&E never operated in the District, so  
3 how was your observations relevant to the  
4 District?

5 THE WITNESS: Thank you,  
6 Commissioner. It's relevant in the following  
7 respect: When we talk about benchmark  
8 competition and across the fence rivalry, we  
9 are talking about the fact that two companies  
10 that are nearby can be compared by human beings  
11 that live, reside, work together. In other  
12 words, it's quite simple for two people who  
13 work in the District, one of whom lives in  
14 Maryland, one of whom lives in the District, to  
15 have a conversation about how is your utility  
16 company doing.

17 In other words, it's the fact of  
18 adjacency. It's the fact of proximity in a  
19 population area where people, family members,  
20 coworkers can get into a conversation about  
21 quality, about rates. The fact that the two  
22 companies in California were in the same state



Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015

689

1 was not what was relevant in their reasoning.

2           What was relevant in the reasoning  
3 there was their proximity, their adjacency.  
4 The fact that they had sufficient similarity in  
5 service territories and load shapes, that a  
6 comparison would be valuable. It's not the  
7 fact that they were in the same jurisdiction.  
8 I hope that makes sense.

9           COMMISSIONER FORT: Do you know  
10 whether or not the D.C. Commission does that?

11           THE WITNESS: I do not know whether  
12 they do that. It's my recommendation that the  
13 Commission do that as well as compare Pepco  
14 with any number of other utilities whose  
15 situations are comparable. My point is that it  
16 is a tool, a regulatory accountability that you  
17 lose with the acquisition.

18           COMMISSIONER FORT: I was going to  
19 ask a question specifically about our D.C. code  
20 provision that requires the Commission to look  
21 at several things in the course of doing their  
22 review of any work, utility work, and it

Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015

690

1 directs us to look at public safety, the  
2 economy of the District, the preservation of  
3 natural resources and environmental quality. I  
4 am missing the specific language, so I'm not  
5 going to quote the fourth one.

6 In how you define what a Commission  
7 should look at on a change of control  
8 transaction like this one, are you saying that  
9 we can only look at those elements that deal  
10 with the coupling of the companies and the  
11 monetary benefits or burdens on the coupling of  
12 the companies that that D.C. statutory language  
13 does not give this Commission a broader  
14 mandate, I guess is the real bottom line  
15 question.

16 THE WITNESS: Thank you. I want to  
17 answer your question yes, so that I am being  
18 direct but I want to make sure I explain myself  
19 carefully. The list of factors that the  
20 statute requires you, invites you, requires you  
21 to examine are a list of factors that are  
22 connected by the language to the word

Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015

691

1 consolidation, and so to emphasize the  
2 fundamental difference between my testimony and  
3 the company, the company's position, is that my  
4 testimony both as an interpretation of the  
5 statute and also as a matter of policy is that  
6 one must look at all of those factors that you  
7 referred to and the others, and others that are  
8 consistent with the words public interest, but  
9 one must associate them with the word  
10 consolidation and I use the phrase coupling of  
11 companies just to distinguish what we mean by  
12 consolidation as distinct from packages of  
13 benefits that are put forward as part of  
14 litigation strategy.

15           So I am arguing both as a matter of  
16 statutory authority, yes, the Commission would  
17 be in error to consider these things, and I  
18 recognize that's not a position that anybody --  
19 that most people in the room will agree with,  
20 but I will also argue as a matter of policy and  
21 I pointed out in both my direct and my  
22 supplemental testimony that the policy problem

Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015

692

1 is that if one considers all those other  
2 factors disassociated from the consolidation,  
3 that one is giving preferences to acquirers who  
4 have the resources to make those offers, and  
5 lots of resources may be a great qualification  
6 to control Pepco, but it isn't necessarily the  
7 right qualification and so that's my concern.

8 That there could be some other  
9 acquirer out there who could be a better and  
10 "more willing partner" but doesn't have the  
11 resources or the cynicism to bring factors in,  
12 in terms of the benefits that are unrelated to  
13 the consolidation.

14 To me, it's the fundamental question  
15 of yes, the Commission's authority and also  
16 what makes appropriate merger policy.

17 COMMISSIONER FORT: Thank you.

18 THE WITNESS: Thank you for your  
19 questions, Commissioner.

20 CHAIRMAN KANE: Thank you. Let me  
21 get back to where my questions are.

22 In the Commission's order rejecting

Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015

693

1 the -- denying the original application and  
2 finding it was not in the public interest, that  
3 is Order No. 17947. In its conclusions, in  
4 Conclusion No. 000, I will just quote it for  
5 you because it's just one line.

6           The Commission concludes that  
7 Exelon's ownership of additional  
8 nonjurisdictional business interests in  
9 general, and its ownership of nuclear  
10 operations in particular, will have an impact  
11 on Pepco and could have a negative impact on  
12 District ratepayers if the proposed merger is  
13 approved.

14           Do you recall -- you would accept  
15 that is what that finding was, or that  
16 conclusion was.

17           THE WITNESS: Yes, ma'am.

18           CHAIRMAN KANE: In your examination  
19 of the nonunanimous settlement agreement, did  
20 you find anything that would address that  
21 conclusion that the Commission had made and  
22 mitigate that conclusion?

Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015

694

1 THE WITNESS: Commissioner -- Madam  
2 Chair, excuse me. I did find elements that  
3 sought to address the concern and I found them  
4 inadequate. The -- may I give you a few  
5 examples?

6 CHAIRMAN KANE: Yes, please.

7 THE WITNESS: So one was the  
8 commitment that PHI would not invest in  
9 nonutility businesses without Commission  
10 permission. That changes nothing about the  
11 unrestricted nature following the repeal of the  
12 Public Utility Holding Company Act, ventures  
13 elsewhere in the Exelon Holding Company, and so  
14 I frankly found that restriction on PHI as  
15 irrelevant from a policy perspective and nearly  
16 irrelevant from a legal perspective because if  
17 PHI were to head down that path and there were  
18 no signs that it was doing so, but were PHI to  
19 head down that path, I would imagine the  
20 Commission could find a way to grab them by the  
21 lapels and ask what is going on. That is No.  
22 1.

Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015

695

1           No. 2 and I want to be fair to the  
2 nonunanimous settlement because there was an  
3 effort. There was the additions to the ring  
4 fencing provisions. Remember that  
5 fundamentally, what we are worried about when  
6 the holding company involves itself in  
7 nonutility businesses is distraction of  
8 management, competition for capital, and the  
9 possibility that the lending community and the  
10 rating agencies that advise the lending  
11 community will start to view Pepco as under  
12 pressure to produce more money or cut costs and  
13 therefore, we might find higher capital costs,  
14 either in terms of debt issued by Pepco or  
15 equity issued by Exelon.

16           There is nothing in the ring fencing  
17 provisions that addresses that matter. Zero.  
18 Ring fencing in general is intended to prevent  
19 the calamity of an Exelon bankruptcy leading to  
20 a pulling in of the Pepco into the bankruptcy  
21 proceeding. That is what ring fencing  
22 generally does. Those are the two points that

Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015

696

1 came to mind. One being the PHI restriction.  
2 The other being some tightening up of the ring  
3 fencing.

4 For me, what I came away with with  
5 the ring fencing, Madam Chair, was what is the  
6 net effect of the merger? One can say, as my  
7 cherished colleague, Mr. Smith said yesterday,  
8 that this settlement is better than other  
9 settlements, but that is a little bit like  
10 comparing two restaurants based on the quality  
11 of the freebie they give you when they leave.

12 You compare two restaurants based on  
13 the full picture of what your experience is.  
14 You compare two transactions based on the  
15 merger and the settlement. To compare just the  
16 settlements, to say that the ring fencing  
17 provisions are better here than they were  
18 somewhere else, doesn't answer the question,  
19 are we better off in the District with this  
20 transaction or without it.

21 The point that I think no witness  
22 can disagree with, is that the risks are not



Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015

697

1 eliminated by the ring fencing and so the risks  
2 have grown, the ring fencing has grown, but the  
3 risks have grown more than the ring fencing and  
4 the District is worse off not better off after  
5 the transaction. There may be others, I don't  
6 mean to be cheap, but those are the two that  
7 came to mind.

8 CHAIRMAN KANE: Thank you. On Page  
9 18 of your testimony starting on Line 11, this  
10 is a followup to the line of questioning, your  
11 subheading is D, consumers remain at risk for  
12 Exelon's other businesses, current and future,  
13 and you list there, the generation interests  
14 that face multiple risks, operational risks,  
15 climate change risks, low cost shield risks,  
16 nuclear specific risks, and you say with the  
17 2005 repeal of the Federal Public Utility  
18 Holding Act of 1935, Exelon can now make  
19 additional acquisitions unlimited by geographic  
20 or type of business boundaries unless the  
21 Commission acts.

22 What kind of acts would a

Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015

698

1 Commission, this Commission or a Commission be  
2 able to take to face or to mitigate the  
3 exposure to those kinds of risks since the  
4 Federal Public Utility Holding Company Act  
5 permits them.

6 THE WITNESS: The -- I want to give  
7 you a legal answer first and then a policy  
8 answer. There is no dispute among any lawyer  
9 that I know, and I was involved in the Holding  
10 Company Act debate for -- the first time I  
11 testified before Congress, I was actually  
12 reading somebody else's testimony. I was a law  
13 student, it was 1982.

14 But starting in '89, I was myself a  
15 direct witness ten times over there. Nobody  
16 views the repeal of the Holding Company Act as  
17 legally preemptive of states. I want to be  
18 sure that is a hundred percent clear. I  
19 explained that in my direct testimony.

20 In fact, on so many occasions, as I  
21 was testifying before Congress, proponents of  
22 repeal would regularly say, we don't need the

Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015

699

1 federal act because the states can handle it.  
2 So what the intent was was to remove the  
3 federal restrictions on acquisitions. There  
4 was no statutory intent to restrict what states  
5 can do.

6 So I want to make sure that legal  
7 context was a hundred percent clear. No one  
8 can tell you that you're barred from -- I'm not  
9 advising this. No one can tell you that you  
10 are barred from reenacting the Holding Company  
11 Act in toto at District Council level.

12 But the answer that I gave and I  
13 will give to you to your questions is the one  
14 that I gave to Commissioner Fort and described  
15 in my direct testimony, is that if you wanted  
16 to ensure that the Exelon you are approving is  
17 the Exelon you will remain comfortable with,  
18 you don't just put a quarter in the meter and  
19 watch what happens. You say as a condition of  
20 the merger, any acquisitions of the following  
21 characteristics would need to come to the  
22 Commission for review and approval first.

Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015

700

1                   Now I'm not saying that's going to  
2 be fun. I'm not saying it's going to be  
3 pretty, I'm not saying it's not going to  
4 require a heck of a lot of staff time and  
5 bother, but those are all the reasons to ask  
6 what are we getting into.

7                   CHAIRMAN KANE: Outside of the --  
8 you have spoken of other utility mergers in  
9 your testimony and you used the word  
10 consolidation as a substitute for the word  
11 merger. Would you agree that what is actually  
12 being applied for here, it's actually in the  
13 title of what the application is, is a "change  
14 of control?"

15                   It's an application for a change of  
16 control.

17                   THE WITNESS: Yes, ma'am, I agree  
18 with that.

19                   CHAIRMAN KANE: Outside of the  
20 utility sector, are you aware of mergers that  
21 have occurred where the company that is being  
22 acquired retains control over significant

Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015

701

1 portions of its business?

2 THE WITNESS: I can't tell you that  
3 I have studied this in a way that I have  
4 studied this merger. I'm not an expert on --  
5 No. 1.

6 No. 2, my answer would depend on how  
7 you and I define control. Let's take the  
8 famous example of Warren Buffet and Berkshire  
9 Hathaway, what this holding company seems to  
10 specialize in is buying companies that are run  
11 well, buying companies that are identified as  
12 being run well by highly-competent  
13 professionals, and then leave them alone.

14 No one would confuse Warren Buffet  
15 with being an expert on reinsurance business or  
16 being an expert on utility business. What he  
17 seems to do at his holding company level is  
18 acquire companies and then let them control,  
19 because it's that very control that has made  
20 them attractive as acquisitions.

21 Now whether there is some language  
22 in his acquisition agreements that says, well,

Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015

702

1 if we don't like what is going on downstairs,  
2 we're going to reach over and do it, I don't  
3 know. So I can't answer your question with  
4 specificity. I think that question of whether  
5 you are going to control depends on the reasons  
6 for acquiring.

7 CHAIRMAN KANE: I asked that  
8 question for another reason, because one could  
9 conclude, and I want you to tell me if it would  
10 be a proper conclusion, from the concerns that  
11 you have raised in your testimony, that given  
12 the Public Utility Holding Company Act, given  
13 the way utility business operates, that it  
14 would not be possible to really have a merger  
15 because of the change in control that would  
16 occur, and my question went to would there be  
17 ways to do a merger, if you will, that did not  
18 require or result in the acquired company  
19 having to give up to a parent company the  
20 control, operating control, other kinds of  
21 control, budget control, over its business.

22 THE WITNESS: I apologize. I might

Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015

703

1 not understand the question well. So if my  
2 answer isn't responsive, tell me.

3 I -- I think my answer to your  
4 question, if I understand it, is the same that  
5 I gave to Commissioner Fort.

6 But if what you're asking is is it  
7 possible for a Pepco or a utility to operate  
8 consistently with the standards that are  
9 expected of it by its regulator, while  
10 retaining the type of legal control that I've  
11 argued for and that I've said would be lost  
12 here, the answer is certainly yes.

13 In other words, if we were in that  
14 very admittedly unusual category where a  
15 holding company legally ceded its otherwise  
16 typical shareholder control, could the utility  
17 still operate well, I see no reason why not.

18 There's still this question that you  
19 raised in your order -- your rejection order of  
20 what happens when the utility needs equity and  
21 its only path to equity is to the holding when,  
22 whereas today its path to equity was more

Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015

704

1 direct.

2 In a sense, what's going on there is  
3 that the holding company that has given up  
4 control is now expected to sit there and go out  
5 and raise equity for the company it can't  
6 control, and that would put any CEO of the  
7 holding company in a position of discomfort.

8 And I apologize if I've not answered  
9 your question.

10 CHAIRMAN KANE: No. I think perhaps  
11 you've answered it when you gave the Warren  
12 Buffett kind of example, that is there --  
13 outside of the utility model or example that  
14 there are ways to do a merger and acquisition  
15 that does not involve ceding total control to a  
16 parent.

17 THE WITNESS: Again, as a practical  
18 matter, yes, I would agree with that.

19 May I just give you one elaboration?

20 CHAIRMAN KANE: Yes.

21 THE WITNESS: I think what's so  
22 important -- and I emphasized this in my



1 supplemental testimony.

2           What's so important is the motive  
3 for the consolidation and also the competitive  
4 context in which it occurs.

5           In the utility context, the  
6 competitive context at bottom is one of no  
7 competition, because what's being acquired here  
8 is control of a franchise to provide a monopoly  
9 service -- distribution service that is an SOS  
10 service. I recognize the District has retail  
11 competition, but the acquisition here is the  
12 acquisition of a company that retains the  
13 monopoly over distribution.

14           And so because what's being acquired  
15 is acquisition of control of customers rather  
16 than acquisition of an opportunity to compete  
17 for customers, there is a fundamental  
18 difference.

19           To clarify, let's talk about a  
20 merger in a nonutility context. And let's not  
21 think about one of the big telecom mergers  
22 where people are accusing them of try to

Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015

706

1 control the -- the highways. Let's just talk  
2 about a -- a merger of two supermarkets in an  
3 otherwise competitive market.

4 What you're acquiring is the  
5 opportunity to compete in that market. You're  
6 not acquiring a franchise of a monopoly. And  
7 so, when you're acquiring an opportunity to  
8 compete in that market, you are disciplined.  
9 The acquirer is disciplined by that fact of  
10 competition. And that discipline's going to  
11 pervade the acquisition decision.

12 It's going to affect how much am I  
13 willing to pay for this target? Because I'm  
14 going to have to find a way, either through  
15 savings to cut costs or extraordinary increases  
16 in quality to attract more customers.

17 That discipline is what tends to  
18 align the motive of the acquiring company with  
19 the public interest and the interest of  
20 consumers. That's the theory of competition.  
21 Is it always in practice that way? No. People  
22 in nonregulated markets acquire for control

Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015

707

1 also.

2 But the fundamental difference here,  
3 Madam Chair, is that, when you're acquiring a  
4 company which is a monopoly, what you're  
5 acquiring is the opportunity to have captive  
6 customers. That's different. And so the same  
7 discipline isn't here or the same motivation  
8 isn't here.

9 Exelon wants to have a shot at  
10 leading the market for distributed generation  
11 in the District. You can already see that in  
12 the settlement. And I'd like to, if we have a  
13 moment, to talk about the predatory pricing  
14 aspects of what was talked about by the prior  
15 witness.

16 Exelon also wants to even out its  
17 portfolio, which is pretty risky, not just  
18 because it's generation subject to competition  
19 but because it's nuclear, which is taking a  
20 beating in the market and could take a beating  
21 at any time from new NRC regulations.

22 These are legitimate concerns of any

Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015

708

1 company. If I were invested in Exelon, I'd  
2 expect them to do this. But that's not a  
3 public interest motivation.

4 PHI's motivation was obvious. Get  
5 that acquisition price up from 22 to 27.25 so  
6 that we can tell our shareholders we've  
7 satisfied our fiduciary obligation to maximize  
8 the value of their shares. That's not a public  
9 interest purpose either. And that's  
10 fundamental difference between a utility  
11 acquisition and a nonutility acquisition.

12 I think there was a connection  
13 between not answering your question, but I  
14 forgot what it was. And I apologize if I -- if  
15 I went too far.

16 CHAIRMAN KANE: No. I asked the  
17 question because one could conclude, from some  
18 of the things that you've said, that there's no  
19 way to do a merger of a -- of a utility -- a  
20 distribution utility that -- and put it under a  
21 holding company, which that you just couldn't  
22 do a merger. It was there are other ways to do

Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015

709

1 a merger.

2 THE WITNESS: Yes, ma'am.

3 But I'm glad you asked that question  
4 because now I understand it better. May I --  
5 and I answered because I -- I briefly heard Dr.  
6 Tierney's coverage of that claim yesterday,  
7 that if we took Hempling's principles and  
8 adopted them, there never -- there would never  
9 have been --

10 CHAIRMAN KANE: Have been a merger,  
11 yeah.

12 THE WITNESS: -- utility mergers.

13 And I would like to address that  
14 directly, if you wouldn't mind.

15 CHAIRMAN KANE: That was the nature  
16 of my question.

17 THE WITNESS: Yes, ma'am. I'm sorry  
18 if I misunderstood it.

19 Here is the reason why Dr. Tierney  
20 is wrong. First of all, autobiographically,  
21 I've been involved directly probably now 17  
22 mergers. The ones before 2005, before the

Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015

710

1   repeal of the Holding Company Act, were  
2   fundamentally different. Often they related to  
3   adjacencies.

4               There was -- my first merger in 1985  
5   was -- these names have disappeared from  
6   history now, but Toledo Edison and Cleveland  
7   Electric Illuminating. The next one, the one  
8   be -- the next one was Utah Power Light and  
9   PacifiCorp. There was Kansas Power Light and  
10   Kansas Gas & Electric. There was Public  
11   Service of New Hampshire and Northeast  
12   Utilities. There was BG&E and Pepco merger, in  
13   which Dr. Hu and I advised the Commission right  
14   here.

15              When mergers are mergers of adjacent  
16   companies, there is a larger possibility that  
17   true economies of scale can be the purpose,  
18   that cost minimization can be the purpose, that  
19   the coupling of two companies gives us a better  
20   company than what we had before.

21              Because the boundaries of our  
22   utility corporations today are the product of

1 a -- a series of -- I hesitate to use the word  
2 "arbitrary" or "random," but it's not as if,  
3 between the 1935 break-ups and not 2005, that  
4 regulators took out magic markers and figured  
5 out the best possible boundaries. There's an  
6 arbitrariness to the boundaries. And one would  
7 expect that, with changes in economies of  
8 scale, changes in technology, that there would  
9 be reason to change those boundaries.

10 And to the extent mergers were  
11 motivated by the desire truly to lower cost and  
12 increase quality, whether because of regulatory  
13 pressure, whether because of legislative  
14 pressure, or whether because the CEO just woke  
15 up one day and said, "You know what I really  
16 care about is the public interest. That's why  
17 I'm in this job."

18 And so every one of my restrictions  
19 and conditions would certainly screen through,  
20 would certainly allow the types of mergers that  
21 are motivated by that true public interest  
22 purpose of quality and cost reduction as

Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015

712

1   opposed to a merger that's motivated by  
2   inquisitiveness and getting the highest price  
3   and then gets add-ons afterwards.

4               So it's a fundamental error that I  
5   think -- that I -- that I assert that  
6   Dr. Tierney has made.

7               My distinction is between mergers  
8   that are motivated by and will serve the public  
9   interest between those -- versus those that are  
10   motivated by other interests.  An yes, my  
11   principles would rule out all of the latter and  
12   should rule in those of the former.

13              CHAIRMAN KANE:  Thank you.

14              One final question.  On Page --  
15   Pages 11 of your testimony, that would be Lines  
16   22 to 26, and talking about the renewable  
17   energy and energy efficiency commitments in the  
18   nonunanimous settlement agreement, and I think  
19   you repeat it in Lines -- on Page 35, Lines 17  
20   to 23, that they should not be countered -- or  
21   should be discounted, I should say, because  
22   they are not achieved through the coupling of



Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015

713

1 the company, and the District, quote, could  
2 institute these policies on its own, and  
3 therefore there's no benefit.

4 Is that a adequate summary of what  
5 you said there?

6 THE WITNESS: Yes, ma'am. It's --

7 CHAIRMAN KANE: Okay.

8 THE WITNESS: It's because of the  
9 point I made earlier.

10 First, as a legal matter, they don't  
11 flow from the, quote, consolidation, close  
12 quote, which is your statutory matter.

13 And secondly, as I pointed out  
14 earlier, they don't flow from an integrated  
15 process where the Commission is thinking about  
16 what do we need where.

17 And thirdly, to emphasize something  
18 in accord with what I've heard earlier this  
19 morning. Granting a first-mover advantage to  
20 somebody seems to me absolutely inconsistent  
21 with what this Commission and what this  
22 District is about.

Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015

714

1 CHAIRMAN KANE: Okay. Two  
2 questions.

3 In terms of these benefits, would  
4 you agree that, absent the merger, there's no  
5 guarantee that all of these commitments will be  
6 effectuated by the District on its own?

7 THE WITNESS: Correct.

8 CHAIRMAN KANE: I mean is that a  
9 relevant consideration?

10 THE WITNESS: I don't think it  
11 should be a relevant consideration, because I  
12 don't think that issues that are the  
13 responsibility of the District council and  
14 issues that are responsibility -- that are the  
15 responsibility of this Commission to take into  
16 account in a considered and comprehensive  
17 fashion, I -- I -- I don't think that those  
18 types of issues ought to be coupled with the  
19 merger.

20 I -- I am not ignorant of the  
21 difficulties your Commission faces in a context  
22 of political uncertainty. I'm not naive about

Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015

715

1     that.  I'm not ignorant of that.

2                   What I'm conscious of is a process  
3     by which this industry has gone from 200  
4     individual utilities to 50 in only 20 years  
5     because merger after merger after merger is  
6     approved by commissions not based on whether  
7     the consolidation, the coupling, makes public  
8     interest sent but because of these things.

9                   And I view the allocation of policy  
10    and statutory authority to this Commission as  
11    being an allocation of authority and duty that  
12    focuses on the consolidation.  And if that  
13    means that we have gaps in public policy, then  
14    we all need to get busy lobbying the city  
15    council the fix them.  But I don't think it's  
16    the Commission's job to do that, Commissioner.

17                   CHAIRMAN KANE:  Thank you.

18                   Finally, are you familiar -- and I  
19    will read it to you -- a provision of -- well,  
20    let me read to you a provision of D.C. law,  
21    D.C. code, which is 34-1506.  It's in the  
22    Electric Competition and Consumer Protection

Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015

716

1 Act. And it's -- 34-1506, the head is "Duties  
2 of the Electric Company."

3 It says: "(a)(1) The electric shall  
4 provide distribution services to all customers  
5 and electricity suppliers on rates, terms of  
6 access and conditions that are comparable to  
7 the electric company's own use of its  
8 distribution system. The electric company  
9 shall not operate its distribution system in a  
10 manner that favors the electricity supply of  
11 the electric company's affiliates." That's in  
12 D.C. law.

13 In looking at, again, the -- the  
14 control issues, the control concerns that you  
15 raised, do you see that those in any which  
16 implicate this provision of D.C. law?

17 THE WITNESS: Well, yes,  
18 Commissioner. Laws are there to be obeyed, and  
19 laws are there to be jerked. There's nobody in  
20 this room that hasn't exceeded a speed limit  
21 based on a calculation that they wouldn't get  
22 caught, and if they did, they could probably

Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015

717

1     afford the ticket price.

2                     One of the elements of your  
3     rejection order was the uncertainty about the  
4     regulatory difficulties and regulatory costs.  
5     You're a small commission associated with  
6     ensuring compliance with the general  
7     principles. Your general principle, that's the  
8     golden rule, nondiscrimination.

9                     Having a rule in place is different  
10    from having the forces that are necessary to  
11    detect it and have in place the consequences  
12    that one administers if there's noncompliance.

13                    So if I understood your question,  
14    there -- in any mind, there's nothing in the  
15    settlement that reduces the chance that  
16    bringing in a company whose priority is  
17    generation will lead to more uncertainty and to  
18    the ability of regulators to detect behaviors  
19    that will be in the self-interest of the  
20    acquirerer but not in the interest of  
21    consumers.

22                    One of the things pointed out in my

Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015

718

1 supplemental testimony was how specific the  
2 document was on what it was offering and how  
3 unspecific it was as to the consequences of  
4 noncompliance.

5 Other than -- and we won't get into  
6 this detail unless you wish, and it isn't a  
7 detail, other than the standards by which the  
8 Commission can order disaffiliation, which  
9 require -- and I don't think I'm being  
10 hyperbolic to use the word "calamity."

11 In other words, all sorts of  
12 negatives and difficulties and adverse effects  
13 can occur short of the four factors, which to  
14 me include calamity, can the Commission act.

15 And so there's no clarity as to the  
16 consequences for not compliance. So at least  
17 when I park in the wrong place in this  
18 District, I know what's going to happen to me,  
19 as I'm sure many people in the room have had  
20 the experience of.

21 But we don't know what's going to  
22 happen to Exelon if they don't comply. Whoops.

Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015

719

1 Sorry. We meant to do our best. I don't know  
2 where that puts the Commission.

3 CHAIRMAN KANE: Thank you.  
4 Commissioner Fort.

5 THE WITNESS: Thank you,  
6 Commissioner.

7 COMMISSIONER FORT: When Chairman  
8 Kane mentioned the -- the rejoinder testimony  
9 of Ms. Tierney, it reminded me that there was  
10 two other things that she had said that I'd be  
11 interested to hear you on.

12 She said that a diversified company  
13 is less likely to be concerned about  
14 distributing generation than a traditional  
15 distribution company because it is getting  
16 revenues from a variety of other sources.

17 Do you have a comment on that?

18 THE WITNESS: Yes. Thank you.

19 She's right in this respect,  
20 Commissioner Fort, that a company whose entire  
21 profitability is dependent on generation is  
22 going to be more upset if it loses market share

Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015

720

1     than a company for whom less than a hundred  
2     percent of their profit depends on generation  
3     would be. I think that's a obvious and common  
4     sense point.

5             Two points in response, though.  
6     Number one, that fact doesn't change the fact  
7     that there's still a conflict. And you're  
8     living in a status quo without a conflict. And  
9     after they are merger, you have a conflict. So  
10    the fact that Dr. Tierney says the conflict is  
11    less bad than it would be if we were a hundred  
12    percent generating company is I think a  
13    distraction from the point, which is are you  
14    better off or worse off with this transaction.

15            Secondly, as I thought about her  
16    comments -- and I've -- I've known Dr. Tierney  
17    since the '80s. She's an extremely intelligent  
18    person and a great public servant.

19            But when I thought about that phrase  
20    "diversified portfolio," what does that tell  
21    you? When you have a diversified portfolio,  
22    well, like any other business, you're a profit



Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015

721

1 maximizer. And what that means is you're going  
2 to seek the opportunities to maximize your  
3 profit, and you're going to diversify your  
4 portfolio based on that series of opportunities  
5 that you see.

6 And if those opportunities include  
7 getting a first-mover advantage in Blue Plains,  
8 you're going to seek that because you want to  
9 diversify that way.

10 In other words, nothing about what  
11 she said changes the fact that, after this  
12 acquisition, you are dealing with a very  
13 different kind of company whose motivations  
14 could change from time to time.

15 I mean are you better off if they  
16 get rid of all their generation, and their  
17 entire stake is now in distributed generation?  
18 Then you're going to be dealing with a company  
19 who wants to be in on the potentially newly  
20 competitive markets in the distribution space,  
21 and you're going to have to deal with that as  
22 opposed to being the Commission that says,

Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015

722

1 "We're open for business, and everybody's going  
2 to have an equal shot at competing."

3 COMMISSIONER FORT: Well, maybe I  
4 heard her say something different, because I  
5 thought she was talking about a risk of a  
6 change of ownership of the distribution company  
7 so that it is now owned by a diversified  
8 company like Exelon, as opposed to currently  
9 when it's owned by PHI, which is a traditional  
10 distribution company where a hundred percent of  
11 your revenues only come from distrubution; and  
12 therefore, a change, as the type of changes  
13 that we're seeing now in the market, would have  
14 the potential of having a much more potentially  
15 devastating effect if you can't keep up with  
16 the change.

17 I think the answer you just gave me  
18 used the change -- you know, the -- the second  
19 company you used was a generation company. And  
20 that's not what I heard her say.

21 THE WITNESS: Oh.

22 COMMISSIONER FORT: So if you -- if

Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015

723

1 -- assuming -- I -- I could be wrong, but let's  
2 answer it my way with what I think I heard her  
3 say, which is the -- is to compare it with the  
4 traditional distribution company, and try it  
5 again.

6 THE WITNESS: Yes, ma'am. Thank you  
7 so much. I'm going to like both my answers.  
8 But let me do answer that second question.  
9 Maybe she made both points. Like I said, she's  
10 a very intelligent person.

11 I disagree with the premise -- I  
12 profoundly disagree with the premise that a  
13 distribution company like Pepco is financially  
14 at risk as the Commission and other  
15 policymakers begin to find ways to empower  
16 customers to self-supply, whether it be through  
17 home solar, whether it be through microgrids,  
18 whether it be through neighborhood-owned  
19 generation -- I profoundly disagree with the  
20 notion that those necessary innovations in  
21 market structure and technology necessarily  
22 come at the expense of the distribution

Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015

724

1 utility. I profoundly disagree with those who  
2 say there is a, quote, existential threat,  
3 close quote, or a death spiral for the existing  
4 incumbents.

5           And here is why I disagree with  
6 that. For as many years as I've had to  
7 confront the issue, I have argued, to the  
8 surprise of many utilities, that those sunk  
9 costs in a distribution system that have been  
10 prudently incurred are the responsibility of  
11 the ratepayers, and they must pay them whether  
12 we have any new bright ideas about  
13 democratizing and diversifying the market.

14           That to suggest that the  
15 distribution monopoly's finances are going to  
16 be damaged because we're going to give  
17 customers a shot at becoming independent of the  
18 utility is wrong on policy grounds and wrong on  
19 statutory grounds and wrong on constitutional  
20 grounds.

21           Now, some companies like Pepco may  
22 shrink because we need their services less.

1 Less. But we must pay off the past.

2 Now, shareholders who took a bet on  
3 growth, they'll have a problem. But  
4 shareholder bets are not the concern of the  
5 commission. The concern of the commission is  
6 assuring recovery and return on investments in  
7 public utility assets.

8 So the argument that Dr. Tierney  
9 made that a Pepco who is nondiversified is less  
10 at risk when it's owned by a diversified  
11 company than it is now uses as a premise a  
12 factor that I disagree with, which is that  
13 regulators would act irresponsibility and put  
14 the Pepco at risk as we diversity our  
15 distribution space.

16 And I -- I appreciate your  
17 clarifying the -- the question.

18 COMMISSIONER FORT: The second line  
19 of comments that she had that I'd be curious to  
20 hear you on went to the fact that you, in your  
21 testimony, focus on savings that come as a  
22 result of coupling of the two companies. And I

Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015

726

1     guess this goes into part of the discussion you  
2     had with the chair.

3                     And we may have done ourselves a  
4     disservice to the extent that this transaction  
5     is so frequently referred to as a merger or a  
6     consolidation. Because you cited the  
7     BG&E-Pepco case that had been before the  
8     Commission was truly a consolidation. You had  
9     two companies that were together -- that were  
10    going to be put together, and you would have  
11    one company; and therefore, the ability to do  
12    what you were looking at, in terms of having  
13    savings when only one company is standing after  
14    you merge the two, is different than the  
15    situation that we have in this transaction.

16                    And sometimes I, you know, try to  
17    make sure that we reflect that this transaction  
18    is a change of control. So it's not two  
19    companies being put together but is a change of  
20    control at the top level.

21                    And I guess I say that by way of  
22    background, because one of the things that

Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015

727

1 Dr. Tierney said was that there were -- given  
2 that other types of benefits that come -- that  
3 can come under that change of control that  
4 don't have monetary benefits attached to it.

5 And the reliability benefits could  
6 occur faster; there could be more of them; they  
7 could occur at the same dollar amount so  
8 there's not a -- there's no reduction, you  
9 know, but it's the same dollar amount; and that  
10 your merger standard was inappropriately  
11 narrow, I think is the term that she used or --  
12 that's what I wrote, so I'm not sure if that's  
13 what she said -- because it excluded the  
14 environmental benefits, the jobs and the  
15 reliability benefits that could come under this  
16 type of transaction, which is a change of  
17 control transaction as opposed to a  
18 consolidation.

19 Can I hear you on that topic?

20 THE WITNESS: Yes. Thank you.

21 First, may I respectfully disagree  
22 with one -- one thing you said. My dim

Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015

728

1 recollection now, because it goes back to '96,  
2 '97 -- Dr. Hu may have a better memory of this  
3 -- is that, even with the Pepco-BG&E  
4 transaction, I don't know if they were putting  
5 them together into a single company or whether  
6 it was more like the PHI connective Pepco  
7 transaction where they were going to be  
8 continuing to be separate subsidiaries of a  
9 company. In any event, I -- I don't think the  
10 distinction is relevant.

11 What you have here, you can call it  
12 a change of control, you can call it a  
13 takeover, or you can call it an acquisition.  
14 It still is a merger of BG&E and Pepco. They  
15 will be subject to common control. Just ask  
16 Brian O'Brien. He's going to up there at  
17 Exelon Utilities telling people what to do.

18 So it's still -- the word "merger"  
19 is okay with me. The word "consolidation" is  
20 okay. The word "change of control" is okay.

21 I think that -- that minor -- hope  
22 minor disagreement is irrelevant to your



1 question, which I now want to come to.

2 Two points then, Commissioner. One  
3 is nothing in the settlement is attributable  
4 and legally traceable to the change in control.  
5 So if we simply call it nothing more than --  
6 well, it's nothing more than.

7 If we simply call it Exelon now will  
8 control Pepco, whereas prior Exelon didn't  
9 control Pepco, there is nothing in the  
10 settlement that legally connects any benefit to  
11 the change in control.

12 There are commitments, I grant you,  
13 on reliability. But we don't know if those are  
14 commitments that could have been made by Pepco  
15 alone or not. And no one is going to be able  
16 to say, when they occur, that they would not  
17 have occurred but for the change in control.

18 There is a association in time and  
19 in documents between the change in control and  
20 the reliability improvements. But nobody is  
21 promising to prove that the only reason those  
22 improvements occurred is because of the change

Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015

730

1 in control.

2 We can hope that's the case. We can  
3 guess that's the case. But as I discussed with  
4 the Chair, and I think with Counselor, if it's  
5 just a matter of somebody coming along with a  
6 bright idea which Pepco didn't have, it's quite  
7 possible at some point Pepco would have come to  
8 that idea. So I disagree with the notion that  
9 we can attribute to the change of control any  
10 of these improvements.

11 And, in fact, this gets to something  
12 that Mr. Smith was saying -- was discussing  
13 with the Chair yesterday when the Chair was  
14 discussing tracking. And I think Mr. Smith  
15 basically got to this point.

16 The point of tracking is to -- is  
17 attribution, is to say such and such would not  
18 have happened but for the merger.

19 After a year or two, you can't know  
20 what the company would have come up with on  
21 their own. You can't know what was truly  
22 introduced by Exelon that would not have been

Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015

731

1 introduced by Pepco by itself. It becomes  
2 speculative. You can try. And, in fact, when  
3 a company says, "We'll come up with a  
4 methodology for doing that," which is one of  
5 the promises, we don't know what that  
6 methodology is.

7           So even the tracking of savings --  
8 the Chair had asked, well, three years versus  
9 five years. I don't know how you do it after  
10 one year because you're guessing -- the  
11 counterfactual is you're guessing at what would  
12 have happened but for the merger, and it's just  
13 hard to know that.

14           Tell me if I answered your question.  
15 I -- I hope I did.

16           COMMISSIONER FORT: That's fine.  
17 Thank you.

18           THE WITNESS: Thank you.

19           COMMISSIONER FORT: Thank you so  
20 much for your answers.

21           CHAIRMAN KANE: Thank you.

22           Redirect?

Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015

732

1 MR. SPECK: Your Honor --

2 CHAIRMAN KANE: I'm sorry.

3 Commissioner Phillips, do you have  
4 any -- the questions --

5 COMMISSIONER PHILLIPS: No. I have  
6 no questions.

7 CHAIRMAN KANE: Okay.

8 COMMISSIONER PHILLIPS: Thank you.

9 CHAIRMAN KANE: Thank you.

10 MR. SPECK: Your Honor, now that Mr.  
11 Meier has opened the door, and with the  
12 indulgence of Grid 2.0's counsel --

13 CHAIRMAN KANE: You -- you would  
14 like an opportunity to cross-examine?

15 MR. SPECK: Just a -- just a couple  
16 of questions, if I could. I hope they're going  
17 to be hopeful. So we'll see.

18 CHAIRMAN KANE: Yeah. We -- would  
19 the -- I'm sorry.

20 COMMISSIONER FORT: These are  
21 questions on questions that the commissioners  
22 have asked?

Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015

733

1 MR. SPECK: Yes. Yes.

2 COMMISSIONER FORT: You know, which  
3 is sometimes what the --

4 CHAIRMAN KANE: I gave everybody --  
5 I -- I gave Mr. Meier an opportunity to  
6 cross-examine even though he had passed when I  
7 -- as everyone did when I asked.

8 And you would like to  
9 cross-examining the witness now, too, having  
10 rethought that opportunity?

11 MR. SPECK: No. Just based on -- on  
12 the questions that -- that you and Commissioner  
13 Fort asked. It's a clarification of those  
14 questions and -- and the responses.

15 CHAIRMAN KANE: Normally that is  
16 done under the witness's own counsel with  
17 redirect or Mr. Meier was kind of doing the  
18 same thing.

19 Yeah. I -- actually, because we're  
20 get -- we have redirect, too.

21 Do you have redirect, sir?

22 MR. RORIES: No. We too would

Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015

734

1 welcome Mr. Speck's. I'm sure that --

2 CHAIRMAN KANE: Okay. Okay.

3 MR. RORIES: -- Your Honor would --

4 CHAIRMAN KANE: We're going to take  
5 a break because the stenographer needs a break.  
6 And we're going to take a ten-minute break.  
7 Then we'll come back to hear questions -- any  
8 redirect you have, get this in, and then we'll  
9 go to the last witness.

10 So we'll -- we'll come back in ten  
11 minutes.

12 THE SECRETARY: All rise.

13 (A short recess was taken.)

14 THE SECRETARY: All rise.

15 You may be seated.

16 MR. SPECK: Your Honor, I decided I  
17 really don't need to ask those questions.  
18 So --

19 CHAIRMAN KANE: Okay.

20 MR. MEIER: And I decided we weren't  
21 going to object, but...

22 CHAIRMAN KANE: Well --

Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015

735

1 MR. RORIES: Grid 2 has no redirect.

2 CHAIRMAN KANE: All right. So let's  
3 -- now we will get back on the record. We are  
4 back on the record. It is 12:50 p.m.

5 And I have been informed by counsel  
6 for D.C. Sun that they are withdrawing their  
7 request to ask some questions of this witness.

8 Now I will go -- if you, sir, have  
9 any redirect -- questions on redirect to the --  
10 to your witness.

11 MR. RORIES: No, Your Honor. Grid 2  
12 has no redirect.

13 CHAIRMAN KANE: Thank you very much.  
14 Do you need to put something in the  
15 record?

16 MR. RORIES: Yes, I do.

17 CHAIRMAN KANE: We need your --  
18 we'll excuse the witness.

19 Thank you, Mr. Hempling.

20 THE WITNESS: Thank you.

21 CHAIRMAN KANE: Thank you very much.

22 MR. RORIES: Your Honor, we

Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015

736

1 respectfully request that Mr. Hempling's  
2 testimony marked Grid 2A -- Grid 2 2A be  
3 entered into the record.

4 CHAIRMAN KANE: It is so entered.

5 (Exhibit Grid 2 2A was admitted into  
6 evidence.)

7 MR. RORIES: Thank you.

8 MR. MEIER: And, Your Honor, we  
9 would move the admission of Joint Applicant NSA  
10 4 into the record.

11 CHAIRMAN KANE: It is moved into the  
12 record.

13 (Exhibit Joint Applicant NSA 4 was  
14 admitted into evidence.)

15 MR. MEIER: Thank you.

16 CHAIRMAN KANE: Now, your other  
17 witness?

18 MR. RORIES: Yes. At this time we'd  
19 like to ask our second witness, Mr. Larry  
20 Martin, to come.

21 LARRY MARTIN,  
22 being first duly sworn, to tell the truth, the



Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015

737

1 whole truth and nothing but the truth,  
2 testified as follows:

3 DIRECT EXAMINATION BY COUNSEL FOR GRID 2.0

4 BY MR. RORIES:

5 Q. Good afternoon, Mr. Martin.

6 For the record, would you please  
7 state your name and business address.

8 A. Larry Martin, 4525 Blagden Avenue,  
9 Northwest, Washington, D.C. 20011.

10 Q. And do you have before you your  
11 supplemental testimony that's been premarked  
12 Grid 2 2C consisting of 13 pages?

13 A. I do.

14 Q. Today do you have any changes to  
15 that testimony?

16 A. No, I don't.

17 Q. And was that testimony prepared by  
18 you or under your supervision?

19 A. Yes, it was.

20 Q. And if I asked you the same question  
21 today, would your answers be the same?

22 A. They would.

Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015

738

1 Q. And is this testimony true to the  
2 best of your information, belief and knowledge?

3 A. Yes, it is.

4 MR. RORIES: Your Honors, Mr. Martin  
5 is available for cross-examination.

6 CHAIRMAN KANE: Thank you.

7 MS. STARK: Thank you.

8 CROSS-EXAMINATION BY COUNSEL FOR PEPCO HOLDINGS

9 BY MS. STARK:

10 Q. My name is Wendy Stark, and I'm one  
11 of the attorneys for Pepco Holdings  
12 representing the joint applicants today. And I  
13 have just a few questions for you.

14 First I'd like to direct your  
15 attention to Page 2 of your testimony.

16 Do you have that in front of you?

17 A. Yes.

18 Q. And in particular I'd like to talk a  
19 little bit about your response to Question 6.

20 Now, in this question you identify  
21 that you are responding to the relevant  
22 Commission statements and findings in the

Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015

739

1 Commission's order related to Factor 7; is that  
2 correct?

3 A. That's correct.

4 Q. But isn't it true that you excluded  
5 from your testimony the Commission's positive  
6 statements regarding Exelon and the merger as  
7 they relate to Factor 7?

8 A. I selected the elements of the  
9 Commission's response that I wanted to address.

10 Q. Okay. So you did not include the  
11 Commission's findings from Paragraph 336  
12 regarding, for instance, the positive benefits  
13 of nuclear power and that a large amount of  
14 Exelon's total generation output comes from  
15 nuclear plants that support clean power  
16 production, correct?

17 A. That's correct. I didn't include  
18 that because I didn't think it was relevant to  
19 the merger and to the ratepayers in the  
20 District of Columbia.

21 Q. Okay. But you did also -- you also  
22 did not include the Commission's findings that

Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015

740

1 they made at Paragraph 337 regarding Exelon's  
2 support in development of renewable generation  
3 and their facilitation of distributed  
4 generation; isn't that correct?

5 A. I don't have that paragraph open  
6 right in front of me, but I -- I trust that  
7 that's correct.

8 Q. Okay. If you'd like to look at it,  
9 the Commission's order is in the binder that's  
10 on your left. And this is a smaller binder up  
11 on the ledge, I think, if you wanted to look at  
12 that.

13 A. Okay. I'll pass on that now.

14 Q. Okay. So you only quoted those  
15 portions of the Commission's order that you  
16 agree with or that are consistent with your  
17 view that opposes the merger, correct?

18 A. Yes. I sought to highlight those.

19 Q. Okay. So let's also talk about your  
20 description of the commission's order. And I  
21 think we can both agree that the Commission's  
22 order and the quotations that you recite

Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015

741

1 related to the original application and not to  
2 the settlement agreement, correct?

3 A. Yes, that's correct.

4 Q. Okay. And as you point out in your  
5 testimony, even accounting for all of the  
6 criticisms that you raise in your testimony,  
7 the Commission and the order found that the  
8 effect of the proposed merger on Factor 7 is  
9 neutral, correct?

10 A. That's correct.

11 Q. Okay. And while we may disagree  
12 about the value or the weight of the  
13 commitments that are now included in the  
14 settlement agreement, would you agree with me  
15 that the settlement agreement does include  
16 affirmative commitments regarding Factor 7 that  
17 were not included in the original application  
18 that was before the Commission?

19 A. Yes, I would.

20 Q. Okay. And for those benefits and  
21 those benefits that relate to Factor 7, would  
22 you agree with me that the settlement agreement

Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015

742

1 provides that customers won't pay for them,  
2 correct?

3 A. Yes. I believe that would be  
4 generally true.

5 Q. Okay. Thank you.

6 So despite the fact that the  
7 settlement agreement includes more than the  
8 original proposal, is it accurate that your  
9 position is that the settlement is actually a  
10 step backward from what the Commission found it  
11 to be on Factor 7; that is the Commission found  
12 Factor 7 to be neutral, but in your words you  
13 would describe it as at best neutral, still  
14 leaning heavily to the negative?

15 A. I still hold by that.

16 And I believe I just misspoke in  
17 response to your previous question.

18 Q. Okay.

19 A. I do think there is a prospect that  
20 ratepayers may be responsible for carrying the  
21 cost of some of the incentives that were  
22 included in the settlement agreement.

Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015

743

1           If I recall correctly, there's a  
2   provision concerning microgrids where the --  
3   the joint applicants would be able to  
4   potentially put some of that into the rate base  
5   and get recovery.

6           Q.     Thank you for that clarification.  
7   So let's follow up on that for just a moment.

8           Is it also your understanding that,  
9   before any cost recovery for a microgrid would  
10   happen, that there would have to be a filing  
11   before this commission, that there would be a  
12   proceeding where intervenors would participate,  
13   and none of that cost recovery could occur  
14   unless the commission itself approved that,  
15   correct?

16          A.     I would even go further to say that  
17   there might even be a reasonable argument to be  
18   made for the joint applicants receiving cost  
19   recovery for microgrids.

20          Q.     Thank you. I would agree with  
21   that --

22          A.     I'm just --

Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015

744

1 Q. -- as well.

2 A. But in response to your question  
3 would there be any cost formed by ratepayers,  
4 yes, there's potential.

5 Q. For the -- that microgrid section,  
6 correct?

7 A. Correct.

8 Q. But I think it is fair to say that,  
9 for instance, the contributions for renewable  
10 generation development, the three and a half  
11 million dollars to the Renewable Energy  
12 Development Fund, that would not be recovered  
13 from ratepayers, correct?

14 A. That's correct.

15 Q. And there are a number of those  
16 other items within the Customer Investment Fund  
17 that would not be recovered from customers,  
18 correct?

19 A. Yes, that's right.

20 Q. Okay. Thank you.

21 Mr. Martin, at Page 12, on Line 20  
22 of your supplemental direct testimony, if you



Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015

745

1 want to turn to that briefly, you state that  
2 the issue of climate change as an outside  
3 element of Public Interest Factor No. 7 should  
4 remain foremost in the minds of commissioners  
5 as they evaluate the implication of the  
6 proposed merger, correct?

7 Did I read that correctly?

8 A. What line is that? I believe that's  
9 correct.

10 Q. Line --

11 A. Could you just --

12 Q. It should be Line 20 and on to Line  
13 21.

14 A. Yes, I do.

15 Q. Okay. Thank you.

16 Now, did you read the Commission's  
17 decision at Paragraph 344 where the Commission  
18 explicitly decided that Factor 7 is not  
19 controlling and would not receive more weight  
20 than the other factors?

21 A. Yes. I wouldn't dispute that.

22 Q. Okay. And as you prepared your

Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015

746

1 testimony, did you review any of the evidence  
2 regarding Exelon's positions on sustainability?

3 A. I consider sustainability to be one  
4 of the areas where I do have a measure of  
5 expertise.

6 Q. Uh-huh.

7 A. And so I would beg that you specify  
8 just what you mean by "sustainability" when you  
9 use that term. Because I think that the use of  
10 the term demands that you -- you have criteria  
11 and a degree of specificity in order to  
12 understand what your metric is for defining  
13 sustainability.

14 What are you trying to sustain?

15 Q. Sure. That's fair enough.

16 Can you take a look for me -- I'm  
17 going to take you back to something else that's  
18 already in the record. And we won't spend a  
19 lot of time on it. I'm just going to ask if  
20 you had reviewed some of these statements  
21 before.

22 In the binder on your left, there is

1 a binder that says "Volume 2 of 3" of fully  
2 conformed testimony of the joint applicants.  
3 And it's the binder that's up on the ledge to  
4 your left, the bigger binder. Yes. That one.

5 And that is Joint Applicants Exhibit  
6 2I. And I'm just going to ask a couple of  
7 quick questions about that.

8 And there is a tab there that I  
9 think indicates that that is the supplemental  
10 direct testimony of Christopher Gould.

11 Do you see that?

12 A. Thank you.

13 Q. I tried to make that a little bit  
14 easy for both of us.

15 Do you see Exhibit 2 to that  
16 testimony?

17 A. I believe I do, yes.

18 Q. And that is Exelon's sustainability  
19 report; is that correct?

20 A. Yes, it is.

21 Q. Okay. Did you review that document  
22 before you prepared your supplemental

Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015

748

1 testimony?

2 A. I did not.

3 Q. Okay. So you were not aware that,  
4 within that document, Exelon in its public  
5 statements, makes it very clear that Exelon is  
6 committed to conducting their business in a way  
7 that minimize environmental impacts and  
8 supports employees in the communities in which  
9 we operate. From decisions regarding  
10 generation mix to the energy efficiency  
11 improvement -- improvement programs we offer to  
12 our customers, we integrate sustainability into  
13 everything we do.

14 A. I appreciate the sentiment. It  
15 strikes me as essentially just a -- a public  
16 statement affirming warm and fuzzy thoughts.

17 Again, I think that sustainability  
18 needs to be made sufficient. You need to talk  
19 about what it is you're sustaining. And you  
20 need to have measurable performance metrics  
21 that you can refer to --

22 Q. Okay.

Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015

749

1           A.     -- when you talk about  
2 sustainability.

3           Q.     Okay. So would you agree that the  
4 reduction of carbon emissions is important in  
5 sustainability?

6           A.     Absolutely.

7           Q.     Okay. And you --

8           A.     Sustainability for society and --  
9 and certain dimensions of ecological structure  
10 and function.

11          Q.     Okay. And you recall that the  
12 Commission found that 81 percent of Exelon's  
13 total generation output comes from plants that  
14 support clean power production, that is their  
15 nuclear plants, correct?

16          A.     I don't dispute that Exelon has a --  
17 a good ratio of power generation to carbon  
18 release.

19          Q.     Okay.

20          A.     But that really wasn't where I  
21 directed my -- my testimony or my focus. I was  
22 focused more on the merger between Exelon and

Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015

750

1 what it brings to Pepco with regard to Pepco's  
2 operations.

3 Q. Okay. So let me ask just one or two  
4 questions, and then we'll get to that point as  
5 well.

6 So at the time of the Commission's  
7 decision, the Commission had found that a large  
8 portion of Exelon's generation plate supports  
9 clean power production.

10 Are you aware that in 2014 alone  
11 Exelon retired or sold nearly all of its  
12 coal-fired assets and divested 1,245 megawatts  
13 of coal-fire generation?

14 A. I'm not familiar with the exact  
15 numbers that you just gave me. But yes, in  
16 general I was familiar with those actions.

17 Q. Okay. And that now less than 1  
18 percent of Exelon's generation capacity is from  
19 coal plants?

20 A. Very happy to know that.

21 Q. Okay. Thank you. We are too.

22 Now, don't these facts contradict

Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015

751

1 the assertion in your testimony that Exelon has  
2 a bias against the very strategies that are  
3 essential for reducing emissions from fossil  
4 fuel combustion?

5 A. Not in the least.

6 Q. How so?

7 A. Nearly 50 percent of the energy  
8 generated in the PJM that we drew here into the  
9 District is generated by fossil fuels as of  
10 2012. It could be less than that now. It was  
11 about 49 percent in 2012.

12 So if you're talking about  
13 specifically policies that are relevant to the  
14 District and to -- and to Pepco, you need to  
15 deal with realities of our generating mix here  
16 in our region.

17 In order to reduce the demands on  
18 that fuel, you need to replace it with, you  
19 know, noncarbon-generating capacity, which  
20 would generally be renewables in this area,  
21 unless we were to build a new nuclear power  
22 plant, or you need to advance efficiency.

Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015

752

1 Q. Okay.

2 A. These are really the two levers that  
3 we have to work with here in the District. And  
4 so anything that would advance renewables or  
5 promote efficiency in particular, because  
6 efficiency would generally be considered to be  
7 more cost effective than renewable power, would  
8 be things that we would want to promote here  
9 and that we would look for the merger to -- to  
10 promote in a -- in a -- in a systematic and  
11 substantive way.

12 What I've argued is that the -- the  
13 incentives that you've given the settling  
14 parties to sign onto the settlement are just  
15 not really that substantive.

16 Q. So thank you for that answer. Let  
17 me just clarify a couple of points.

18 So you and I can agree that Exelon  
19 has a low carbon fleet, as we just walked  
20 through.

21 A. Heartily.

22 Q. And we can agree that the -- as this



Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015

753

1 relates to the merger, that Pepco, as a  
2 utility, will continue to purchase its  
3 generation through the SOS process that is  
4 supervised by the Commission and that gets its  
5 power from a competitive process where the  
6 lowest bidder becomes the supplier here,  
7 correct, that it is not based upon affiliation?

8 A. I suspect that would be true, yes.

9 Q. Okay. So the issue of the overall  
10 carbon footprint, we'll say, of PJM is not  
11 really related to this merger specifically,  
12 correct?

13 A. The overall carbon footprint of PJM  
14 is not related to this merger.

15 Q. Or the amount of generation within  
16 PJM that comes from fossil fuels, that that  
17 comparison of PJM is not what we're talking  
18 about; we were talking about the Exelon mix,  
19 correct?

20 A. You are talking about the Exelon mix  
21 as opposed to PJM. That's correct. Yes.

22 Q. Okay. Thanks.

Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015

754

1                   And so let's talk a little bit about  
2   Exelon's record for supporting renewables.

3                   Do you recall the Commission's  
4   finding that Exelon utilities have  
5   interconnected thousands of customers for over  
6   a hundred megawatts of distributed generation,  
7   and BG&E alone has approved more than 4,000  
8   interconnection requests just in 2014?

9                   Do you recall that?

10           A.     I don't recall the numbers  
11   specifically. But yes, I recall the general  
12   thrust of your point.

13           Q.     So that the Commission found that  
14   this merger would bring to the District -- and  
15   I'm quoting from Paragraph 342 of the  
16   Commission's order -- a company that's  
17   knowledgeable and experienced in renewable  
18   energy generation and has at least one  
19   subsidiary, BG&E, that is experienced in  
20   interconnecting renewable energy.

21                   Do you recall that?

22           A.     Yes, I do.

Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015

755

1 Q. Okay. Now let's talk a little bit  
2 about your testimony at Page 4, Lines 22 to 23.

3 A. Okay.

4 Q. So in there you state that, if Pepco  
5 had been doing these things already -- and by  
6 that you're referring to the number of  
7 commitments that are within the settlement  
8 agreement -- either voluntarily or due to a  
9 Commission order or to a city counsel mandate,  
10 Exelon would have nothing to add, correct?

11 A. That's correct.

12 Q. Okay. So there are two things that  
13 I want to talk about related to that sentence.

14 First you make the point that, if  
15 Pepco had been doing the things, either  
16 voluntarily or involuntarily, Pepco would have  
17 nothing to add.

18 And on that point, I just want to  
19 ask you whether or not you see a difference  
20 between doing something voluntarily versus  
21 involuntarily.

22 A. Yes. I do see a difference between

Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015

756

1 voluntarily and involuntarily.

2 Q. And you see doing something  
3 voluntarily better than doing it involuntarily  
4 in this context, correct?

5 A. Not necessarily.

6 Q. Do you recognize that it would be  
7 better for the joint applicants to be making  
8 these commitments voluntarily as opposed to  
9 being required to do them through, for  
10 instance, a city council mandate?

11 A. Yes. Yes --

12 Q. Would --

13 A. -- I do. That would indicate a  
14 degree of partnership and willingness.

15 Q. Okay. And it's better to have  
16 them -- these commitments made voluntarily in  
17 the settlement agreement as opposed to after a  
18 lengthy Commission proceeding where -- that  
19 results in an order at the end of that,  
20 correct?

21 A. I -- I would not say that that would  
22 necessarily be true in all cases. I -- I

Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015

757

1 wouldn't make a -- a blanket statement to that  
2 effect.

3 Q. Okay. Fair enough.

4 So let's also talk about the other  
5 part of that sentence that says if -- if Pepco  
6 had been doing these things already, then  
7 Exelon would have nothing to add. And we  
8 talked a little bit about a couple of these  
9 things earlier.

10 But just to be clear, is it your  
11 understanding that Pepco is already  
12 contributing to the Renewable Energy  
13 Development Fund?

14 Is Pepco doing that now?

15 A. You know, I don't know to what  
16 extent Pepco has complied with the RPS and is  
17 buying RECs as opposed to contributing to the  
18 fund as, you know, essentially a penalty. But  
19 it could be that it is contributing to the  
20 fund.

21 In addition to the -- you know, to  
22 the same extent that you're proposing to

Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015

758

1 augment the fund with some millions of dollars,  
2 no, certainly not. I don't believe they are.

3 Q. Okay. Thank you.

4 And just to be clear, to the extent  
5 that Pepco was paying some sort of alternative  
6 compliance payment for SOS providers, that  
7 would be money that would be recovered from  
8 customers that is then paid into the fund; that  
9 would not be shareholder dollars such as is  
10 suggested here in the settlement agreement,  
11 correct?

12 A. That's correct.

13 Q. Okay. Thank you.

14 And for the other items in the  
15 Customer Investment Fund, the other  
16 contributions that are being made, those are  
17 not things that Exelon or Pepco is currently  
18 doing, correct?

19 A. That is correct.

20 Q. Okay. And it's also true that Pepco  
21 is not currently developing up to 10 megawatts  
22 of solar in the District of Columbia.

Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015

759

1           A.     That is also correct, to my  
2     knowledge.

3           Q.     Okay. And you're not aware that  
4     either Pepco -- that Pepco has not already  
5     agreed to develop or support the development by  
6     procuring a hundred megawatts of wind under a  
7     long-term contract, has it?

8           A.     No, it has not.

9           Q.     Okay. So all of those things are  
10    new and are incremental benefits as a result of  
11    the settlement agreement; those are not things  
12    that were being done already by Pepco, correct?

13          A.     No dispute.

14          Q.     Great. Thank you.

15                 Mr. Martin, did you look at the  
16    other benefits in the settlement agreement, and  
17    do you consider there to be benefits in the  
18    settlement agreement?

19          A.     I did focus my attention principally  
20    on Public Interest Factor No. 7. And that's  
21    all I'm really prepared to speak to today.

22                 But I did review the entire

Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015

760

1 settlement agreement. And I've listened to  
2 much of the testimony here today. So  
3 systematically I've heard the joint applicants  
4 speak to the various incentives that have been  
5 put into the -- to the agreement for parties to  
6 settle, yes.

7 Q. Okay. And you would agree there are  
8 benefits there, those other issues, things --

9 A. No dis- --

10 Q. -- like the Customer Investment Fund  
11 and --

12 A. No dispute.

13 Q. Thank you.

14 Are you familiar with rate making  
15 process generally and in the District of  
16 Columbia specifically?

17 A. Probably not to the extent of most  
18 of the people in this room. It's not an area  
19 that I have -- have expertise in.

20 But I've engaged in the process.

21 I've been a party to rate making cases. So I  
22 have a passing familiarity with it.



Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015

761

1 Q. Okay. Thank you. I'm sure that's  
2 more than enough for the few questions I'm  
3 going to ask.

4 Would you agree that Pepco, as a  
5 regulated utility, is entitled to recover the  
6 cost that it prudently incurs in order to  
7 provide utility service to District of Columbia  
8 residents?

9 A. Yes. And -- and as I've put on the  
10 record in the past on behalf of Grid 2.0, we do  
11 take issue with this idea of prudence.

12 We feel that -- we feel that a  
13 prudent utility is going to be forward looking  
14 and examining opportunities for smart grid to a  
15 greater extent than has been the case here in  
16 the District.

17 Q. Uh-huh.

18 A. We're very pleased now that the  
19 Commission has opened up Formal Case 1130 to  
20 advance that discussion. Because, at least in  
21 our opinion, that was not being -- that was not  
22 being given prudent consideration by the

Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015

762

1 utility.

2 But, in general, the -- I would  
3 agree with your assertion.

4 Q. Okay. And Pepco's participating in  
5 Formal Case 1130, correct?

6 A. Oh, it certainly is.

7 Q. Okay. Good.

8 So you would agree with me then  
9 that, if the Commission were to order Pepco to  
10 provide a particular service, so, for instance,  
11 energy efficiency as an example -- and we'll  
12 assume for the brief purpose of my question  
13 that Pepco were allowed to provide those  
14 services instead of the SEU -- but if the  
15 Commission were to order Pepco to do that, then  
16 Pepco would be entitled to recover its  
17 prudently incurred costs associated with that  
18 service; is that correct?

19 A. Well, of course that's true.

20 Q. Okay.

21 A. However, I think that there are many  
22 things that a -- a forward looking and

1 proactive utility can engage in that don't even  
2 necessarily entail a lot of capital investment,  
3 and primarily in the way of policy that could  
4 move us in the direction of efficiency and  
5 adoption of renewables that go beyond the --  
6 the limited range of -- of investments that  
7 would be recoverable in a rate case that you're  
8 referring to.

9 Q. Okay. And I would agree with you on  
10 that. But let me follow up on my question just  
11 a little bit.

12 So if the utility is entitled to  
13 recover costs if they are ordered to do it, I  
14 just want to close that out that, under the  
15 terms of the settlement agreement, Pepco and  
16 Exelon have agreed to not get recovery in rates  
17 for the funding of the support for renewable  
18 energy development, for energy efficiency or  
19 for sustainability under the settlement  
20 agreement; isn't that correct?

21 A. Yes. This is true.

22 MS. STARK: Okay. Thank you.

Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015

764

1           That -- those are the only questions  
2 I have, Mr. Martin. Thank you much.

3           THE WITNESS: You're welcome.

4           CHAIRMAN KANE: Anyone else have  
5 cross-examination for this witness?

6           MR. CALDWELL: Your Honor, I just  
7 have one -- one question -- one --

8           CHAIRMAN KANE: Well --

9           MR. CALDWELL: -- area of question.

10          CHAIRMAN KANE: Uh-huh.

11          CROSS-EXAMINATION BY COUNSEL FOR D.C.

12                       GOVERNMENT

13          BY MR. CALDWELL:

14          Q.     Good afternoon, Mr. Martin.

15                 Brian Caldwell with the District  
16 Government.

17                 I just had one bit of your  
18 testimony. If you could turn to Page 9, Lines  
19 15 through 17 of your testimony.

20                 And you state, in reference to the  
21 wind procurement contract -- or commitment, I  
22 should say -- "The procurement of 100 megawatts

Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015

765

1 of wind energy under long-term contracts is an  
2 open-ended commitment without a fixed deadline  
3 and can be executed by any Exelon subsidiary in  
4 any of the PHI jurisdictions. The Commission  
5 should not count this as anything other than a  
6 neutral factor, neither enhancing nor  
7 diminishing the public interest for Factor  
8 No. 7 because it lacks any specific commitment  
9 in -- in support of the District's goals of  
10 achieving 50 percent renewable power by 2013.

11 You would agree that the  
12 Commission's --

13 CHAIRMAN KANE: Mr. Caldwell.

14 MR. CALDWELL: Yes?

15 CHAIRMAN KANE: I think you mean  
16 2032.

17 MR. CALDWELL: Is that -- oh, sorry.  
18 What did I say?

19 CHAIRMAN KANE: 2013.

20 MR. CALDWELL: Yes. I did mean  
21 2032. Thank you, Your Honor.

22 BY MR. CALDWELL:

Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015

766

1           Q.     You would agree that the  
2     commission's Public Interest Factor 7 states  
3     that the Commission must consider the  
4     transactions effect on the conservation of  
5     natural resources and preservation of  
6     environmental quality, correct?

7           A.     Yes.   That's correct.

8           Q.     Okay.   The Commission's Public  
9     Interest Factor 7 does not state that it must  
10    consider the merger's effect on the District's  
11    ability to achieve 50 percent renewable power  
12    by 2032, does it?

13          A.     It doesn't limit it to that.   You're  
14    correct.

15          Q.     Okay.   Wouldn't you agree that the  
16    existence of an offer to purchase 100 megawatts  
17    of wind energy over a ten-year period could  
18    provide an incentive for a developer of wind  
19    power to add new wind generation in the PJM  
20    that might not otherwise exist but for this  
21    commitment?

22          A.     It is conceivable.   But once again,

Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015

767

1 I would say it's speculative, like so many of  
2 the other measures in the settlement.

3 There's money that's going into this  
4 fund or that fund. It could lead to the  
5 development of solar power. This could lead to  
6 the development of new wind power.

7 But it's -- it's -- I mean I  
8 wouldn't want to dismiss it as hand waving, but  
9 it's -- it's not a firm commitment. And  
10 there's certainly no enforceability behind any  
11 of these things.

12 Q. Okay. But you said it would be  
13 conceivable if --

14 A. Yes.

15 Q. It's conceivable.

16 So wouldn't the addition of new wind  
17 generation in the region contribute to the  
18 conservation of natural resources and  
19 preservation of environmental quality?

20 A. New generation would certainly do  
21 that, yes.

22 MR. CALDWELL: Okay. That's all I

Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015

768

1 have. Thank you.

2 CHAIRMAN KANE: Thank you.

3 Anyone else?

4 Commissioner Fort.

5 COMMISSIONER FORT: Just briefly.

6 Good afternoon, Mr. Martin.

7 On Page 4 of your testimony at Lines  
8 17 to 20, in the section where I think the  
9 heading for that section is "Explain Why the  
10 Commission Should Find the Commitments in the  
11 Settlement Relating to Public Interest Factor  
12 No. 7 Insufficient."

13 And you, over the next couple of  
14 pages, identify three reasons why they should  
15 be insufficient, the first being that they do  
16 not relate to the coupling of the companies.

17 And you note, quote: No economy of  
18 scale or scope or access to better financing.  
19 Nothing about the merger of PHI and Exelon  
20 makes this possible.

21 Were you in the room when I had my  
22 discussion with Mr. Hempling?



Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015

769

1 THE WITNESS: Yes, I was.

2 COMMISSIONER FORT: Okay. So you --  
3 I'm going to ask first are you relying on  
4 language from an order or a statute when you  
5 state that the commitments need to be related  
6 to the coupling of the company?

7 THE WITNESS: No. No, I'm not.

8 COMMISSIONER FORT: What are you  
9 relying on.

10 THE WITNESS: I'm -- I'm relying on  
11 the idea of a merger or -- or acquisition  
12 pertaining to the attributes associated with  
13 those two companies coming together.

14 The distinction the grid makes in  
15 this case between attributes arising out of a  
16 merger I think Mr. Hempling has -- has spoken  
17 to adequately.

18 I would only add here that adding  
19 another umpteen million dollars out of a -- a  
20 billion dollar package is -- is really just  
21 buying the support of various -- various  
22 settling parties to participate in the deal.

Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015

770

1           Yes, I would -- I would acknowledge  
2   that potentially we could get some new solar  
3   out of this, and we could get some new wind  
4   energy out of this.

5           Some of the more profound outcomes  
6   that I would look for from the merger where we  
7   would be advancing an integrated resource and  
8   distribution system, such as is being discussed  
9   in 1130, I think are missing.

10          These are the sorts of things that I  
11   would imagine might come from a coupling of  
12   companies as opposed to just kind of a shopping  
13   list of -- of items that seem to appease  
14   settling parties to participate.

15          COMMISSIONER FORT: I've asked each  
16   of the settling parties the question, if the  
17   Commission establishes additional rules or rule  
18   makings or orders after the settlement  
19   agreement is considered, if we were to accept  
20   the settlement agreement, would the settlement  
21   agreement preclude the parties from complying  
22   with Commission rules at a, you know, different

1 date.

2           You know, I don't see the paper that  
3 I read. I've kind of tried to carefully read  
4 it to everybody. But, you know, that was the  
5 idea, which one would preempt the other.

6           And the responses back, you know,  
7 that I got from each party was that the parties  
8 would still comply with commission rules and  
9 commission orders.

10           If that is true and -- and that if  
11 we come up with something out of 1130 that they  
12 would then have to comply with, is that still a  
13 concern of yours?

14           THE WITNESS: No. I agree that all  
15 the settling parties have agreed that the  
16 controlling documents would be anything  
17 subsequently issued by the PSC.

18           COMMISSIONER FORT: On Page 5 of  
19 your testimony, at Lines 4 to 6, you identify  
20 the second of the three reasons that you find  
21 the commitments to be insufficient.

22           And you say there the joint

1 applicants still fail to grasp that the  
2 essential role of a distribution utility in  
3 D.C. is not one of a developer but that of a  
4 partner to advance the policies set in place by  
5 the CABA, the RPS, CREA and sustainability  
6 goals.

7           You see that language there?

8           THE WITNESS: Yes, Commissioner.

9           COMMISSIONER FORT: Okay. Do you  
10 agree that some of the commitments relate to  
11 Exelon separate from Pepco so that some are  
12 related to Pepco as a distribution company and  
13 some are related to Exelon?

14           THE WITNESS: In making that  
15 statement, I was referring only to the  
16 distribution utility insofar as that -- that  
17 was the -- that's focus of the acquisition.

18           COMMISSIONER FORT: But we have  
19 joint applicants. And so we have multiple  
20 parties in front of us.

21           So I guess I'll ask this question:  
22 Should Exelon, separate from Pepco, also take

Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015

773

1 steps to advance the goals of the Clean and  
2 Affordable Energy Act in the District's  
3 renewable portfolio standards, in your opinion,  
4 since there are multiple parties?

5 THE WITNESS: I think that's  
6 certainly allowable, yes.

7 COMMISSIONER FORT: In your opinion,  
8 should Exelon, as the parent company -- oh,  
9 never mind. I won't ask that one.

10 I guess and my last question to you  
11 is, on Page 12, Lines 12 to 16, you state that  
12 a surprising majority of District citizens are  
13 well aware that we should not permit our  
14 utility to be dragged back to the 20th century  
15 in return for what amounts to a few bags of  
16 groceries per household and a couple years'  
17 worth of funding for District programs.

18 Are you using a majority of District  
19 residents just as a figure of speech there, or  
20 does Grid 2.0 have something that backs up some  
21 numbers that this is a majority of District  
22 citizens?

Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015

774

1 THE WITNESS: So this was based on  
2 the -- the testimony that had been received by  
3 the PSC and the PSC's decision order, the  
4 number of which escapes me off the top of my  
5 head, where -- where the PSC indicated that  
6 there had been a -- a very strong response and  
7 that that had to be taken into account in your  
8 decision.

9 COMMISSIONER FORT: Good. Thank  
10 you.

11 Those are all my questions. Thank  
12 you so much.

13 THE WITNESS: Thank you.

14 CHAIRMAN KANE: Thank you.

15 Mr. Martin, just a couple of  
16 questions.

17 If I were to turn you again to Page  
18 4 of your testimony, which Ms. Stark had  
19 questioned you about at the bottom of the page,  
20 in answer to Question 8, the last two lines,  
21 last two -- had Pepco been doing these things  
22 already, either voluntarily or due to

Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015

775

1 commission order or city council mandate,  
2 Exelon would have had nothing to add. And you  
3 had a -- a Q-and-A back and forth with Mrs.  
4 Stark about voluntary versus mandatory.

5           Would -- in terms of enforcing a  
6 commitment -- or enforcing a -- versus a  
7 requirement, would the Commission have any  
8 ability -- were a company -- the company --  
9 where Pepco doing something voluntarily, what  
10 authority would the Commission have to see that  
11 it continued, to enforce it?

12           THE WITNESS: If I understand your  
13 question properly, it would have no authority  
14 to enforce something voluntarily unless --  
15 yeah. I -- I can see that there could be a  
16 correlation between rules and voluntary  
17 actions. They would have done it anyway even  
18 without a rule, potentially.

19           But I -- I think, if I understand  
20 your question properly, there would be no  
21 authority to enforce a voluntary action.

22           CHAIRMAN KANE: So it could go away.

Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015

776

1 THE WITNESS: Could go away.

2 CHAIRMAN KANE: Secondly, on the  
3 issue of wind, you were asked whether or not --  
4 and this is in Commitment 130 -- whether or not  
5 the production of new sources of wind within  
6 PJM would be a benefit to the environment, if  
7 I'm phrasing that question correctly. You were  
8 asked that question.

9 THE WITNESS: Yes.

10 CHAIRMAN KANE: And you had answered  
11 --

12 THE WITNESS: I believe so.

13 CHAIRMAN KANE: -- it could.

14 THE WITNESS: Yes. Well, Exelon  
15 could invest anywhere in the country or the  
16 world, for that matter, and potentially it  
17 would be a benefit to the environment.

18 CHAIRMAN KANE: Okay.

19 THE WITNESS: They could invest with  
20 or without the acquisition of Pepco, and it  
21 would still be a benefit to the environment.

22 CHAIRMAN KANE: Okay. If you would



Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015

777

1 look at, if you have it before you, 130, the  
2 first paragraph before Paragraph A. And these  
3 lines are not numbered, but it all -- the first  
4 sentence of 130.

5           And I'll skip down: Exelon or its  
6 non -- or its nonutility subsidies --  
7 subsidiaries -- excuse me -- will -- et cetera,  
8 et cetera -- will conduct one or more requests  
9 for proposals or other competitive process to  
10 solicit offers to purchase a total of a hundred  
11 megawatts of renewable energy capacity and  
12 ancillary services and environmental attributes  
13 associated therewith, including but not limited  
14 to renewable energy credits from one or more  
15 new or existing wind generation facilities.

16           Do you see that?

17           THE WITNESS: Yes, I do.

18           CHAIRMAN KANE: So is there anything  
19 in Commitment 130 which would require the  
20 investment, the construction, the development  
21 of any new wind facilities within PJM, either  
22 by Exelon directly or by -- as a result of a

Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015

778

1 RFP for purchase of power from such a facility?

2 THE WITNESS: I think it's very  
3 clear there's no indication that any new  
4 facility has to be constructed to support this  
5 provision.

6 CHAIRMAN KANE: Okay. And for  
7 compliance with the -- get back to your  
8 testimony and find the right page. Page 9 of  
9 your testimony.

10 Again, where you're talking starting  
11 on Page 4 -- excuse m -- Line 14 about the  
12 procurement of the hundred megawatts of wind  
13 energy, says: Open-ended fix, don't fix  
14 deadline can be executed by any Exelon  
15 subsidiary in any of the PHI operation's  
16 jurisdictions.

17 Do you mean to say "PHI" there?

18 THE WITNESS: I believe I did. If  
19 -- if I -- if I recall correctly, the -- the  
20 wind energy project can occur in any PHI  
21 jurisdiction.

22 CHAIRMAN KANE: You would look at --

Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015

779

1 I'm sorry. Just to be clear what we're talking  
2 about -- Commitment 130.

3 And you -- would you agree, right  
4 after where I read before, from one or more new  
5 -- new or existing wind generation facilities,  
6 it says "located within the PJM" --

7 THE WITNESS: Oh --

8 CHAIRMAN KANE: -- in your report?

9 THE WITNESS: -- you're absolutely  
10 right. Yes, it is PJM.

11 CHAIRMAN KANE: And PJM is a larger  
12 geographic area than PHI?

13 THE WITNESS: That's -- that's  
14 correct.

15 CHAIRMAN KANE: So --

16 THE WITNESS: There was a reference  
17 to PHI in here somewhere.

18 CHAIRMAN KANE: But let's stick to  
19 this.

20 THE WITNESS: Yes. I --

21 CHAIRMAN KANE: And it says: not  
22 specific to the District, could be --

Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015

780

1 conceivable be met by -- without contributing  
2 to D.C. RPS in any way.

3 Whose responsibility -- which  
4 entities are responsible for complying with the  
5 District renewable portfolio standards law?

6 THE WITNESS: Those would be any  
7 business that sells power into the distribution  
8 system of the District.

9 CHAIRMAN KANE: Would you agree it  
10 would be any retail supplier that is licensed  
11 by the District to sell power to customers in  
12 the District? Is that --

13 THE WITNESS: I think that's  
14 accurate, yes.

15 CHAIRMAN KANE: So Exelon itself is  
16 not -- is Exelon a licensed supplier in the  
17 District? Or would you agree, subject to  
18 check, that the Exelon subsidiaries -- there  
19 are some Exelon subsidiaries that are licensed  
20 suppliers in the District --

21 THE WITNESS: I --

22 CHAIRMAN KANE: -- but Exelon

Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015

781

1 Corporation is not?

2 THE WITNESS: I believe that's  
3 right. I think there are subsidiaries that are  
4 licensed to sell power to the District.

5 CHAIRMAN KANE: Constellation, for  
6 example, for electricity and -- well, but  
7 that's all in public record who is -- who is  
8 licensed.

9 And that -- what -- would you agree  
10 that, absent the merger, that those -- if there  
11 were an Exelon subsidiary that is licensed to  
12 sell electricity to customers in the District,  
13 to the extent that it actually does sell  
14 electricity to the customers, it must comply  
15 with the RPS?

16 THE WITNESS: Yes. That's correct.

17 CHAIRMAN KANE: And is there, to  
18 your knowledge -- and it may not be within  
19 your -- your area of knowledge, but you do work  
20 in sustainable energy.

21 Is there a shortage of Tier 1  
22 renewable energy credits for satisfying the --

Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015

782

1 the R -- the RPS requirement in the District  
2 other than solar -- District-based solar?

3 THE WITNESS: I believe there is a  
4 shortage for solar. I don't know that there is  
5 a shortage for other Tier 1 credits.

6 CHAIRMAN KANE: Thank you.

7 One other question. Are you aware  
8 the District intends to establish a green bank  
9 using 7 or \$8 million out of the 10.05 billion  
10 provided for the green -- or using some money  
11 out of the Green Building Fund?

12 Were you here with -- to hear Mr.  
13 Wells's testimony of that?

14 THE WITNESS: I heard his  
15 explanation, yes.

16 CHAIRMAN KANE: Okay. Do you  
17 consider the commitment to put \$10 billion into  
18 the Green Building Fund a serious commitment to  
19 promote the District's clean energy policies?

20 THE WITNESS: I think it has every  
21 potential to be.

22 CHAIRMAN KANE: Potential.

1                   THE WITNESS: I have been very  
2 positively impressed with the extent to which  
3 the District has made a commitment to -- to  
4 clean energy and tried to characterize  
5 stability in a way that's meaningful. And i  
6 think a green building fund can certainly  
7 contribute to that.

8                   My only reservation with -- with  
9 regard to the settlement is, once again, it's  
10 very speculative. We don't have something  
11 concrete on the table. We have a -- an  
12 agreement to put money into a fund which may or  
13 may not be translated into a green building  
14 program.

15                  We've learned with a little more  
16 specificity from Mr. Hawkins today that roughly  
17 a fifth of that money might go into a green  
18 infrastructure trading program and -- and --  
19 which I would find a very constructive use of  
20 that money.

21                  I don't know what else Green  
22 Building Fund might -- might include. But if

1 it includes green infrastructure, it's at least  
2 tangential. We could find -- there are other  
3 things.

4 My -- my principal concern here, and  
5 the reason why I call it speculative, is I  
6 think, going to the point that you made on the  
7 first day, Madam Chair, when you were making  
8 inquiries of the joint applicants' witnesses,  
9 money is moving into funds, and those funds are  
10 managed in such a way where sometimes the money  
11 is used to achieve the stated purpose of the  
12 funds, and sometimes they're used as cookie  
13 jars.

14 And so, in the absence of making  
15 explicit, specific, measurable, enforceable  
16 commitments through the settlement, we're  
17 getting, you know, a lot of money that's going  
18 to the settling parties.

19 I mean ultimately, when all is said  
20 and done, it appears to me that the residents  
21 of the District will get enough money to offset  
22 some costs on their electric bill, as you



1 demonstrated, one time, unless you're a very  
2 small user, in which case, you know, maybe your  
3 two bills. But that's in return for selling  
4 your utility forever. That's what they get.

5           The settling parties, the -- the  
6 Consumer Law Center and -- and the -- and the  
7 other -- help me out, please -- the N -- NCLC,  
8 those parties, they -- they get a -- a  
9 specified seat at the table with a pot of money  
10 that they can help designate.

11           Director Wells gets a good bit of  
12 money into funds that he oversees. There  
13 are -- you know, a lot of -- there's a lot of  
14 money that's being divvied up to the settling  
15 parties that I have no question will ultimately  
16 be used in a positive way.

17           Some of these things, such as what  
18 maybe is going to the low income assistance  
19 fund, it is a responsibility of the District  
20 and augmented by the federal government, to  
21 support these funds.

22           Instead we'll get a one-time

Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015

786

1 infusion from the joint -- from Exelon and --  
2 to -- to support that for some period of time.  
3 But ultimately, again, that's going to be gone  
4 too. And the fund will have to, again, be  
5 supported by the District Government and the --  
6 and whatever matching funds from the federal  
7 government.

8 I don't see that there are -- are  
9 substantive changes being presented here that  
10 will, in the longer term, lead to make positive  
11 outcome for ratepayers in the District.

12 There are some short-term gains.  
13 And I don't deny that. The case that I've made  
14 my testimony is I don't find that these are  
15 substantive. In light of the -- the larger  
16 settlement and the amount of returns going to  
17 the stockholders, I feel like the stakeholders  
18 are getting very short shrift.

19 And as you know from Grid 2.0's  
20 previous appearances before the Commission, our  
21 concern is that it's a new normal. We can't  
22 just treat business as unusual.

1           The opportunities that exist for  
2 building out a smart grid are huge. I see very  
3 little before us that, say, those goes to the  
4 opportunities behind the -- behind the meter  
5 for enhancing efficiency.

6           That could be a substantive game  
7 changer. That could enhance a huge -- what I  
8 consider to be a very huge factor in -- in how  
9 we use electricity in the District.

10          As you know, our efficiency  
11 factor -- or use of electricity in factor --  
12 factor is about 42 percent, which means, out of  
13 every 2 kilowatts that are generated, we get  
14 about 1 kilowatt here. If we save that 1  
15 kilowatt, we get a two-for. Where's -- where's  
16 the efficiency in the settlement?

17          Now, that would be a substantive  
18 game -- game changer if they made a -- a  
19 measured commitment to that. Our concern is  
20 that, as a generator, Exelon's really not  
21 interested in -- in advancing or promoting  
22 efficiency.

Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015

788

1           Renewables they're getting into to  
2   the extent that, you know, it helps them meet  
3   their RPS. It's a legal requirement. They  
4   kind of have to. They may also see the writing  
5   on the wall. They may see that ultimately this  
6   is going to be more cost effective.

7           But I'm also very concerned with  
8   what's in the record with regard statements  
9   such as made by Mr. Dominguez, who I believe is  
10   a chief lobbyist or was in 2014, bragging about  
11   killing the wind industry and then claiming,  
12   "Next year we're going to kill the solar  
13   industry." This was cited in my original  
14   direct testimony.

15           And then there's D.C. Sun's  
16   confidential cross-examination No. 1 where it  
17   was made very clear as a policy statement on  
18   the part of the corporation that efficiency  
19   and -- and renewable power represent a direct  
20   threat to the core -- the core business of  
21   Exelon.

22           These are -- these are statements

Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015

789

1 you can't -- or at least we just did not  
2 disregard. And it speaks to the -- you know,  
3 sort of the core thrust of policy of the  
4 corporation, and it is our principal concern.

5           If we saw things in this -- in this  
6 settlement that demonstrated that they were  
7 willing to actually make substantive changes --  
8 if they own 5 megawatts at -- at Blue Plains,  
9 they're able to sell it. And -- and they've  
10 indicated that they won't do it if it's not  
11 commercially viable.

12           So it's a business proposition. It  
13 may not get them their biggest bang for the,  
14 buck but it's basically a business proposition.  
15 And they can afford to do that.

16           If they had committed to something  
17 equivalent to advancing efficiency in the  
18 District, it would have been far more powerful,  
19 and it would have demonstrated, at least to me  
20 personally, that they were -- that they were  
21 willing to go against the -- the core business  
22 of their -- of their generating subsidiaries

Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015

790

1 and do what's right for D.C. ratepayers and to  
2 protect the quality in the environment from the  
3 conservation of resources. And I just haven't  
4 seen that commitment here.

5 I -- I'm in agreement with their  
6 counsel that it's an incremental improvement  
7 over their -- over their initial proposal. I  
8 think that, if the Commission comes back and  
9 asks for another \$10 million of this, that or  
10 the other thing, I'm sure they would be willing  
11 to pony that up too.

12 But something more substantive I  
13 think is really at the -- at the root of where  
14 Grid 2.0 would want to see this settlement go.  
15 And we're just not seeing it.

16 CHAIRMAN KANE: Thank you,  
17 Mr. Martin.

18 Commissioner Fort.

19 COMMISSIONER FORT: Did Grid 2.0  
20 participate in the round of settlement  
21 discussions that resulted in the settlement  
22 agreement?

Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015

791

1 THE WITNESS: No. Director Wells  
2 did invite me to come to his office, in which  
3 he showed me a sheet of settlement terms. And  
4 he asked us if we could get behind that.

5 And we indicated, much as we have  
6 here, that it was just insufficient.

7 COMMISSIONER FORT: Now --

8 THE WITNESS: And that was  
9 essentially the -- the upshot of our  
10 conversation.

11 COMMISSIONER FORT: Did Grid 2.0 --  
12 I don't want to get in -- well, you weren't in  
13 the settlement discussions.

14 Was there any time -- was there any  
15 time when the type of substantive changes that  
16 you were talking about was ever advanced to any  
17 of the other parties?

18 THE WITNESS: Again, not getting  
19 into -- I'm not sure exactly where we draw the  
20 line on settlement.

21 COMMISSIONER FORT: Yeah. I know.  
22 I'm --

Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015

792

1                   THE WITNESS: I would assume joint  
2 applicants need to be in the room in order to  
3 make it a settlement discussion. If that's the  
4 case, then yes, we did have discussions with  
5 other parties outside of the joint applicants,  
6 such as GSA, for example, of, you know, what  
7 might constitute a more substantive settlement  
8 package.

9                   COMMISSIONER FORT: In your  
10 discussions with the Chair, you gave one  
11 example of what you consider a substantive  
12 change, you know, something that would have  
13 improved inefficiency.

14                   I think, in talking to me, you  
15 mentioned integrated resource planning and kind  
16 of things that are being discussed in 1130.

17                   I don't have in mind your specific  
18 testimony from the prior part of the case, so I  
19 don't know whether anything -- was there  
20 anything else listed that you considered a  
21 substantive change?

22                   THE WITNESS: I think a substantive



Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015

793

1 change would be something that would move the  
2 market in a -- in a positive way as opposed to,  
3 you know, just, you know, put solar panels on  
4 top of Dunbar High School or something like  
5 that, which I consider to be more along the  
6 lines, as I dismissed earlier -- and I wish I  
7 had a better term for it, but it's kind of like  
8 hand waving.

9                   And so I would say yes. For  
10 example, we're trying to advance the Community  
11 Renewable Energy Act in the District. And  
12 we've been in -- in -- in discussions with the  
13 Commission on how to define, you know, the  
14 terms of -- of a tariff and what have you.

15                   Had the joint applicants agreed to,  
16 say, for example, guarantee loans, have a pool  
17 to guarantee loans, some fixed amount to  
18 guarantee loans for applicants to free up that  
19 would have made a substantive contribution to  
20 the support and advance and success of -- of  
21 that legislation, that would have indicated to  
22 me a true willingness to -- to move this in

Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015

794

1 a -- in a positive, market-changing way.

2 Because CREA is all about bringing  
3 in people in -- into the -- into the renewable  
4 market who can't access it very effectively now  
5 short of just going out and buying RECs.

6 COMMISSIONER FORT: But does the --  
7 a number of the agreements put money into the  
8 Sustainable Energy Trust Fund, which is the  
9 fund that funds SEU, which is doing work to put  
10 more solar and doing work in the CREA space.

11 So to the extent that there is  
12 funding available to do that, is it the fact  
13 that it is not specifically designated, is --

14 THE WITNESS: Exactly.

15 COMMISSIONER FORT: -- it your  
16 problem?

17 THE WITNESS: Yes, commissioner.

18 COMMISSIONER FORT: Okay. Thank  
19 you.

20 CHAIRMAN KANE: Thank you.

21 Redirect?

22 MR. RORIES: No. We have no

Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015

795

1 redirect, Your Honor.

2 CHAIRMAN KANE: Thank you.

3 Do you want to put your document in?

4 MR. RORIES: I certainly do. Your  
5 Honors, we respectfully ask that Mr. Martin's  
6 testimony marked Grid 2 2C be entered into the  
7 record.

8 CHAIRMAN KANE: It is entered --

9 MR. RORIES:

10 CHAIRMAN KANE: -- into the record.

11 (Exhibit Grid 2 2C was admitted into  
12 evidence.)

13 CHAIRMAN KANE: All right. You may  
14 be excused, Mr. Martin. Thank you very much.

15 I believe that concludes --  
16 concludes our witnesses.

17 And before we officially adjourn  
18 this hearing, I've some things to remind the --  
19 the parties of and do some procedural things.

20 First of all, we -- we -- there are  
21 still a couple of bench questions outstanding  
22 that I remind you of. And that is No. 1 from

Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015

796

1 Wednesday's hearing transcript. If you look at  
2 the transcript, Pages 165 to 166, there was a  
3 question addressed Mr. Wells, Mr. Caldwell,  
4 which was: "To your knowledge, has Pepco or  
5 PHI provided workforce training" -- excuse me  
6 -- "funds for projects or for sustainable jobs  
7 that are currently in the District in  
8 coordination with anything that DOEE is doing?"

9 And then, Mr. Meier, also from  
10 Wednesday's transcript, on Pages 281 to 282,  
11 there was a question addressed to Mr. Khouzami,  
12 and it was: "How many wind generation does  
13 Exelon currently own within the PJM region or  
14 the PJM states?"

15 MR. MEIER: Yes, Your Honor.

16 CHAIRMAN KANE: And the responses --  
17 excuse me.

18 The responses to these bench  
19 questions -- bench requests must be submitted,  
20 as I indicated, at the start of the hearing by  
21 close of business on Monday, December 7th.

22 And additionally, any motions to

Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015

797

1 correct the transcript as well as the final  
2 corrected list of cross-examination exhibits  
3 will be due on Wednesday, December 9.

4           As we previously established in the  
5 procedural schedule, the filing of initial  
6 post-hearing briefs are due by Friday, December  
7 11th. That's a week from today. And reply  
8 briefs are due by Friday, December 18th, two  
9 weeks from today.

10           And just also a housekeeping matter  
11 in regard to the briefs. The transcript number  
12 -- transcript page numbers for the public  
13 interest hearing will begin again at 1, Page 1,  
14 rather than continuing where the other  
15 transcript page numbers ended from our previous  
16 number of hearings. I believe that the  
17 previous transcripts ended at Page 3,597.

18           And so to prevent any confusion in  
19 any citations, since some pages may be  
20 duplicates from the first phase of the hearing,  
21 we direct the parties to refer to the pages  
22 from the public interest hearing transcript as

Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015

798

1 NSA transcript number, NSA 1, NSA 2, et cetera,  
2 and to refer -- if you're referring to any  
3 pages from the transcript of the prior hearing  
4 on the application, they should be referred to  
5 as application transcript No. 3,000 whatever.  
6 And we'll put this out in writing.

7           Please note further that, in  
8 addition to the number of copies of briefs to  
9 be filed, an electronic Word copy of each brief  
10 shall also be sent to Rick Herzkowitz, the lead  
11 attorney for the Commission on this case -- on  
12 this case.

13           The record in the case will close on  
14 December 18th, 2015, concurrent with the filing  
15 of the reply briefs. We have -- and so for the  
16 public that's listening that wishes to also  
17 continue to submit any comments or any  
18 testimony, any documents, that also will be  
19 close of business on Friday, December 18th.  
20 That is for any parties who are not -- not  
21 parties to the proceeding -- any interested  
22 persons not parties to the proceeding. Those

Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015

799

1 do need to be in writing to the Office of the  
2 Commission of Secretary either by e-mail  
3 attachment or by mail.

4 Do the parties have any further  
5 matters they wish to raise at this time?

6 MR. MEIER: No, ma'am, Your Honor.

7 CHAIRMAN KANE: Anyone?

8 MR. CALDWELL: Just a point of  
9 clarification, Your Honor. The --

10 CHAIRMAN KANE: Caldwell.

11 MR. CALDWELL: -- the -- the two  
12 bench data requests that you mentioned at the  
13 outset, are those the -- one was to joint  
14 applicants, one was to the District.

15 Was that the only bench request that  
16 the --

17 CHAIRMAN KANE: From our review of  
18 the transcript, those were the only two bench  
19 requests that were made.

20 MR. CALDWELL: Okay.

21 CHAIRMAN KANE: Okay.

22 MR. CALDWELL: Thank you.

Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015

800

1 CHAIRMAN KANE: Anything else that  
2 you feel need to be addressed can be addressed  
3 in the briefs and the reply briefs.

4 MR. CALDWELL: Very good, Your  
5 Honor.

6 CHAIRMAN KANE: Okay.

7 MR. CALDWELL: Thank you.

8 CHAIRMAN KANE: If there's nothing  
9 else --

10 MR. SPECK: Your Honor.

11 CHAIRMAN KANE: Yes, Mr. Speck.

12 MR. SPECK: I just have one plea, I  
13 guess.

14 The nonsettling parties are very  
15 resource strapped, as you know. Getting the  
16 briefs done in one week is going to be very  
17 difficult. I know that the -- all of the  
18 settling parties propose that initial briefs be  
19 due on December 16th with reply briefs due on  
20 the 23rd.

21 We would just ask once more if we  
22 could have at least that relief so that we



Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015

801

1 would have some opportunity to be able to spend  
2 a little bit more time on the briefs, which I  
3 think will improve the product that the  
4 Commission will receive.

5 CHAIRMAN KANE: Give you another  
6 weekend.

7 MR. SPECK: I hate to say it, but  
8 yes, that's true.

9 CHAIRMAN KANE: Yeah. So we will  
10 make that modification that the briefs will be  
11 due on December 16th and the reply briefs on  
12 December 23rd.

13 And that will then also mean,  
14 because it is our practice to close the record  
15 on the day that the reply briefs are due, that  
16 the record will remain open for nonparties --  
17 any interested persons who are nonparties to  
18 fill written comments regarding the  
19 nonunanimous settlement on close of business on  
20 December 23rd.

21 I'm not going to go any further  
22 because that means Christmas Eve.

Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015

802

1 MR. SPECK: I understand. Thank you  
2 very much.

3 CHAIRMAN KANE: You're welcome.

4 MR. SPECK: We appreciate that.

5 CHAIRMAN KANE: Okay. Then I want  
6 to thank everyone for their cooperation during  
7 this proceeding, and especially during --  
8 during the entire year and a half that we have  
9 been dealing with this proceeding, and  
10 especially during this most recent public  
11 interest hearing.

12 And this hearing is now adjourned.

13 THE SECRETARY: All rise.

14 (Whereupon, the proceeding was  
15 concluded at 1:53 p.m.)

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Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015

803

1 CERTIFICATE OF COURT REPORTER

2

3 I, Bonnie L. Russo, do hereby certify that  
4 the foregoing transcript is a true record of  
5 the proceedings to the best of my ability, that  
6 I am not related to or employed by any of the  
7 parties involved in these proceedings, and,  
8 further, that I am not a relative or employee  
9 of any attorney or counsel employed by the  
10 parties hereto, or financially interested in  
11 the proceedings.

12

13

*Bonnie L. Russo*

14

Notary Public

15

16 My Commission Expires:

17 June 30, 2020

18

19

20

21

22



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Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015  
Page 1

<u>\$</u>	111 590:15	801:11	761:10 773:20
\$10 782:17 790:9	1119 589:4 594:5	17 709:21 712:19	790:14,19
\$10.5 602:7	1130 673:5 761:19	764:19 768:8	791:11
\$2 601:20 605:5	762:5 770:9	17530 671:8	2.0's 665:1 732:12
606:5,6,11	771:11 792:16	17597 672:3	786:19
\$3 637:2	1133 591:3	17947 693:3	20 631:11 684:9
\$3.5 659:10	115 674:19 678:7	17th 591:12	715:4 744:21
\$5.2 637:20 650:4	679:16	18 617:14 697:9	745:12 768:8
\$8 782:9	118 617:4	18th 797:8	200 715:3
	11th 797:7	798:14,19	20001 591:17
<u>0</u>	12 744:21 773:11	19 667:16,22	20005 591:4,21
000 693:4	12:50 735:4	668:11 674:17	20011 592:8 737:9
	120 683:3	19103 590:20	20036 591:8,12
<u>1</u>	1200 592:3	1935 697:18 711:3	592:4,17
1 605:3 633:21	128 626:7 628:17	1982 698:13	20037 592:12
648:5,7 650:16	13 627:9 630:20	1984 684:2	2005 685:11,21
652:5 694:22	631:4 674:17	1985 666:20	697:17 709:22
701:5 750:17	680:7 737:12	669:10 710:4	711:3
781:21 782:5	130 776:4	19th 592:3	20068 590:5,10
787:14 788:16	777:1,4,19 779:2		20080 592:21
795:22 797:13			2012 751:10,11
798:1	1325 589:15	<u>2</u>	2013 765:10,19
1,245 750:12	14 634:22 680:6	2 593:11,13	2014 609:12,13
1:53 802:15	778:11	602:13	750:10 754:8
10 611:1 612:20	15 680:7 764:19	604:8,12,20	788:10
617:8,18 631:7	155 609:2	605:11,14,16	2015 589:10
637:19 662:21	15th 591:3	607:9 610:14	595:16 609:13
672:16 684:11	16 626:6	633:20,22 637:2	614:18 631:18
758:21	649:4,8,12	645:16 646:9	648:14 798:14
10.05 659:13	666:18	648:13,15 649:1	2016 611:14
782:9	667:15,17	650:16 668:8,10	612:7,15,18,19
10:10 589:13	668:17 669:8	695:1 701:6	613:16 614:21
594:6	773:11	735:1,11 736:2,5	
100 764:22 766:16	1615 591:7	737:12 738:15	2018 617:7
1001 592:16	165 796:2	747:1,15 787:13	2020 803:17
101 592:20	166 796:2	795:6,11 798:1	202-261-1406
1050 591:12	16th 800:19	2.0 592:6 596:16	591:4
11 697:9 712:15		645:12,22	202-296-3390
		648:12 664:9,21	
		666:5 737:3	

Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015  
Page 2

591:13	2301 590:19	342 754:15	500 590:15
202-297-6100	23rd 800:20	344 745:17	51 658:21 662:20
592:12	801:12,20	35 712:19	510 592:16
202-467-6370	24 603:5 604:1		55 649:5,8,12
591:8	650:5 651:9	<u>4</u>	589 589:7
202-595-7843	687:11	4 589:10 593:10	595 593:3
592:17	25 629:21 687:2,5	602:10,11 626:9	596 593:8
202-624-6116	26 672:16 673:1	634:1 637:18	
592:21	712:16	648:17,19 649:6	<u>6</u>
202-626-6260	27 648:14	658:21	6 596:20 605:2,3,4
592:5	27.25 708:5	667:11,22	617:6 658:15
202-682-3510	28 599:7	668:7,8,9,10,11	659:1 738:19
591:22	281 796:10	672:16	771:19
202-727-6211	282 796:10	736:10,13 755:2	640 593:3
591:17	2A 593:11 646:9	768:7 771:19	644 593:8
202-872-2347	736:2,5	774:18 778:11	645 593:14
590:10	2C 593:13 737:12	4,000 754:7	646 593:4
202-872-2953	795:6,11	410-470-2321	647 593:4
590:6	2I 747:6	590:16	648 593:10
2032 765:16,21		417 646:5	650-S 591:16
766:12	<u>3</u>	42 650:16 787:12	
20901 646:6	3 593:15 598:2	441 591:16	<u>7</u>
20th 773:14	602:11 610:13	4525 592:7 737:8	7 617:20 658:15
21 745:13	634:1,14 640:16	49 751:11	659:1 665:15,16
21202 590:16	644:22 667:15	4th 592:11 594:6	739:1,7
215-841-4635	687:12 747:1	<u>5</u>	741:8,16,21
590:20	3,000 798:5	5 602:2,11 603:22	742:11,12
216 667:4,7	3,597 797:17	608:14 610:20	745:3,18 759:20
22 614:22 623:14	3.5 659:11	615:15	765:8 766:2,9
631:11 634:21	30 595:16 612:20	617:11,17 618:9	768:12 782:9
642:8 649:6	687:19 803:17	619:16 621:2	701 590:5,9
658:11,18	300 592:4	622:10 634:1,21	703-283-9063
667:11 668:1,12	31 617:7	668:1,12 771:18	592:8
708:5 712:16	336 739:11	789:8	736 593:10,11
755:2	337 740:1	5.2 604:3	737 593:5
2200 592:11	34-1506 715:21	50 658:11 715:4	738 593:5
23 658:11,18	716:1	751:7 765:10	75 646:9
712:20 755:2		766:11	

Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015  
Page 3

764 593:5	able 597:12,13	achieving 655:19	694:12 697:18
795 593:13	619:22 623:13	656:5 665:20	698:4,10,16
7th 796:21	627:13 628:6	765:10	699:1,11 702:12
<hr/>	630:10 632:17	acknowledge	710:1 716:1
8	639:2 642:15	654:8 770:1	718:14 725:13
8 593:14	698:2 729:15	acquire 682:19,20	773:2 793:11
610:12,13,15	743:3 789:9	685:16 701:18	action 775:21
626:5 633:18,22	801:1	706:22	actions 675:4
634:1 637:19	absence 784:14	acquired 700:22	750:16 775:17
645:1,4 658:15	absent 683:11,15	702:18 705:7,14	actively 597:16
659:1 674:16	685:6 714:4	acquiree 656:9	acts 697:21,22
678:14 684:11	781:10	acquirer 656:8	actual 605:20
774:20	absolutely 637:10	692:9 706:9	actually 597:9
800 591:7	642:22 713:20	acquirerer 717:20	599:21 605:3
803 589:7	749:6 779:9	acquirers 692:3	606:1 609:10
80s 686:21 720:17	accept 656:17	acquiring	612:10 615:11
81 749:12	666:1 693:14	654:11,12,17	631:5 632:1
85 670:12	770:19	662:2 670:6	698:11
89 698:14	acceptable 620:2	702:6	700:11,12
<hr/>	access 716:6	706:4,6,7,18	733:19 742:9
9	768:18 794:4	707:3,5	781:13 789:7
9 598:2 640:15	accord 713:18	acquisition 655:14	add 612:1,9
662:20	according 667:1	666:19 669:8	652:18
672:15,21	669:12	684:13,20 687:4	755:10,17 757:7
764:18 778:8	account 599:10	689:17 701:22	766:19 769:18
797:3	714:16 774:7	704:14	775:2
901 591:21	accountability	705:11,12,15,16	added 618:10
96 728:1	657:18 689:16	706:11 708:5,11	adding 618:9
97 728:2	accounting 741:5	721:12 728:13	634:15 769:18
9th 590:5,9	accurate 742:8	769:11 772:17	addition 600:21
<hr/>	780:14	776:20	601:6 603:22
A	accusing 705:22	acquisitions	604:13,21
a)(1 716:3	achievable 655:20	685:2,8,13	607:10,13
a.m 589:13 594:6	656:1,6	686:15 697:19	611:1,6 617:5
ability 662:4	achieve 599:11	699:3,20 701:20	627:12 629:9
717:18 726:11	620:4 656:11	acres 609:2	637:17 757:21
766:11 775:8	766:11 784:11	across 687:13,20	767:16 798:8
803:5	achieved 620:5	688:8	additional 599:22
	622:9 712:22	act 652:18	605:5 606:8
		665:7,22 685:12	629:9 635:1
			693:7 697:19



Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015

Page 4

770:17	645:4 736:5,14	<b>afford</b> 653:11	756:17 758:10
<b>additionally</b>	795:11	717:1 789:15	759:11,16,18
796:22	<b>admittedly</b> 703:14	<b>Affordable</b>	760:1,5
<b>additions</b> 695:3	<b>adopted</b> 668:22	665:7,21 773:2	763:15,20
<b>add-ons</b> 712:3	709:8	<b>affording</b> 652:17	770:19,20,21
<b>address</b> 646:4	<b>adoption</b> 763:5	<b>afternoon</b> 737:5	783:12 790:5,22
673:14 678:16	<b>advance</b> 632:11	764:14 768:6	<b>agreements</b>
687:20 693:20	751:22 752:4	<b>afterwards</b> 712:3	615:13 701:22
694:3 709:13	761:20 772:4	<b>against</b> 751:2	794:7
737:7 739:9	773:1 793:10,20	789:21	<b>ahead</b> 640:9 643:5
<b>addressed</b> 633:20	<b>advanced</b> 791:16	<b>agencies</b> 605:21	672:19
661:4 673:5	<b>advancing</b> 770:7	695:10	<b>align</b> 706:18
796:3,11 800:2	787:21 789:17	<b>agency</b> 621:18	<b>allocate</b> 602:13
<b>addresses</b> 695:17	<b>advantage</b> 632:16	652:18 686:7	<b>allocated</b> 607:14
<b>addressing</b> 670:15	662:12 713:19	<b>ago</b> 625:22	<b>allocation</b> 604:7
<b>adequate</b>	721:7	<b>agreed</b> 759:5	715:9,11
599:16,18 713:4	<b>advantages</b>	763:16 771:15	<b>allow</b> 635:4
<b>adequately</b> 665:4	643:10	793:15	711:20
769:17	<b>adverse</b> 718:12	<b>agreeing</b> 621:1	<b>allowable</b> 773:6
<b>adjacencies</b> 710:3	<b>advise</b> 650:13	<b>agreement</b> 593:10	<b>allowed</b> 639:21
<b>adjacency</b> 688:18	675:22 677:2	599:4,8 600:19	762:13
689:3	695:10	601:3,11 602:2	<b>alluded</b> 672:13
<b>adjacent</b> 670:11	<b>advised</b> 678:20	603:9 610:22	<b>alone</b> 701:13
710:15	710:13	611:13	729:15 750:10
<b>adjourn</b> 795:17	<b>advising</b> 699:9	612:7,14,22	754:7
<b>adjourned</b> 802:12	<b>affairs</b> 602:8	613:7,21	<b>already</b> 607:10,14
<b>administered</b>	<b>affect</b> 652:6	614:9,21 615:5	609:15 615:20
604:5	673:15 706:12	619:8 620:7	616:2 618:11
<b>administers</b>	<b>affiliate</b> 624:17	622:4	626:11 627:9
717:12	625:13	623:6,12,20	630:20 636:20
<b>administrator</b>	<b>affiliates</b> 716:11	624:11 627:2	646:14 707:11
602:20 607:5	<b>affiliation</b> 753:7	637:8 641:12,17	746:18 755:5
637:12 644:3	<b>affirmative</b>	642:2 643:10	757:6,11
<b>administrator's</b>	741:16	647:22 648:8	759:4,12 774:22
601:19	<b>affirmatively</b>	650:6 653:21	<b>alternate</b> 632:19
<b>admission</b>	675:15	658:16 669:18	<b>alternative</b> 597:16
644:17,22 736:9	<b>affirming</b> 748:16	674:20 678:8	622:14 758:5
<b>admitted</b> 644:19		679:11 693:19	<b>am</b> 594:20 597:2
		712:18	606:21 617:21
		741:2,14,15,22	
		742:7,22 755:8	

Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015  
Page 5

618:15 641:6 645:15 652:4,8 666:1 668:3,15 672:15 690:4,17 691:15 706:12 714:20 803:6,8 <b>Amendment</b> 675:21 676:13,22 677:17 <b>among</b> 679:8 698:8 <b>amount</b> 615:3 625:18 627:10 642:16 678:19 727:7,9 739:13 753:15 786:16 793:17 <b>amounts</b> 773:15 <b>ancillary</b> 777:12 <b>ANN</b> 589:18 <b>answer</b> 610:13 611:2,7,15,18,22 612:8,13 613:19 630:10 637:4 651:19 654:5,21 664:12 666:9 669:2,7,17,18 671:16 677:5 681:21 683:12 686:3 690:17 696:18 698:7,8 699:12 701:6 702:3 703:2,3,12 722:17 723:2,8 752:16 774:20 <b>answered</b> 611:11 704:8,11 709:5 731:14 776:10 <b>answering</b> 608:16 657:8 708:13	<b>answers</b> 595:19,22 634:9 646:19 649:17 723:7 731:20 737:21 <b>ANTHONY</b> 590:18 <b>anthony.gay@exeloncorp.com</b> 590:21 <b>anticipate</b> 626:17 632:11 <b>antithetical</b> 664:1 <b>anxious</b> 625:16 <b>anybody</b> 691:18 <b>Anyone</b> 764:4 768:3 799:7 <b>anything</b> 673:9 677:3 686:14 693:20 752:4 765:5 771:16 777:18 792:19,20 796:8 800:1 <b>anyway</b> 775:17 <b>anywhere</b> 621:5 677:17 776:15 <b>APARTMENT</b> 591:10 <b>apologize</b> 641:5 702:22 704:8 708:14 <b>apology</b> 651:16 <b>appeals</b> 662:22 <b>appearances</b> 590:1 591:1 592:1 786:20 <b>appeared</b> 660:22 <b>appears</b> 634:5	784:20 <b>appease</b> 770:13 <b>applicable</b> 654:10 <b>Applicant</b> 590:2 736:9,13 <b>applicants</b> 598:7,12 629:18 630:6 638:4 641:7 647:11 648:3,13 668:7 738:12 743:3,18 747:2,5 756:7 760:3 772:1,19 784:8 792:2,5 793:15,18 799:14 <b>application</b> 589:4 598:8 600:7 669:22 693:1 700:13,15 741:1,17 798:4,5 <b>applied</b> 601:16 700:12 <b>appreciate</b> 597:5 645:6 654:21 725:16 748:14 802:4 <b>appropriate</b> 681:20 692:16 <b>approval</b> 589:7 699:22 <b>approvals</b> 632:6 <b>approve</b> 676:3 <b>approved</b> 616:18 643:15 693:13 715:6 743:14 754:7 <b>approving</b> 699:16 <b>April</b> 614:12	<b>arbitrariness</b> 711:6 <b>arbitrary</b> 711:2 <b>area</b> 605:19 607:18 653:13 658:7 679:1 688:19 751:20 760:18 764:9 779:12 781:19 <b>areas</b> 653:6,12 746:4 <b>argue</b> 656:3 691:20 <b>argued</b> 703:11 724:7 752:12 <b>arguing</b> 691:15 <b>argument</b> 725:8 743:17 <b>arguments</b> 676:15 <b>arising</b> 769:15 <b>arose</b> 623:10 <b>arranged</b> 642:4 <b>arrangement</b> 601:18 607:8 609:7 617:11,16 618:2 624:8 637:17 640:20 <b>arrangements</b> 601:13 634:13 <b>aspects</b> 707:14 <b>aspirational</b> 678:18 679:21 <b>assert</b> 712:5 <b>assertion</b> 751:1 762:3 <b>assets</b> 725:7 750:12 <b>assist</b> 617:7
--	---	--	---



Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015  
Page 6

<b>assistance</b> 785:18	777:12	<b>backs</b> 773:20	594:19 596:15
<b>Assistant</b> 591:15	<b>attribution</b> 730:17	<b>backstop</b> 613:16	761:10
<b>associate</b> 590:19	<b>augment</b> 758:1	614:6	<b>behaving</b> 656:4
592:20 691:9	<b>augmented</b> 785:20	<b>backward</b> 742:10	<b>behaviors</b> 717:18
<b>associated</b> 657:19	<b>August</b> 632:7,8	<b>bad</b> 720:11	<b>behind</b> 648:7
717:5 762:17	671:14	<b>bags</b> 773:15	767:10 787:4
769:12 777:13	<b>authority</b> 594:20	<b>Baltimore</b> 590:16	791:4
<b>association</b> 591:11	650:10 666:2	<b>bang</b> 789:13	<b>beings</b> 688:10
729:18	675:3,12,14,16	<b>bank</b> 782:8	<b>belabor</b> 663:11
<b>assume</b> 634:14	676:2,3 691:16	<b>bankruptcy</b>	<b>belief</b> 596:2
674:18 762:12	692:15	695:19,20	646:22 738:2
792:1	715:10,11	<b>barred</b> 699:8,10	<b>believe</b> 600:1
<b>assuming</b> 606:21	775:10,13,21	<b>base</b> 599:11 743:4	616:15
723:1	<b>AUTHORIZATI</b>	<b>based</b>	619:5,7,22
<b>assumption</b>	<b>ON</b> 589:7	696:10,12,14	620:3,11 621:3,5
656:12	<b>autobiographicall</b>	715:6 716:21	633:8 640:15
<b>assumptions</b>	<b>y</b> 709:20	721:4 733:11	651:6 652:10
629:19 630:6	<b>avail</b> 613:2	753:7 774:1	659:9 673:13
<b>assured</b> 650:11	<b>available</b> 597:19	<b>basically</b> 730:15	675:15 676:1
<b>assuring</b> 650:7	603:16 647:3	789:14	678:15 680:2
725:6	738:5 794:12	<b>basis</b> 602:17	742:3,16 745:8
<b>asthma</b> 660:2	<b>Avenue</b>	616:21 622:17	747:17 758:2
<b>attached</b> 727:4	592:7,11,16,20	629:6 665:3	776:12 778:18
<b>attachment</b> 799:3	737:8	<b>Bay</b> 627:18	781:2 782:3
<b>attend</b> 630:2	<b>award</b> 597:10	<b>beating</b> 707:20	788:9 795:15
<b>attention</b> 738:15	<b>aware</b> 601:3 615:6	<b>becomes</b> 635:1	797:16
759:19	651:14,20	731:1 753:6	<b>believes</b> 622:8
<b>attorney</b>	672:2 683:18	<b>becoming</b> 639:7,9	627:6
591:14,15	700:20 748:3	724:17	<b>belong</b> 653:15
798:11 803:9	750:10 759:3	<b>beg</b> 746:7	<b>belongs</b> 651:11,13
<b>attorneys</b> 738:11	773:13 782:7	<b>begin</b> 723:15	652:11
<b>attract</b> 706:16	<b>awareness</b> 597:6	797:13	<b>bench</b> 795:21
<b>attractive</b> 701:20	<b>away</b> 683:3 696:4	<b>beginning</b> 671:7	796:18,19
<b>attributable</b> 729:3	775:22 776:1	<b>begins</b> 656:12	799:12,15,18
<b>attribute</b> 730:9	<hr/>	<b>behalf</b> 590:2	<b>benchmark</b>
<b>attributes</b> 624:1	<b>B</b>	591:2,10,14,19	687:14 688:7
769:12,15	<b>background</b> 606:3	592:2,6,9,14,19	<b>benefit</b> 598:15
	726:22		599:1,19 600:3
			602:1 613:4
			619:21 638:1,22

Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015  
Page 7

639:9,13 713:3 729:10 776:6,17,21 <b>benefits</b> 598:17 600:20 601:1 602:6 626:15 638:15,16,17 643:10 651:7,18 652:6 687:13 690:11 691:13 692:12 714:3 727:2,4,5,14,15 739:12 741:20,21 759:10,16,17 760:8 <b>Berkshire</b> 701:8 <b>best</b> 596:1 646:22 657:15,16,22 711:5 719:1 738:2 742:13 803:5 <b>bet</b> 725:2 <b>bets</b> 725:4 <b>better</b> 617:1 618:4 620:4,12 622:8 636:5 654:18 656:15,16 692:9 696:8,17,19 697:4 709:4 710:19 720:14 721:15 728:2 756:3,7,15 768:18 793:7 <b>BETTY</b> 589:18 <b>beyond</b> 763:5 <b>BG&amp;E</b> 687:15,16 688:2 710:12 728:14 754:7,19 <b>BG&amp;E-Pepco</b> 726:7	<b>BGE</b> 674:21 <b>bias</b> 751:2 <b>bid</b> 609:10,15 618:5 622:10,18 641:20,22 <b>bidder</b> 623:13 753:6 <b>bigger</b> 747:4 <b>biggest</b> 789:13 <b>bill</b> 784:22 <b>billion</b> 629:21 769:20 782:9,17 <b>bills</b> 785:3 <b>binder</b> 740:9,10 746:22 747:1,3,4 <b>bit</b> 634:19 678:4 687:15 696:9 738:19 747:13 754:1 755:1 757:8 763:11 764:17 785:11 801:2 <b>Blagden</b> 592:7 737:8 <b>blanket</b> 757:1 <b>Blue</b> 597:15 602:3 608:15,19 609:2 610:21 617:13,18 619:12 620:14 626:9 632:22 661:15,18 721:7 789:8 <b>board</b> 616:14,18 618:2 632:5,6,10 <b>BOGGS</b> 592:3 <b>BONNEY</b> 590:12 <b>Bonnie</b> 589:21	803:3 <b>book</b> 648:2 <b>boosting</b> 650:22 <b>bother</b> 700:5 <b>bottom</b> 668:12 690:14 705:6 774:19 <b>boundaries</b> 697:20 710:21 711:5,6,9 <b>bragging</b> 788:10 <b>break</b> 734:5,6 <b>break-ups</b> 711:3 <b>Brian</b> 591:15 728:16 764:15 <b>brian.caldwell@d</b> <b>c.gov</b> 591:18 <b>brief</b> 678:21 762:12 798:9 <b>briefly</b> 649:2 709:5 745:1 768:5 <b>briefs</b> 797:6,8,11 798:8,15 800:3,16,18,19 801:2,10,11,15 <b>bright</b> 724:12 730:6 <b>bring</b> 610:6 692:11 754:14 <b>bringing</b> 717:16 794:2 <b>brings</b> 750:1 <b>broad-based</b> 665:13 <b>broader</b> 690:13 <b>broadly</b> 601:16	<b>brought</b> 673:19 <b>buck</b> 789:14 <b>budget</b> 653:20 702:21 <b>Buffet</b> 701:8,14 <b>Buffett</b> 704:12 <b>build</b> 620:20 628:3 661:18 751:21 <b>building</b> 590:15 591:10,20 602:9,14 603:2 604:8 606:7 619:11 659:14 782:11,18 783:6,13,22 787:2 <b>built</b> 622:18 <b>burdens</b> 690:11 <b>business</b> 597:13 608:5 624:13 646:4 657:19 662:1,12 693:8 697:20 701:1,15,16 702:13,21 720:22 722:1 737:7 748:6 780:7 786:22 788:20 789:12,14,21 796:21 798:19 801:19 <b>businesses</b> 687:1,5 694:9 695:7 697:12 <b>busy</b> 715:14 <b>buying</b> 636:12 685:6 701:10,11 757:17 769:21
--	--	---	---

Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015  
Page 8

794:5 buys 679:5	carolyn@carolyn elefant.com 592:13	618:13 624:12 675:20 678:19 749:9	610:1,4,11,18 611:5,11,20 612:4
<hr/> C <hr/>	carrying 742:20	certainly 601:2	614:7,18,20
CABA 772:5	cart 684:5,6	624:20 633:13	615:2,14,19
calamity 695:19	case 589:3 594:5	650:19 656:7,14	616:6,17,20
718:10,14	616:13 624:21	661:12	617:3 620:16,21
calculation 716:21	625:5 635:11	667:15,21	621:4,8,13 623:9
Caldwell 591:15	642:3 651:17	675:11 678:6	624:15
764:6,9,13,15	653:16 660:16	703:12	625:7,11,13,15
765:13,14,17,20,	661:19 662:10	711:19,20 758:2	626:2 628:13,16
22 767:22 796:3	665:17 666:17	762:6 767:10,20	629:14 630:4,15
799:8,10,11,20,2	673:4,8 684:2	773:6 783:6	640:1,6 643:21
2 800:4,7	726:7 730:2,3	795:4	644:6,12,18,21
California 688:22	761:15,19 762:5	certainty 626:20	645:8 647:4
canceled 597:11	763:7 769:15	627:1	648:18 668:4,9
cancelled 612:5	785:2 786:13	CERTIFICATE	674:3,6,10
candidate 628:12	792:4,18	803:1	692:20 693:18
Candler 590:15	798:11,12,13	certification	694:6 697:8
cap 625:18,22	cases 599:12	635:20 636:8	700:7,19 702:7
capable 661:12	756:22 760:21	certified 635:21	704:10,20
664:20	casual 626:15	certify 803:3	708:16
capacity 750:18	catastrophic	cetera 617:14	709:10,15
751:19 777:11	627:15 629:13	777:7,8 798:1	712:13 713:7
capital 695:8,13	category 621:19	chair 594:14,18	714:1,8 715:17
763:2	703:14	596:10 597:18	719:3,7 731:21
captioned 589:13	caught 716:22	630:19 633:16	732:2,7,9,13,18
captive 707:5	cause 682:13	634:19 643:22	733:4,15
carbon 749:4,17	685:2	694:2 696:5	734:2,4,19,22
752:19	causes 660:13	707:3 726:2	735:2,13,17,21
753:10,13	caveat 684:18	730:4,13 731:8	736:4,11,16
care 672:18	686:19	784:7 792:10	738:6 764:4,8,10
711:16	ceded 703:15	Chairman 589:18	765:13,15,19
carefully 686:12	ceding 704:15	594:4,16	768:2 774:14
690:19 771:3	Center 592:14	596:6,12 597:20	775:22
CAROLYN	785:6	598:5,10 599:6	776:2,10,13,18,2
592:10	century 773:14	600:6,10,22	2 777:18
	CEO 704:6 711:14	602:4 603:21	778:6,22
	certain 615:8	604:22 605:14	779:8,11,15,18,2
		606:6,18 607:22	1 780:9,15,22
		608:9,13	781:5,17
		609:14,17	782:6,16,22
			790:16 794:20
			795:2,8,10,13
			796:16

Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015  
Page 9

<p>799:7,10,17,21 800:1,6,8,11 801:5,9 802:3,5</p> <p><b>challenge</b> 618:7</p> <p><b>chance</b> 717:15</p> <p><b>change</b> 613:5 690:7 697:15 700:13,15 702:15 711:9 720:6 721:14 722:6,12,16,18 726:18,19 727:3,16 728:12,20 729:4,11,17,19,2 2 730:9 745:2 792:12,21 793:1</p> <p><b>changed</b> 600:13 686:7</p> <p><b>changer</b> 787:7,18</p> <p><b>changes</b> 646:11 694:10 711:7,8 721:11 722:12 737:14 786:9 789:7 791:15</p> <p><b>characteristics</b> 624:7 699:21</p> <p><b>characterization</b> 671:5</p> <p><b>characterize</b> 670:19 671:1 783:4</p> <p><b>characterizing</b> 664:21</p> <p><b>charitable</b> 621:17</p> <p><b>Charles</b> 592:7 645:15</p> <p><b>cheap</b> 697:6</p> <p><b>check</b> 780:18</p>	<p><b>cherished</b> 696:7</p> <p><b>Chesapeake</b> 627:18</p> <p><b>chief</b> 595:12 667:2 668:20 669:15 788:10</p> <p><b>children's</b> 660:2</p> <p><b>choice</b> 626:10 627:7 663:11</p> <p><b>chose</b> 663:6,17</p> <p><b>chosen</b> 616:2</p> <p><b>Christmas</b> 801:22</p> <p><b>Christopher</b> 747:10</p> <p><b>CHRYSSIKOS</b> 592:19</p> <p><b>CIF</b> 604:1 606:8</p> <p><b>citations</b> 797:19</p> <p><b>cite</b> 602:7 687:22</p> <p><b>cited</b> 604:2 726:6 788:13</p> <p><b>citizens</b> 662:22 773:12,22</p> <p><b>city</b> 601:19 602:20 606:15,16 607:5,19 636:12 637:12 638:20,22 639:1,6,9,14,16 644:3 715:14 755:9 756:10 775:1</p> <p><b>civil</b> 678:1</p> <p><b>claim</b> 709:6</p> <p><b>claiming</b> 788:11</p> <p><b>clarification</b> 733:13 743:6 799:9</p>	<p><b>clarify</b> 705:19 752:17</p> <p><b>clarifying</b> 612:2,10 639:21 640:7 725:17</p> <p><b>clarity</b> 718:15</p> <p><b>clauses</b> 597:13</p> <p><b>clean</b> 665:6,21 739:15 749:14 750:9 773:1 782:19 783:4</p> <p><b>clear</b> 612:13 613:20 634:18 635:1 638:1 643:5 677:5 684:17 698:18 699:7 748:5 757:10 758:4 778:3 779:1 788:17</p> <p><b>clearly</b> 681:6</p> <p><b>Cleveland</b> 710:6</p> <p><b>client</b> 664:9</p> <p><b>climate</b> 697:15 745:2</p> <p><b>close</b> 599:13 713:11 724:3 763:14 796:21 798:13,19 801:14,19</p> <p><b>closing</b> 598:18</p> <p><b>coal</b> 750:19</p> <p><b>coal-fire</b> 750:13</p> <p><b>coal-fired</b> 750:12</p> <p><b>COALITION</b> 592:10</p> <p><b>code</b> 689:19 715:21</p>	<p><b>colleague</b> 696:7</p> <p><b>Columbia</b> 589:2,15 591:14 594:20 643:16 652:3 659:17 662:18 665:19 739:20 758:22 760:16 761:7</p> <p><b>combination</b> 603:18</p> <p><b>combined</b> 619:12 631:6</p> <p><b>combustion</b> 751:4</p> <p><b>comes</b> 622:12 638:18 739:14 749:13 753:16 790:8</p> <p><b>comfortable</b> 699:17</p> <p><b>coming</b> 618:18 730:5 769:13</p> <p><b>comment</b> 612:10 671:9 719:17</p> <p><b>comments</b> 597:3,7 612:2 659:7 671:18 672:13 675:20 687:18,21 720:16 725:19 798:17 801:18</p> <p><b>commercial</b> 598:13 630:9</p> <p><b>commercially</b> 789:11</p> <p><b>commercially-acceptable</b> 617:11,16 618:1,17,21 634:13</p> <p><b>commercially-</b></p>
---	--	--	--



Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015  
Page 10

<b>reasonable</b> 640:20 <b>commercially-viable</b> 633:2 <b>commission</b> 589:1,14 598:13 601:8 643:16 650:2,9 651:13,22 652:17 653:18 654:2 661:11 665:16 666:6 671:8 672:3,4 673:7 674:7 675:3,6,12,14,16 ,19,22 676:1,10 677:3 681:15 684:13,14,21 685:1,5,14,22 686:8 689:10,13,20 690:6,13 691:16 693:6,21 694:9,20 697:21 698:1 699:22 710:13 713:15,21 714:15,21 715:10 717:5 718:8,14 719:2 721:22 723:14 725:5 726:8 738:22 741:7,18 742:10,11 743:11,14 745:17 749:12 750:7 753:4 754:13 755:9 756:18 761:19 762:9,15 765:4 766:3 768:10 770:17,22 771:8,9 775:1,7,10	786:20 790:8 793:13 798:11 799:2 801:4 803:16 <b>commissioner</b> 589:18,19 630:16,17 631:16 633:10,16 634:8,11,17 635:9,13 636:19 637:5,18 638:9,13 639:17 644:9 674:11,12,15,16 675:2,9 676:12,21 677:19 678:7,10,12 680:5 681:16 682:15 683:5 684:9 685:18 687:9,11 688:6 689:9,18 692:17,19 694:1 699:14 703:5 715:16 716:18 719:4,6,7,20 722:3,22 725:18 729:2 731:16,19 732:3,5,8,20 733:2,12 768:4,5 769:2,8 770:15 771:18 772:8,9,18 773:7 774:9 790:18,19 791:7,11,21 792:9 794:6,15,17,18 <b>commissioners</b> 644:1 732:21 745:4 <b>commissions</b>	715:6 <b>commission's</b> 598:21 671:17 677:8,11 692:15,22 715:16 739:1,5,9,11,22 740:9,15,20,21 745:16 750:6 754:3,16 765:12 766:2,8 <b>commit</b> 653:18 682:5 <b>commitment</b> 599:7 606:14 628:17 637:11 651:8 659:10 678:15 682:7 694:8 764:21 765:2,8 766:21 767:9 775:6 776:4 777:19 779:2 782:17,18 783:3 787:19 790:4 <b>commitments</b> 601:12 658:14 666:7,14 712:17 714:5 729:12,14 741:13,16 755:7 756:8,16 768:10 769:5 771:21 772:10 784:16 <b>commits</b> 604:1 <b>committed</b> 601:7 607:5,11 636:9,21 637:2,13,14 679:17 748:6 789:16 <b>committee</b> 632:10 <b>common</b> 664:5	720:3 728:15 <b>commonly</b> 672:9 <b>communities</b> 748:8 <b>community</b> 639:8 660:10 695:9,11 793:10 <b>companies</b> 652:12,13 655:20 670:11 671:3 676:14 688:1,9,22 690:10,12 691:11 701:10,11,18 710:16,19 724:21 725:22 726:9,19 768:16 769:13 770:12 <b>company</b> 589:5,6 652:20 653:11 654:17,19 656:3 658:2 662:3 680:16 682:3,4,9,10,16, 20,21 683:16,22 684:3,8 685:12 686:10 687:17 688:16 691:3 694:12,13 695:6 698:4,10,16 699:10 700:21 701:9,17 702:12,18,19 703:15 704:3,5,7 705:12 706:18 707:4 708:1,21 710:1,20 713:1 716:2,8 717:16 719:12,15,20 720:1,12 721:13,18 722:6,8,10,19
---	--	--	---

Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015  
Page 11

723:4,13 725:11 726:11,13 728:5,9 730:20 731:3 754:16 769:6 772:12 773:8 775:8 <b>company's</b> 657:12 691:3 716:7,11 <b>comparable</b> 689:15 716:6 <b>compare</b> 689:13 696:12,14,15 723:3 <b>compared</b> 688:10 <b>comparing</b> 696:10 <b>comparison</b> 657:16 658:7 689:6 753:17 <b>compensating</b> 650:13 <b>compensation</b> 650:8,11 679:2,5,15 <b>compete</b> 661:17 705:16 706:5,8 <b>competent</b> 655:20 656:7,10 <b>competing</b> 722:2 <b>competition</b> 657:20 687:14 688:8 695:8 705:7,11 706:10,20 707:18 715:22 <b>competitive</b> 597:8 610:2 615:22 617:2 623:7 657:17 705:3,6 706:3 721:20 753:5 777:9	<b>competitively</b> 616:10 <b>competitor</b> 679:20 <b>complete</b> 632:3 666:3 669:7 671:16 <b>completed</b> 612:15,18 613:1 631:22 635:7,10 <b>completely</b> 636:8 <b>completion</b> 642:20,21 643:2 <b>complex</b> 609:7 626:10 <b>compliance</b> 717:6 718:16 758:6 778:7 <b>complied</b> 757:16 <b>comply</b> 643:15 718:22 771:8,12 781:14 <b>complying</b> 770:21 780:4 <b>component</b> 618:12 <b>comprehensive</b> 714:16 <b>comprehensiveness</b> 673:20 <b>computers</b> 654:15 655:5 <b>conceivable</b> 766:22 767:13,15 780:1 <b>concept</b> 642:19 <b>concern</b> 661:3,5,6 681:14 685:3 692:7 694:3 725:4,5 771:13 784:4 786:21	787:19 789:4 <b>concerned</b> 598:13 601:14 650:22 660:1 681:2,5 719:13 788:7 <b>concerning</b> 608:17 743:2 <b>concerns</b> 662:5 674:20 678:13,16 679:3,6 702:10 707:22 716:14 <b>concert</b> 629:8 <b>conclude</b> 687:19 702:9 708:17 <b>concluded</b> 802:15 <b>concludes</b> 645:10 693:6 795:15,16 <b>conclusion</b> 603:7 693:4,16,21,22 702:10 <b>conclusions</b> 693:3 <b>concrete</b> 783:11 <b>concurrent</b> 798:14 <b>condition</b> 676:17 677:3 682:1 683:12,15 684:12 685:6 686:11 699:19 <b>conditions</b> 682:1 711:19 716:6 <b>conduct</b> 777:8 <b>conducting</b> 748:6 <b>confidence</b> 619:8 <b>confident</b> 618:15 642:15 <b>confidential</b> 788:16	<b>confined</b> 659:8 <b>confirm</b> 637:6 668:16 <b>conflated</b> 669:5 <b>conflict</b> 677:15 682:8 720:7,8,9,10 <b>conflicts</b> 677:11 681:5 <b>conformed</b> 747:2 <b>confront</b> 724:7 <b>confuse</b> 701:14 <b>confusing</b> 605:1 651:16 <b>confusion</b> 682:13 797:18 <b>Congress</b> 698:11,21 <b>connect</b> 659:2 <b>connected</b> 624:10 632:18 690:22 <b>Connecticut</b> 592:16 686:6,8 <b>connecting</b> 627:21 <b>connection</b> 635:11 708:12 <b>connective</b> 728:6 <b>connects</b> 659:3 729:10 <b>connote</b> 663:2 <b>conscious</b> 715:2 <b>consent</b> 636:16 <b>consequence</b> 615:10 <b>consequences</b> 632:20 654:3 717:11 718:3,16
---	--	--	--

Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015  
Page 12

<b>conservation</b> 766:4 767:18 790:3	715:7,12 726:6,8 727:18 728:19	629:5 753:2 798:17	19 730:1,9
<b>consider</b> 599:14 601:22 608:19 639:8 691:17 746:3 759:17 766:3,10 782:17 787:8 792:11 793:5	<b>Constellation</b> 781:5	<b>continued</b> 591:1 592:1 775:11	<b>controlled</b> 687:16
<b>consideration</b> 652:6 714:9,11 761:22	<b>constitute</b> 792:7	<b>continuing</b> 620:13 728:8 797:14	<b>controlling</b> 683:17 745:19 771:16
<b>considerations</b> 652:21 653:15	<b>Constitution</b> 592:20	<b>contours</b> 607:3,16	<b>conversation</b> 605:17 606:5 688:15,20 791:10
<b>considered</b> 671:10 673:17 714:16 752:6 770:19 792:20	<b>constitutional</b> 724:19	<b>contract</b> 597:11,12 608:7 609:11 617:19 631:22 632:1,4,5 759:7 764:21	<b>conversations</b> 602:19 627:3,5
<b>considering</b> 596:21 597:16 652:11	<b>constitutionally</b> 650:14	<b>contracting</b> 631:20	<b>cookie</b> 784:12
<b>considers</b> 692:1	<b>construct</b> 619:14 620:3	<b>contracts</b> 765:1	<b>cooperation</b> 802:6
<b>consistent</b> 654:22 660:13,21 661:7 670:8 691:8 740:16	<b>constructed</b> 610:21 615:16 617:12 778:4	<b>contradict</b> 750:22	<b>coordinate</b> 626:7
<b>consistently</b> 703:8	<b>constructing</b> 612:16 619:15,16	<b>contribute</b> 767:17 783:7	<b>coordination</b> 796:8
<b>consisting</b> 646:9 737:12	<b>construction</b> 604:18 620:9,19 621:11,21 622:14,21 623:15 628:21 642:1,10,20 643:7 777:20	<b>contributing</b> 757:12,17,19 780:1	<b>copies</b> 798:8
<b>consists</b> 649:12	<b>constructive</b> 783:19	<b>contribution</b> 621:17 793:19	<b>Copperweld</b> 684:2
<b>consolidation</b> 651:18 652:12,22 653:2,4,8,10 658:5 666:17 671:3,18,21 677:9 681:6,10 691:1,10,12 692:2,13 700:10 705:3 713:11	<b>consumer</b> 592:14 602:8 715:22 785:6	<b>contributions</b> 744:9 758:16	<b>copy</b> 595:14 649:10 798:9
	<b>consumers</b> 697:11 706:20 717:21	<b>control</b> 676:11 682:9,10,21 683:1,21 684:5 690:7 692:6 700:14,16,22 701:7,18,19 702:5,15,20,21 703:10,16 704:4,6,15 705:8,15 706:1,22 716:14 726:18,20 727:3,17 728:12,15,20 729:4,8,9,11,17,	<b>core</b> 627:14 630:22 631:12 788:20 789:3,21
	<b>context</b> 637:7 652:22 661:1,2 662:9 673:17 682:12 699:7 705:4,5,6,20 714:21 756:4		<b>corner</b> 649:6 668:13
	<b>continue</b> 608:6		<b>corporation</b> 589:4 592:15 781:1 788:18 789:4
			<b>corporations</b> 710:22
			<b>correct</b> 596:1 598:8,9 606:21 607:2 609:16 611:3,4,9 614:19 615:1,17,18 616:3,19 625:12,17 626:1 635:8,11,12 638:8 649:14,18 655:7,8 656:22

Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015  
Page 13

658:10 670:17 671:11,13 672:10 673:3,13 678:17 680:13 714:7 739:2,3,16,17 740:4,7,17 741:2,3,9,10 742:2 743:15 744:6,7,13,14,18 745:6,9 747:19 749:15 753:7,12,19,21 755:10,11 756:4,20 758:11,12,18,19 759:1,12 762:5,18 763:20 766:6,7,14 779:14 781:16 797:1 <b>corrected</b> 797:2 <b>corrections</b> 646:14 <b>correctly</b> 659:2 743:1 745:7 776:7 778:19 <b>correlation</b> 775:16 <b>cost</b> 599:10,22 614:4 619:15,19,21 620:8,20 621:10,21 622:2,13 640:22 641:10,15,17 642:1 652:13 697:15 710:18 711:11,22 742:21 743:9,13,18 744:3 752:7 761:6 788:6 <b>costs</b> 605:20 619:20 620:2	670:3 695:12,13 706:15 717:4 724:9 762:17 763:13 784:22 <b>council</b> 650:3,10 651:2,12 699:11 714:13 715:15 756:10 775:1 <b>counsel</b> 590:8,14,19 591:2,3 592:20 595:5 625:21 640:11 645:22 647:7 649:3 674:3 732:12 733:16 735:5 737:3 738:8 755:9 764:11 790:6 803:9 <b>Counselor</b> 647:13 660:12 669:1 730:4 <b>count</b> 765:5 <b>countered</b> 712:20 <b>counterfactual</b> 731:11 <b>country</b> 776:15 <b>couple</b> 630:18 639:21 667:21 732:15 747:6 752:17 757:8 768:13 773:16 774:15 795:21 <b>coupled</b> 714:18 <b>coupling</b> 690:10,11 691:10 710:19 712:22 715:7 725:22 768:16 769:6 770:11 <b>course</b> 650:11	678:5 681:9 682:2,7,16 689:21 762:19 <b>Court</b> 684:2 803:1 <b>cover</b> 613:3 <b>coverage</b> 709:6 <b>covered</b> 622:21 <b>covering</b> 620:8 641:22 <b>coworkers</b> 688:20 <b>CREA</b> 772:5 794:2,10 <b>create</b> 605:22 653:5 662:16 <b>creates</b> 653:10 <b>credential</b> 636:4 <b>credit</b> 613:1,4,15 614:4 624:9 629:22 <b>credits</b> 612:20 630:9 676:18 777:14 781:22 782:5 <b>criteria</b> 746:10 <b>critical</b> 680:10 <b>criticism</b> 671:5 <b>criticisms</b> 741:6 <b>criticize</b> 666:5,13 670:14,19 <b>CROSS</b> 593:2 <b>cross-examination</b> 597:19,21 633:18 640:11 647:3,7 648:2 738:5,8 764:5,11 788:16 797:2 <b>cross-examine</b> 640:2,5,9 732:14	733:6 <b>cross-examining</b> 733:9 <b>curious</b> 725:19 <b>current</b> 597:14 697:12 <b>currently</b> 608:8 681:18 722:8 758:17,21 796:7,13 <b>customer</b> 629:21 670:4 744:16 758:15 760:10 <b>customers</b> 598:14,16 630:10 705:15,17 706:16 707:6 716:4 723:16 724:17 742:1 744:17 748:12 754:5 758:8 780:11 781:12,14 <b>cut</b> 652:14 695:12 706:15 <b>cute</b> 654:16 <b>cyber</b> 653:12 <b>cynicism</b> 692:11  <hr/> <p style="text-align: center;">D</p> <hr/> <b>D.C</b> 589:9,16 590:5,10 591:4,8,12,17,21 592:4,8,12,17,21 595:5,13 596:5,7,21 598:6,10,14,19 599:19 600:19 601:4,9,14,17 602:15 603:14
--	---	---	---



Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015  
Page 14

604:5,11,13,14 605:7,22 606:20 608:1,10,11,12,1 8 610:5,8 614:5 616:8 617:13 618:8 619:3,17 620:7,12 622:1,3,7,15,17 623:5 624:21 626:9,14,17,21 627:6 630:20 635:2,4,14 636:20 638:2,6,17 639:15 640:18 642:13 644:9,17,19 651:1 665:6,21 666:14 673:6 689:10,19 690:12 715:20,21 716:12,16 735:6 737:9 764:11 772:3 780:2 788:15 790:1 <b>D.C.Water</b> 593:8 <b>damaged</b> 724:16 <b>data</b> 610:5,9,12 611:16,17 640:14 648:13 649:4 667:4,8 668:16 669:14 799:12 <b>date</b> 632:12,18 633:12 642:21 646:11 771:1 <b>dates</b> 642:21 643:2,3,6 <b>day</b> 594:7 654:2 711:15 784:7 801:15	<b>DC</b> 591:19 592:2 <b>DCG</b> 666:7 <b>deadline</b> 765:2 778:14 <b>deal</b> 612:17 613:12,18 617:1 618:4 620:11 622:8 623:4 690:9 721:21 751:15 769:22 <b>dealing</b> 721:12,18 802:9 <b>death</b> 724:3 <b>debate</b> 698:10 <b>debt</b> 695:14 <b>December</b> 589:10 594:6 617:7,14 796:21 797:3,6,8 798:14,19 800:19 801:11,12,20 <b>decide</b> 606:16 <b>decided</b> 734:16,20 745:18 <b>decision</b> 603:13 615:22 651:11,12 706:11 745:17 750:7 774:3,8 <b>decisions</b> 682:5 683:1,17 748:9 <b>declaring</b> 654:4 <b>decreases</b> 626:4 <b>decree</b> 636:16 <b>dedicated</b> 605:8 <b>dedication</b> 607:13 <b>deems</b> 684:14 <b>deeply</b> 673:15	<b>define</b> 655:18 685:1 690:6 701:7 793:13 <b>defining</b> 655:17 746:12 <b>definition</b> 657:14 680:18,19,20 681:19 <b>degree</b> 746:11 756:14 <b>delighted</b> 601:10 <b>DELIVERY</b> 589:6 <b>demand</b> 674:18,21 678:19,21 679:1,4,5,7,8,12, 17,19 <b>demands</b> 746:10 751:17 <b>democratizing</b> 724:13 <b>demonstrated</b> 785:1 789:6,19 <b>deny</b> 786:13 <b>denying</b> 693:1 <b>department</b> 602:8,21 604:16 636:10,17 <b>depend</b> 701:6 <b>dependent</b> 719:21 <b>depends</b> 632:14 653:7 702:5 720:2 <b>Deposition</b> 648:19 <b>Deputy</b> 590:8,13 <b>describe</b> 600:22 667:1 669:15 676:4 742:13	<b>described</b> 699:14 <b>description</b> 659:4 740:20 <b>design</b> 620:3,9,18 621:10,21 622:13,20 623:16 628:3 642:1 <b>designate</b> 785:10 <b>designated</b> 794:13 <b>designation</b> 604:11 <b>designing</b> 619:15 <b>desirable</b> 622:16 <b>desire</b> 711:11 <b>despite</b> 742:6 <b>destructive</b> 664:4 <b>detail</b> 602:5 718:6,7 <b>details</b> 623:1 642:4 <b>detect</b> 717:11,18 <b>determination</b> 619:6 <b>determine</b> 603:17 <b>determined</b> 607:3 624:1 <b>devastating</b> 722:15 <b>develop</b> 607:6 617:7 619:22 626:8 662:4 759:5 <b>developed</b> 607:16 617:19 <b>developer</b> 766:18 772:3
--	--	--	--

Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015  
Page 15

<b>developing</b> 627:21 758:21	612:6 623:10,11,19	<b>directs</b> 690:1	<b>discussion</b> 596:20,22 634:12,15 726:1 761:20 768:22 792:3
<b>development</b> 603:4 604:3,4,14 605:6 607:18 617:8 628:20 629:1 632:15 637:21 639:12 650:4 740:2 744:10,12 757:13 759:5 763:18 767:5,6 777:20	<b>digester</b> 627:11 629:10 <b>digestive</b> 626:12 <b>dim</b> 727:22 <b>dimensions</b> 749:9 <b>diminishing</b> 765:7 <b>direct</b> 593:2 595:5,15 598:22 599:6 624:21 626:15 639:13 645:22 675:19 676:14 679:20 681:21 682:1 685:10 686:5,12 687:3 690:18 691:21 698:15,19 699:15 704:1 737:3 738:14 744:22 747:10 788:14,19 797:21	<b>dis</b> 760:9 <b>disaffiliation</b> 718:8 <b>disagree</b> 656:11 657:10 658:6 696:22 723:11,12,19 724:1,5 725:12 727:21 730:8 741:11 <b>disagreement</b> 728:22 <b>disappeared</b> 710:5 <b>disappointed</b> 632:17 <b>disassociated</b> 692:2 <b>discipline</b> 706:17 707:7 <b>disciplined</b> 706:8,9 <b>discipline's</b> 706:10 <b>disclosure</b> 667:3 <b>discomfort</b> 704:7 <b>discounted</b> 712:21 <b>discrimination</b> 658:14,16,19,22 659:7 660:11,17 <b>discriminatory</b> 659:21 <b>discuss</b> 670:9 <b>discussed</b> 619:2 629:17 644:4 661:15 730:3 770:8 792:16 <b>discussing</b> 730:12,14	<b>dismiss</b> 767:8 <b>dismissed</b> 793:6 <b>dispute</b> 652:9 682:22 698:8 745:21 749:16 759:13 760:12 <b>disregard</b> 789:2 <b>disrespectful</b> 664:14 <b>disservice</b> 726:4 <b>distinct</b> 691:12 <b>distinction</b> 671:6 712:7 728:10 769:14 <b>distinguish</b> 691:11 <b>distraction</b> 695:7 720:13 <b>distributed</b> 707:10 721:17 740:3 754:6 <b>distributing</b> 719:14 <b>distribution</b> 619:20 641:16 705:9,13 708:20 716:4,8,9 719:15 721:20 722:6,10 723:4,13 724:9,15 725:15 770:8
<b>developmental</b> 635:18 <b>devote</b> 628:6 <b>Dick</b> 684:20 <b>difference</b> 613:14 655:2 691:2 705:18 707:2 708:10 755:19,22 <b>different</b> 606:12 618:14 621:19 642:3 655:1 657:5 663:3 667:14 670:13 679:13 680:6 681:18 684:10 707:6 710:2 717:9 721:13 722:4 726:14 770:22 <b>differential</b> 655:21 656:1 <b>differently</b> 655:18 <b>difficult</b> 655:15 800:17 <b>difficulties</b> 714:21 717:4 718:12 <b>difficulty</b> 611:12	<b>612:6</b> <b>623:10,11,19</b> <b>629:10</b> <b>626:12</b> <b>727:22</b> <b>749:9</b> <b>765:7</b> <b>593:2</b> <b>595:5,15 598:22</b> <b>599:6 624:21</b> <b>626:15 639:13</b> <b>645:22 675:19</b> <b>676:14 679:20</b> <b>681:21 682:1</b> <b>685:10 686:5,12</b> <b>687:3 690:18</b> <b>691:21</b> <b>698:15,19</b> <b>699:15 704:1</b> <b>737:3 738:14</b> <b>744:22 747:10</b> <b>788:14,19</b> <b>797:21</b> <b>749:21</b> <b>625:8</b> <b>763:4</b> <b>680:9</b> <b>612:11</b> <b>625:6 637:11</b> <b>665:17</b> <b>709:14,21</b> <b>777:22</b> <b>592:20</b> <b>602:21 605:17</b> <b>606:4 627:3</b> <b>681:19 785:11</b> <b>791:1</b> <b>680:17</b> <b>681:8 683:7</b>		

Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015  
Page 16

772:2,12,16 780:7 <b>district</b> 589:2,15 591:14 594:19 601:22 602:9,13 603:9,13,17 606:2 607:20 609:4 617:9 626:8,15 628:19,22 635:4,21 636:3 638:2,12 639:12 643:16 650:3,9,21 652:2,7,15 659:11,16 660:14 661:22 662:14,18 665:19 685:4 687:12 688:2,4,13,14 690:2 693:12 696:19 697:4 699:11 705:10 707:11 713:1,22 714:6,13 718:18 739:20 751:9,14 752:3 754:14 758:22 760:15 761:7,16 764:15 773:12,17,18,21 779:22 780:5,8,11,12,17 782:1,8 783:3 784:21 785:19 786:5,11 787:9 789:18 793:11 796:7 799:14 <b>District-based</b> 782:2 <b>District's</b> 659:12,14 660:21 765:9	766:10 773:2 782:19 <b>distrubution</b> 722:11 723:22 <b>diversified</b> 719:12 720:20,21 722:7 725:10 <b>diversify</b> 721:3,9 <b>diversifying</b> 724:13 <b>diversity</b> 725:14 <b>divested</b> 750:12 <b>divided</b> 679:8 <b>division</b> 605:8 606:20 607:1 <b>divvied</b> 785:14 <b>document</b> 595:19 648:11 718:2 747:21 748:4 795:3 <b>documents</b> 647:16,17 729:19 771:16 798:18 <b>DODDY</b> 589:18 <b>DOEE</b> 796:8 <b>dollar</b> 727:7,9 769:20 <b>dollars</b> 632:7 636:11 744:11 758:1,9 769:19 <b>Dominguez</b> 788:9 <b>donate</b> 621:10,12,14 <b>donation</b> 601:20 604:19 606:8,11 <b>done</b> 609:10 613:21 614:3,20	615:5,8,21 620:14 623:14 624:8 625:17,18 631:13 632:21 642:14 677:16 682:17 726:3 733:16 759:12 775:17 784:20 800:16 <b>door</b> 732:11 <b>downstairs</b> 702:1 <b>dozen</b> 666:21 <b>dozens</b> 669:10 <b>Dr</b> 709:5,19 710:13 712:6 720:10,16 725:8 727:1 728:2 <b>dragged</b> 773:14 <b>draw</b> 791:19 <b>drawn</b> 684:4 <b>drew</b> 751:8 <b>drive</b> 629:8 646:6 <b>due</b> 597:12 600:7 611:12 612:5 755:8 774:22 797:3,6,8 800:19 801:11,15 <b>duly</b> 595:2 645:19 736:22 <b>Dunbar</b> 793:4 <b>DUNCAN</b> 591:6 <b>duplicates</b> 797:20 <b>during</b> 634:22 802:6,7,8,10 <b>Duties</b> 716:1 <b>duty</b> 715:11 <hr/> <div style="text-align: center;">E</div> <hr/>	<b>earlier</b> 635:7 661:15 713:9,14,18 757:9 793:6 <b>early</b> 609:13 <b>easier</b> 623:17 677:10,16 <b>East</b> 592:11 <b>easy</b> 747:14 <b>ecological</b> 749:9 <b>economies</b> 710:17 711:7 <b>economy</b> 639:10 652:7 690:2 768:17 <b>ede@dwgp.com</b> 591:9 <b>Edison</b> 710:6 <b>effect</b> 658:13 660:2 696:6 722:15 741:8 757:2 766:4,10 <b>effective</b> 752:7 788:6 <b>effectively</b> 794:4 <b>effects</b> 718:12 <b>effectuated</b> 714:6 <b>efficiencies</b> 653:5,9,13 <b>efficiency</b> 659:13 712:17 748:10 751:22 752:5,6 762:11 763:4,18 787:5,10,16,22 788:18 789:17 <b>efficient</b> 652:20 <b>effort</b> 695:3 <b>efforts</b> 656:2
--	--	---	---

Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015  
Page 17

659:13 <b>EILBOTT</b> 591:6 <b>either</b> 604:21 606:14 650:13 681:3 685:3,19 695:14 706:14 708:9 755:8,15 759:4 774:22 777:21 799:2 <b>elaboration</b> 704:19 <b>electric</b> 589:5 710:7,10 715:22 716:2,3,7,8,11 784:22 <b>electricity</b> 619:18 716:5,10 781:6,12,14 787:9,11 <b>electronic</b> 798:9 <b>ELEFANT</b> 592:10 <b>element</b> 624:11 663:5 665:15 745:3 <b>elements</b> 601:3 660:20 661:7 664:7,18 671:22 673:22 690:9 694:2 717:2 739:8 <b>ELI</b> 591:6 <b>eligible</b> 625:19 <b>eliminated</b> 697:1 <b>else</b> 664:4 696:18 746:17 764:4 768:3 783:21 792:20 800:1,9 <b>else's</b> 698:12 <b>elsewhere</b> 694:13	<b>e-mail</b> 799:2 <b>eminently</b> 597:1 <b>emissions</b> 749:4 751:3 <b>emphasize</b> 691:1 713:17 <b>emphasized</b> 704:22 <b>employed</b> 595:10 803:6,9 <b>employee</b> 656:2 803:8 <b>employees</b> 636:14 748:8 <b>employing</b> 607:20 <b>employment</b> 604:16 651:1,7 652:2,10,15,18,2 1 653:3,6,15 <b>empower</b> 723:15 <b>empowerment</b> 670:4 <b>enable</b> 627:12 636:4 <b>energy</b> 589:5 592:9 597:17 602:21 609:20 619:10 628:1,4 631:18 659:12 661:8,18 662:4 665:7,22 672:11 712:17 744:11 748:10 751:7 754:18,20 757:12 762:11 763:18 765:1 766:17 770:4 773:2 777:11,14 778:13,20 781:20,22	782:19 783:4 793:11 794:8 <b>enforce</b> 775:11,14,21 <b>enforceability</b> 767:10 <b>enforceable</b> 784:15 <b>enforcing</b> 775:5,6 <b>engage</b> 600:18 633:14 763:1 <b>engaged</b> 612:11 760:20 <b>engineering</b> 609:7 631:10 633:4 <b>enhance</b> 787:7 <b>enhanced</b> 626:16 643:11 <b>enhancing</b> 765:6 787:5 <b>ensure</b> 699:16 <b>ensuring</b> 717:6 <b>entail</b> 763:2 <b>enter</b> 603:8 617:9 <b>entered</b> 736:3,4 795:6,8 <b>enterprises</b> 599:22 <b>entire</b> 622:13 627:17 719:20 721:17 759:22 802:8 <b>entities</b> 780:4 <b>entitled</b> 604:2 761:5 762:16 763:12 <b>ENTITY</b> 589:6 <b>environment</b>	602:22 638:21 639:15 665:12 776:6,17,21 790:2 <b>environmental</b> 665:5 690:3 727:14 748:7 766:6 767:19 777:12 <b>EP1132</b> 590:9 <b>EP1215</b> 590:4 <b>EPA</b> 636:9,18 <b>episodic</b> 661:10 673:21 <b>equal</b> 722:2 <b>equally</b> 601:12 <b>equity</b> 695:15 703:20,21,22 704:5 <b>equivalent</b> 789:17 <b>error</b> 691:17 712:4 <b>escapes</b> 774:4 <b>especially</b> 679:18 802:7,10 <b>Esq</b> 590:3,7,12,18 591:2,6,11,15,19 592:2,7,10,15,19 <b>essential</b> 751:3 772:2 <b>essentially</b> 603:12 748:15 757:18 791:9 <b>establish</b> 635:18 643:4 782:8 <b>established</b> 797:4 <b>establishes</b> 770:17 <b>establishing</b> 605:7
--	---	---	--



Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015  
Page 18

638:20 et 617:13 777:7,8 798:1 evaluate 672:5 745:5 evaluated 600:5 624:12 evaluating 599:20 evaluation 598:7 600:10 651:22 EVD 593:7 Eve 801:22 event 617:15 623:8 629:12 728:9 everybody 733:4 771:4 everybody's 722:1 everyone 627:6 733:7 802:6 everything 748:13 evidence 644:20 645:5 658:16 736:6,14 746:1 795:12 exact 637:14 669:3 750:14 exactly 607:3,17 624:14 631:9 642:17 791:19 794:14 examination 595:5 645:22 693:18 737:3 examine 690:21 examining 761:14 example 642:8,20 652:12 653:11	655:22 657:7 658:8 659:22 686:5 687:7 701:8 704:12,13 762:11 781:6 792:6,11 793:10,16 examples 658:22 687:9 694:5 exceeded 716:20 excellent 662:8 except 632:7 675:5 Exchange 680:12,19 excluded 727:13 739:4 excuse 626:4 651:15 669:21 674:9 694:2 735:18 777:7 778:11 796:5,17 excused 795:14 executed 597:14 633:8 765:3 778:14 executive 595:12 executives 682:4 Exelon 589:4,5 590:13 604:1 615:16 617:6 618:16,22 619:14 620:1,19 621:9 622:12,21 623:15 624:6,16 625:10,11 627:5 633:10 640:21 655:22 662:11 674:20 675:4,11 676:11,17 681:10,13 683:1	684:14,21 685:7,16 694:13 695:15,19 697:18 699:16,17 707:9,16 708:1 718:22 722:8 728:17 729:7,8 730:22 739:6 748:4,5 749:16,22 750:11 751:1 752:18 753:18,20 754:4 755:10 757:7 758:17 763:16 765:3 768:19 772:11,13,22 773:8 775:2 776:14 777:5,22 778:14 780:15,16,18,19, 22 781:11 786:1 788:21 796:13 Exelon's 693:7 697:12 739:14 740:1 746:2 747:18 749:12 750:8,18 754:2 787:20 exhibit 596:7 610:14 633:18,22 634:2 644:17,19 645:4 668:2,5,7 736:5,13 747:5,15 795:11 exhibits 648:2 797:2 exist 638:3 766:20 787:1 existence 766:16	existential 724:2 existing 627:22 633:6 644:6,8 724:3 777:15 779:5 exists 673:8 expansion 659:10 expect 622:5 623:16 647:16 654:5 708:2 711:7 expectation 623:4 624:20 expected 703:9 704:4 expecting 621:20 expense 723:22 expensive 619:3 experience 599:19 619:10,13 696:13 718:20 experienced 623:13 754:17,19 expert 701:4,15,16 expertise 746:5 760:19 Expires 803:16 explain 604:9 657:3,6 675:11 678:18 690:18 768:9 explained 698:19 explanation 669:13,14 782:15 explicit 784:15 explicitly 745:18
---	---	--	---

Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015  
Page 19

<b>exposure</b> 698:3	765:6,7 766:2,9	786:6	723:13 803:10
<b>extensive</b> 604:15	768:11	<b>feel</b> 761:12 786:17	<b>financing</b> 628:20
<b>extent</b> 675:5	787:8,11,12	800:2	768:18
711:10 726:4	<b>factors</b> 651:21	<b>fellow</b> 684:5	<b>finding</b> 693:2,15
757:16,22 758:4	652:9,16 665:16	<b>fence</b> 687:13,20	754:4
760:17 761:15	671:10,19 672:4	688:8	<b>findings</b> 738:22
781:13 783:2	690:19,21 691:6	<b>fencing</b>	739:11,22
788:2 794:11	692:2,11 718:13	695:4,16,18,21	<b>finds</b> 657:15,21
<b>extraordinary</b>	745:20	696:3,5,16	<b>fine</b> 606:13 644:13
706:15	<b>facts</b> 750:22	697:1,2,3	647:13 731:16
<b>extremely</b> 627:19	<b>fail</b> 772:1	<b>FERC</b> 674:22	<b>finished</b> 619:11
720:17	<b>failing</b> 655:4	675:5,6,21	651:15
	<b>fair</b> 695:1 744:8	<b>fewer</b> 653:13	<b>firm</b> 767:9
<u>F</u>	746:15 757:3	<b>fiduciary</b> 708:7	<b>first</b> 594:12 595:2
<b>face</b> 697:14 698:2	<b>fairly</b> 633:9	<b>Fifteenth</b> 591:21	628:3 641:8
<b>faces</b> 714:21	<b>faith</b> 617:10	<b>fifth</b> 783:17	645:13,17,19
<b>facilitation</b> 740:3	<b>familiar</b> 628:16	<b>figure</b> 773:19	647:19 657:9
<b>facilities</b> 627:14	629:16 630:5,13	<b>figured</b> 711:4	669:20,22 674:7
628:7 630:22	642:19 665:1,8	<b>filed</b> 595:15	675:21
631:12 640:22	666:2	596:15 599:12	676:13,22
777:15,21 779:5	673:4,8,9,11	630:7 648:14	677:17 686:16
<b>facility</b> 609:6	715:18	665:10 798:9	698:7,10 699:22
619:1,16,18	750:14,16	<b>filing</b> 743:10	709:20 710:4
620:19 621:22	760:14	797:5 798:14	713:10 727:21
628:2 629:10	<b>familiarity</b> 760:22	<b>Filipino-speaking</b>	736:22 738:14
631:8,15 778:1,4	<b>family</b> 688:19	660:9	755:14 768:15
<b>fact</b> 615:7 620:4	<b>famous</b> 684:1	<b>fill</b> 801:18	769:3 777:2,3
628:4 657:11	701:8	<b>final</b> 625:15	784:7 795:20
687:15	<b>fashion</b> 655:11	712:14 797:1	797:20
688:9,17,18,21	714:17	<b>finally</b> 623:10	<b>first-mover</b>
689:4,7 698:20	<b>faster</b> 727:6	626:3 629:15	662:11 713:19
706:9 720:6,10	<b>favors</b> 716:10	715:18	721:7
721:11 725:20	<b>feasible</b> 597:1	<b>finances</b> 724:15	<b>fits</b> 657:2
730:11 731:2	656:18	<b>financial</b> 598:15	<b>five</b> 609:1 731:9
742:6 794:12	<b>February</b> 614:12	616:22 622:16	<b>fix</b> 715:15 778:13
<b>factor</b> 640:19	<b>federal</b> 685:11	624:1,7	<b>fixed</b> 765:2 793:17
652:5,10,11	697:17 698:4	<b>financially</b> 613:18	<b>fleet</b> 752:19
725:12 739:1,7	699:1,3 785:20		<b>Floor</b> 592:11
741:8,16,21			<b>flow</b> 713:11,14
742:11,12			
745:3,18 759:20			

Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015  
Page 20

<b>focus</b> 725:21 749:21 759:19 772:17	638:9,13 639:17 674:11,12,16 675:2 676:12,21 677:19 678:7,10,12 680:5 681:16 682:15 683:5 684:9 685:18 687:11 689:9,18 692:17 699:14 703:5 719:4,7,20 722:3,22 725:18 731:16,19 732:20 733:2,13 768:4,5 769:2,8 770:15 771:18 772:9,18 773:7 774:9 790:18,19 791:7,11,21 792:9 794:6,15,18	694:14 <b>FRANN</b> 591:11 <b>free</b> 628:22 793:18 <b>freebie</b> 696:11 <b>frequently</b> 639:5 726:5 <b>Friday</b> 589:10 594:6 797:6,8 798:19 <b>friend</b> 596:18 <b>friends</b> 597:6 670:20,21 <b>front</b> 738:16 740:6 772:20 <b>Frontier</b> 686:10 <b>fuel</b> 751:4,18 <b>fuels</b> 751:9 753:16 <b>fulfill</b> 597:12 <b>full</b> 652:18 696:13 <b>fully</b> 747:1 <b>fully-evaluated</b> 633:5 <b>fun</b> 700:2 <b>function</b> 749:10 <b>fund</b> 601:21 602:9,14 603:2,4,14 604:8 606:7 650:3,4 659:14 744:12,16 757:13,18,20 758:1,8,15 760:10 767:4 782:11,18 783:6,12,22 785:19 786:4 794:8,9 <b>fundamental</b>	691:2 692:14 705:17 707:2 708:10 712:4 <b>fundamentally</b> 679:14 682:8 695:5 710:2 <b>funding</b> 603:11,12,20 617:5 635:2,14,15 636:6,21 637:21 763:17 773:17 794:12 <b>funds</b> 603:16,18 604:11 606:12 607:13 637:15 784:9,12 785:12,21 786:6 794:9 796:6 <b>future</b> 626:12 673:15 685:9 697:12 <b>fuzzy</b> 748:16 <hr/> <b>G</b> <hr/> <b>gain</b> 679:7 <b>gained</b> 653:9 <b>gains</b> 786:12 <b>game</b> 787:6,18 <b>gaps</b> 657:11 715:13 <b>garbled</b> 669:2 <b>Gas</b> 609:21 710:10 <b>GAY</b> 590:18 <b>general</b> 590:8,13,19 591:14,15 592:20 595:12 601:15 604:15 608:15 653:1
<b>focused</b> 607:18 666:16 749:22			
<b>focuses</b> 715:12			
<b>focusing</b> 671:2			
<b>folks</b> 678:3			
<b>followup</b> 630:18 697:10			
<b>footprint</b> 753:10,13			
<b>force</b> 603:4 604:3,4,14 606:8 635:18 637:20 650:4			
<b>forces</b> 717:10			
<b>forego</b> 683:16			
<b>foregoing</b> 669:13 803:4	<b>forth</b> 641:11 672:3 775:3		
<b>foremost</b> 745:4	<b>forthwith</b> 633:14		
<b>forever</b> 785:4	<b>forward</b> 611:9 633:7 678:4 691:13 761:13 762:22		
<b>forgot</b> 708:14	<b>fossil</b> 751:3,9 753:16		
<b>form</b> 626:16 683:22	<b>foundation</b> 659:5		
<b>formal</b> 589:3 594:5 654:4 673:4 761:19 762:5	<b>fourth</b> 642:5 690:5		
<b>formed</b> 744:3	<b>FourthStreet</b> 591:16		
<b>former</b> 712:12	<b>frame</b> 600:5 614:13 615:13		
<b>Fort</b> 589:18 630:16,17 631:16 633:10,16 634:8,11,17 635:9,13 636:19 637:5,18	<b>franchise</b> 705:8 706:6 <b>FRANCIS</b> 591:11 <b>frankly</b> 606:13		

Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015  
Page 21

656:14 661:9 673:10 693:9 695:18 717:6,7 750:16 754:11 762:2 <b>generally</b> 695:22 742:4 751:20 752:6 760:15 <b>generated</b> 619:18 621:1 622:22 628:1,7 651:8 751:8,9 787:13 <b>generates</b> 630:20 <b>generating</b> 627:9 660:3 720:12 751:15 789:22 <b>generation</b> 610:20 611:2 617:6,9,12,19 629:9 659:11 679:19,20 680:4 697:13 707:10,18 717:17 719:14,21 720:2 721:16,17 722:19 723:19 739:14 740:2,4 744:10 748:10 749:13,17 750:8,13,18 753:3,15 754:6,18 766:19 767:17,20 777:15 779:5 796:12 <b>generator</b> 787:20 <b>GENZER</b> 591:6 <b>geographic</b> 697:19 779:12 <b>George</b> 593:3 594:21	595:1,9,15 <b>gets</b> 619:21 679:3,8 684:21 712:3 730:11 753:4 785:11 <b>getting</b> 623:11,19 636:19 700:6 712:2 719:15 721:7 784:17 786:18 788:1 791:18 800:15 <b>GI</b> 604:6 605:6,8 634:22 635:5,15 638:1,18,19 644:3 <b>gift</b> 620:21,22 621:14 <b>gigantic</b> 609:6 <b>given</b> 604:17 626:11 631:14 702:11,12 704:3 727:1 752:13 761:22 <b>gives</b> 629:4 710:19 <b>giving</b> 650:12 692:3 <b>glad</b> 709:3 <b>goal</b> 627:13,19 630:21 635:20 <b>goals</b> 765:9 772:6 773:1 <b>golden</b> 717:8 <b>gone</b> 597:9 622:10,18 623:7 715:3 786:3 <b>Gould</b> 747:10 <b>government</b> 603:13,17 621:18 664:6	665:19 666:15 764:12,16 785:20 786:5,7 <b>grab</b> 694:20 <b>grant</b> 729:12 <b>granted</b> 613:8,9,11,12,15 <b>Granting</b> 713:19 <b>grants</b> 604:18 <b>grasp</b> 772:1 <b>great</b> 619:8 627:16 628:11 648:11 692:5 720:18 759:14 <b>greater</b> 761:15 <b>greatest</b> 601:9 <b>green</b> 601:20 602:9,13,14 603:1 604:8,20 605:9,19 606:1,7 607:6,11,19 627:22 634:20 635:19,22 636:11,13,15 637:21 638:20 639:4,11 659:14 782:8,10,11,18 783:6,13,17,21 784:1 <b>Greetings</b> 641:9,10 <b>grid</b> 592:6 593:11,13 596:16 645:12,16,22 646:9 648:4,12 664:9,21 665:1 666:5 673:6 732:12 735:1,11 736:2,5 737:3,12	761:10,14 769:14 773:20 786:19 787:2 790:14,19 791:11 795:6,11 <b>groceries</b> 773:16 <b>ground</b> 617:17 <b>grounds</b> 724:18,19,20 <b>group</b> 645:16 <b>grown</b> 697:2,3 <b>growth</b> 725:3 <b>GSA</b> 792:6 <b>guarantee</b> 612:17 613:11 614:2 615:9 623:14 628:14,15 714:5 793:16,17,18 <b>guaranteed</b> 613:9 642:21 <b>guess</b> 611:15 685:21 690:14 726:1,21 730:3 772:21 773:10 800:13 <b>guessing</b> 658:1 731:10,11 <hr/> <b>H</b> <hr/> <b>half</b> 744:10 802:8 <b>halfway</b> 649:7 <b>Hampshire</b> 710:11 <b>hand</b> 609:5 613:8 630:13 667:12 767:8 793:8 <b>handle</b> 699:1 <b>handled</b> 623:22
---	---	---	---



Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015  
Page 22

624:14 <b>happen</b> 613:3 624:18 628:10 679:12 718:18,22 743:10 <b>happened</b> 611:8 730:18 731:12 <b>happens</b> 628:9 699:19 703:20 <b>happy</b> 644:5 750:20 <b>hard</b> 619:5 731:13 <b>harm</b> 652:14 <b>Harry</b> 684:20 <b>hate</b> 801:7 <b>Hathaway</b> 701:9 <b>haven't</b> 632:17 665:9 790:3 <b>having</b> 624:21 625:5,7 660:2 667:2 669:15 685:17 702:19 717:9,10 722:14 726:12 733:9 <b>Hawkins</b> 593:3,8 594:13,22 595:1,9,15 596:5,14 597:18 598:1 641:3 644:4 645:3 662:6,15 783:16 <b>head</b> 637:1 694:17,19 716:1 774:5 <b>heading</b> 649:8 768:9 <b>health</b> 627:17 629:11 638:21	639:15 <b>hear</b> 663:15 667:5 719:11 725:20 727:19 734:7 782:12 <b>heard</b> 662:15 677:19 709:5 713:18 722:4,20 723:2 760:3 782:14 <b>hearing</b> 589:12 599:20 625:4 795:18 796:1,20 797:13,20,22 798:3 802:11,12 <b>hearings</b> 594:8 629:17 630:3 797:16 <b>Heartily</b> 752:21 <b>heat</b> 619:12 631:6 <b>heavily</b> 742:14 <b>heck</b> 700:4 <b>help</b> 785:7,10 <b>helpful</b> 639:20 <b>helps</b> 788:2 <b>Hempling</b> 593:4,11 645:17,18 646:2,5 647:3,9 648:22 649:9 650:2,15 656:21 669:9 674:2,13 735:19 768:22 769:16 <b>Hempling's</b> 709:7 736:1 <b>hereby</b> 803:3 <b>herein</b> 628:22 <b>hereto</b> 803:10	<b>Herzkowitz</b> 798:10 <b>he's</b> 662:8 728:16 <b>hesitate</b> 711:1 <b>High</b> 793:4 <b>higher</b> 652:13 653:18 695:13 <b>highest</b> 658:3 712:2 <b>highlight</b> 655:2 740:18 <b>highly-competent</b> 701:12 <b>highways</b> 706:1 <b>hiring</b> 608:12 660:7 <b>history</b> 710:6 <b>hold</b> 742:15 <b>holding</b> 682:4,9 683:16,22 684:3,7 685:12 694:12,13 695:6 697:18 698:4,9,16 699:10 701:9,17 702:12 703:15,21 704:3,7 708:21 710:1 <b>Holdings</b> 589:4 590:4,8 640:11 641:6 647:7,10 738:8,11 <b>home</b> 723:17 <b>honest</b> 664:11 <b>honestly</b> 607:15 <b>Honor</b> 639:19 647:6 674:4 732:1,10	734:3,16 735:11,22 736:8 764:6 765:21 795:1 796:15 799:6,9 800:5,10 <b>Honors</b> 645:15 647:2 738:4 795:5 <b>hope</b> 622:6,20 628:9 629:8 677:5 689:8 728:21 730:2 731:15 732:16 <b>hopeful</b> 732:17 <b>horses</b> 684:4,6 <b>host</b> 627:7 <b>household</b> 773:16 <b>housekeeping</b> 797:10 <b>HOUSING</b> 592:14 <b>Hu</b> 710:13 728:2 <b>huge</b> 787:2,7,8 <b>human</b> 688:10 <b>hundred</b> 636:10 675:10 698:18 699:7 720:1,11 722:10 754:6 759:6 777:10 778:12 <b>hyperbolic</b> 718:10 <b>hypothetical</b> 656:12 <hr/> <b>I</b> <b>I'd</b> 707:12 708:1 719:10 725:19 738:14,18 <b>ID</b> 593:7 <b>idea</b> 730:6,8
--	---	--	--

Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015  
Page 23

761:11 769:11 771:5 <b>ideal</b> 626:10 <b>ideas</b> 608:3 724:12 <b>identifiable</b> 657:14 <b>identification</b> 596:8 648:20 <b>identified</b> 603:5 641:8 647:20 649:13 651:21 701:11 <b>identify</b> 603:11 631:1 639:2 648:12 671:9 681:17 682:15 738:20 768:14 771:19 <b>IEEE</b> 658:8 <b>ignorant</b> 714:20 715:1 <b>ignore</b> 651:7 <b>III</b> 589:6 <b>I'll</b> 634:8 740:13 772:21 777:5 <b>Illinois</b> 685:16 <b>Illuminating</b> 710:7 <b>I'm</b> 606:20 615:6 618:12 620:16 623:21 624:11 630:12 642:15,16 647:10,11,15 650:8 653:22 655:15 656:22 657:5 658:12 660:12 663:15 664:20 665:8 667:3	671:11,12,15 672:12 673:8,9 677:7 678:21 683:18 687:6 690:4 699:8 700:1,2,3 701:4 706:13 709:3,17 711:17 714:22 715:1,2 718:9,19 723:7 727:12 732:2,19 734:1 738:10 743:22 746:16,19 747:6 750:14 754:15 759:21 761:1,2 769:3,7,10 776:7 779:1 788:7 790:5,10 791:19,22 801:21 <b>imagine</b> 603:19 617:1 694:19 770:11 <b>immediate</b> 598:14 599:18 600:3 632:9 <b>impact</b> 693:10,11 <b>impacts</b> 748:7 <b>implementing</b> 607:19 665:21 <b>implicate</b> 652:2 716:16 <b>implication</b> 745:5 <b>imply</b> 663:6 <b>important</b> 676:10 704:22 705:2 749:4 <b>impose</b> 654:2 <b>impressed</b> 783:2 <b>improperly</b>	651:10 652:14 <b>improve</b> 601:13 654:11,20 656:8 801:3 <b>improved</b> 629:12 655:14 792:13 <b>improvement</b> 656:9 658:4 748:11 790:6 <b>improvements</b> 656:18 729:20,22 730:10 <b>improves</b> 638:21 <b>inadequate</b> 694:4 <b>inappropriately</b> 727:10 <b>inartful</b> 606:10 <b>Inc</b> 589:5 590:4,8 609:21 <b>incentive</b> 766:18 <b>incentives</b> 742:21 752:13 760:4 <b>include</b> 640:22 718:14 721:6 739:10,17,22 741:15 783:22 <b>included</b> 633:21 653:20 663:9 686:1 741:13,17 742:22 <b>includes</b> 652:6 742:7 784:1 <b>including</b> 604:5 605:7 629:2 635:19 640:21 654:9 777:13 <b>income</b> 785:18 <b>inconsistent</b>	662:13 713:20 <b>increase</b> 653:6 670:2,3 711:12 <b>increases</b> 629:15 630:1,7 706:15 <b>increasing</b> 605:21 <b>incremental</b> 759:10 790:6 <b>incumbent</b> 654:18 656:3,13,16,17,1 9 657:18 <b>incumbents</b> 724:4 <b>incurred</b> 724:10 762:17 <b>incurs</b> 761:6 <b>independence</b> 680:9,18 <b>independent</b> 629:1 680:9,17,21 681:1,3,4,7,12,1 3,19 682:12,14 683:8 724:17 <b>independently</b> 607:4 629:6 <b>in-depth</b> 612:13 <b>indicate</b> 756:13 <b>indicated</b> 774:5 789:10 791:5 793:21 796:20 <b>indicates</b> 747:9 <b>indication</b> 615:3 624:16 778:3 <b>individual</b> 662:8 715:4 <b>indulgence</b> 643:20 732:12 <b>industry</b> 615:12
---	---	--	--

Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015  
Page 24

673:16 685:4 715:3 788:11,13 <b>inefficiency</b> 792:13 <b>influence</b> 675:17 676:8 <b>influencing</b> 674:21 <b>information</b> 596:2 609:18 646:22 664:12 738:2 <b>informed</b> 735:5 <b>infrastructure</b> 601:21 602:15 604:20 605:9,19 606:1 607:6,11,19 634:20 635:19,22 636:11,13,15 637:22 638:20 639:4,11 783:18 784:1 <b>infusion</b> 786:1 <b>inherent</b> 683:22 <b>initial</b> 634:22 790:7 797:5 800:18 <b>initiated</b> 606:4 609:11 <b>initiatives</b> 663:1 <b>innovation</b> 670:3 <b>innovations</b> 723:20 <b>inquiries</b> 784:8 <b>inquisitiveness</b> 712:2 <b>insights</b> 653:10	<b>insofar</b> 772:16 <b>inspection</b> 605:9 <b>install</b> 640:21 <b>installation</b> 602:2 605:8,20 609:5 <b>instance</b> 739:12 744:9 756:10 762:10 <b>instead</b> 639:7 762:14 785:22 <b>institute</b> 713:2 <b>instruction</b> 671:17 <b>insufficient</b> 768:12,15 771:21 791:6 <b>integrate</b> 599:22 748:12 <b>integrated</b> 661:11 713:14 770:7 792:15 <b>intelligent</b> 720:17 723:10 <b>intend</b> 603:11 <b>intended</b> 695:18 <b>intends</b> 782:8 <b>intent</b> 676:4 699:2,4 <b>intention</b> 603:6 <b>interaction</b> 604:16 <b>interconnect</b> 626:8 <b>interconnected</b> 754:5 <b>interconnecting</b> 754:20 <b>interconnection</b> 601:13 611:13	612:6,14,22 613:7,21 614:9 615:4 623:11,19 624:10 629:2 642:6,9 643:11,14 754:8 <b>interest</b> 589:12 627:16 628:11 630:14 651:18 652:1 663:3,5,12,13,18 ,19,22 664:2,10 665:4,11,13,14,1 6 667:3 668:21 669:16 670:8 672:6 691:8 693:2 706:19 708:3,9 711:16,21 712:9 715:8 717:20 745:3 759:20 765:7 766:2,9 768:11 797:13,22 802:11 <b>interested</b> 608:3 719:11 787:21 798:21 801:17 803:10 <b>interests</b> 661:4 662:22 693:8 697:13 712:10 <b>internal</b> 677:11 <b>interpretation</b> 691:4 <b>interrupting</b> 671:15 <b>intervene</b> 665:2 675:6 <b>intervenor</b> 660:6 <b>intervenors</b> 660:10,16	743:12 <b>intervention</b> 665:3 <b>introduced</b> 730:22 731:1 <b>invest</b> 694:8 776:15,19 <b>invested</b> 708:1 <b>investment</b> 612:20 613:15 624:9 744:16 758:15 760:10 763:2 777:20 <b>investments</b> 725:6 763:6 <b>invite</b> 791:2 <b>invites</b> 690:20 <b>involuntarily</b> 755:16,21 756:1,3 <b>involve</b> 643:1 704:15 <b>involved</b> 642:7 666:20 668:18,19 669:10 677:13 684:21 698:9 709:21 803:7 <b>involves</b> 695:6 <b>involving</b> 686:9 <b>irrelevant</b> 694:15,16 728:22 <b>irresponsibility</b> 725:13 <b>isn't</b> 655:6 670:16 672:10 692:6 703:2 707:7,8 718:6 739:4 740:4 763:20
--	--	---	---

Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015  
Page 25

<b>issue</b> 608:22 613:8 622:15 623:17 624:10 629:6 630:14 651:16 666:17 671:4 676:15,22 683:2 684:10 724:7 745:2 753:9 761:11 776:3	700:2,3,12,15 701:19 706:12 707:18,19 711:2 712:4 713:6,8 715:15,21 716:1 722:9 725:10 726:18 727:9 728:18 729:6 730:4,6 731:12 733:13 747:3 756:15 758:20 760:18 767:1,7,9,15 778:2 783:9 784:1 786:21 788:3 789:10,12,14 790:6 793:7	<b>joint</b> 589:3 598:7,11 609:22 629:17 630:6 638:3 641:7 647:11 648:3,13 668:7 736:9,13 738:12 743:3,18 747:2,5 756:7 760:3 771:22 772:19 784:8 786:1 792:1,5 793:15 799:13	621:4,8,13 623:9 624:15 625:7,11,13,15 626:2 628:13,16 629:14 630:4,15 640:1,6 643:21 644:6,9,12,18,21 645:8 647:4 648:18 668:4,9 674:3,6,10 692:20 693:18 694:6 697:8 700:7,19 702:7 704:10,20 708:16 709:10,15 712:13 713:7 714:1,8 715:17 719:3,8 731:21 732:2,7,9,13,18 733:4,15 734:2,4,19,22 735:2,13,17,21 736:4,11,16 738:6 764:4,8,10 765:13,15,19 768:2 774:14 775:22 776:2,10,13,18,2 2 777:18 778:6,22 779:8,11,15,18,2 1 780:9,15,22 781:5,17 782:6,16,22 790:16 794:20 795:2,8,10,13 796:16 799:7,10,17,21 800:1,6,8,11 801:5,9 802:3,5
<b>issued</b> 597:8 695:14,15 771:17	767:1,7,9,15 778:2 783:9 784:1 786:21 788:3 789:10,12,14 790:6 793:7	<b>June</b> 803:17	674:3,6,10 692:20 693:18 694:6 697:8 700:7,19 702:7 704:10,20 708:16 709:10,15 712:13 713:7 714:1,8 715:17 719:3,8 731:21 732:2,7,9,13,18 733:4,15 734:2,4,19,22 735:2,13,17,21 736:4,11,16 738:6 764:4,8,10 765:13,15,19 768:2 774:14 775:22 776:2,10,13,18,2 2 777:18 778:6,22 779:8,11,15,18,2 1 780:9,15,22 781:5,17 782:6,16,22 790:16 794:20 795:2,8,10,13 796:16 799:7,10,17,21 800:1,6,8,11 801:5,9 802:3,5
<b>issues</b> 603:10 624:22 640:18 642:6,7,10,12,13 ,17 644:3 673:5,10,14 675:18,22 676:13 677:22 714:12,14,18 716:14 760:8	<b>I've</b> 662:6 669:21 703:10,11 704:8 709:21 713:18 720:16 724:6 752:12 760:1,3,20,21 761:9 770:15 771:3 786:13 795:18	<b>jurisdiction</b> 689:7 778:21	674:3,6,10 692:20 693:18 694:6 697:8 700:7,19 702:7 704:10,20 708:16 709:10,15 712:13 713:7 714:1,8 715:17 719:3,8 731:21 732:2,7,9,13,18 733:4,15 734:2,4,19,22 735:2,13,17,21 736:4,11,16 738:6 764:4,8,10 765:13,15,19 768:2 774:14 775:22 776:2,10,13,18,2 2 777:18 778:6,22 779:8,11,15,18,2 1 780:9,15,22 781:5,17 782:6,16,22 790:16 794:20 795:2,8,10,13 796:16 799:7,10,17,21 800:1,6,8,11 801:5,9 802:3,5
<b>ITC</b> 613:1	<b>J</b>	<b>jurisdictions</b> 605:18 608:7 765:4 778:16	674:3,6,10 692:20 693:18 694:6 697:8 700:7,19 702:7 704:10,20 708:16 709:10,15 712:13 713:7 714:1,8 715:17 719:3,8 731:21 732:2,7,9,13,18 733:4,15 734:2,4,19,22 735:2,13,17,21 736:4,11,16 738:6 764:4,8,10 765:13,15,19 768:2 774:14 775:22 776:2,10,13,18,2 2 777:18 778:6,22 779:8,11,15,18,2 1 780:9,15,22 781:5,17 782:6,16,22 790:16 794:20 795:2,8,10,13 796:16 799:7,10,17,21 800:1,6,8,11 801:5,9 802:3,5
<b>item</b> 642:5	<b>JANSA</b> 593:10 648:5,15,17,19	<b>Justice</b> 636:10,18	674:3,6,10 692:20 693:18 694:6 697:8 700:7,19 702:7 704:10,20 708:16 709:10,15 712:13 713:7 714:1,8 715:17 719:3,8 731:21 732:2,7,9,13,18 733:4,15 734:2,4,19,22 735:2,13,17,21 736:4,11,16 738:6 764:4,8,10 765:13,15,19 768:2 774:14 775:22 776:2,10,13,18,2 2 777:18 778:6,22 779:8,11,15,18,2 1 780:9,15,22 781:5,17 782:6,16,22 790:16 794:20 795:2,8,10,13 796:16 799:7,10,17,21 800:1,6,8,11 801:5,9 802:3,5
<b>items</b> 671:2 744:16 758:14 770:13	<b>jars</b> 784:13	<b>justifications</b> 616:12	674:3,6,10 692:20 693:18 694:6 697:8 700:7,19 702:7 704:10,20 708:16 709:10,15 712:13 713:7 714:1,8 715:17 719:3,8 731:21 732:2,7,9,13,18 733:4,15 734:2,4,19,22 735:2,13,17,21 736:4,11,16 738:6 764:4,8,10 765:13,15,19 768:2 774:14 775:22 776:2,10,13,18,2 2 777:18 778:6,22 779:8,11,15,18,2 1 780:9,15,22 781:5,17 782:6,16,22 790:16 794:20 795:2,8,10,13 796:16 799:7,10,17,21 800:1,6,8,11 801:5,9 802:3,5
<b>it's</b> 605:14,16 606:5,7 609:3 613:6,20 621:9,14,16,18 624:11 627:10 631:6 636:17 637:1 640:15 641:21 648:5 654:12 656:7 658:13 661:3 665:14,16 667:17 668:7 677:9,15 679:20 680:22 685:7 688:6,12,17,18 689:6,12 692:14 693:5	<b>JOANNE</b> 589:18	<b>justified</b> 616:15 618:3	674:3,6,10 692:20 693:18 694:6 697:8 700:7,19 702:7 704:10,20 708:16 709:10,15 712:13 713:7 714:1,8 715:17 719:3,8 731:21 732:2,7,9,13,18 733:4,15 734:2,4,19,22 735:2,13,17,21 736:4,11,16 738:6 764:4,8,10 765:13,15,19 768:2 774:14 775:22 776:2,10,13,18,2 2 777:18 778:6,22 779:8,11,15,18,2 1 780:9,15,22 781:5,17 782:6,16,22 790:16 794:20 795:2,8,10,13 796:16 799:7,10,17,21 800:1,6,8,11 801:5,9 802:3,5
	<b>job</b> 606:19 607:18 639:3,11 662:8 670:22 711:17 715:16	<b>K</b>	674:3,6,10 692:20 693:18 694:6 697:8 700:7,19 702:7 704:10,20 708:16 709:10,15 712:13 713:7 714:1,8 715:17 719:3,8 731:21 732:2,7,9,13,18 733:4,15 734:2,4,19,22 735:2,13,17,21 736:4,11,16 738:6 764:4,8,10 765:13,15,19 768:2 774:14 775:22 776:2,10,13,18,2 2 777:18 778:6,22 779:8,11,15,18,2 1 780:9,15,22 781:5,17 782:6,16,22 790:16 794:20 795:2,8,10,13 796:16 799:7,10,17,21 800:1,6,8,11 801:5,9 802:3,5
	<b>jobs</b> 639:12 652:14,18,19 653:12,13 727:14 796:6	<b>Kane</b> 589:18 594:4,16 596:6,12 597:20 598:5,10 599:6 600:6,10,22 602:4 603:21 604:22 605:14 606:6,18 607:22 608:9,13 609:14,17 610:1,4,11,18 611:5,11,20 612:4 614:7,18,20 615:2,14,19 616:6,17,20 617:3 620:16,21	674:3,6,10 692:20 693:18 694:6 697:8 700:7,19 702:7 704:10,20 708:16 709:10,15 712:13 713:7 714:1,8 715:17 719:3,8 731:21 732:2,7,9,13,18 733:4,15 734:2,4,19,22 735:2,13,17,21 736:4,11,16 738:6 764:4,8,10 765:13,15,19 768:2 774:14 775:22 776:2,10,13,18,2 2 777:18 778:6,22 779:8,11,15,18,2 1 780:9,15,22 781:5,17 782:6,16,22 790:16 794:20 795:2,8,10,13 796:16 799:7,10,17,21 800:1,6,8,11 801:5,9 802:3,5
		<b>Kansas</b> 710:9,10 <b>KAREN</b> 591:2	674:3,6,10 692:20 693:18 694:6 697:8 700:7,19 702:7 704:10,20 708:16 709:10,15 712:13 713:7 714:1,8 715:17 719:3,8 731:21 732:2,7,9,13,18 733:4,15 734:2,4,19,22 735:2,13,17,21 736:4,11,16 738:6 764:4,8,10 765:13,15,19 768:2 774:14 775:22 776:2,10,13,18,2 2 777:18 778:6,22 779:8,11,15,18,2 1 780:9,15,22 781:5,17 782:6,16,22 790:16 794:20 795:2,8,10,13 796:16 799:7,10,17,21 800:1,6,8,11 801:5,9 802:3,5



Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015  
Page 26

<b>KAYE</b> 591:20	<b>last</b> 594:7 625:21	<b>lending</b> 695:9,10	662:20 667:22
<b>key</b> 622:15	628:17 667:21	<b>lengthy</b> 756:18	674:17 684:11
<b>Khouzami</b> 796:11	669:6 684:17	<b>less</b> 687:8 719:13	712:15,19 755:2
<b>kill</b> 788:12	734:9 773:10	720:1,11 724:22	764:18 768:7
<b>killing</b> 788:11	774:20,21	725:1,9 750:17	771:19 773:11
<b>kilowatt</b> 787:14,15	<b>latter</b> 712:11	751:10	774:20 777:3
<b>kilowatts</b> 787:13	<b>law</b> 592:14 665:15	<b>let's</b> 667:7 701:7	793:6
<b>kinds</b> 698:3	698:12 715:20	705:19,20 706:1	<b>list</b> 642:5
702:20	716:12,16 780:5	723:1 735:2	690:19,21
<b>knowable</b>	785:6	740:19 743:7	697:13 770:13
657:1,14	<b>Lawrence</b> 646:5	754:1 755:1	797:2
<b>knowledge</b> 596:1	<b>laws</b> 716:18,19	757:4 779:18	<b>listed</b> 792:20
646:22 682:17	<b>lawyer</b> 698:8	<b>level</b> 682:4 699:11	<b>listened</b> 662:6
738:2 759:2	<b>lead</b> 652:13	701:17 726:20	760:1
781:18,19 796:4	717:17 767:4,5	<b>levers</b> 752:2	<b>listening</b> 798:16
<b>knowledgeable</b>	786:10 798:10	<b>licensed</b>	<b>litigation</b> 691:14
754:17	<b>leading</b> 695:19	780:10,16,19	<b>little</b> 602:5 609:3
<b>known</b> 675:7	707:10	781:4,8,11	696:9 738:19
720:16	<b>leaning</b> 742:14	<b>life</b> 636:5 639:3	747:13 754:1
<b>ksistrunk@opc-</b>	<b>learned</b> 783:15	<b>light</b> 710:8,9	755:1 757:8
<b>dc.gov</b> 591:5	<b>least</b> 626:9 638:12	786:15	763:11 783:15
	718:16 751:5	<b>likely</b> 600:1 680:2	787:3 801:2
	754:18 761:20	719:13	<b>live</b> 688:11
	784:1 789:1,19	<b>limit</b> 716:20	<b>lives</b> 688:13,14
	800:22	766:13	<b>living</b> 720:8
<b>L</b>	<b>leave</b> 696:11	<b>limitations</b> 653:20	<b>LLC</b> 589:6
<b>lacks</b> 765:8	701:13	<b>limited</b> 596:10	<b>LLP</b> 591:20 592:3
<b>language</b> 613:5	<b>ledge</b> 740:11 747:3	763:6 777:13	<b>load</b> 689:5
641:2 671:12	<b>legal</b> 694:16 698:7	<b>line</b> 598:2 603:21	<b>loans</b> 793:16,17,18
690:4,12,22	699:6 703:10	626:6 658:21	<b>lobbying</b> 715:14
701:21 769:4	713:10 788:3	672:16 673:1	<b>lobbyist</b> 788:10
772:7	<b>legally</b> 682:5	687:12 690:14	<b>located</b> 779:6
<b>lapels</b> 694:21	683:16 698:17	693:5 697:9,10	<b>locations</b> 626:19
<b>large</b> 609:1,4	703:15 729:4,10	725:18 744:21	<b>lock</b> 603:15
619:11 739:13	<b>legislation</b> 625:21	745:8,10,12	<b>long</b> 614:7 616:12
750:7	793:21	778:11 791:20	623:18 631:21
<b>larger</b> 710:16	<b>legislative</b> 711:13	<b>lines</b> 602:11 605:3	677:14
779:11 786:15	<b>legitimate</b> 707:22	634:21 637:19	<b>longer</b> 600:17
<b>Larry</b> 593:5		650:16	
596:15,18		658:11,18	
736:19,21 737:8			

Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015  
Page 27

632:13 669:6 786:10 <b>long-term</b> 759:7 765:1 <b>lose</b> 679:18 689:17 <b>loses</b> 687:13 719:22 <b>losing</b> 657:19 <b>loss</b> 613:4,14 628:10 <b>losses</b> 676:10 <b>lost</b> 614:4 703:11 <b>lot</b> 619:1,10 632:21 633:3 700:4 746:19 763:2 784:17 785:13 <b>lots</b> 692:5 <b>low</b> 697:15 752:19 785:18 <b>lower</b> 711:11 <b>lowest</b> 753:6 <b>low-income</b> 660:3  <hr/> <p style="text-align: center;">M</p> <hr/> <b>ma'am</b> 668:6 675:1 677:1,18 678:11 680:14 684:16 693:17 700:17 709:2,17 713:6 723:6 799:6 <b>Madam</b> 594:14,18 596:9 597:18 643:22 694:1 696:5 707:3 784:7 <b>magic</b> 711:4	<b>magnitude</b> 685:3 <b>mail</b> 799:3 <b>mainly</b> 603:13 <b>maintenance</b> 605:10 <b>major</b> 678:22 <b>majority</b> 773:12,18,21 <b>makers</b> 679:1 <b>makings</b> 770:18 <b>managed</b> 617:17 784:10 <b>management</b> 680:22 681:7 683:8,9 695:8 <b>manager</b> 595:13 <b>managerial</b> 656:2 <b>mandate</b> 690:14 755:9 756:10 775:1 <b>mandatory</b> 775:4 <b>manner</b> 661:10 716:10 <b>mark</b> 648:17 <b>marked</b> 596:5,6,7 610:13,14 633:17 648:15,18,19 649:5 668:8,9 736:2 795:6 <b>markers</b> 711:4 <b>market</b> 590:15,19 617:2 620:13 622:11,19 623:7 679:2,3,4,9,14 706:3,5,8 707:10,20 719:22 722:13	723:21 724:13 793:2 794:4 <b>market-changing</b> 794:1 <b>markets</b> 706:22 721:20 <b>Martin</b> 593:5,13 596:15,18 608:17 664:22 736:20,21 737:5,8 738:4 744:21 759:15 764:2,14 768:6 774:15 790:17 795:14 <b>Martin's</b> 596:19 597:4,5 795:5 <b>Maryland</b> 590:16 646:6 688:14 <b>matching</b> 786:6 <b>matter</b> 589:3,13 615:7 653:1 662:1 691:5,15,20 695:17 704:18 713:10,12 730:5 776:16 797:10 <b>matters</b> 594:9 678:20 799:5 <b>maximize</b> 635:5 708:7 721:2 <b>maximizer</b> 721:1 <b>may</b> 594:3,17 599:17 603:2 607:12 622:11 635:7 637:3 639:19 645:13 655:17 657:7 667:15 671:16 675:10 678:17 680:14 683:14	692:5 694:4 697:5 704:19 709:4 724:21 726:3 727:21 728:2 734:15 741:11 742:20 781:18 783:12,13 788:4,5 789:13 795:13 797:19 <b>maybe</b> 722:3 723:9 785:2,18 <b>mayor</b> 607:6 651:2 <b>McPherson</b> 591:20 <b>mean</b> 615:19 640:1 660:17 663:6 664:14 691:11 697:6 714:8 721:15 746:8 765:15,20 767:7 778:17 784:19 801:13 <b>meaning</b> 655:15 <b>meaningful</b> 601:4 783:5 <b>means</b> 657:13 664:6,7 680:21 681:1,7 715:13 721:1 787:12 801:22 <b>meant</b> 618:21 671:1 681:12 719:1 <b>measurable</b> 748:20 784:15 <b>measure</b> 655:12 657:2 680:8 746:4
--	---	---	--

Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015  
Page 28

<b>measured</b> 787:19	<b>mentioned</b> 625:1	670:7,10	659:10,12,13
<b>measures</b> 767:2	627:4 642:8	700:8,20 705:21	677:2 744:11
<b>mechanism</b> 622:4	643:9 663:9	709:12,22	769:19 782:9
<b>medium</b> 686:3	719:8 792:15	710:15	790:9
<b>meet</b> 598:21 788:2	799:12	711:10,20 712:7	<b>millions</b> 758:1
<b>meeting</b> 632:8	<b>mere</b> 679:16	<b>merger's</b> 766:10	<b>mind</b> 696:1 697:7
654:9	<b>merge</b> 726:14	<b>merging</b> 670:5	709:14 717:14
<b>megawatt</b> 602:2	<b>merger</b> 589:7	<b>merit</b> 685:15	773:9 792:17
619:16 622:10	598:16,17,18,20	<b>merits</b> 662:1,3,14	<b>minds</b> 745:4
625:19	599:2,13,15	<b>meshed</b> 671:19	<b>mine</b> 670:21
<b>megawatts</b> 608:14	600:4,11 603:7	<b>met</b> 662:7 780:1	<b>mingling</b> 664:15
610:20 611:1	651:12 652:1	<b>meter</b> 699:18	<b>minimization</b>
615:16	661:20 662:10	787:4	710:18
617:8,12,17,18,2	666:19 668:20	<b>methodology</b>	<b>minimize</b> 748:7
0 618:10 621:2	669:8,19	731:4,6	<b>minor</b> 728:21,22
627:10	670:12,15	<b>metric</b> 746:12	<b>minutes</b> 734:11
630:21,22	671:10 672:5	<b>metrics</b> 748:20	<b>missing</b> 661:1
631:2,4,7,11	673:2,12	<b>METROPOLITA</b>	690:4 770:9
750:12 754:6	685:18,20	N 591:11	<b>misspoke</b> 742:16
758:21 759:6	692:16 693:12	<b>microgrid</b>	<b>misunderstand</b>
764:22 766:16	696:6,15 699:20	626:11,14,18	680:15
777:11 778:12	700:11 701:4	627:22	<b>misunderstanding</b>
789:8	702:14,17	628:6,12,22	681:12
<b>Meier</b> 590:3	704:14 705:20	629:10 673:21	<b>misunderstood</b>
639:19	706:2 708:19,22	743:9 744:5	681:3 709:18
640:4,10,12	709:1,10	<b>microgrids</b>	<b>mitigate</b> 693:22
641:6 643:18	710:4,12 712:1	626:4,9 628:21	698:2
647:5,8,10	714:4,19 715:5	673:14,15	<b>mix</b> 748:10 751:15
648:21	720:9 726:5	723:17 743:2,19	753:18,20
668:4,6,11,14	727:10	<b>mid-'90s</b> 670:12	<b>mixed</b> 683:14
674:1 732:11	728:14,18	<b>MID-ATLANTIC</b>	<b>mixing</b> 651:11
733:5,17 734:20	730:18 731:12	592:9	686:22
736:8,15	739:6,19 740:17	<b>million</b> 601:20	<b>MOA</b>
796:9,15 799:6	741:8 745:6	602:7,13	635:3,6,10,15
<b>member</b> 639:7	749:22 752:9	604:3,8,12,20	<b>model</b> 704:13
<b>members</b> 660:9	753:1,11,14	605:6,11,15,17	<b>modern</b> 654:15
688:19	754:14 768:19	606:5,6,11 607:9	<b>modernizing</b>
<b>memorandum</b>	769:11,16 770:6	632:7 636:11	
603:9 644:2,7	781:10	637:2,20 650:4	
<b>memory</b> 728:2	<b>merger-related</b>		
	599:10		
	<b>mergers</b> 599:20		
	668:17,18 669:5		

Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015  
Page 29

673:6 <b>modification</b> 636:17 801:10 <b>moment</b> 612:3 650:18 672:19 678:9 707:13 743:7 <b>Monday</b> 796:21 <b>monetary</b> 690:11 727:4 <b>money</b> 637:8,9 662:21 679:6 695:12 758:7 767:3 782:10 783:12,17,20 784:9,10,17,21 785:9,12,14 794:7 <b>monopoly</b> 705:8,13 706:6 707:4 <b>monopoly's</b> 724:15 <b>month</b> 632:5,7 <b>months</b> 614:22 623:14 642:8 665:10 <b>morning</b> 594:4 645:14 646:2 647:9,12 674:12,14 713:19 <b>motions</b> 796:22 <b>motivated</b> 619:9 624:2 711:11,21 712:1,8,10 <b>motivation</b> 707:7 708:3,4 <b>motivations</b>	721:13 <b>motive</b> 705:2 706:18 <b>MOU</b> 603:15 606:15 636:7,9 637:15,16 <b>move</b> 624:2,6 632:2 633:6 644:16,21 645:1 736:9 763:4 793:1,22 <b>moved</b> 644:18 736:11 <b>moving</b> 673:17 784:9 <b>multiple</b> 688:1 697:14 772:19 773:4 <b>municipal</b> 605:21 <b>muster</b> 616:13 <b>myself</b> 641:8 690:18 698:14 <hr/> <p style="text-align: center;">N</p> <hr/> <b>N.W</b> 589:15 590:5,9 591:3,7,12,16,21 592:3,7,11,16,20 <b>NAACP</b> 660:1,5 677:20 678:2 <b>naive</b> 714:22 <b>Nancy</b> 592:2 594:20 <b>narrow</b> 727:11 <b>NATIONAL</b> 592:14 <b>natural</b> 690:3 766:5 767:18 <b>nature</b> 653:7	664:16,17 673:21 694:11 709:15 <b>NCLC</b> 785:7 <b>nearby</b> 688:10 <b>nearly</b> 694:15 750:11 751:7 <b>necessarily</b> 653:4 657:13 692:6 723:21 756:5,22 763:2 <b>necessary</b> 687:8 717:10 723:20 <b>negative</b> 683:14 693:11 742:14 <b>negatives</b> 718:12 <b>negotiated</b> 617:17 618:11,13 <b>negotiating</b> 607:8 614:13 625:2 <b>negotiation</b> 603:3 614:1 619:6 622:7 631:22 632:4 <b>negotiations</b> 609:11 617:10,22 625:4 631:17 <b>neighborhood-</b> <b>owned</b> 723:18 <b>neighborhoods</b> 660:3 <b>neither</b> 765:6 <b>net</b> 631:7 696:6 <b>neutral</b> 741:9 742:12,13 765:6 <b>nevertheless</b> 655:13	<b>newly</b> 721:19 <b>nobody</b> 664:4 682:18,19 698:15 716:19 729:20 <b>non</b> 777:6 <b>noncarbon-</b> <b>generating</b> 751:19 <b>noncompliance</b> 717:12 718:4 <b>non-D.C</b> 618:11 <b>nondiscriminatio</b> <b>n</b> 717:8 <b>nondiversified</b> 725:9 <b>none</b> 604:12 630:8 685:13 743:13 <b>nonjurisdictional</b> 693:8 <b>nonparties</b> 801:16,17 <b>nonregulated</b> 706:22 <b>nonsettling</b> 800:14 <b>nonunanimous</b> 599:3,8 610:22 615:15 648:6 664:8 671:20 673:22 693:19 695:2 712:18 801:19 <b>nonutility</b> 687:1,5 694:9 695:7 705:20 708:11 777:6 <b>nor</b> 658:1 765:6 <b>norm</b> 619:4
---	---	---	---



Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015  
Page 30

<b>normal</b> 786:21	<b>objectives</b>	<b>officials</b> 624:5	627:11
<b>Normally</b> 632:3	659:16,18,19	<b>offset</b> 784:21	<b>onto</b> 634:15
733:15	665:20 677:12	<b>oh</b> 722:21 762:6	752:14
<b>Northeast</b> 710:11	<b>obligate</b> 628:19	765:17 773:8	<b>OPC</b> 666:7,15
<b>Northwest</b> 737:9	<b>obligated</b> 635:14	779:7	<b>open</b> 617:2 648:3
<b>Nos</b> 649:4	636:6	<b>okay</b> 603:21 617:3	662:1 722:1
<b>Notary</b> 803:14	<b>obligation</b> 708:7	634:11 649:11	740:5 801:16
<b>note</b> 768:17 798:7	<b>obliged</b> 635:3	650:20 651:20	<b>opened</b> 673:7
<b>nothing</b> 594:10	<b>O'Brien</b> 728:16	659:6 662:20	732:11 761:19
595:3 628:18	<b>observations</b>	674:10 713:7	<b>open-ended</b> 765:2
645:20 660:6	688:3	714:1 728:19,20	778:13
671:21 685:17	<b>obtained</b> 653:14	732:7 734:2,19	<b>operate</b> 628:3
687:20 694:10	<b>obvious</b> 708:4	739:10,21	653:11 703:7,17
695:16 717:14	720:3	740:8,13,14,19	716:9 748:9
721:10	<b>obviously</b> 630:14	741:4,11,20	<b>operated</b> 688:2
729:3,5,6,9	<b>occasions</b> 698:20	742:5,18 744:20	<b>operates</b> 702:13
737:1 755:10,17	<b>occur</b> 702:16	745:15,22	<b>operating</b> 609:6
757:7 768:19	718:13 727:6,7	747:21 748:3,22	655:10 688:1
775:2 800:8	729:16 743:13	749:3,7,11,19	702:20
<b>notice</b> 589:14	778:20	750:3,17,21	<b>operation</b> 631:12
<b>notion</b> 677:8 682:9	<b>occurred</b> 670:11	752:1 753:9,22	652:20
723:20 730:8	700:21	755:1,3,12	<b>operational</b>
<b>November</b> 648:14	729:17,22	756:15 757:3	617:14 626:11
<b>NRC</b> 707:21	<b>occurs</b> 705:4	758:3,13,20	697:14
<b>NSA</b> 668:7	<b>October</b> 595:16	759:3,9 760:7	<b>operations</b> 600:1
736:9,13 798:1	<b>offer</b> 606:1 644:1	761:1 762:4,7,20	604:17 693:10
<b>nuclear</b> 693:9	748:11 766:16	763:9,22	750:2
697:16 707:19	<b>offered</b> 646:14	766:8,15	<b>operation's</b>
739:13,15	<b>offering</b> 718:2	767:12,22 769:2	778:15
749:15 751:21	<b>offers</b> 692:4	772:9 776:18,22	<b>opinion</b> 761:21
<b>numerals</b> 654:14	777:10	778:6 782:16	773:3,7
655:4	<b>office</b>	794:18	<b>opinions</b> 675:7
<hr/>	591:2,3,10,14	799:20,21 800:6	<b>opportunities</b>
<b>O</b>	601:19 791:2	802:5	653:5 657:17
<b>obeyed</b> 716:18	799:1	<b>OLIVIA</b> 592:15	721:2,4,6 761:14
<b>object</b> 734:21	<b>officer</b> 595:12	<b>omissions</b> 660:12	787:1,4
<b>objective</b> 655:12	<b>officially</b> 795:17	<b>ones</b> 630:18 663:9	<b>opportunity</b> 629:7
662:16		685:21 709:22	652:17 661:17
		<b>one-time</b> 785:22	662:11 705:16
		<b>ongoing</b> 606:22	
		<b>on-site</b> 626:12	

Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015  
Page 31

706:5,7 707:5 732:14 733:5,10 801:1 <b>oppose</b> 676:17 <b>opposed</b> 638:9 663:8 673:20 712:1 721:22 722:8 727:17 753:21 756:8,17 757:17 770:12 793:2 <b>opposes</b> 740:17 <b>option</b> 612:20 620:12 <b>order</b> 618:19 625:17 633:9 650:3 653:18 671:8 672:3 677:8 681:15 692:22 693:3 703:19 717:3 718:8 739:1 740:9,15,20,22 741:7 746:11 751:17 754:16 755:9 756:19 761:6 762:9,15 769:4 774:3 775:1 792:2 <b>ordered</b> 763:13 <b>orders</b> 650:12 666:21 669:11 685:20 770:18 771:9 <b>organization</b> 664:17 <b>organizational</b> 606:22 <b>organized</b> 647:15 <b>original</b> 598:7 600:11 693:1	741:1,17 742:8 788:13 <b>others</b> 599:20 632:13 661:4 670:9 691:7 697:5 <b>otherwise</b> 623:5 650:12 655:10 683:17 685:14 703:15 706:3 766:20 <b>ought</b> 714:18 <b>ourselves</b> 726:3 <b>outcome</b> 786:11 <b>outcomes</b> 770:5 <b>output</b> 739:14 749:13 <b>outset</b> 799:13 <b>outside</b> 700:7,19 704:13 745:2 792:5 <b>outstanding</b> 795:21 <b>overall</b> 753:9,13 <b>overcome</b> 623:20 <b>overrule</b> 682:5 <b>overruling</b> 683:17 <b>oversees</b> 785:12 <b>overstate</b> 660:19 <b>owein@nclc.org</b> 592:18 <b>owned</b> 722:7,9 725:10 <b>ownership</b> 628:20 680:3 693:7,9 722:6 <hr/> <div style="text-align: center;">P</div> <hr/>	<b>P.C</b> 591:6 <b>p.m</b> 735:4 802:15 <b>PacifiCorp</b> 710:9 <b>package</b> 636:17 769:20 792:8 <b>packages</b> 691:12 <b>page</b> 596:20 598:2 602:10,11 603:22 605:2,3,4 626:5 633:22 634:1,21 637:18 649:6,7 650:16 658:11,21 662:20 667:11,15,22 668:1,11 672:15,16,20,21 674:16 678:14 684:9 687:11,19 697:8 712:14,19 738:15 744:21 755:2 764:18 768:7 771:18 773:11 774:17,19 778:8,11 797:12,13,15,17 <b>pages</b> 589:7 646:9 650:16 680:6,7 712:15 737:12 768:14 796:2,10 797:19,21 798:3 <b>pagination</b> 667:14 668:1 <b>paid</b> 658:4 758:8 <b>panels</b> 621:22 793:3 <b>paper</b> 771:2 <b>papers</b> 629:18 630:5	<b>paragraph</b> 603:5 604:1 617:4,6 618:8,10,15 623:1 626:7 628:18 650:5 651:8 658:15 659:1 660:4 665:8 674:19 678:7,18 739:11 740:1,5 745:17 754:15 777:2 <b>paragraphs</b> 659:8 683:3 <b>parameters</b> 608:5 <b>paraphrase</b> 658:12 <b>parent</b> 702:19 704:16 773:8 <b>park</b> 718:17 <b>participate</b> 743:12 769:22 770:14 790:20 <b>participated</b> 685:19 <b>participating</b> 762:4 <b>particular</b> 599:7 618:7 653:6 661:14 677:4 686:21 693:10 738:18 752:5 762:10 <b>particularly</b> 609:9 685:21 <b>parties</b> 594:10,12 597:21 601:5 618:18 619:9 625:1 645:10 670:15,20 671:9 676:16 752:14 760:5 769:22
---	--	--	---

Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015  
Page 32

770:14,16,21 771:7,15 772:20 773:4 784:18 785:5,8,15 791:17 792:5 795:19 797:21 798:20,21,22 799:4 800:14,18 803:7,10 <b>partner</b> 609:22 677:9 680:1 692:10 772:4 <b>partnership</b> 756:14 <b>party</b> 614:15 619:21 625:3 640:21 643:5 654:11,13 665:4 666:8 760:21 771:7 <b>pass</b> 616:13 740:13 <b>passed</b> 733:6 <b>passing</b> 760:22 <b>past</b> 614:16 622:19 661:13 725:1 761:10 <b>path</b> 694:17,19 703:21,22 <b>PATTON</b> 592:3 <b>PAUL</b> 590:12 <b>paul.bonney@exeloncorp.com</b> 590:17 <b>pay</b> 614:4 619:14,17,19 621:1,15,16 622:22 706:13 724:11 725:1 742:1	<b>payback</b> 620:9 <b>paying</b> 620:17 622:13 641:15 758:5 <b>payment</b> 758:6 <b>PECO</b> 590:18 <b>pejorative</b> 657:2 663:5,20 <b>PEMBROKE</b> 591:6 <b>penalties</b> 643:3 653:19 <b>penalty</b> 757:18 <b>Pennsylvania</b> 590:20 592:11 <b>pens</b> 654:14 655:3 <b>people</b> 656:7,10 661:17 663:21 677:15,22 678:1,4 688:12,19 691:19 705:22 706:21 718:19 728:17 760:18 794:3 <b>PEOPLE'S</b> 591:2,3 <b>Pepco</b> 589:4 590:4,8 599:9 611:14 612:7,12,14 614:10 619:10 623:12 624:6,17 625:3,8,9 626:7 627:5 628:1,4,19 629:1 638:10 639:14 640:11 641:6 643:14 647:7,10 648:12 650:3 653:18	655:22 658:2 675:4,17,18,19 676:6,8,11 680:2 682:6 683:2,18 685:17 687:15 689:13 692:6 693:11 695:11,14,20 703:7 710:12 723:13 724:21 725:9,14 728:6,14 729:8,9,14 730:6,7 731:1 738:8,11 750:1 751:14 753:1 755:4,15,16 757:5,11,14,16 758:5,17,20 759:4,12 761:4 762:9,13,15,16 763:15 772:11,12,22 774:21 775:9 776:20 796:4 <b>Pepco-BG&amp;E</b> 728:3 <b>Pepco's</b> 638:16 750:1 762:4 <b>per</b> 773:16 <b>percent</b> 612:20,21 675:10 687:2,5 698:18 699:7 720:2,12 722:10 749:12 750:18 751:7,11 765:10 766:11 787:12 <b>performance</b> 655:21 656:8 657:12,15 748:20 <b>performances</b>	657:22 <b>performs</b> 657:16 <b>perhaps</b> 618:13 704:10 <b>period</b> 599:12 600:17 624:4 632:13 766:17 786:2 <b>permission</b> 694:10 <b>permit</b> 773:13 <b>permits</b> 698:5 <b>person</b> 639:1 679:17,18 720:18 723:10 <b>personally</b> 789:20 <b>persons</b> 798:22 801:17 <b>perspective</b> 640:18 694:15,16 <b>pertaining</b> 769:12 <b>pervade</b> 706:11 <b>Peter</b> 590:3 641:5 647:10 <b>peter.meier@pepcoholdings.com</b> 590:6 <b>petition</b> 665:2,9 <b>phase</b> 797:20 <b>PHI</b> 675:4 694:8,14,17,18 696:1 722:9 728:6 765:4 768:19 778:15,17,20 779:12,17 796:5 <b>Philadelphia</b> 590:20
--	---	--	--

Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015  
Page 33

<b>Phillips</b> 589:19 732:3,5,8 <b>PHI's</b> 708:4 <b>photo</b> 631:14 <b>phrase</b> 691:10 720:19 <b>phrasing</b> 776:7 <b>physical</b> 621:22 631:14 <b>picture</b> 696:13 <b>pilot</b> 626:18 <b>PJM</b> 675:4,18,20 678:20 751:8 753:10,13,16,17, 21 766:19 776:6 777:21 779:6,10,11 796:13,14 <b>Plains</b> 597:15 602:3 608:15,20 609:2 610:21 617:13,18 619:12 620:14 626:10 632:22 661:16,18 721:7 789:8 <b>plan</b> 615:15 623:20 <b>planned</b> 597:15 611:1 <b>planning</b> 792:15 <b>plans</b> 610:19 633:6,11 <b>plant</b> 628:5 751:22 <b>plants</b> 619:12 660:3 739:15 749:13,15 750:19 <b>plate</b> 750:8	<b>play</b> 679:4 <b>players</b> 679:9 <b>plea</b> 800:12 <b>pleading</b> 666:6 <b>please</b> 595:7 646:3 650:18 667:6,10,20 678:9 694:6 737:6 785:7 798:7 <b>pleased</b> 601:12,16 761:18 <b>plus</b> 685:8 <b>pocketbook</b> 662:2 <b>point</b> 597:10 663:12,14 679:22 685:10 689:15 696:21 713:9 720:4,13 730:7,15,16 741:4 750:4 754:12 755:14,18 784:6 799:8 <b>pointed</b> 680:20 691:21 713:13 717:22 <b>pointing</b> 687:6 <b>points</b> 695:22 720:5 723:9 729:2 752:17 <b>policies</b> 660:14,21 713:2 751:13 772:4 782:19 <b>policy</b> 659:16,18 661:8 662:13 670:16 674:21 677:13 678:22 691:5,20,22 692:16 694:15	698:7 715:9,13 724:18 763:3 788:17 789:3 <b>policymakers</b> 723:15 <b>political</b> 651:11 714:22 <b>politically</b> 650:14 <b>pony</b> 790:11 <b>pool</b> 793:16 <b>population</b> 688:19 <b>portfolio</b> 707:17 720:20,21 721:4 773:3 780:5 <b>portion</b> 616:4,6 630:3 750:8 <b>portions</b> 701:1 740:15 <b>pose</b> 639:21 <b>posing</b> 657:17 <b>position</b> 595:11 598:12 639:3 677:4 691:3,18 704:7 742:9 <b>positions</b> 675:17 676:6,8 746:2 <b>positive</b> 672:8,12 739:5,12 785:16 786:10 793:2 794:1 <b>positively</b> 783:2 <b>possibility</b> 654:17 695:9 710:16 <b>possible</b> 609:5 654:12 656:7 702:14 703:7 711:5 730:7 768:20	<b>possibly</b> 605:7 677:6 <b>post-hearing</b> 797:6 <b>pot</b> 785:9 <b>potential</b> 635:5 722:14 744:4 782:21,22 <b>potentially</b> 636:5 664:1 721:19 722:14 743:4 770:2 775:18 776:16 <b>POTOMAC</b> 589:5 <b>power</b> 589:5 601:10 619:12,19 620:7,10,15 621:1 622:4,22 627:11,12,15,22 628:5,6,10 631:6,11 632:19 641:1,11,15,18 710:8,9 739:13,15 749:14,17 750:9 751:21 752:7 753:5 765:10 766:11,19 767:5,6 778:1 780:7,11 781:4 788:19 <b>powerful</b> 789:18 <b>practical</b> 704:17 <b>practice</b> 655:6 706:21 801:14 <b>practices</b> 656:2 <b>preclude</b> 770:21 <b>predatory</b> 707:13 <b>preempt</b> 771:5
---	---	---	--

Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015  
Page 34

<b>preemptive</b> 698:17	711:13,14	614:12 709:21 716:22 760:17	<b>product</b> 710:22 801:3
<b>preferences</b> 692:3	<b>presumption</b> 641:13	<b>problem</b> 627:15 629:13 655:16 660:5,22 664:13 691:22 725:3 794:16	<b>production</b> 739:16 749:14 750:9 776:5
<b>preliminarily</b> 593:14 610:12,14 644:22 648:15	<b>pretty</b> 700:3 707:17	<b>procedural</b> 795:19 797:5	<b>professional</b> 670:22
<b>preliminary</b> 594:9	<b>prevent</b> 695:18 797:18	<b>procedures</b> 629:3	<b>professionals</b> 701:13
<b>premarked</b> 640:15 646:8 668:1,5,7,8,10 737:11	<b>previous</b> 610:19 623:12 629:16 641:22 742:17 786:20 797:15,17	<b>proceeding</b> 595:16 596:16 603:7 653:17 654:4 668:22 671:4,7 672:9,10 673:1,2,12,18,19 675:6 682:16 695:21 743:12 756:18 798:21,22 802:7,9,14	<b>profit</b> 679:19 720:2,22 721:3
<b>premise</b> 656:17 658:6 723:11,12 725:11	<b>previously</b> 601:7 641:20 666:14 797:4	<b>proceedings</b> 669:5 685:19 803:5,7,11	<b>profitability</b> 719:21
<b>premium</b> 658:3	<b>price</b> 708:5 712:2 717:1	<b>process</b> 610:2 615:22 631:20 661:11 687:8 713:15 715:2 753:3,5 760:15,20 777:9	<b>profound</b> 770:5
<b>preparation</b> 633:4	<b>pricing</b> 707:13	<b>processes</b> 643:11,14	<b>profoundly</b> 723:12,19 724:1
<b>preparatory</b> 632:21	<b>primarily</b> 763:3	<b>procurement</b> 597:8,10 616:9,16 628:3 764:21,22 778:12	<b>program</b> 602:15 604:6,18 605:7,22 607:4,7,15,17 627:14 631:1 634:20 635:1,16,19 636:8,14 637:22 638:1,18,19 639:11 644:10 783:14,18
<b>prepare</b> 632:14	<b>prime</b> 628:11	<b>procuring</b> 625:1 759:6	<b>programs</b> 604:5 748:11 773:17
<b>prepared</b> 636:1 646:15 649:20 737:17 745:22 747:22 759:21	<b>principal</b> 784:4 789:4	<b>produce</b> 662:9 695:12	<b>program's</b> 635:5
<b>presence</b> 654:20	<b>principally</b> 665:19 759:19		<b>project</b> 596:21,22 597:4,6,7,9 609:9 613:2 618:18 619:3,14 620:1,4,6 622:11,16 623:8 624:3 626:12,13 627:11,21 632:18,22 633:2,8 641:10 642:2,11 662:17
<b>present</b> 675:12	<b>principle</b> 656:14 717:7		
<b>presented</b> 671:20 786:9	<b>principles</b> 709:7 712:11 717:7		
<b>presents</b> 629:7	<b>prior</b> 611:14 612:7 638:4 666:4 685:11 707:14 729:8 792:18 798:3		
<b>preservation</b> 592:15 690:2 766:5 767:19	<b>priorities</b> 681:13		
<b>preserve</b> 652:19	<b>priority</b> 717:16		
<b>preserving</b> 650:22	<b>proactive</b> 763:1		
<b>President</b> 590:13	<b>probably</b> 609:1		
<b>President-Legal</b> 590:3			
<b>pressure</b> 695:12			



Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015  
Page 35

<p>778:20</p> <p><b>projects</b> 597:15,17 625:18 632:13 643:8 659:15 796:6</p> <p><b>project's</b> 641:1</p> <p><b>promises</b> 731:5</p> <p><b>promising</b> 729:21</p> <p><b>promote</b> 659:15,18 752:5,8,10 782:19</p> <p><b>promoting</b> 787:21</p> <p><b>proper</b> 673:14 702:10</p> <p><b>properly</b> 775:13,20</p> <p><b>proponents</b> 660:16 698:21</p> <p><b>proposal</b> 600:11 622:12 638:4 673:21 742:8 790:7</p> <p><b>proposals</b> 777:9</p> <p><b>propose</b> 800:18</p> <p><b>proposed</b> 589:7 629:22 681:22 684:12 693:12 741:8 745:6</p> <p><b>proposing</b> 661:20 684:19 757:22</p> <p><b>proposition</b> 789:12,14</p> <p><b>prospect</b> 742:19</p> <p><b>protect</b> 790:2</p> <p><b>protecting</b> 665:12</p> <p><b>protection</b> 665:5 715:22</p>	<p><b>prove</b> 729:21</p> <p><b>provide</b> 603:19 604:3 626:15 635:3,14 636:14 639:13 644:5,13 658:22 705:8 716:4 761:7 762:10,13 766:18</p> <p><b>provided</b> 617:6 622:1 626:19 782:10 796:5</p> <p><b>provider</b> 679:7</p> <p><b>providers</b> 758:6</p> <p><b>provides</b> 617:4 626:6 742:1</p> <p><b>providing</b> 639:12 654:8 655:11</p> <p><b>provision</b> 602:1 618:9 619:2 641:22 678:13 686:1 689:20 715:19,20 716:16 743:2 778:5</p> <p><b>provisions</b> 601:11 607:9 627:20 695:4,17 696:17</p> <p><b>proximity</b> 688:18 689:3</p> <p><b>prudence</b> 655:17,18 656:5 657:3 761:11</p> <p><b>prudent</b> 654:10 655:5,6,11 656:13,18 761:13,22</p> <p><b>prudently</b> 656:4 724:10 761:6 762:17</p>	<p><b>PSC</b> 593:14,15 633:17 644:22 645:1,4 771:17 774:3,5</p> <p><b>PSC's</b> 774:3</p> <p><b>public</b> 589:1,12,14 601:8 609:18 627:17 643:15 651:18 652:1 659:16 660:14 661:7 662:13 664:2 667:2 668:21 669:16 670:8 672:5 673:6 677:13 678:22 685:12,22 690:1 691:8 693:2 694:12 697:17 698:4 702:12 706:19 708:3,8 710:10 711:16,21 712:8 715:7,13 720:18 725:7 745:3 748:4,15 759:20 765:7 766:2,8 768:11 781:7 797:12,22 798:16 802:10 803:14</p> <p><b>pulling</b> 695:20</p> <p><b>purchase</b> 620:6,10 622:4 641:12 642:2 753:2 766:16 777:10 778:1</p> <p><b>purpose</b> 589:6 664:5 667:2 668:20 669:15,20 670:1,19 676:4 708:9 710:17,18</p>	<p>711:22 762:12 784:11</p> <p><b>purposes</b> 599:18 601:15 653:8</p> <p><b>pursuant</b> 589:13 610:21</p> <p><b>pursue</b> 628:22</p> <p><b>pursued</b> 660:15</p> <p><b>push</b> 678:4</p> <p><b>puts</b> 719:2</p> <p><b>putting</b> 608:19 618:5 728:4</p> <hr/> <p style="text-align: center;"><b>Q</b></p> <hr/> <p><b>Q-and-A</b> 775:3</p> <p><b>qualification</b> 692:5,7</p> <p><b>quality</b> 655:19 656:6 665:6 670:2 688:21 690:3 696:10 706:16 711:12,22 766:6 767:19 790:2</p> <p><b>quarrel</b> 660:18,19</p> <p><b>quarter</b> 699:18</p> <p><b>question</b> 600:6 608:16 610:13,18 612:12,16 613:2 614:2 615:9 618:7 625:15 630:11 633:19,21 634:1,9,14 636:20 640:16 654:1,6 655:1,9,16 657:9 658:20 663:16 664:12,13</p>
--	---	---	---

Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015  
Page 36

666:10 667:5,17 669:2,4 674:5 680:15 681:16,22 683:12 689:19 690:15,17 692:14 696:18 702:3,4,8,16 703:1,4,18 704:9 708:13,17 709:3,16 712:14 717:13 723:8 725:17 729:1 731:14 737:20 738:19,20 742:17 744:2 762:12 763:10 764:7,9 770:16 772:21 773:10 774:20 775:13,20 776:7,8 782:7 785:15 796:3,11 <b>questioned</b> 774:19 <b>questioning</b> 647:18 697:10 <b>questions</b> 595:18 611:21 630:16 634:3 639:18,22 640:8 646:18 649:8,12,17 674:2,7 678:22 692:19,21 699:13 714:2 732:4,6,16,21 733:12,14 734:7,17 735:7,9 738:13 747:7 750:4 761:2 764:1 774:11,16 795:21 796:19 <b>quick</b> 674:5 747:7 <b>quicker</b> 624:18	<b>quickly</b> 624:3 632:3 <b>quill</b> 654:13 655:3 <b>quite</b> 606:13 607:15 688:12 730:6 <b>quo</b> 720:8 <b>quotations</b> 740:22 <b>quote</b> 684:1 690:5 693:4 713:1,11,12 724:2,3 768:17 <b>quoted</b> 612:4 686:12 687:3 740:14 <b>quoting</b> 754:15 <hr/> <p style="text-align: center;">R</p> <hr/> <b>rail</b> 677:17 <b>raise</b> 625:22 675:21 676:21 704:5 741:6 799:5 <b>raised</b> 625:20 676:16 678:14,16 702:11 703:19 716:15 <b>ramping</b> 605:19 <b>RANDALL</b> 591:19 <b>randall.speck@ka</b> <b>yescholer.com</b> 591:22 <b>random</b> 711:2 <b>range</b> 620:2 631:13 763:6 <b>raring</b> 633:7 <b>rate</b> 599:12 626:4	629:15,22 630:7 743:4 760:14,21 763:7 <b>rate-making</b> 676:2 <b>ratepayer</b> 599:1 <b>ratepayers</b> 621:16 622:9,17 623:5 638:2,5,7,10,16, 17 639:9,14 662:17 693:12 724:11 739:19 742:20 744:3,13 786:11 790:1 <b>rates</b> 688:21 716:5 763:16 <b>rather</b> 615:20 624:22 671:2 705:15 797:14 <b>rating</b> 695:10 <b>ratio</b> 749:17 <b>rationality</b> 682:20 <b>reach</b> 640:19 702:2 <b>reached</b> 643:4 661:2,9,10 <b>readers</b> 681:4 <b>reading</b> 617:21 667:3 698:12 <b>ready</b> 624:2,6 633:7 636:1 <b>real</b> 690:14 <b>realities</b> 751:15 <b>really</b> 682:22 702:14 711:15 734:17 749:20 752:2,15 753:11 759:21 769:20 787:20 790:13	<b>reap</b> 598:16 <b>reason</b> 600:18 611:8 623:6 643:4 651:6 669:18 678:2,3 702:8 703:17 709:19 711:9 729:21 784:5 <b>reasonable</b> 624:20 743:17 <b>reasoning</b> 689:1,2 <b>reasons</b> 627:8 633:1 700:5 702:5 768:14 771:20 <b>REC</b> 593:2 <b>recall</b> 596:19 651:4 671:12 693:14 743:1 749:11 754:3,9,10,11,21 778:19 <b>receive</b> 598:14 624:9 626:21 745:19 801:4 <b>received</b> 625:20 666:22 774:2 <b>receives</b> 600:20 <b>receiving</b> 611:13 612:6 743:18 <b>recent</b> 619:13 802:10 <b>recess</b> 734:13 <b>recite</b> 740:22 <b>recognize</b> 677:18 691:18 705:10 756:6 <b>recollection</b> 637:1 728:1
---	--	---	--

Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015  
Page 37

<b>recommendation</b> 689:12	<b>reenacting</b> 699:10	711:4 717:18 725:13	627:16 653:19 654:3 727:5,15 729:13,20
<b>record</b> 594:5 595:8 610:6 631:3 634:18 639:20 644:5 645:2 646:3 735:3,4,15 736:3,10,12 737:6 746:18 754:2 761:10 781:7 788:8 795:7,10 798:13 801:14,16 803:4	<b>refer</b> 658:19 659:1 748:21 797:21 798:2 <b>reference</b> 764:20 779:16 <b>referenced</b> 650:5 <b>references</b> 648:5 <b>referred</b> 608:16 610:4 628:21 629:18 640:15 691:7 726:5 798:4 <b>referring</b> 605:12 606:9 642:18 664:19 669:3,13 672:15 674:19 755:6 763:8 772:15 798:2 <b>reflect</b> 726:17 <b>Reform</b> 672:11 <b>regard</b> 629:21 750:1 783:9 788:8 797:11 <b>regarding</b> 739:6,12 740:1 741:16 746:2 748:9 801:18 <b>region</b> 629:11 751:16 767:17 796:13 <b>regularly</b> 603:10 643:7 698:22 <b>regulated</b> 761:5 <b>regulation</b> 677:14 <b>regulations</b> 707:21 <b>regulator</b> 703:9 <b>regulators</b> 651:3	<b>regulatory</b> 590:14 602:8 666:21 669:11 675:16 689:16 711:12 717:4 <b>reinsurance</b> 701:15 <b>rejected</b> 682:2,11 <b>rejecting</b> 677:8 692:22 <b>rejection</b> 681:15 703:19 717:3 <b>rejoinder</b> 596:10 719:8 <b>relate</b> 739:7 741:21 768:16 772:10 <b>related</b> 603:12 642:10,12 659:14 710:2 739:1 741:1 753:11,14 755:13 769:5 772:12,13 803:6 <b>relates</b> 753:1 <b>relating</b> 673:5 678:20 768:11 <b>relationship</b> 684:7 <b>relative</b> 803:8 <b>release</b> 749:18 <b>relevant</b> 665:17 688:3,6 689:1,2 714:9,11 728:10 738:21 739:18 751:13 <b>reliability</b> 601:6,10 626:16	<b>relief</b> 800:22 <b>relying</b> 769:3,9,10 <b>remain</b> 669:17 697:11 699:17 745:4 801:16 <b>remaining</b> 670:1 <b>remember</b> 637:13 652:8 695:4 <b>remind</b> 795:18,22 <b>reminded</b> 719:9 <b>remoteness</b> 685:4 <b>remove</b> 699:2 <b>renewable</b> 592:9 617:5 659:11 661:8 712:16 740:2 744:9,11 752:7 754:17,20 757:12 763:17 765:10 766:11 773:3 777:11,14 780:5 781:22 788:19 793:11 794:3 <b>renewables</b> 751:20 752:4 754:2 763:5 788:1 <b>repeal</b> 694:11 697:17 698:16,22 710:1 <b>repeat</b> 712:19 <b>replace</b> 751:18 <b>reply</b> 797:7 798:15 800:3,19 801:11,15 <b>report</b> 747:19



Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015  
Page 38

779:8 <b>REPORTER</b> 803:1 <b>represent</b> 641:7 645:15 665:4 788:19 <b>representing</b> 647:11 738:12 <b>request</b> 610:12 611:16,17 648:13 735:7 736:1 799:15 <b>requests</b> 610:5,9 754:8 777:8 796:19 799:12,19 <b>require</b> 671:18 700:4 702:18 718:9 777:19 <b>required</b> 756:9 <b>requirement</b> 598:22 775:7 782:1 788:3 <b>requirements</b> 601:6 616:8,12 <b>requires</b> 683:15 689:20 690:20 <b>requiring</b> 677:3 <b>reservation</b> 783:8 <b>reside</b> 688:11 <b>resident</b> 608:12 635:21 <b>residents</b> 607:20 626:16 638:3 639:1,13 761:8 773:19 784:20 <b>resiliency</b> 629:6 <b>resource</b> 770:7	792:15 800:15 <b>resources</b> 690:3 692:4,5,11 766:5 767:18 790:3 <b>respect</b> 635:10 661:6 662:3,19 675:11,13 676:15 684:17 688:7 719:19 <b>respectfully</b> 727:21 736:1 795:5 <b>responding</b> 630:19 738:21 <b>response</b> 640:14,17 667:4 668:16 669:14 674:18,21 678:19,21 679:1,4,5,7,8,12, 17,19 720:5 738:19 739:9 742:17 744:2 774:6 <b>responses</b> 610:8 648:12 649:4 667:8 733:14 771:6 796:16,18 <b>responsibility</b> 651:1 714:13,14,15 724:10 780:3 785:19 <b>responsible</b> 665:20 742:20 780:4 <b>responsive</b> 681:8 703:2 <b>restate</b> 683:13 <b>restaurants</b>	696:10,12 <b>restrict</b> 699:4 <b>restricted</b> 685:12 <b>restriction</b> 687:7 694:14 696:1 <b>restrictions</b> 699:3 711:18 <b>restricts</b> 686:22 <b>result</b> 598:15 653:2 654:19 702:18 725:22 759:10 777:22 <b>resulted</b> 790:21 <b>results</b> 625:4 756:19 <b>retail</b> 705:10 780:10 <b>retaining</b> 703:10 <b>retains</b> 700:22 705:12 <b>rethought</b> 733:10 <b>retired</b> 750:11 <b>return</b> 725:6 773:15 785:3 <b>returns</b> 786:16 <b>REV</b> 672:10,11 673:1 <b>revealed</b> 600:17 <b>revenues</b> 719:16 722:11 <b>review</b> 632:10 668:19 684:13,22 685:5 686:17 687:8 689:22 699:22 746:1 747:21 759:22 799:17 <b>reviewed</b>	596:14,17 669:11 685:20 746:20 <b>reviewing</b> 686:8 <b>RFP</b> 778:1 <b>Rick</b> 798:10 <b>rid</b> 721:16 <b>right-hand</b> 668:12 <b>rights</b> 678:1 <b>ring</b> 695:3,16,18,21 696:2,5,16 697:1,2,3 <b>rise</b> 594:2 734:12,14 802:13 <b>risk</b> 601:9 657:19 697:11 722:5 723:14 725:10,14 <b>risks</b> 696:22 697:1,3,14,15,16 698:3 <b>risky</b> 707:17 <b>rivalry</b> 688:8 <b>rivals</b> 687:21 <b>robust</b> 605:6 <b>role</b> 772:2 <b>roles</b> 680:8 <b>rollout</b> 634:22 <b>Roman</b> 654:14 655:4 <b>room</b> 682:22 691:19 716:20 718:19 760:18 768:21 792:2 <b>root</b> 790:13
---	--	---	---

Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015  
Page 39

<b>Rories</b> 592:7 645:14,15 646:1 647:2,20 674:4,9 733:22 734:3 735:1,11,16,22 736:7,18 737:4 738:4 794:22 795:4,9 <b>roughly</b> 670:11 686:11,13 687:2 783:16 <b>round</b> 790:20 <b>RPS</b> 757:16 772:5 780:2 781:15 782:1 788:3 <b>rule</b> 687:2 712:11,12 717:8,9 770:17 775:18 <b>rules</b> 629:2 680:11,12 681:19 770:17,22 771:8 775:16 <b>run</b> 627:13 630:22 631:5 661:12 701:10,12 <b>running</b> 628:4 661:12 684:6 <b>Russo</b> 589:21 803:3 <hr/> S <hr/> <b>S23-1</b> 590:19 <b>safety</b> 690:1 <b>SAIDI</b> 658:8 <b>SAIFI</b> 658:9 <b>satisfactory</b> 654:9 655:11	<b>satisfied</b> 708:7 <b>satisfying</b> 781:22 <b>save</b> 787:14 <b>savings</b> 598:17,20 599:3,10,11,15 600:12,16,21 706:15 725:21 726:13 731:7 <b>saw</b> 789:5 <b>scale</b> 604:17 710:17 711:8 768:18 <b>scattered</b> 661:9 <b>schedule</b> 629:22 797:5 <b>SCHOLER</b> 591:20 <b>School</b> 793:4 <b>scope</b> 768:18 <b>Scott</b> 593:4 645:17,18 646:5 649:9 <b>scratch</b> 633:3 <b>screen</b> 711:19 <b>searching</b> 658:3 <b>seat</b> 785:9 <b>seated</b> 594:3 734:15 <b>second</b> 648:16 667:19 722:18 723:8 725:18 736:19 771:20 <b>secondly</b> 713:13 720:15 776:2 <b>secret</b> 684:8 <b>Secretary</b> 594:2 734:12,14 799:2	802:13 <b>section</b> 598:6 744:5 768:8,9 <b>sector</b> 700:20 <b>security</b> 653:12 <b>seeing</b> 722:13 790:15 <b>seek</b> 626:17 636:2 637:16 721:2,8 <b>seeking</b> 600:3 <b>seeks</b> 636:3 <b>seem</b> 770:13 <b>seems</b> 662:12 701:9,17 713:20 <b>seen</b> 633:10 666:22 669:12 790:4 <b>select</b> 683:7 <b>selected</b> 626:18,22 739:8 <b>selecting</b> 658:2 <b>self-interest</b> 717:19 <b>selfish</b> 664:3 <b>self-powered</b> 631:7 <b>self-supply</b> 723:16 <b>sell</b> 780:11 781:4,12,13 789:9 <b>selling</b> 785:3 <b>sells</b> 679:4 780:7 <b>send</b> 661:22 684:22 <b>sending</b> 661:16 <b>Senior</b> 590:13	<b>sense</b> 603:19 606:17 608:6 618:17 658:5 664:5 666:3 689:8 704:2 720:4 <b>sent</b> 715:8 798:10 <b>sentence</b> 599:9 628:17 638:6 669:3,6,20,22 755:13 757:5 777:4 <b>sentiment</b> 748:14 <b>separate</b> 600:21 601:1 604:7 636:8 637:16 671:22 728:8 772:11,22 <b>separately</b> 603:5 <b>series</b> 711:1 721:4 <b>serious</b> 782:18 <b>servant</b> 720:18 <b>serve</b> 667:2 668:20 712:8 <b>served</b> 665:5 <b>service</b> 589:1,14 601:8 628:4 643:16 654:9,11 655:12,13,19 656:6 673:7 685:22 689:5 705:9,10 710:11 761:7 762:10,18 <b>serviced</b> 670:4 <b>services</b> 590:3 604:17 606:2 619:10 628:2 631:18 639:5 716:4 724:22 762:14 777:12
---	---	--	--

Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015  
Page 40

<b>serving</b> 669:15	770:14,16	<b>shrift</b> 786:18	<b>skip</b> 777:5
<b>setting</b> 609:8 636:13	771:15 784:18 785:5,14 800:18	<b>shrink</b> 724:22	<b>slightly</b> 655:1 657:1
<b>settle</b> 760:6	<b>SEU</b> 762:14 794:9	<b>sign</b> 752:14	<b>small</b> 717:5 785:2
<b>settlement</b> 593:10 599:3,8 600:18 601:11 604:2 610:22 615:15 617:4 626:6,19 627:2 637:8 647:22 648:6,7 650:5 653:20 658:15 659:20,21 660:4,6,15,20 663:7 664:8,18,20 671:2,20 673:22 674:19 678:8 683:4 687:19 693:19 695:2 696:8,15 707:12 712:18 717:15 729:3,10 741:2,14,15,22 742:7,9,22 752:14 755:7 756:17 758:10 759:11,16,18 760:1 763:15,19 767:2 768:11 770:18,20 783:9 784:16 786:16 787:16 789:6 790:14,20,21 791:3,13,20 792:3,7 801:19	<b>seven</b> 651:21 671:19 672:3 <b>several</b> 689:21 <b>Sewer</b> 594:20 <b>sewers</b> 636:12 <b>shade</b> 609:3 <b>shapes</b> 689:5 <b>share</b> 677:15,22 719:22 <b>shareholder</b> 681:9 682:9 703:16 725:4 758:9 <b>shareholders</b> 708:6 725:2 <b>shares</b> 708:8 <b>sheet</b> 791:3 <b>she's</b> 719:19 720:17 723:9 <b>shield</b> 697:15 <b>shopping</b> 770:12 <b>short</b> 599:21 618:18 619:6 633:9 686:2 718:13 734:13 786:18 794:5 <b>shortage</b> 781:21 782:4,5 <b>shortly</b> 632:12 664:22 <b>short-term</b> 786:12 <b>shot</b> 707:9 722:2 724:17 <b>showed</b> 791:3	<b>signal</b> 661:16,21 <b>significant</b> 600:2 602:1 627:10 684:15 700:22 <b>significantly</b> 628:8 <b>signs</b> 694:18 <b>Silver</b> 646:6 <b>similar</b> 641:19,21 <b>similarity</b> 689:4 <b>simple</b> 688:12 <b>simply</b> 615:7 620:13 672:13 687:6 729:5,7 <b>single</b> 657:13 658:2 660:18 684:5 728:5 <b>sir</b> 649:18 651:19 652:4 654:20 659:5,19 662:19 663:5,16,21 666:12 667:17 671:15 672:7,19 733:21 735:8 <b>SISTRUNK</b> 591:2 <b>sit</b> 704:4 <b>site</b> 609:2 628:5,7 632:14 633:5 640:22 <b>sites</b> 609:4 <b>situation</b> 726:15 <b>situations</b> 689:15 <b>size</b> 625:19 631:14 657:2 662:2 <b>skeptical</b> 598:11	<b>smart</b> 761:14 787:2 <b>Smith</b> 696:7 730:12,14 <b>society</b> 664:5 749:8 <b>solar</b> 596:21 602:2 608:15,19 609:21 610:20 611:1 612:12 614:8 615:21 617:8,18 620:14 621:2 626:12 627:12,21 629:9 631:19 632:18 640:21 661:8,18 662:4,12 723:17 758:22 767:5 770:2 782:2,4 788:12 793:3 794:10 <b>sold</b> 750:11 <b>sole</b> 616:11,14,15,21 618:3 <b>solicit</b> 777:10 <b>solid</b> 656:1 <b>solve</b> 660:5 <b>somebody</b> 656:14 677:10,12 698:12 713:20 730:5 <b>somehow</b> 681:12 <b>someone</b> 639:5

Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015  
Page 41

677:4 <b>somewhere</b> 696:18 779:17 <b>sorry</b> 620:16 663:15 667:8 669:1 671:15 709:17 719:1 732:2,19 765:17 779:1 <b>sort</b> 603:10 615:7 625:3 758:5 789:3 <b>sorts</b> 718:11 770:10 <b>SOS</b> 705:9 753:3 758:6 <b>sought</b> 622:19 666:7,14 694:3 740:18 <b>sound</b> 613:18 <b>sounds</b> 662:7 <b>source</b> 606:17 616:11,14,15,21 618:3 <b>sources</b> 632:19 719:16 776:5 <b>space</b> 721:20 725:15 794:10 <b>Spanish-speaking</b> 660:8 <b>speak</b> 635:6 678:13 759:21 760:4 <b>speaking</b> 598:6 605:5 650:8 686:11,13 687:2 <b>speaks</b> 789:2 <b>special</b> 589:6 632:8	663:3,4,12,18,19 ,22 664:10 <b>specialize</b> 701:10 <b>specific</b> 600:20 604:11,19 637:3 661:4 662:22 663:2,7,13,19 664:6,7,10 665:12 671:12 687:8 690:4 697:16 718:1 765:8 779:22 784:15 792:17 <b>specifically</b> 596:22 601:17 614:14 635:17 686:16 689:19 751:13 753:11 754:11 760:16 794:13 <b>specifications</b> 618:20 <b>specificity</b> 702:4 746:11 783:16 <b>specifics</b> 663:8 664:19 <b>specified</b> 665:6 785:9 <b>specify</b> 746:7 <b>Speck</b> 591:19 732:1,10,15 733:1,11 734:16 800:10,11,12 801:7 802:1,4 <b>Speck's</b> 734:1 <b>speculative</b> 598:21 600:12,16 731:2 767:1 783:10 784:5 <b>speech</b> 773:19 <b>speed</b> 716:20	<b>spelled</b> 623:1 <b>spend</b> 636:10 746:18 801:1 <b>spiral</b> 724:3 <b>spiriting</b> 602:16 <b>spoke</b> 649:3 <b>spoken</b> 624:5 700:8 769:16 <b>sponsor</b> 611:17 649:13 <b>sponsored</b> 634:5,6 <b>spring</b> 614:12,16 631:18 646:6 <b>SQUIRE</b> 592:3 <b>SRECs</b> 625:19 <b>SSI</b> 609:22 612:12 613:13 625:2 <b>St</b> 646:5 <b>stability</b> 783:5 <b>staff</b> 610:5,9,11 684:22 700:4 <b>stake</b> 721:17 <b>stakeholders</b> 786:17 <b>stand</b> 594:22 <b>standalone</b> 618:14 <b>standard</b> 609:21 614:8 615:12,21 620:6 654:10 667:1 668:19,22 727:10 <b>standards</b> 653:19 654:3 658:8 703:8 718:7 773:3 780:5 <b>standing</b> 726:13 <b>stands</b> 672:11	679:18 <b>Stark</b> 590:7 738:7,9,10 763:22 774:18 775:4 <b>start</b> 594:8 597:22 608:19 632:12 659:4 695:11 796:20 <b>starting</b> 598:2 626:6 633:3 697:9 698:14 778:10 <b>starts</b> 605:3 632:1 <b>state</b> 595:7 597:14 646:3 650:21 681:17 685:22 688:2,22 737:7 745:1 755:4 764:20 766:9 769:5 773:11 <b>stated</b> 641:14 784:11 <b>statement</b> 679:16 680:16 748:16 757:1 772:15 788:17 <b>statements</b> 672:8 738:22 739:6 746:20 748:5 788:8,22 <b>states</b> 640:17 686:20 687:21,22 698:17 699:1,4 766:2 796:14 <b>status</b> 720:8 <b>statute</b> 686:22 690:20 691:5 769:4
---	---	---	---

Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015  
Page 42

<b>statutory</b> 665:15 666:2 690:12 691:16 699:4 713:12 715:10 724:19	<b>subjected</b> 657:20 <b>subjecting</b> 657:17 <b>submit</b> 798:17 <b>submitted</b> 796:19 <b>subsequently</b> 771:17 <b>subsidiaries</b> 684:3,4 728:8 777:7 780:18,19 781:3 789:22 <b>subsidiary</b> 624:16 684:7 754:19 765:3 778:15 781:11 <b>subsidies</b> 777:6 <b>substantially</b> 629:12 <b>substantive</b> 752:11,15 786:9,15 787:6,17 789:7 790:12 791:15 792:7,11,21,22 793:19 <b>substitute</b> 700:10 <b>subtle</b> 613:19 676:8 <b>subtlety</b> 680:22 <b>success</b> 793:20 <b>suddenly</b> 654:2 <b>sufficient</b> 686:4 689:4 748:18 <b>suggest</b> 724:14 <b>suggested</b> 758:10 <b>suggests</b> 656:22 <b>suitable</b> 643:4 <b>Suite</b> 590:15 591:7,16	592:4,16 <b>summary</b> 713:4 <b>summer</b> 625:21 <b>Sun</b> 591:19 735:6 <b>sunk</b> 724:8 <b>Sun's</b> 788:15 <b>supermarkets</b> 706:2 <b>supervised</b> 753:4 <b>supervision</b> 646:16 649:21 737:18 <b>supplemental</b> 646:8 650:17 666:4 670:16 691:22 705:1 718:1 737:11 744:22 747:9,22 <b>supplier</b> 753:6 780:10,16 <b>suppliers</b> 716:5 780:20 <b>supply</b> 716:10 <b>support</b> 602:14 603:14 604:4,13,14 605:6 638:1 659:12,13 670:1 739:15 740:2 749:14 759:5 763:17 765:9 769:21 778:4 785:21 786:2 793:20 <b>supported</b> 786:5 <b>supporting</b> 754:2 <b>supportive</b> 604:19 632:19 <b>supports</b> 748:8	750:8 <b>Supreme</b> 684:2 <b>sure</b> 600:19 607:7 642:17 653:22 656:22 663:17 671:11,12 672:12 686:19 690:18 698:18 699:6 718:19 726:17 727:12 734:1 746:15 761:1 790:10 791:19 <b>surprise</b> 724:8 <b>surprising</b> 773:12 <b>suspect</b> 600:16 753:8 <b>sustain</b> 746:14 <b>sustainability</b> 659:15 746:2,3,8,13 747:18 748:12,17 749:2,5,8 763:19 772:5 <b>sustainable</b> 781:20 794:8 796:6 <b>sustaining</b> 748:19 <b>sworn</b> 595:2 645:19 736:22 <b>synergies</b> 600:2 653:14 <b>synergy</b> 598:17,20 599:3,15 600:12,21 <b>system</b> 627:18 631:6 716:8,9 724:9 770:8 780:8
--	--	---	--



Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015  
Page 43

<b>systematic</b> 752:10 <b>systematically</b> 760:3 <b>Systems</b> 609:20 <hr/> T <hr/> <b>tab</b> 648:7,16,22 747:8 <b>table</b> 608:4 648:1 783:11 785:9 <b>tag</b> 631:14 <b>takeover</b> 728:13 <b>taking</b> 594:11 639:5 707:19 <b>talk</b> 638:15 662:21 680:7,11 687:14 688:7 705:19 706:1 707:13 738:18 740:19 748:18 749:1 754:1 755:1,13 757:4 <b>talked</b> 607:14 634:12,19 649:2 707:14 757:8 <b>talking</b> 614:21 631:16 637:7,20 638:6 647:16,17 660:12 663:22 674:18 684:11 688:9 712:16 722:5 751:12 753:17,18,20 778:10 779:1 791:16 792:14 <b>tangential</b> 784:2 <b>tangible</b> 598:15,22 600:20 601:1,5 <b>target</b> 706:13	<b>tariff</b> 793:14 <b>tax</b> 612:20 613:1,4,15 614:4 624:9 676:18 <b>taxpaying</b> 639:7 <b>tchryssikos@was</b> <b>hgas.com</b> 592:22 <b>teach</b> 656:15 <b>team</b> 633:4 <b>technical</b> 618:19 <b>technology</b> 654:15 711:8 723:21 <b>telecom</b> 705:21 <b>telecommunicatio</b> <b>ns</b> 686:9 <b>TELEMAC</b> 592:19 <b>ten</b> 698:15 734:10 <b>tends</b> 706:17 <b>ten-minute</b> 734:6 <b>ten-year</b> 766:17 <b>term</b> 599:21 657:2 663:18 727:11 746:9,10 786:10 793:7 <b>terms</b> 619:7 629:15 692:12 695:14 714:3 716:5 726:12 763:15 775:5 791:3 793:14 <b>territories</b> 689:5 <b>territory</b> 670:4 <b>testified</b> 595:4 645:21 698:11 737:2	<b>testify</b> 662:15 <b>testifying</b> 698:21 <b>testimony</b> 593:9,12,13 595:15 596:5,11,15,17,2 0 597:4 598:2 602:10 605:2 608:18 626:5 627:4 634:21 637:19 646:8,12,15,21 647:19 650:17 654:22 658:12,13 659:3 666:5,6,15 670:14,16 671:1 672:1,14 674:17 680:6 682:2 684:10 685:11 686:6,12 687:3,12 691:2,4,22 697:9 698:12,19 699:15 700:9 702:11 705:1 712:15 718:1 719:8 725:21 736:2 737:11,15,17 738:1,15 739:5 741:5,6 744:22 746:1 747:2,10,16 748:1 749:21 751:1 755:2 760:2 764:18,19 768:7 771:19 774:2,18 778:8,9 782:13 786:14 788:14 792:18 795:6 798:18 <b>thank</b> 594:18 596:9,12 597:20	604:22 608:13 612:4 626:2 629:14 630:15 639:18 640:10 643:18,19,22 644:13 645:3,7,8 647:4,5,14 650:1,15 651:20 654:7 668:10 671:6 674:1 688:5 690:16 692:17,18,20 697:8 712:13 715:17 719:3,5,18 723:6 727:20 731:17,18,19,21 732:8,9 735:13,19,20,21 736:7,15 738:6,7 742:5 743:6,20 744:20 745:15 747:12 750:21 752:16 758:3,13 759:14 760:13 761:1 763:22 764:2 765:21 768:1,2 774:9,11,13,14 782:6 790:16 794:18,20 795:2,14 799:22 800:7 802:1,6 <b>Thanks</b> 753:22 <b>that's</b> 614:13 615:18 618:6 630:14 635:6,12 636:12 644:13,15 651:19 654:22 655:22 659:20 660:11,17 662:4 664:1 671:11 672:1 673:13,19
---	--	---	---

Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015  
Page 44

674:10 678:12 684:6 686:4 691:18 692:7 700:1 706:20 707:6 708:2,8,9 711:16 712:1 716:11 717:7 720:3 722:20 727:12 730:2,3 731:16 737:11 739:3,17 740:7,9 741:3,10 744:14,19 745:8 746:15,17 747:3 753:21 754:16 755:11 758:12 759:20 761:1 762:19 766:7 767:3,22 772:17 773:5 779:13 780:13 781:2,7,16 783:5 784:17 785:3,4,14 786:3 792:3 797:7 798:16 801:8 <b>themselves</b> 656:19 664:3,22 <b>theory</b> 706:20 <b>thereafter</b> 632:12 <b>thereby</b> 654:19 <b>therefore</b> 658:5 695:13 713:3 722:12 726:11 <b>there's</b> 604:12 628:13 654:16 684:8 703:18 708:18 711:5 713:3 714:4 716:19 717:12,14 718:15 720:7 727:8 743:1	744:4 767:3,10 778:3 785:13 788:15 800:8 <b>therewith</b> 777:13 <b>they'll</b> 725:3 <b>they're</b> 619:9 638:11 661:10 732:16 784:12 788:1 789:9 <b>they've</b> 789:9 <b>third</b> 625:3 631:8 640:21 648:11 677:17 <b>thirdly</b> 713:17 <b>thoroughly</b> 609:12 <b>thoughts</b> 748:16 <b>thousands</b> 754:5 <b>threat</b> 724:2 788:20 <b>three-year</b> 599:12,14 <b>thrust</b> 754:12 789:3 <b>ticket</b> 717:1 <b>Tier</b> 781:21 782:5 <b>Tierney</b> 709:19 712:6 719:9 720:10,16 725:8 727:1 <b>Tierney's</b> 709:6 <b>tightening</b> 696:2 <b>title</b> 700:13 <b>today</b> 595:20 611:21 646:19 647:11 649:17 655:4,5 661:15 685:7,8,16 703:22 710:22	737:14,21 738:12 759:21 760:2 783:16 797:7,9 <b>Toledo</b> 710:6 <b>Tom</b> 684:20 <b>tool</b> 689:16 <b>top</b> 637:1 649:6 726:20 774:4 793:4 <b>topic</b> 607:18 680:6 727:19 <b>topics</b> 633:21 <b>total</b> 604:9,12 627:10 687:6 704:15 739:14 749:13 777:10 <b>toto</b> 699:11 <b>traceable</b> 598:22 729:4 <b>track</b> 599:9 <b>tracked</b> 600:13 <b>tracking</b> 599:15 730:14,16 731:7 <b>trading</b> 783:18 <b>traditional</b> 719:14 722:9 723:4 <b>train</b> 639:2 <b>trained</b> 635:21 <b>training</b> 604:6 606:19 607:7,11 636:7 644:10 796:5 <b>transaction</b> 589:7 624:13 669:19 670:2 685:15 686:9 690:8 696:20 697:5	720:14 726:4,15,17 727:16,17 728:4,7 <b>transactions</b> 666:19 669:9 696:14 766:4 <b>transcript</b> 796:1,2,10 797:1,11,12,15,2 2 798:1,3,5 799:18 803:4 <b>transcripts</b> 797:17 <b>translated</b> 783:13 <b>translators</b> 660:7 <b>transmission</b> 619:20 <b>treat</b> 786:22 <b>tremendous</b> 642:16 <b>tried</b> 747:13 771:3 783:4 <b>true</b> 595:22 619:5 646:21 710:17 711:21 738:1 739:4 742:4 753:8 756:22 758:20 762:19 763:21 771:10 793:22 801:8 803:4 <b>truly</b> 711:11 726:8 730:21 <b>trust</b> 592:14 740:6 794:8 <b>TRUST- ENTERPRISE</b> 592:15 <b>truth</b> 595:2,3 645:19,20
---	---	---	---

Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015  
Page 45

<p>736:22 737:1 try 615:4 655:2 705:22 723:4 726:16 731:2 trying 614:9 746:14 793:10 turn 645:12 648:22 649:5 667:7 680:5 745:1 764:18 774:17 turning 684:10 two-for 787:15 type 653:8 658:13,16 660:11 670:13 685:3 697:20 703:10 722:12 727:16 791:15 types 653:15 680:8 681:5 685:1 711:20 714:18 727:2 typical 703:16</p> <hr/> <p style="text-align: center;">U</p> <hr/> <p>U.S 636:18 684:1 Uh-huh 598:4 746:6 761:17 764:10 ultimate 603:3 627:13 640:22 679:6 ultimately 784:19 785:15 786:3 788:5 umpteen 769:19 uncertain 623:21 uncertainty</p>	<p>714:22 717:3,17 unclear 613:6 unconflicted 680:3 underlining 629:19 underlying 629:20 understand 603:2 622:6 643:13 646:13 653:22 672:1 683:6,13 703:1,4 709:4 746:12 775:12,19 802:1 understanding 602:12,18 603:1 604:10 621:9 641:14 644:2 743:8 757:11 understood 659:9 717:13 undertake 637:15 642:16 undertaken 609:8 unknown 618:20 unlawful 658:17,20 unless 683:20 697:20 718:6 743:14 751:21 775:14 785:1 unlimited 697:19 unrelated 652:19 692:12 unrestricted 694:11 unseemly 658:17,19</p>	<p>unspecific 718:3 unsurprisingly 682:11 unusual 615:3 703:14 786:22 upon 753:7 upset 719:22 upshot 791:9 user 785:2 users 662:18 681:4 usually 678:2 Utah 710:8 utilities 689:14 710:12 715:4 724:8 728:17 754:4 utility 651:2 654:8,13 655:6,9,13 666:19 669:8 676:5 685:12 687:1 688:15 689:22 694:12 697:17 698:4 700:8,20 701:16 702:12,13 703:7,16,20 704:13 705:5 708:10,19,20 709:12 710:22 724:1,18 725:7 753:2 761:5,7,13 762:1 763:1,12 772:2,16 773:14 785:4</p> <hr/> <p style="text-align: center;">V</p> <hr/> <p>validated 665:14 valuable 689:6 value 662:17</p>	<p>663:1 708:8 741:12 varies 632:2 variety 719:16 various 597:13 604:4 679:9 760:4 769:21 venture 684:21 ventures 685:2 694:12 versus 712:9 731:8 755:20 775:4,6 viable 639:7 789:11 Vice 590:3,13 Vietnamese- speaking 660:8 view 622:20 652:16 695:11 715:9 740:17 views 698:16 vision 672:12 676:4 677:15 678:1 Volume 589:6 747:1 voluntarily 755:8,16,20 756:1,3,8,16 774:22 775:9,14 voluntary 775:4,16,21</p> <hr/> <p style="text-align: center;">W</p> <hr/> <p>wake 654:2 walked 619:1 752:19 wall 788:5</p>
---	--	--	--



Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015  
Page 46

<b>warm</b> 748:16	793:8	788:12 790:15	792:19
<b>Warren</b> 701:8,14	<b>ways</b> 676:8	793:10	<b>White</b> 592:2
704:11	679:10,13	<b>westark@pepcoh</b>	594:12,14,18,21
<b>Washington</b>	702:17 704:14	<b>oldings.com</b>	595:6 596:4,9,13
589:9,16	708:22 723:15	590:11	597:18 640:7
590:5,10	<b>we'd</b> 628:6 736:18	<b>we've</b> 607:14	643:19,21,22
591:4,8,11,12,17	<b>Wednesday</b> 627:4	608:21 632:20	644:8,11,15
,21	797:3	636:9 708:6	<b>whole</b> 595:3
592:4,8,12,17,21	<b>Wednesday's</b>	783:15 793:12	606:20 638:22
609:21 639:14	796:1,10	<b>WG</b> 631:18	639:11,16
737:9	<b>week</b> 797:7 800:16	<b>WGEL</b> 612:11	645:20 737:1
<b>wasn't</b> 651:15	<b>weekend</b> 801:6	625:2	<b>wholly</b> 661:7
749:20	<b>weeks</b> 797:9	<b>WGL</b> 592:19	<b>whom</b> 595:10
<b>watch</b> 699:19	<b>weight</b> 741:12	609:19 613:13	688:13,14 720:1
<b>watching</b> 685:16	745:19	<b>WGLES</b> 614:8	<b>Whoops</b> 718:22
<b>water</b> 592:2	<b>WEIN</b> 592:15	615:21	<b>whose</b> 669:11
594:20 595:5,13	<b>WEINBERG</b>	<b>whatever</b> 622:1	689:14 717:16
596:5,7,21	591:6	685:8 786:6	719:20 721:13
598:11,14,19	<b>welcome</b> 734:1	798:5	780:3
599:19 600:19	764:3 802:3	<b>whereas</b> 703:22	<b>WILLIE</b> 589:19
601:4,9,14,17	<b>welfare</b> 627:17	729:8	<b>willing</b> 613:17
602:15 603:14	629:11	<b>where's</b> 787:15	614:6 633:13
604:6,12,15	<b>we'll</b> 731:3 732:17	<b>Whereupon</b>	677:9 680:1
605:8,22 606:20	734:7,8,10	802:14	692:10 706:13
608:1,10,11,19	735:18 750:4	<b>whether</b> 606:7	789:7,21 790:10
610:5,8 614:5	753:10 762:11	608:5,6 610:19	<b>willingness</b> 756:14
616:8 617:13	785:22 798:6	612:13,17	793:22
618:12 619:3,17	<b>Wells</b> 602:21	613:6,8,11,20	<b>wind</b> 676:18 759:6
620:8,12	605:17 606:4	614:3 624:8	764:21 765:1
622:2,3,7,15,17	627:3 785:11	630:5 637:6	766:17,18,19
624:21	791:1 796:3	640:19	767:6,16 770:3
626:14,17,21	<b>Wells's</b> 782:13	651:14,21,22	776:3,5
627:6,18 630:20	<b>Wendy</b> 590:7	652:5,12	777:15,21
635:2,4,14	738:10	675:13,19	778:12,20 779:5
636:20 638:2,17	<b>we're</b> 681:5 702:2	689:10,11	788:11 796:12
642:14	722:1,13 724:16	701:21 702:4	<b>winning</b> 623:13
644:17,19	733:19 734:4,6	711:12,13,14	<b>Wisconsin</b> 686:20
662:18	753:17 761:18	715:6	<b>wise</b> 676:5
<b>Water's</b> 598:6	779:1 784:16	723:16,17,18	<b>wish</b> 644:12
618:9 626:9		724:11 728:5	670:10 718:6
638:6 640:18		755:19 776:3,4	
<b>waving</b> 767:8			

Capital Reporting Company  
Formal Case No. 1119 (Volume III) 12-04-2015  
Page 47

793:6 799:5 <b>wishes</b> 798:16 <b>withdrawing</b> 735:6 <b>witness</b> 593:2 594:9,17 598:4,9 599:5,17 600:9,15 601:2 602:19 604:10 605:12,16 606:10 607:2 608:2,11,21 609:16,19 610:3,10,17 611:4,10,19 612:1,9 614:11,19 615:1,6,18 616:4,11,19,22 618:6 620:18,22 621:6,12 622:5 623:21 624:19 625:9,12,14 626:1 627:1 628:15 629:4 630:2,12 631:4 632:2 633:12 634:7,10,16 635:8,12,17 636:22 637:10 638:8,11,19 640:2,3,5,9 645:6,13,17 649:9 674:14 675:1,9 676:19 677:1 678:5,9,11,17 680:14 681:21 682:18 683:11 684:16 686:2 688:5 689:11 690:16 692:18 693:17 694:1,7 696:21 698:6,15	700:17 701:2 702:22 704:17,21 707:15 709:2,12,17 713:6,8 714:7,10 716:17 719:5,18 722:21 723:6 727:20 731:18 733:9 734:9 735:7,10,18,20 736:17,19 764:3,5 769:1,7,10 771:14 772:8,14 773:5 774:1,13 775:12 776:1,9,12,14,19 777:17 778:2,18 779:7,9,13,16,20 780:6,13,21 781:2,16 782:3,14,20 783:1 791:1,8,18 792:1,22 794:14,17 <b>witnesses</b> 645:11 670:21 784:8 795:16 <b>witness's</b> 733:16 <b>woke</b> 711:14 <b>work</b> 601:22 603:4,11 604:3,4,14 606:8,15 607:21 608:11 616:2 618:16 629:18 630:5 632:21 635:18 636:2,5,15 637:20 642:14,16 645:9 650:4 659:22	677:10,13,20 678:3 688:11,13 689:22 752:3 781:19 794:9,10 <b>worked</b> 608:4 623:2 <b>workforce</b> 796:5 <b>working</b> 608:1 609:12,17 614:8 615:20 627:20 639:10 645:16 662:10 <b>world</b> 776:16 <b>worried</b> 695:5 <b>worse</b> 663:12 697:4 720:14 <b>worth</b> 773:17 <b>worthwhile</b> 627:19 <b>write</b> 675:20 <b>writing</b> 621:5,6 788:4 798:6 799:1 <b>written</b> 605:1 801:18 <b>wrong</b> 606:21 617:22 637:3 709:20 718:17 723:1 724:18,19 <b>wrote</b> 727:12 <hr/> <b>Y</b> <b>Yep</b> 672:22 <b>yesterday</b> 649:3 696:7 709:6 730:13 <b>yet</b> 654:10 669:19,21 <b>York</b> 672:9	673:18,19 680:11,19 <b>yours</b> 771:13 <b>you've</b> 615:20,22 704:11 708:18 752:13 <hr/> <b>Z</b> <b>Zero</b> 695:17
--	---	---	---